

## CONTRIBUTOR BIO

---



**BRETT RAFFISH** is a second-year political science major concentrating in pre-law. He minors in global politics, religious studies, and psychology. Brett is currently Cal Poly's ASI Secretary of Community Relations and is an appointed commissioner on the San Luis Obispo Human Relations Commission. After graduating, Brett plans on attending law school and becoming a Judge Advocate General in the U.S. Navy.

## **POLICE ON-BODY CAMERAS: A VIOLATION OF PRIVACY?**

*Brett Raffish*

### **Introduction**

Within the last ten years, the relationship between the public and the law enforcement community has diminished greatly. This impasse can be attributed to the public's decreasing trust in officers to behave fairly and to treat individuals within the limits and boundaries of the law.<sup>1</sup> The emergence of cell phone cameras and other new, innovative recording devices has only deepened this mistrust. Civilians now utilize this new technology to record all types of police encounters, including the apprehension, arrest, or questioning of individuals.<sup>2,3</sup> The August 2014 shooting of Michael Brown, an 18 year old unarmed African-American, by Officer Darren Wilson of the Ferguson,

---

1 Davis, Robert C. *Perceptions of the Police among Members of Six Ethnic Communities in Central Queens, NY: Executive Summary*. New York, NY: Safe. <https://www.ncjrs.gov/pdffiles1/nij/grants/184613.pdf>.

2 *Know Your Rights When Taking Photos and Making Video and Audio Recordings*. American Civil Liberties Union, n.d. Web. 24 Jan. 2016. <https://www.aclupa.org/issues/policepractices/your-right-record-and-observe-police/taking-photos-video-and-audio/>.

3 Law Enforcement Equipment and Technology. National Institute of Justice. N.p., n.d. Web. 24 Jan. 2016. <https://www.nij.gov/topics/law-enforcement/technology/pages/body-worn-cameras.aspx>.

Missouri Police Department, exemplified and perpetuated society's distrust of the reliability in officer testimonies and accounts as to how and why the shooting occurred.<sup>4</sup> Without video evidence or the testimony of reliable witnesses, the court was forced to rely solely on the verbal testimony of Officer Wilson and on witnesses with conflicting accounts of what occurred. The dispute surrounding the Michael Brown shooting reflects just one example of dozens of cases detailing officer-involved shootings that are based exclusively on the verbal testimony of the individuals involved. Different law enforcement organizations such as the International Association of Chiefs of Police (IACP) have begun encouraging and promoting the use of various technologies to eliminate or mitigate discrepancies in the investigation of an officer's actions. New innovative technologies, such as on-body cameras, would increase transparency to the public and provide evidence useful in the defense of a police department in cases of civil liability and/or in the adjudication of peace officer personnel complaints.<sup>5</sup> The newest, and arguably most controversial technology introduced thus far, is the camera affixed to officers' uniforms – also known as “on-body” cameras.<sup>6</sup>

Due to the relative infancy of body camera technology, there is much debate surrounding almost every aspect of the new device. Policy options concerning exceptions to required camera activation must be examined in order to protect officer/civilian privacy. The overarching goal of the implementation of body camera technology is police department transparency and bridging the gap of mistrust between the public and the law enforcement community. The protection of privacy, in the context of law enforcement body camera usage, is a fine line which, if crossed, can destroy the advancements toward trust gained over recent years, and cause communities to again lose faith in their protectors. Therefore, the primary research question in this paper is: What are the most reasonable policy options to police body camera deactivation in order to protect civilian and officer privacy?

---

4 “Memorandum.” *Federal Sentencing Reporter* 6.6, Justice Department Guidance for Prosecutors: Fifteen Years of Charging & Plea Policies (2015): 342-46. [http://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2014/DOJ\\_memo.pdf](http://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2014/DOJ_memo.pdf).

5 International Association of Chiefs of Police. 2004. *The Impact of Video Evidence on Modern Policing: Research and Best Practices from the IACP Study on In-Car Cameras*. Alexandria, VA: International Association of Chiefs of Police. <https://www.bja.gov/bwcl/pdfs/IACPIn-CarCameraReport.pdf>.

6 “Body Worn Cameras Model Policy.” (2015): 1007-011. International Association of Chiefs of Police. Web. <http://www.iacp.org/mpbodyworncameras>.

## Implications of Body Cameras

The body camera performs the same function as a modern cell phone camera and can range in shape and size, from a unit as small as a pen to as large as a two-way radio (walkie-talkie). All such cameras also have tamper-proof hardware. While officers have the ability to control when the devices are activated, they cannot edit video while in the field. Some systems allow officers to select between audio and/or video modes.<sup>7</sup> There are three common areas where the camera can be placed: affixed to an officer's lapel, attached to an officer's glasses, or hooked on to an officer's uniform at the shoulder. No formal requirement exists concerning the placement of the cameras, with the decision left up to the discretion of each law enforcement agency.<sup>8</sup> Law enforcement departments utilizing on-body cameras have created policies establishing when and how long an officer's camera should be on.<sup>9</sup> Policy makers and the law enforcement community are still in great debate over officers' length of recordings and when the officer may turn the camera on and off.

The introduction of voluminous video recording and downloading presents two key technological issues for police departments and judicial systems. The initial technological issue is the method of storing body camera imagery. When the Chula Vista Police Department in Southern California transitioned to the use of body cameras, the department quickly realized data storage was an impediment to the implementation of the cameras. Given that a 30-minute video takes up approximately 800 megabytes of storage, the department calculated that 33 terabytes would be used every year for only 200 officers' video data (to truly emphasize just how substantial 33 terabytes of data is, 33 terabytes of data would

---

7 Corso, Jason, Alexander Alahi, Kristen Grauman, Gregory Hager, Louis Morency, and Harpreet Sawney. *Video Analysis for Body-worn Cameras in Law Enforcement* (n.d.): n. pag. Computing Community Consortium. Web. <https://arxiv.org/abs/1604.03130>.

8 Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services. [http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf).

9 White, Michael D. 2014. *Police Officer Body-Worn Cameras: Assessing the Evidence*. Washington, DC: Office of Community Oriented Policing Services. <https://www.ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

fill 2,062 Apple iPhones to maximum storage capacity).<sup>10</sup> A larger department of over 10,000 sworn officers, such as the Los Angeles Police Department or the New York Police Department, would be faced with thousands of terabytes of video data per year which would require such departments to either invest in massive hard drives, which are steep expenditures for a municipality, or store video online utilizing ‘cloud’ technology. Most ‘cloud’ servers, however, are not compliant with the FBI’s Criminal Justice Information Services requirements. This means that most available cloud networks neither provide sufficient security nor contain the algorithms or encryption codes necessary to keep the data from being compromised by experienced hackers. Moreover, it is uncertain whether the particular cloud network even has the capability to store thousands of terabytes of data.<sup>11</sup> In the absence of a secure cloud network, Departments are not legally able to store the data online. This makes answering the storage issue of critical importance to agencies contemplating use of body cameras.

The second issue of debate is the retention period for video imagery. Departments have begun classifying video footage into two categories: evidentiary and non-evidentiary. Several cities have enacted policies whereby non-evidentiary footage is retained for approximately 60-90 days, and even as few as 30 days before it is purged.<sup>12</sup> The time limit for retention of evidentiary data, however, varies from department to department. The rapid accumulation of evidentiary data forces certain departments, depending on the size of storage, to limit the length of time the data is retained to less than five years.<sup>13</sup> Destruction of evidentiary data can give rise to problematic legal issues. For example, if a court case is retried after the retention period for the video imagery

---

10 Newcombe, Tod. “Body Worn Camera Data Storage: The Gorilla in the Room.” N.p., n.d. Web. <http://www.govtech.com/dcl/articles/Body-Worn-Camera-Data-Storage-The-Gorilla-in-the-Room.html>.

11 Sallee, Vern. “Outsourcing the Evidence Room: Moving Digital Evidence to the Cloud.” *The Police Chief* 81 (April 2014): 42–46. <http://www.policiechiefmagazine.org/outsourcing-the-evidence-room-moving-digital-evidence-to-the-cloud/>.

12 Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services. [http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf).

13 “Memorandum.” *Federal Sentencing Reporter* 6.6, Justice Department Guidance for Prosecutors: Fifteen Years of Charging & Plea Policies (2015): 342-46. Department of Justice. Web. [http://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2014/DOJ\\_memo.pdf](http://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2014/DOJ_memo.pdf).

has expired, the court may be without the evidence (video footage) used in the original trial. Police departments are taking these issues into consideration and are continuing to work on storage policies.

### Issues with Data Access

Data access by the public is not regulated by or conferred under one single piece of legislation. Instead, every state has a different public records statutory scheme that describes the extent of public access to public records, of which video footage is included. At the federal level, all data recorded and retained by federal peace officers (i.e. Drug Enforcement Agency, Customs and Border Protection, etc.) falls under the U.S. Freedom of Information Act (FOIA) which grants all citizens the right to inspect or receive copies of public records created by federal authorities.<sup>14</sup> However, if the video footage is a part of an ongoing investigation, the footage is generally exempt from public disclosure. Several amendments to the FOIA have been suggested by the House Committee on Government Operations as well as the Senate Committee on the Judiciary, which would limit public access to video imagery. The goal of these amendments is to prevent public access to footage showing officers' use of force.<sup>15</sup>

Various states have public records laws that exempt investigatory records such as the majority of police body camera footage from disclosure to the public. Some states such as Michigan and Florida have passed laws that exempt police body camera footage taken in a person's home from public disclosure.<sup>16</sup> The number of states that have mandated the release of footage are limited. Overall, the process for accessing these records varies from state to state and municipality to municipality. Under an interpretation of the California Public Records Act (CPRA) by the California Attorney General's Office, "Records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda are investigative records," and

---

14 "FOIA Update: The Freedom of Information Act, 5 U.S.C. sect. 552, As Amended By Public Law No. 104-231, 110 Stat. 3048". *usdoj.gov*.

15 Testimony of Adam A. Marshall on Behalf of the Reporters Committee for Freedom of the Press on B21-0351, the "BODY-WORN CAMERA PROGRAM REGULATIONS AMENDMENT ACT OF 2015" B21-0356, the "PUBLIC ACCESS TO BODY-WORN CAMERA VIDEO AMENDMENT ACT OF 2015." <https://www.rcfp.org/sites/default/files/2015-10-21-comments-on-dc-bodycam-legisla.pdf>

16 "Police Body Cameras Raise Privacy Issues for Cops and the Public." The Cato Institute, 12 February 2015. Web. 24 Jan. 2016. <https://www.cato.org/blog/police-body-cameras-raise-privacy-issues-cops-public>.

are exempt from disclosure to the public.<sup>17</sup> Numerous judicial decisions have clarified the types of records which fall within the “investigatory” exemption. Further, assuming that the record in question properly fits within the exemption, the investigatory record exemption (and others found in the CPRA) is permissive, meaning California law enforcement agencies have discretion to assert the exemption over the record and withhold it, or not assert and allow the record to be disclosed.

Because each city in California has interpreted and applied the CPRA and its permissive exemptions differently, it has inherently created differing policies for relinquishing video to the public. The Oakland Police Department evaluates public records requests on a case-by-case basis, while the Los Angeles and San Diego Police Departments have generally asserted the available exemptions and denied all access to the footage.<sup>18</sup> The lack of uniformity in the policies regarding video data disclosure has generated strong public outcry and criticism toward law enforcement agencies for not delivering on the original intent of the body cameras — department transparency and accountability.

### **Policy Suggestions**

Nationally, police departments initially resisted the concept of police body cameras until the effects of the cameras were tested in various cities around the country and proved, over time, to decrease complaints against officers and improve public opinion of local law enforcement.<sup>19</sup> For example, the Rialto Police Department in San Bernardino, CA, implemented on-body cameras in 2012. Within the first 12 months of implementation and use of the on-body cameras, general use of force against suspects was 50 percent lower than it had been the year prior. The Rialto Police Department also experienced a tremendous drop in personnel complaints against their officers, almost dropping to

---

17 “SUMMARY CALIFORNIA PUBLIC RECORDS ACT GOVERNMENT CODE SECTION 1 6250 ET SEQ.” California Attorney General’s Office, n.d. Web. <http://chwlaw.us/papers/Public%20Records%20Act%20Summary.pdf>.

18 Mather, Kate. “A Fight over Access to Video from LAPD Body Cameras Is Shaping up.” *Los Angeles Times*. Los Angeles Times, n.d. Web. 24 Jan. 2016. <http://www.latimes.com/local/crimel/la-me-lapd-cameras-20150205-story.html>.

19 Celona, Larry. “NYPD in a ‘snap’ Judgment: PBA and Brass Resist Order to Carry Cameras.” *New York Post NYPD in a Snap Judgment PBA and Brass Resist Order to Carrycameras Comments*. New York Post, 14 Aug. 2013. Web. 24 Jan. 2016. <http://nypost.com/2013/08/14/nypd-in-a-snap-judgment-pba-and-brass-resist-order-to-carry-cameras/>.

zero.<sup>20</sup> Although departments began to implement the new technology in hopes of increasing department and officer accountability and transparency, many departments soon realized that some recordings contained extremely sensitive content that revealed images of individuals in their most personal and private settings.<sup>21</sup> To protect the privacy of individuals and officers, some departments (in accordance with their state's public records laws) have refused to relinquish the video records, essentially acting against their original intention in implementing a camera program.<sup>22</sup> In various cases, the cameras have also inhibited public cooperation with law enforcement for fear of intrusion into their privacy. There are, however, policy options involving when an officer should not record that can be implemented in order to enhance civilian and officer privacy.<sup>23</sup> By not recording certain contacts and in certain places, California law enforcement agencies may, in turn, be more willing to permit public access to video records, foster a more uniform system for public access and improve privacy of both civilians and officers.

Policy options limiting an officer's camera activation involve the following: (1) When interviewing, questioning, and/or assisting victims of sexual assault, rape, and other sexual offenses regardless of location; (2) When recording would expose the identity of a confidential informant, citizen informant, or undercover peace officer; (3) When an officer and his/her partner are alone in the car and not involved in an investigatory or enforcement action (see provisions below); (4) When entering hospitals and healthcare facilities; and (5) When in any locker room or bathroom for non-investigatory purposes, or while the officer is on break.

The first restriction on camera activation would occur when officers are interviewing or interacting with victims of sexual assault, rape, and/or sexual abuse, regardless of the location where this contact occurs. An officer's duties

---

20 Ariel, Alex. "How police body cameras can improve behavior, ease tension." *SanDiegoUnionTribune.com*. N.p., 21 Oct. 2016. Web. 07 Mar. 2017. <http://www.rand.org/blog/2016/11/how-police-body-cameras-can-improve-behavior-ease-tension.html>

21 Sanburn, Josh. "Sheriffs Are Often the Lone Holdout on Body Cameras." *Time*. Time, n.d. Web. 24 Jan. 2016. <http://time.com/3900775/police-body-cameras-sheriffs/>

22 Stanley, Jay. "Police Body-Mounted Cameras: With Right Policies in Place, a Win For All." *American Civil Liberties Union*. American Civil Liberties Union, n.d. Web. 24 Jan. 2016. <https://www.aclu.org/other/police-body-mounted-cameras-right-policies-place-win-all>

23 McKinney, Matt. "Police Body Cameras Raise Questions about Privacy Rights." *Star Tribune*. Star Tribune, n.d. Web. 24 Jan. 2016. <http://www.startribune.com/police-body-cameras-raise-questions-about-privacy-rights/228872071/>

when dealing with a victim of a sex crime can include interviewing the victim in his/her house or hospital, responding to a 9-1-1 call by someone who was recently abused or raped, and/or assisting a victim in dressing themselves after abuse has occurred.<sup>24</sup> Regardless of the specific scenario or situation, sex crimes by their very nature are extremely personal and private to the victim and require the utmost understanding and respect from officers when dealing with these types of crimes. Recording individuals during this time of greater fragility and unease could increase the trauma and stress for such victims who may feel that their situation is not as private as it could be or they would like it to be.<sup>25</sup> Presently, the decision of whether or not to record such interactions varies by law enforcement agency, which means that depending on the agency overseeing the sex crime investigation, recordings of victims may be subject to public access.<sup>26</sup> Access to such footage would almost certainly cause further embarrassment, as well as the strong possibility that victims would simply refuse to provide a statement or disclose pivotal or key details of the situation for fear of the footage being publicized. Privacy of victims of sex crimes should be respected and accommodated by deactivating officer body cameras.<sup>27</sup>

The second restriction on officer body camera activation is when an officer is interacting with a confidential informant, citizen informant, or undercover peace officer. This exemption can be separated into two categories: confidential civilian informants and undercover peace officers. It is extremely challenging to find civilians (who may or may not also be criminals) willing to provide information about crimes to law enforcement agencies. Individuals who cooperate with law enforcement by providing information to assist agencies in their crime fighting efforts run the risk of exposure and, consequently, jeopardize their safety

---

24 Jetmore, Larry. "Investigating Rape Crimes, Part 1: Guidelines for First Responders." *PoliceOne*. PoliceOne.com, n.d. Web. 24 Jan. 2016. <https://www.policeone.com/police-products/investigation/evidence-management/articles/509858-Investigating-Rape-Crimes-Part-1-Guidelines-for-first-responders/>

25 Edwards, Susan S. M. "Domestic Violence and Sexual Assault." *Police Force, Police Service* (1994): 131-50. Battered Women's Project. Web.

26 "POLICE BODY CAM FOOTAGE: JUST ANOTHER PUBLIC RECORD." (n.d.): n. pag. Abrams Institute, Dec. 2015. Web. [http://isp.yale.edu/sites/default/files/publications/police\\_body\\_camera\\_footage\\_just\\_another\\_public\\_record.pdf](http://isp.yale.edu/sites/default/files/publications/police_body_camera_footage_just_another_public_record.pdf).

27 "Impact of Police Use of Body Camera on Victims." (n.d.): n. pag. Dec. 2015. Web. [http://endabusewi.cruiskeenconsulting.com/sites/default/files/resources/impact\\_of\\_police\\_use\\_of\\_body\\_camera\\_on\\_victims\\_discussion.pdf](http://endabusewi.cruiskeenconsulting.com/sites/default/files/resources/impact_of_police_use_of_body_camera_on_victims_discussion.pdf)

and the safety of those around them.<sup>28</sup> Recording these individuals could not only put their life in peril, but could dissuade future civilian cooperation with authorities. Undercover peace officers at both the state and federal level can work in very volatile and hostile environments, and operate under aliases in order to assimilate into various criminal enterprises to collect evidence and effectuate arrests.<sup>29</sup> The need to maintain the confidentiality of their law enforcement identity is vital to the success of the undercover operation. If officers' identities are exposed, not only would it jeopardize the integrity of the operation, but put the undercover officer's life in danger.<sup>30</sup> To minimize such significant risks, all body camera policies should restrict activation where civilian informants or undercover officers are involved.

Requiring body camera activation while officers are in a police car also inhibits officer privacy. However, restricting camera activation to preserve officer privacy in this situation is subject to certain limitations. For instance, if an individual is being transported, camera activation may not intrude upon officer privacy, as the "forum" is far less private as compared to when officers are in the car alone.<sup>31</sup> Officers must activate cameras before any contact with the public and before they activate lights and sirens in response to an emergency call, allowing officers to respond outside the rules of the road. This exemption only protects officers when partners are in the police car alone. Although employers are legally permitted to monitor an officer's speech and conduct, even while in a police vehicle, doing so may not be productive or fair to officers.<sup>32</sup> Partner communication is vital to an officer's ability to carry out his or her job safely,

---

28 "Chapter Three: The Attorney General's Guidelines Regarding the Use of Confidential Informants." *Special Report*. Office of the Inspector General, Sept. 2005. Web. 24 Jan. 2016. <https://oig.justice.gov/special/0509/chapter3.html>

29 Burton, Thomas. "NEIA Associates - Undercover Officer Safety." *NEIA Associates - Undercover Officer Safety*. National Executive Institute Associates, Oct. 1995. Web. 24 Jan. 2016. <http://www.neiaassociates.org/undercover-officer-safety/>

30 Geiger, Kim, and Jeremy Gorner. "Rauner Signs Police Body Camera Bill into Law." *Chicagotribune.com*. Chicago Tribune, 12 Aug. 2015. Web. 24 Jan. 2016. <http://www.chicagotribune.com/news/local/politics/ct-bruce-rauner-police-body-camera-bill-met-0713-20150812-story.html>

31 Los Angeles Police Department. Office of the Chief of Police. *Body Worn Video Procedures-Established*. N.p.: n.p., n.d. Print.

32 Prupis, Nadia. "New Debate on Police Body Cameras Pits Privacy Against Accountability." *Common Dreams*. Common Dreams, 11 Sept. 2015. Web. 24 Jan. 2016. <http://www.commondreams.org/news/2015/09/11/new-debate-police-body-cameras-pits-privacy-against-accountability>

effectively, and efficiently. By monitoring officer conversation in the vehicle, officers could become uneasy about communicating with their partner due to constant worry of censorship over what they say. When partners are able to develop relationships and become comfortable and familiar with one another, chemistry and cooperation are increased, thereby fostering greater reliance and dependability in the field.<sup>33</sup> In many professions, employers monitor electronic communications of their employees including emails, website access, and phone calls. However, not every word spoken or action taken is subject to recordation. Privacy should be granted to officers who are not engaged in contact with the public and where the communications consist of conversations between officers inside a contained environment (i.e., a police car).<sup>34</sup>

Under no circumstances should body cameras be activated in hospitals or healthcare facilities where preservation of the privacy of patients and others receiving medical treatment or consultation is of the utmost importance. Police officers are often in hospitals to interview victims/suspects of crime, guard a suspect or prisoner, or for other investigatory matters.<sup>35</sup> Although the Fourth Amendment to the United States Constitution prohibits unreasonable searches, and whether a “search” occurred is determined by assessing whether the individual in question had a reasonable expectation of privacy in the conduct, and that expectation is one that society is willing to accept as reasonable, an officer may record anyplace that he or she has a lawful right to be.<sup>36</sup> The issue, therefore, is more about individual privacy and not necessarily one of constitutional dimension under the Fourth Amendment.<sup>37</sup> Individuals in the hospital, whether criminals or victims, may be in extremely vulnerable and sensitive states. It would

---

33 “Police Communication: Why Does It Matter?” National Communication Association, June 2008. Web. <https://www.natcom.org/communication-currents/police-communication-why-does-it-matter>.

34 “Fact Sheet 7: Workplace Privacy and Employee Monitoring.” *Workplace Privacy and Employee Monitoring*. Privacy Rights Clearinghouse, Oct. 2015. Web. 24 Jan. 2016. <https://www.privacyrights.org/consumer-guides/workplace-privacy-and-employee-monitoring>.

35 “Interviewing Victims of Sexual Assault as Part of Sex Offender Management.” *Interviewing Victims of Sexual Assault as Part of Sex Offender Management* (n.d.): n. pag. Center for Sex Offender Management. Web. <http://www.csom.org/train/victim/4/material/Section%204%20Handout%20-%20Interviewing%20Victims.pdf>.

36 *United States of America v. Ricky S. Wachumwah*. United States Court of Appeals For the Ninth Circuit. 12 Oct. 2012. Print.

37 Warren, Bryan. “Body Cameras Must Be Deployed with Caution in Healthcare Facilities.” *Campus Safety*, n.d. Web. [http://www.campusafety.com/article/body\\_cameras\\_must\\_be\\_deployed\\_with\\_caution\\_in\\_healthcare\\_facilities/blog](http://www.campusafety.com/article/body_cameras_must_be_deployed_with_caution_in_healthcare_facilities/blog)

be terribly intrusive to record individuals so situated. Additionally, under the Health Insurance Portability and Accountability Act (HIPAA), a substantial amount of protected patient information would need to be redacted from the recordings if the footage was made accessible to the public, which would be an extraordinarily time consuming. Individual and patient privacy is infringed when police body cameras are activated in hospitals and healthcare facilities.<sup>38</sup>

The final restriction is to prohibit body camera activation in a bathroom or locker room (when the officer is present for non-investigatory purposes), or while the officer is on break. In the first instance, the intention of this restriction is overwhelmingly straightforward - the protection of officers' privacy.<sup>39</sup> An officer, like any other person, maintains a reasonable expectation of privacy while in restrooms and locker rooms.<sup>40</sup> The more controversial restriction to body camera activation concerns officers on break. When officers are on lunch break, they may still have encounters with the public, and there is always the possibility of an officer being called on to stop a crime.<sup>41</sup> Again, this is less about constitutional issues and more about general notions of privacy when individuals take a break from their primary duties. Even though officers in most jurisdictions still must respond should a radio call come in, they may take care of personal business unrelated to their duties during such breaks. Officers should not have to activate their cameras during their breaks as this time is allotted to them during an 8-12 hour shift.<sup>42</sup>

---

38 Carter, Craig. "Legal Implications of Video Recording Devices in Hospitals." *Legal Implications of Video Recording Devices in Hospitals* (n.d.): n. pag. Jackson & Carter, PLLC.

39 "Indianapolis Police Testing Use of Body Cameras While on Duty | The Law Office of John L. Tompkins | Indianapolis." *The Law Office of John L. Tompkins*. John Tompkins, n.d. Web. 24 Jan. 2016. <http://www.jobntompkinslaw.com/Articles/Indianapolis-police-testing-use-of-body-cameras-while-on-duty.shtml>.

40 Johnson, O'Ryan, and Erin Smith. "Boston Brass, Police Union Fear Body Cams on Cops." *PoliceOne*. PoliceOne, 3 Dec. 2014. Web. 24 Jan. 2016. <https://www.policeone.com/police-products/body-cameras/articles/7921491-Boston-brass-police-union-fear-body-cams-on-cops/>.

41 Kofman, Ava. "We Don't Even Know How Best to Use Body Cameras—Let Alone Regulate Them." *The Nation*. The Nation, 23 Sept. 2015. Web. 24 Jan. 2016. <https://www.thenation.com/article/we-dont-even-know-how-best-to-use-body-cameras-let-alone-regulate-them/>.

42 Los Angeles Police Department. Office of the Chief of Police. *Body Worn Video Procedures-Established*. N.p.: n.p., n.d. Print.

**Future Recommendations**

The implementation of police body cameras has significant potential for transparency and accountability in law enforcement. Although body cameras are a powerful tool and could generate better relationships between the public and the law enforcement community, the activation of cameras by officers in various scenarios and situations can impede civilian and officer privacy. Some of the critical restrictions on camera activation, examined in previous sections, include: when interviewing, questioning, and assisting victims of sexual assault, rape, and other sex offenses regardless of location; when recording would expose the identity of a confidential informant, citizen informant, or undercover peace officer; when an officer and his/her partner are alone in the patrol car; when entering hospitals and healthcare facilities; and when in any locker room or bathroom for non-investigatory purposes or while on break. Although officers may record in most if not all of the aforementioned situations, the issue truly becomes should they record.<sup>43</sup>

The privacy of all individuals captured on body cameras is vital to the cooperation between law enforcement agencies and the public. For decades, this relationship has rapidly declined into a state of distrust. By implementing body cameras and simultaneously respecting one another's privacy, the initial goal of body cameras (transparency and accountability) is maintained and the relationship between the two entities can improve without additional hindrance. It is the author's recommendation that all of the restrictions and policies examined above be adopted and implemented by law enforcement agencies using body camera technology to insure that the privacy boundary of all individuals recorded is not crossed which, again, allows the relationship between the law enforcement community and the public to grow.

The restrictions examined pertain only to when police officers should not have their cameras activated to protect the privacy of all individuals recorded. However, future research should be done on the following: (1) the development of a national uniform system of access to body camera video (currently states control their own public records laws); (2) minimizing the vulnerability of police video data storage to infiltration, exposure and hacking; and (3) whether officers should be required to inform citizens that they are being recorded. Police body camera technology is very new and, due to its immaturity, many

---

43 Op. Cit., fn. 39

legal and ethical issues have yet to be resolved.