

# **FINAL REPORT OF THE POLICE BODY-WORN CAMERA FEASIBILITY REVIEW COMMITTEE**

January XX, 2021  
Madison, Wisconsin

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## OVERVIEW<sup>1</sup>

The recent nationwide spate of high-visibility police use-of-force incidents, often captured on video, and the ensuing social unrest expressing outrage over systematic race-based excessive use of force by police, have thrust the issue of body-worn cameras (BWCs) to the forefront of public debate. Calls for implementing BWC programs are common, and the data suggest that large numbers of police departments are adopting them. In 2013, the U.S. Bureau of Justice Statistics estimated that over one-quarter of U.S. police departments had adopted BWCs;<sup>2</sup> by 2016, about half of U.S. law enforcement agencies (47%) had adopted BWCs.<sup>3</sup> Of those agencies that had adopted BWCs, approximately 60% had fully deployed BWCs to all officers, while 40% had adopted only pilot projects or adopted partial deployment for some assignments.<sup>4</sup> The number of departments with BWCs is almost surely significantly higher today than when this data was collected more than four years ago, especially given that in 2015 the Obama Administration awarded \$23 million in grants to law enforcement agencies across the nation for BWC pilot projects,<sup>5</sup> although recently some departments have abandoned their use of BWCs, apparently primarily smaller departments that struggle with the costs of footage storage.

In communities without BWCs, including Madison, news accounts of violent encounters between police and community members are often accompanied by pointed observations that police were not equipped with BWCs, or that police in the reporting locale do not wear BWCs. A recent editorial in the Wisconsin State Journal lamented, “We’re not excited about the mayor spending \$450,000 on an independent police monitor because it won’t have video evidence to inform its decisions about controversial police encounters.”<sup>6</sup>

Reflecting the urgency with which Madison city leaders perceive this issue, in the summer of 2020 the Common Council and the Mayor created this Committee, the Body-Worn Camera Feasibility Review Committee, and gave it a six-month deadline within which to complete its work. Three months before that deadline, while the

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<sup>1</sup> The Committee is grateful to the following City staff members for their time and contribution on this project: Common Council Legislative Analyst Karen Kapusta-Pofahl, City Attorney Mike Haas, and MPD Captain Brian Austin.

<sup>2</sup> U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS, 2013, 200 (2015).

<sup>3</sup> U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS BODY-WORN CAMERA SUPPLEMENT 2016, at 16 (2016) (question 10a).

<sup>4</sup> *Id.* at 25.

<sup>5</sup> U.S. Dep’t of Justice, *Justice Department Awards over \$23 Million in Funding for Body Worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States* (Sept. 21, 2015), <https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law>.

<sup>6</sup> Editorial, *Good to see solid funding for city police*, WISCONSIN STATE JOURNAL, Oct. 25, 2020, p. B3.

Committee was still studying the matter, the Common Council moved forward and allocated funds for a potential police BWC pilot project, though expenditure of the funds would be contingent on a separate second Council vote approving the expenditure during 2021.

Advocates of BWCs tout their potential to create an objective factual record of disputed events; increase police transparency and accountability; reduce imbalances of power in police-said, suspect-said credibility contests; enhance public views of police legitimacy; reduce police use-of-force incidents; reduce unfounded civilian complaints against police; improve police and civilian behavior during encounters; streamline the complaint-resolution process; provide improved evidence for criminal prosecutions of criminal offenders; and provide improved opportunities for police training. For these purposes, across the spectrum, BWCs enjoy wide popular support. Polls consistently find that, nationwide, nearly 90% of the public supports BWCs.<sup>7</sup>

Support for BWCs is far from universal, however. Critics of BWCs point to the scientific literature researching BWCs (which indicates that in reality, BWCs have little impact on either police or civilian behavior), the expansions of surveillance and intrusions upon privacy, the financial cost of BWCs and data storage, and data suggesting that BWCs expand criminalization of marginalized populations. The public support they enjoy thus masks challenges to and unintended consequences of BWCs that make the decision whether to implement a BWC program, and if so, how, much more complicated than they first appear. Various segments of Madison, especially among some marginalized communities, are strongly opposed to BWC implementation, citing a variety of costs and detrimental effects. Our Committee worked hard to understand all of these potential benefits and potential harms. The picture that emerged is a complicated one.

Reflecting that complexity, this Committee's work follows the work of a predecessor Committee that in 2015 voted against adopting BWCs in Madison. As a starting point, our Committee heard presentations from individuals who participated in that earlier committee work. To start, we heard a presentation from Jacquelyn Boggess, who conducted extensive listening sessions and focus groups among affected people in the community for that prior committee. Ms. Boggess reported that members of Madison's Black and other marginalized communities at that time expressed no strong feelings either for or against BWCs; they were more concerned about mistrust, fear, and frustration with racial profiling and discrimination by police. While they had no strong feelings about BWCs themselves, they had some concerns about the potential for officer manipulation of camera data, cameras

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<sup>7</sup> Katy Frankovic, *Unlike Ferguson, the shooting of Walter Scott finds racial agreement*, YouGov (April 15, 2015), <https://today.yougov.com/topics/politics/articles-reports/2015/04/15/unlike-ferguson-shooting-walter-scott-finds-racial> (2015 poll finds 88% of the public supports BWCs, and only 8% oppose them); *Large Majorities Favor Police Reforms in Congressional Bills, New UMD Survey Finds*, <https://www.prnewswire.com/news-releases/large-majorities-favor-police-reforms-in-congressional-bills-new-umd-survey-finds-301093289.html> (2020 poll finds that 89% of respondents favor BWCs); Chris Khan, *Exclusive: Most Americans, including Republicans, support sweeping Democratic police reform proposals - Reuters/Ipsos poll* (June 11, 2020), <https://www.reuters.com/article/us-minneapolis-police-poll-exclusive/exclusive-most-americans-including-republicans-support-sweeping-democratic-police-reform-proposals-reuters-ipsos-poll-idUSKBN23I380> (2020 Reuters poll finds that 92% of respondents want federal police to wear BWCs).

providing a false sense of security, and privacy issues. Our current Committee has sought to address those serious and legitimate concerns in this Report and its accompanying Model Policy.

Two members of the predecessor BWC Committee—Tom Brown and Veronica Figueroa—are members of our current Committee, and they also addressed our Committee on the prior Committee’s work and conclusion. Tom Brown (who co-chairs the current Committee) expressed strong support for BWCs at this time, noting, “It is a different era, it is a different time.” He added “I believe that if we do get body cameras, I do think that it will help us in the effort of the police serving us, especially those marginalized communities. I think it will help bring more honor. And I also think ... some people will feel protected, even the cops that fear that they might be accused of doing wrong.”

For her part, Veronica Figueroa, who voted against BWCs in the prior Committee, explained: “My vote no was mainly because we didn’t have a process in place. We didn’t have policies and procedures to give the committee straight answers on how these cameras were going to be used, who was going to have access to the camera, whether or not they were going to be able to be turned on or off, when especially in domestic violence situations or when victims were sexually assaulted, how the cameras were going to be [considered] if people were undocumented, consider certain aspects of people’s lives. So my no was related more to like I cannot approve something that doesn’t have a policy and procedure behind it that is potentially going to hinder more the community than help in the community. My other logic was also there’s tons of cameras watching what we all do through phones, and there’s videos and tons of footage out there with no accountability. So is this camera really going to hold police accountable for misbehavior, or even citizens for misbehavior, when we have tons of footage and nothing has happened both from police and from every day regular citizens that just, you know, bystanders who just go and record what’s happening. So those were my two things that I looked at when I decided to say no to body cameras....” In our current Committee’s work, we have taken efforts to address both of these critical issues in this Report and the Model Policy.

The Committee also heard from numerous community groups and individuals, who shared varying perspectives on BWCs.<sup>8</sup> In addition to presentations from representatives of eighteen organizations, the Committee extended invitations to present to an additional fourteen community organizations.<sup>9</sup> The Committee reached out to

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<sup>8</sup> Presenters included Jacqueline Boggess, UW-Madison School of Social Work; Dr. Ruben Anthony, the Urban League; Chris Ott, ACLU of Wisconsin; Captain Brian Austin, Madison Police Department; Dr. Floyd Rose, 100 Black Men; Greg Jones & Pia Kinney James, NAACP of Dane County; M. Adams, Kabjuag Vaj, & Mahnker Dahnweth, Freedom, Inc.; the Hon. Everett Mitchell, Dane County Circuit Court; Mike Gennaco, the OIR Group; Greg Markle, Operation Fresh Start; Madison City Attorney Mike Haas; Peter Block, Nick DiSiato, and Doug Work, Milwaukee Police Department; Tom Dull, Madison Police IT Department; Anna Moffit, National Alliance for Mental Illness (NAMI) Dane County; Kelli Thompson and Adam Plotkin, Wisconsin State Public Defender’s Office; Ismael Ozanne, Dane County District Attorney’s Office; Lt. Edward Hartwick, Fitchburg Police Department; and Harlan Yu, Executive Director of Upturn.

<sup>9</sup> Occupy Madison, MOSES, GSAFE, Latino Academy, JustDane, Movement Fund, Nehemiah, Peace Network, Sankofa, Urban Triage, Anesis Therapy, Latino Chamber of Commerce, and UNIDOS.

this wide array of organizations and individuals in order to hear from a wide swathe of Madison's community, despite the limited timeframe within which to complete its work and the particularly busy and challenging time for many organizations in Madison during the COVID-19 pandemic. None were selected for invitation because of their position on BWCs; indeed, the Committee had no knowledge of most of the organizations' positions on BWCs when they were invited. Whether directly invited or not, representatives of all community groups and all individuals were welcome to participate in the Committee's meetings and make comments or suggest other organizations to invite.

Of those that presented to our Committee, two organizations, Freedom, Inc. (a Madison-based "Black and Southeast Asian non-profit organization that works with low- to no-income communities of color"), and Upturn (a national organization that "advances equity and justice in the design, governance, and use of technology"), as well as a number of individuals who addressed our Committee, expressed firm opposition to providing police with another tool that they fear will just be used to further monitor and oppress communities of color and exacerbate problems of over-prosecution and criminalization.

Most groups the committee heard from, however, including national and local civil liberties groups, groups representing minorities and vulnerable or over-policed populations, police, and both prosecutors and criminal defense attorneys, expressed varying degrees of support or in a few cases, no clear position. The Committee does not claim to have heard from a statistically representative set of community organizations. A number of additional groups were invited, but were unable to participate for various reasons, including a number of organizations that are known to have strong opposition to BWCs.

Representatives of the Urban League, 100 Black Men, the NAACP of Dane County, Operation Fresh Start, and the ACLU of Wisconsin, for example, offered varying degrees of support for BWCs. Dr. Floyd Rose of 100 Black Men told the Committee that BWCs could be part of the solution to policing problems in Madison, but that adopting BWCs should not be done in the absence of making bigger fixes. Chris Ott of the ACLU of Wisconsin said that, while the ACLU usually opposes governmental surveillance tools, the ACLU supports carefully regulated BWC programs because of the potential they create for police accountability and transparency. Greg Jones and Pia Kinney James of the NAACP likewise told the Committee that BWCs can be useful tools for ensuring transparency, but that they must be adopted with carefully drafted policies to govern their use. Jones concluded that, without BWCs, all we have is the account of an incident provided by police, so "[i]f we don't have a tool like this, we lose this battle." Judge Everett Mitchell similarly stressed the importance of BWCs for creating a record that can be used to contest police-officer accounts of incidents. Without video evidence, all the Court typically has to rely on is the competing accounts of police officers and suspects and, as he put it, "[o]fficers don't need bodycams to get people convicted." Greg Markle of Operation Fresh Start reported on a survey of his agency's clients, 16-24-year-old youths, predominantly of color, who have struggled to stay connected to successful pathways in life. His survey found that, among these youths, an overwhelming majority of whom distrust police and have negative views of them, a solid majority said they would favor implementation of BWCs and that they would trust police more if they wore them. These youths also said they would be more likely to call police in a dangerous situation if police wore BWCs.

Still others took no firm position on whether to adopt BWCs, focusing instead on the need for careful regulation of any BWC program. The National Alliance for Mental Illness (NAMI), for example, has taken no formal position on BWCs, but strongly believes that, if BWCs are adopted, they must be governed by carefully crafted policies. Anna Moffitt of NAMI Dane County told the Committee that BWCs increase transparency and accountability for law enforcement in their encounters with the mentally ill, but also have a down side—they can capture video of a person in mental health crisis and thereby create a harmful record that follows the individual for life.

Criminal justice system actors were uniformly supportive of BWCs as a useful tool for developing evidence to help get to the truth. As noted, Dane County Circuit Court Judge Everett Mitchell urged adoption of BWCs as a tool for resolving disputes between police and civilians about the facts of an encounter. Representatives of police agencies—from Madison, Milwaukee, and Fitchburg—expressed strong support for BWCs. Milwaukee and Fitchburg Police also helped the Committee understand the benefits and challenges of actually implementing BWCs, based on their own recent experiences implementing the technology. And both the Public Defender’s Office and the District Attorney’s Office expressed strong support for BWCs as an evidence-gathering and preserving tool.

As this brief summary of presentations made to the Committee suggests, for most of those in the community who support BWCs, that support came with caveats. Repeatedly, the Committee heard that no one should expect BWCs to be a panacea. And the Committee repeatedly heard concerns, even from BWC supporters, that BWCs can be misused, and can have unintended negative consequences. A report submitted by the National Alliance for Mental Illness (NAMI), exemplifies the mixed reactions to BWCs: “[BWC] use is beneficial in terms of transparency and accountability by police. Their use is problematic in terms of personal privacy.”

Because so many of the questions about the uses and effects of BWCs are ones that in theory can be answered by research, the Committee spent considerable time and effort examining the social science research on BWCs. The research, however, has not yet fully resolved some important questions and is not uniform in its results, although for most questions the research has provided substantial quantitative understanding of the impact – or lack of impact – of BWCs. In sum, it is fair to say that the scientific research on BWCs paints a “modest and mixed” picture of the effects of BWCs.<sup>10</sup> A comprehensive, systematic review of the social science research on BWCs published in 2020 summarizes the research, concluding, “There is high variability in findings across studies, which suggests that BWCs can have positive, negative, or null impacts on police or citizen behaviors under different circumstances that are not well understood”. The researchers go on to elaborate:

Our meta-analysis of 30 studies and 116 effects of police use of BWCs finds that this technology produces few clear or consistent impacts on police or citizen behaviors. Across a variety of outcome measures—including police use of force, complaints against officers, arrests, proactive police activities, assaults or

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<sup>10</sup> Lum 2019

resistance against officers, citizen calls for police service, and others—individual studies have produced a mix of positive, negative, and null findings. The average impact of BWCs on all of these outcomes but one is not statistically significant across studies. The one exception is with complaints—BWCs do seem to reduce complaints against police. The average relative reduction in complaints linked to BWCs is about 17% (and may be greater in agencies that have recent histories of more serious officer misconduct). It is unclear, however, to what extent this represents improvements in the behaviors of officers and citizens toward one another (and hence more positive interactions) or a decline in the willingness of citizens to file complaints against officers.

Additionally, the estimated effects of BWCs are quite variable (i.e., statistically heterogeneous) across studies, meaning that BWCs may increase these behaviors in some contexts and decrease them in others with considerable uncertainty about any typical effect across implementations. Our analysis examined several factors that may contribute to this variability, including whether randomized designs were used; the unit of assignment; susceptibility to contamination of treatment and control conditions; study fidelity; the level of discretion allowed by an agency's BWC policy; and an agency's recent history with reform initiatives or sentinel events. None of these factors were sufficient to explain the variability in BWC results, though there are tentative (albeit inconclusive) indications that BWCs are more effective in reducing police use of force (broadly defined) when agencies limit officer discretion in the use of the cameras. Further research is needed to better understand how these contextual factors and others—alone and in combination—influence the outcomes that police experience with BWCs, for better or worse.<sup>11</sup>To complicate matters even further, because so much of the research is highly dependent on the local culture and the practices and policies governing the use of BWCs, it is hard to know how much the research will translate directly to the experience in Madison, or whether better (or worse) outcomes can be expected here given the culture and policies that exist or might be created here.

Regardless, from all of this, two clear conclusions emerge:

1. BWCs are not a panacea, and cannot alone be expected to “fix,” or necessarily even improve, the perceived problems with policing and police/community relations, over-policing, or excessive uses of force. Indeed, it is possible that they might cause more unintended negative consequence than benefits. They should be understood instead as a tool—a tool that can expand the collection of evidence. That evidence can then be used in beneficial or problematic ways. The positive or negative impact of a BWC program therefore depends more on the procedures and context under which they are deployed, and the uses that are made of them, than on the mere deployment of the cameras themselves.

2. Relatedly, to realize any of the desired effects from BWCs, and to minimize the potential magnitudes and risks of harmful effects from BWCs, if BWCs are to be implemented the implementation must be only as a part of a package of reforms designed to enhance accountability, improve community relations, improve outcomes, and ensure BWCs are utilized appropriately and in ways that minimize their potential for unintended harms. In Madison, if the City follows through with the 177 recommendations made in the 2019 Report of the Madison

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<sup>11</sup> Cynthia Lum et al. (2020). Body-worn cameras' effects on police officers and citizen behavior: A systematic review, available at <https://doi.org/10.1002/cl2.1112>.

Police Department Police and Procedure Review Ad Hoc Committee, and continues to move forward with the process of civilian engagement with police in goal-setting, policy-making, and incident review, the City will be making meaningful progress toward meeting the first of these requirements. What remains is to ensure that any BWC program the City might adopt is one that tightly regulates the use of BWCs and ensures compliance with best practices, as informed by the social science research and the experiences with BWCs in other cities, and that conditions outside the BWC program itself be set as to, as far as possible, reduce harms.

In this Report, we identify the complexities of BWC policy, and we outline what a good BWC policy should entail. We stress that proper implementation of BWCs can be seen as an important part of an overall package of reforms designed to reimagine the role of police—from enforcers solely aligned with prosecuting individuals or undesirable behaviors, to justice system partners aligned with a search for the truth on behalf of prosecutors to be sure, but also on behalf of criminal defendants, and the whole community. In sum, BWCs can best be implemented if adopted as part of a reform of policing that positions police as partners of the whole justice system and the whole community, not just enforcers of the law against the community or an arm of the prosecutor.

To aid the Committee in considering both whether to recommend a BWC program in Madison, and what that program should look like if the City moves forward with one, the Committee found it helpful to identify the potential pros and cons of a BWC program, and then to evaluate those pros and cons in light of existing research and experience. As the following analysis reveals, the two key questions confronting the Committee— 1) whether to recommend the use of BWCs, and 2) what policies and other reforms to adopt to minimize their harms – are connected. Whether the Committee recommends that Madison should adopt BWCs depends heavily on what policies and procedures are adopted and implemented to guide BWC use, and what other reforms are implemented to enhance their utility and improve police/community relations.

While the Committee struggled to come to consensus on whether to recommend for or against BWCs, the Committee was unanimous that BWCs should *only* be implemented if done so in a context that includes good policies and procedures as part of an overall package of reforms that enhances the potential for desired effects and minimizes the potential for unintended harms as much as possible. Thus, the following should be strict preconditions for implementation of BWCs.

Madison should adopt a BWC program only if:

1. MPD has formally adopted the BWC policies recommended by the Body-Worn Camera Feasibility Review Committee with, at most, minor modifications that do not alter the essential substance and principles outlined in this Report and in the Model Policy, which are designed to minimize officer discretion, minimize potential bias in the captured images, protect legitimate privacy interests, minimize opportunities for exacerbating racial disparities and increased criminalization of marginalized groups, minimize opportunities for mass surveillance of civilians, ensure the integrity of the recordings, enhance accountability and transparency, and enhance access to the truth.



2. Accompanying all disclosure or release of BWC footage shall be a statement, either written as a document or added to the beginning of the video, informing viewers of the perceptual bias (detailed below) inherent in viewing BWC video footage, with an instruction to the viewer to consider this risk and its impact before reaching a conclusion about the footage, in order to arrive at valid judgements.<sup>[1]</sup> This instruction may include:

- a. Because the BWC is not aimed at the wearer, it may not capture relevant actions of the wearer. BWC footage may not accurately capture the intent and possible misconduct of the person wearing the BWC, since they are largely invisible in their own BWC video. Research shows that human beings tend to judge more harshly the person who is the subject in a video and therefore to skew perception in favor of the wearer and against the subject because BWCs are pointed at the subject.
- b. BWC footage may promote or create an exaggerated perception of aggression of subjects interacting with the BWC wearer, given motion and jostling of the BWC on the wearer.
- c. BWC footage may promote or create an exaggerated perception of the height and size of subjects interacting with the BWC wearer, dependent on the position of the BWC mount.
- d. The speed at which BWC footage is viewed may affect perception of subject intent or actions. Slowing down footage may make the subject appear more deliberate in their actions, while speeding up footage may make the subject appear more aggressive.
- e. BWC footage provides a record of events, but that record is not comprehensive and is subject to the viewer's interpretation. BWC footage should be considered within the context of other evidence provided.

3. Given ongoing advances in research, experts on cognitive and perceptual biases should periodically be consulted for recommendations on steps that should be taken to best mitigate these biases in judgements based on body camera footage (e.g., specific trainings for prosecutors, etc.), and appropriate actions should be taken, based on these recommendations.

4. The Independent Police Monitor and Police Civilian Oversight Board are fully operational and have access to BWC video footage as set forth elsewhere in this report and model policy.

5. The City and MPD have made substantial and sustained progress toward adopting the other reforms recommended by the previous Madison Police Department Policy and Procedure Review

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<sup>[1]</sup> Elek, J. K., Ware, L. J., & Ratcliff, J. J. (2012). Knowing when the camera lies: Judicial instructions mitigate the camera perspective bias. *Legal and Criminological Psychology*, 17(1), 123–135.

Ad Hoc Committee, especially in the areas of Accountability, Use of Force, and Response to Critical Incidents.

6. A system and or process for sharing BWC video footage files – preferably an electronic file sharing system if feasible – with the Dane County District Attorney’s Office and the Public Defender’s Office in time for informing charging decisions for cases referred by MPD for potential criminal charges.

7. The Dane County District Attorney’s Office has formally enacted a policy to review any relevant BWC video before making a charging decision in any case referred by MPD where BWC video is available.

8. The Dane County District Attorney’s Office has firmly committed to measures sufficient to prevent an overall increase in charging rates and criminalization in low-level offenses caused by MPD BWC implementation.<sup>12</sup>

9. Arrangements have been made for a rigorous, randomized controlled trial as a pilot program, with tracking and analysis of data on key outcomes, and particularly prosecutorial charging rates. A primary use of the trial would be to determine if charging rates and pleading rates are increased, particularly for misdemeanors, for cases in which BWC video is available. If there is statistically significant evidence of an increase in charging rates, particularly for misdemeanors, which can be causally connected to the implementation of BWCs, measures sufficient to fully offset the increase should be taken before BWC program continuation or more widespread BWC implementation. If expansion of implementation occurs after the pilot program, MPD, as well as the Dane County District Attorney’s Office, should continue to collect data on the effects of BWCs to continue to ascertain if BWCs are producing increases in charging rates for low-level offenses or other unintended negative consequences. If so, the City should take the necessary steps vis-à-vis the MPD and/or the District Attorney’s Office to fully offset any unintended negative consequences.

10. The Common Council should engage in informed deliberation on whether resources required for BWC implementation would best be allocated to BWC implementation or other competing needs.

If the City, MPD, and the DA’s Office fail to fulfill these preconditions, then the Committee unanimously agrees that BWCs should not be implemented in Madison.

#### **ANALYZING THE “PROS”: THE POTENTIAL BENEFITS OF BWCs**

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<sup>12</sup> These may include using more stringent criteria to initiate prosecutions, enacting a default of not prosecuting many types of misdemeanors, and greatly expanding diversion programs.

- **Increased transparency in law enforcement**

One of the most frequently cited reasons for employing BWCs is that they have the potential to increase transparency—the cameras make a record of police/civilian encounters that might otherwise be unavailable or hidden. Proponents of BWCs believe that residents are more comfortable with enhanced visibility into police work. Indeed, increased transparency is one of the central calls for police reform in Madison, and there is no doubt that video recordings can make police and civilian behavior more observable.

But, whether BWCs will actually translate into greater transparency in practice depends to a great deal on how they are used and controlled, and how footage is accessed. What is clear to the Committee is that, if BWCs are going to increase transparency, they can only do so if employed in ways that minimize officer discretion about when to turn cameras on and off (so that officers cannot choose not to record during incidents in which they might engage in inappropriate behavior); that ensures as many perspectives and the widest view of the incident as possible to minimize the potential for officers to provide misleading accompanying verbal narratives, control where the camera is pointed to distort understanding, or record staged scenes as with planted evidence, etc.; that ensure adequate storage and protection of the integrity of the footage (to ensure the footage is not deleted or altered); and that ensure adequate access by the public. Importantly, given that Madison has now created a new Office of an Independent Monitor (IM) and Civilian Oversight Board (COB), largely unfettered and prompt access to footage by those entities (as well as to the general public, though with additional privacy protections) is essential. At the same time, the existence of the IM and COB at least increases the possibility that BWCs can be employed in Madison in ways that optimize the potential for transparency. Complicating matters, transparency interests inherently conflict with privacy interests, as widespread public availability of BWC footage has the potential to infringe legitimate privacy interests of civilians and in some cases police officers. The Committee has tried to accommodate all of these competing interests and considerations in the Model Policy attached to this report, which we consider an essential component of our recommendations.

As discussed below, other considerations also affect the degree to which BWCs effectively and fairly enhance transparency. Those factors include, for example, the reality that BWCs can provide a biased view of incidents, which might skew perceptions of police/civilian encounters, but do so in ways that might appear unbiased. Relative to dashcam footage, BWC footage may lead to underestimation of officer culpability (by limited context that doesn't fully capture officer intent, since an officer is not the focal subject of their own video) and an exaggerated perception of the size and physical aggression of individuals interacting with officers. Thus, although BWCs do provide additional information about incidents, some kinds of information captured will be objectively reliable while other kinds are susceptible to misinterpretation. All of these considerations discussed in this section on transparency are also addressed in the model policy that the Committee has proposed.

These considerations are supported by social science research. Recently, a trial in one jurisdiction has suggested that BWCs may produce enhanced transparency (and accountability) by improving police reporting of stops and frisks of civilians, and enhancing the ability of independent monitors to evaluate the legality of the stops.

While the finding achieved statistical significance, it did so only weakly, and no firm conclusion should be drawn as to whether this effect is meaningful and generalizable without confirmation in additional trials. Stop & frisk has become a controversial matter in policing given that routine stop & frisk activity poses a serious intrusion on individual liberties and dignity, and has been employed across the country in racially discriminatory ways. In combination, these features of expansive use of stop & frisk activities have added to the corrosion of police/community relations. A report released by the federal monitor of the New York Police Department in December 2020 showed that Officers who wore BWCs reported 39 percent more stops than officers who did not, “suggesting that body cameras could compel officers to provide a more accurate accounting of their pedestrian stops.”<sup>13</sup> Importantly, the Monitor’s Report also found that BWC footage resulted in a statistically significant increase in findings of improper or unlawful stops by police officers—suggesting that the cameras were indeed enhancing transparency and accountability. The Monitor’s Report explained: “In analyzing the stops of officers in the treatment [i.e., officers with BWCs] and control [i.e., officers without BWCs] precincts, the monitor team found that stop reports of officers in the BWC precincts were less likely to be deemed lawful. In stop reports that involved a frisk and/or search, the justifications reported for frisking or searching citizens in BWC officer stop reports were also less likely to be judged by the monitor team as constitutional when compared to control officer reports.”<sup>14</sup> The *New York Times* reported that the federal monitor “attributed the increase in documented stops to officers being more inclined to record their actions on official paperwork knowing that they were recorded and could be reviewed. Underreporting has hindered court-ordered reform efforts for years, but the report suggests that the cameras are key to understanding the scope of the problem and fixing it.”<sup>15</sup>

- **Increased trust in law enforcement**

One goal of BWCs is to increase community trust in police. The hope is that civilians might trust police more, knowing that a record is being made of their encounters and that police are being held accountable for their actions. However, some research to-date shows that has not happened. One recent paper presenting a systematic review of BWC research, for example, reported no links between deployment of body cameras and citizens’ views of police legitimacy, professionalism or satisfaction with police interactions.<sup>16</sup> Further, the authors concluded, “There are disparities between the legitimacy afforded to the police by various groups, which does not seem to be

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<sup>13</sup> Ashley Southall, *Police Body Cameras Cited as ‘Powerful Tool’ Against Stop-and-Frisk Abuses*, NY TIMES, Nov 30, 2020.

<sup>14</sup> Letter from Peter L. Zimroth to Hon. Analisa Torres (Nov. 30, 2020), transmitting PETER L. ZIMROTH, A CLUSTER RANDOMIZED CONTROLLED TRIAL MEASURING EFFECTS ON THE CIVILITY OF POLICE-CITIZEN ENCOUNTERS, POLICING ACTIVITIES, POLICE LAWFULNESS, AND POLICE-COMMUNITY RELATIONS (Nov. 30, 2020)

<sup>15</sup> *Id.*

<sup>16</sup> Lum, C., Stoltz, M., Koper, C., & Scherer, J.A. (2019). Research on body-worn cameras: What we know, what we need to know. *Criminology & Public Policy*, 18(1).

remedied by BWCs.”<sup>17</sup> In another study, after conducting a randomized-controlled trial of BWCs in one Texas jurisdiction, the Police Executive Research Forum “found no significant differences between perceptions of police officers among citizens who interacted with officers wearing BWCs and citizens who interacted with officers who were not wearing BWCs.”<sup>18</sup> The study’s authors cautioned, however, that the study’s “findings may only be generalizable to other agencies with a strong baseline community support. If so, then agencies already seen positively among large majorities of citizens may not see any additional boost to perceptions of legitimacy, professionalism, and satisfaction.”<sup>19</sup> As the study noted, the local police department that was studied enjoyed high levels of community trust, and hence the authors could “not rule out a potential positive effect of BWCs if this work were replicated in a jurisdiction without such strong baseline trust in the police.”<sup>20</sup>

As noted, an informal survey by Greg Markle of Operation Fresh Start provides some support for the belief that bodycams might increase trust. Markle reported on a survey of his agency’s clients, 16-24-year-old at-risk youths, predominantly of color, which found that a solid majority said they would trust police more if police wore BWCs, and that they would be more likely to call police in a dangerous situation if police wore BWCs. On the other hand, there may be an important difference between anticipated benefits (what people imagine deployment of bodycams might bring) versus realized benefits (i.e., people’s actual assessments after experience with officers wearing BWCs).

Given the general tenor of media reporting, the growing ubiquity of video cameras in most areas of life, and community expressions of support for BWCs, some members of the Committee expressed concern that, even if adopting BWCs does not increase community trust in police, *failure* to adopt them might further erode trust, as it might raise suspicions that police are unwilling to expose their actions to video recording. At the time the report was written, many of the police departments surrounding Madison equip their officers with BWCs, leaving Madison as an outlier in the area. The adoption of BWCs in these departments may increase the criticism of a lack of transparency and accountability the MPD could face if BWCs are not adopted.

On the other hand, the Committee noted concern that any increased trust in police that might accrue from adopting BWCs might erode over time, especially if the footage is not handled in objective and transparent ways, and if other reforms are not adopted at the same time to address root causes of distrust. Moreover, the Committee is sensitive to the sentiment expressed by Freedom, Inc., Upturn, and a number of individuals who addressed our

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<sup>17</sup> *Id.*, p. 107

<sup>18</sup> Police Executive Research Forum (2017). Final Report: Citizen Perceptions of Body-Worn Cameras: A Randomized Controlled Trial, p. 7.  
<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjY9pHGgpruAhUMOs0KHWJuBssQFjABegQIBRAC&url=https%3A%2F%2Fperf.memberclicks.net%2Fassets%2Fbodyworncameraperceptions.pdf&usg=AOvVaw2GhM7nFEuXfOcsyfdDJDTb>

<sup>19</sup> *Id.*, pp. 7-8.

<sup>20</sup> *Id.*, p. 6.

Committee, that BWCs might *diminish* trust, especially among those groups already most suspicious of police, who might view the cameras as just another tool for monitoring and controlling marginalized groups. As with all other considerations, if BWCs are implemented in Madison, real sensitivity and care will have to be paid to this concern.

It is important to recognize that healing and trust are built over time, and BWCs are unlikely to immediately significantly increase public trust in the MPD, even with policies to enhance transparency. Trust and healing will be a process that the MPD and public must work together to build, and BWCs will not replace the need for that effort. In the recommended Model Policy, the Committee has built in rules to try to minimize the degree that BWCs can be misused for monitoring and controlling marginalized groups and to enhance the likelihood of BWCs to improve trust.

- **Increased accountability for police misconduct**

The additional evidence provided by BWCs may help ensure that police who violate the law or abuse their authority will be held accountable. Despite the inherent limitations of BWCs, BWCs can increase the quantity and quality of evidence available for accountability purposes. On this issue, however, a 2020 systematic review of the research by Cynthia Lum and her colleagues concluded, “Research has not directly addressed whether BWCs can strengthen police accountability systems or police-citizen relationships.”<sup>21</sup> Whether they will have the potential for greater accountability will depend on how they are implemented.

One special consideration deserves highlighting here that makes the implementation of a BWC program in Madison different, and potentially more promising, than implementation in many other jurisdictions. If BWCs are adopted here, they will not be the only new tool for increasing accountability. The City’s new Independent Monitor (IM) and Civilian Oversight Board (COB) are, in certain ways, uniquely expansive accountability entities, which will make real and meaningful accountability more likely. The two entities now have the authority to monitor police department policies, practices, and training, and to conduct parallel investigations into allegations of police misconduct. The IM and COB authority over disciplinary matters is limited. Unlike some police oversight entities, the IM and COB can only make recommendations and have no power to impose discipline. The ultimate power to determine whether misconduct occurred and impose discipline lies entirely in the hands of the Chief and Police & Fire Commission, which of course will also have access to the BWC footage. However, the IM and COB will have extensive investigative authority and were adopted by the City with the belief that their findings will have significant persuasive value. If the IM determines that a complaint against a police officer has arguable merit, the IM has the authority to appoint counsel for the aggrieved individual for purposes of filing and litigating a complaint before the Police & Fire Commission. No other civilian oversight entity we are aware of in the country has this authority to appoint counsel for members of the community.

The existence of the IM and COB not only increases the likelihood of meaningful oversight and accountability, but also provides an argument for adopting BWCs in Madison to facilitate that work. To be

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<sup>21</sup> Lum et al., p. 1.

effective in their monitoring and accountability roles, it will be important for the IM and the COB to have access to the best possible investigative tools and evidence. BWCs can be a very powerful tool for these entities in fulfilling those oversight and accountability responsibilities. Mike Gennaco of the OIR Group told the Committee that he favors BWCs in the right circumstances precisely because of their potential to aid in civilian oversight. He said:

I have seen it to be tremendously advantageous to my work [as a police monitor], because I no longer have to rely entirely on police reports and then compare that to what the civilian says occurred and try to break that tie based on credibility or whatever. Oftentimes it is a he-said/he-said. And with the body camera footage you can—you have a vivid imagery of what transpired. And really, interestingly enough and ironically enough, this happens more frequently on the routine contact than it does on a shooting. Because in a serious deadly force incident or a serious force incident, more often than not there's a tussle, there's physicality, the body camera becomes dislodged, the firing of the weapon gets in the way of the vantage point of the body camera, so you wind up with not a whole lot of helpful information. But in the routine conduct, when an officer comes up to a civilian, and the civilian at the end of that contact believes that the officer did not behave professionally in one way or another, the body camera will tell you what happened. Because there's no obstruction, there's no physicality, it's all there. And you can use that information once you have it to persuasively get a department to take remedial action if remedial action is called for in those kinds of cases. Because you can just point out the body camera, you know, if somebody says to somebody something demeaning or inappropriate, it's captured on tape and now you can then use it effectively to impose remedial action based on that information. So, ... absolutely it has been indispensable to our work, it's a lot more work, but it has been indispensable. And under the right system of accountability, it will increase officer accountability, officer remediation, retraining, and alert a department that's interested in looking at it, warning signs about officers who are not performing consistent with the expectations of the department.

Similarly, the *New York Times* recently reported that, in New York, “[t]he Civilian Complaint Review Board, which investigates accusations of police misconduct filed by civilians, has said that body-camera footage increases the likelihood that its investigators will be able to complete their investigations and substantiate claims against officers.”<sup>22</sup> However, one challenge could be access to the records. For instance, the Civilian Complaint Review Board has complained strongly about NYPD obstructing access to BWC footage.<sup>23</sup> As a ProPublica article noted, “The NYPD has regularly failed to turn over key records and videos to police abuse investigators at New York’s

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<sup>22</sup> Ashley Southall, *Police Body Cameras Cited as ‘Powerful Tool’ Against Stop-and-Frisk Abuses*, NY TIMES, Nov. 30, 2020.

<sup>23</sup> Olas Carayannis. BWC and Document Request Issues with the NYPD. July 5, 2019. [https://brooklyneagle.com/wp-content/uploads/2019/07/20190710\\_boardmtg\\_BWC\\_memo-2-1.pdf](https://brooklyneagle.com/wp-content/uploads/2019/07/20190710_boardmtg_BWC_memo-2-1.pdf); Olas Carayannis & Dane Buchanan, CCRB Memo on Body Cam Footage. June 26, 2020. <https://www.documentcloud.org/documents/6980787-CCRB-Memo-on-Body-Cam-Footage.html>; NYC CCRB @CCRB\_NYC Twitter account. Sep 12, 2019. “Unless there is a significant change, the backlog of CCRB requests for video evidence will continue to increase and impair the CCRB’s ability to complete investigations within the 18-month statute of limitations.”

Civilian Complaint Review Board.”<sup>24</sup> The Civilian Complaint Review Board also noted that NYPD was training officers to signal other officers as a warning that body cameras are active “in an effort to obfuscate or facilitate police misconduct.”<sup>25</sup> The Committee recommends that any BWC program include unfettered access to BWC footage by the Independent Police Monitor and Civilian Oversight Board so that the problems experienced in New York are not experienced here. Should those problems arise here, continued use of BWCs should be reexamined.

To many members of this Committee, the fact that Madison has committed itself to an expansive civilian oversight process is the strongest argument for adopting BWCs: having created an oversight mechanism, the City needs to equip the IM and COB with all the tools reasonably available to do the oversight job well. Even with a dedicated and committed civilian oversight mechanism, however, BWC footage is not guaranteed to enhance accountability, and could in some categories of cases undermine it. Research suggests that BWC footage can create biased perceptions that might interfere with accountability aims and this is most likely to occur in cases when there is physical engagement between the officer and the subject. One study shows, for example, that people are less likely to indict an officer for misconduct (specifically instances of assault, battery, or aggravated battery by an officer) upon watching BWC video than after watching dashcam video or reading a written police report about the same incident.<sup>26</sup> If presented with a written report plus BWC video, people are less likely to indict than if given the written report alone. It appears that this effect predominantly occurs because officers are not the focal subject of their own video and thus, intent is not ascribed to them. This effect is less likely to be present in the routine encounters described above by Mike Gennaco. Bias is not limited strictly to BWCs, as any video angle that emphasizes a single actor may increase intentionality judgments of that actor. However, because BWCs are outward facing, the viewpoint is that of the officer, making the subject the focal actor, and increasing the likelihood of bias towards that actor. One way the researchers interpret these findings is that BWCs can reduce officer accountability by influencing the public, particularly those susceptible to camera-bias, to not indict officers when they otherwise would if given only the written report or shown dashcam footage. In addition, without proper safeguards, BWC footage is subject to manipulation – by officers turning cameras on and off to capture only favorable footage, providing misleading verbal narratives, etc., which can also undermine accountability by influencing the viewers perception of the footage. The Committee’s Model Policy is intended to minimize as much as possible the opportunities officers will have for such manipulation.

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<sup>24</sup> Eric Umansky & Mollie Simon. *The NYPD Is Withholding Evidence From Investigations Into Police Abuse*. ProPublica. Aug. 17, 2020.

<sup>25</sup> Aliza Chasan , Ayana Harry , & Anthony DiLorenzo. *NYPD officers may be intentionally interfering with body cam video: CCRB*. PIX11 News. Feb 27, 2020; Christina Carrega. *Some NYPD officers tip each other off when body cameras are on: watchdog report*. ABC News. February 27, 2020.

<sup>26</sup> Turner, B.L., Caruso, E.M., Dilich, M.A., & Roese, N.J. (2019). *Body camera footage leads to lower judgments of intent than dash camera footage*. *Proceedings of the National Academy of Sciences of the United States of America*, 116(4), 1201–1206.



Similarly, a second study shows that, when witnesses view BWC footage, they tend to rate officer behavior more favorably (hence, less culpably) than if they view the same incident from surveillance video that captures both the officer and the civilian:

[P]articipants who watched body-camera footage, compared with people who watched surveillance footage of the same encounter, perceived the officer’s behavior as being more justified and made more lenient punishment decisions.... [O]ur findings support the illusory causation hypothesis for BWC footage: people hold more favorable ratings of police officer’s actions and intent during violent interactions when they see BWC footage than when they see a third-person perspective.<sup>27</sup>

The study also found, however, that “[t]he camera perspective only affected what people thought about the officer’s actions, not the civilian’s actions.”<sup>28</sup> Despite this potential for a biasing effect, the researchers noted, in the introduction to their paper, that “there is little doubt that BWCs have improved police transparency—at least in jurisdictions where the footage is routinely released,” while noting that “the technology is still imperfect.”<sup>29</sup> Moreover, the study found that “participants who viewed the BWC and then surveillance footage provided ratings for the officer that were not statistically different from participants who only viewed the surveillance footage, suggesting that multiple camera perspectives help reduce bias resulting from the BWC footage.”<sup>30</sup>

Combined, this research highlights not only the potential for BWC footage from a single angle to produce biased interpretations of an incident (thereby impeding the sought-after enhanced accountability), but also the potential that providing multiple camera perspectives has for correcting those biased perceptions, and thus for enhancing accountability. It is for this reason that the Committee’s Model Policy requires all officers on the scene to activate their BWCs—to try to increase the likelihood that multiple angles and perspectives are captured, including views from one officer’s camera that might capture the movements and actions of other officers—and requires that the MPD receive and treat all other footage from any other source (e.g., civilian bystander footage, surveillance camera footage, etc.) the same as BWC footage. It is also for these reasons that this Report and Model Policy recommend prompt and ready access, to the extent permissible while accommodating privacy interests, to BWC footage by prosecutors, defense lawyers, the public, and the Independent Monitor and Civilian Oversight Board. The Committee’s hope is that by creating as many video images of an incident as possible, the potential for bias is minimized and that, coupled with routine release of the footage, real accountability might be made possible, although the Committee recognizes that obtaining multiple perspectives may not always be possible as a means of mitigating perceptual bias.

The Committee is well aware that the track record on using BWCs to hold officers who have engaged in

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<sup>27</sup> Jones, K.A., Crozier, W.E., & Strange, D. (2019), Look there! The effect of perspective, attention, and instructions on how people understand recorded police encounters. *Behavioral Sciences & the Law* 37 (6), 711-731, 711.

<sup>28</sup> *Id.*, p. 718.

<sup>29</sup> *Id.*, p. 712.

<sup>30</sup> *Id.*, p. 718.

misconduct accountable in other jurisdictions has not been promising. Rarely have officers been subject to serious consequences, even when misconduct is captured in BWC footage. That reality is more a consequence of the use the decision-makers have made of the BWC footage than it is a necessary feature of the BWC footage. No one should expect BWCs alone to change institutional structures that in some places protect police from appropriate sanctions for misconduct. BWCs are a tool, and whether they are used to impose appropriate sanctions depends on the institutions, individuals, and rules that govern the resolution of allegations of misconduct. Madison is embarking on a new civilian oversight process (along with other initiatives designed to heal rifts between the MPD and Madison’s marginalized communities such as the MPD Black Officers Coalition) that may enhance the opportunities and climate for appropriate oversight, although it is too early to know how effective they will be.

- **Increased civility**

Some proponents of BWCs argue that the presence of a camera will improve civility, by both police and civilians. If both parties know their actions are being recorded, this theory contends, they may be less likely to act badly. There is, however, very little if any empirical (or even anecdotal) evidence to support this effect. White et al. (2017) note that a civilizing effect would require meeting the preconditions that the citizen is aware of the camera’s presence and, more importantly, that they are thinking rationally during the encounter. These authors note, “Research has shown for decades that police frequently deal with citizens who are upset, traumatized, angry, under the influence of drugs or alcohol, and mentally ill and in crisis... All of the aforementioned issues can cloud someone’s judgment and reduce the likelihood he or she will be able to rationally understand the implications of being recorded; and make the decision to change one’s behavior.”<sup>31</sup>

- **Fewer civilian complaints**

A possible reduction in civilian complaints against officers is potentially both a “pro” and a “con.” Research generally supports the contention that BWCs will reduce civilian complaints against police—on average, across high-quality studies to date, by 16.6%, although some studies show no effect.<sup>32</sup> What is unclear from the research, however, is *why* BWCs reduce civilian complaints. The research reviewed by the Committee notes that it could be because BWCs reduce police misconduct, or it could be that civilians, knowing that the incident is recorded, are dissuaded from filing frivolous complaints, or it could be that police are able to use BWC footage to resolve complaints informally or otherwise encourage people not to file complaints.

It is worth noting that just because complaints go down, it does not necessarily mean greater public satisfaction with police. Goodison and Wilson (2017), in their randomized controlled experiment, found a reduction

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<sup>31</sup> White, M. D., Todak, N., & Gaub, J. E. (2017). Assessing citizen perceptions of body-worn cameras after encounters with police. *Policing: An International Journal of Police Strategies and Management*, 40, 689–703.

<sup>32</sup> Lum, C., Koper, C.S., Wison, D.B., Stoltz, M., Goodier, M., Eggins, E., Higginson, A., & Mazerolle, L. (2020). Body-worn cameras' effects on police officers and citizen behavior: A systematic review. Source. Campbell Systematic Review.

in complaints with officers wearing BWCs, but no significant differences in citizens' satisfaction with the interaction, perception of police legitimacy, or views of police professionalism.<sup>33</sup>

- **Reduced police use of force and deaths at police hands**

Much of the debate about BWCs has focused on the possibility that their use might reduce police uses of force. Advocates tout the potential for cameras to rein in police violence, while critics argue that cameras have shown no such effect, and that therefore BWCs are not worth the expense and other tradeoffs. Frequently, the Committee heard from BWC critics that cameras have not stopped police violence. The social science research is not entirely consistent on the effect on police applications of force, but overall shows no significant reduction in police use of force. An anticipated reduction in police use of force appears to have been the primary reason for rapid implementation of BWCs across many cities, following the release of a study that appeared to show such an effect in 2014.<sup>34</sup> Subsequent research has not upheld that result, as a generalizable finding. However, some proponents of BWCs would argue that the debate may have become overly focused on this question. To expect BWCs to significantly reduce police violence is to expect too much and miss other sources of potential value, or potential downsides, of BWCs.

There is a substantial amount of research on this point, although the results are mixed and in combination suggest little reason to expect BWCs to reduce uses of force, at least on their own. Initial research suggested that BWCs can have a dramatic effect on reducing police uses of force,<sup>35</sup> but recent, much more comprehensive, research has suggested that BWCs have no discernible, statistically significant effects on use of force.<sup>36</sup>

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<sup>33</sup> Goodison, S., & Wilson, T. (2017). Citizen perceptions of body worn cameras: A randomized controlled trial. Washington, DC: Police Executive Research Forum.

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<sup>35</sup> Anthony A. Braga, William H. Sousa, James R. Colden Jr., & Denise Rodriguez, *The Effects of Body-Worn Cameras on Police Activity and Police-Citizen Encounters: A Randomized Controlled Trial*, 108 J. CRIM. L. & CRIMINOLOGY 511 (2018); Barak Ariel et al., *The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial*, 31 J. QUANTITATIVE CRIMINOLOGY 509, 524–25 (2015); E.C. Hedberg et al., *Body-Worn Cameras and Citizen Interactions with Police Officers: Estimating Plausible Effects Given Varying Compliance Levels*, 34 JUST. Q. 627, 642 (2016); Wesley G. Jennings et al., *Evaluating the Impact of Police Officer Body-Worn Cameras (BWCs) on Response-to-Resistance and Serious External Complaints: Evidence from the Orlando Police Department (OPD) Experience Utilizing a Randomized Controlled Experiment*, 43 J. CRIM. JUST. 480, 485 (2015).

<sup>36</sup> LYNNE GROSSMITH ET AL., POLICE, CAMERA, EVIDENCE: LONDON'S CLUSTER RANDOMISED CONTROLLED TRIAL OF BODY WORN VIDEO 15 (2015).

A study released in 2014, based on a randomized controlled trial conducted in Rialto, California, appeared to show that wearing BWCs generated a 50% reduction in use of force reports relative to not wearing cameras during comparison shifts.<sup>37</sup> In Arizona, the Mesa Police Department’s quasi-experimental evaluation of BWCs reported a 75% decline in use of force complaints.<sup>38</sup> In Orlando, Florida, a randomized experiment found that BWC officers had a significantly lower rate of incidents involving electronic control devices, chemical agents, impact weapons, and other non-lethal implements.<sup>39</sup>

A large randomized-controlled study in Washington, D.C., however, found no statistically significant effect on police use of force, citizen complaints, policing activity, or judicial outcomes.<sup>40</sup> Likewise, a multisite randomized experiment involving 2,122 officers across ten sites in eight police departments reported no overall reduction in officer use of force, with significant increases in some cities and decreases in others.<sup>41</sup> And a recent study by the Urban Institute of the Milwaukee Police Department’s BWC program found no reduction in police uses of force.<sup>42</sup>

Interpreting these results is complicated by the fact that it appears that the Washington, D.C., and the Milwaukee studies employed a methodology that can reduce the magnitude of effects of BWCs. Both studies randomized the deployment of BWCs at the officer level, rather than the shift level, which means that at recordable incidents some officers might show up equipped with BWCs and some officers at the scene might be assigned to the non-BWC group. In such cases, the presence of the BWCs may influence the behaviors of officers not wearing BWCs just as much as the officers wearing BWCs. Any potential reduction in use of force that might be produced by BWCs may be under-recognized in this research.<sup>43</sup>

However, a lack of a significant reduction in police use of force was also found across studies that randomized by shift. A 2020 meta-analysis of existing BWC trials, including those that randomized by officer, shift, or other, found that “[t]he use of BWCs does not have consistent or significant effects on officers’ use of

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<sup>37</sup> Ariel, pp. 523-24.

<sup>38</sup> MESA POLICE DEP’T, ON-OFFICER BODY CAMERA SYSTEM: PROGRAM EVALUATION AND RECOMMENDATIONS 11 (2013).

<sup>39</sup> Jennings et al., p. 485.

<sup>40</sup> DAVID YOKUM, ANITA RAVISHANKAR, AND ALEXANDER COPPOCK, EVALUATING THE EFFECTS OF POLICE BODY-WORN CAMERAS: A RANDOMIZED CONTROLLED STUDY 18 (2017).

<sup>41</sup> Ariel et al., p. 750.

<sup>42</sup> BRUCE E. PETERSON, LILLY YU, & NANCY LA VIGNE, THE MILWAUKEE POLICE DEPARTMENT’S BODY-WORN CAMERA PROGRAM: EVALUATION FINDINGS AND KEY TAKEAWAYS (May 2018).

<sup>43</sup> For a discussion of the confounding effects of camera assignment at the individual, rather than shift, level in the research, see Ariel, Sutherland, & Sherman, *Preventing treatment spillover contamination in criminological field experiments: the case of body-worn police cameras* (2018).

force....”<sup>44</sup> The authors noted, “Overall, there remains substantial uncertainty about whether BWCs can reduce officer use of force, but the variation in effects suggests there may be conditions in which BWC could be effective.”<sup>45</sup> In particular, they wrote that “restricting officer discretion in turning on and off BWCs may reduce police use of force, but more assessment is needed.”<sup>46</sup>

The largest multi-city study to date (referenced above), involving randomized controlled trials across ten sites in eight cities with randomization by shift, for a total of 2.2 million officer hours, also found no average change in use of force.<sup>47</sup> The study noted, however, that the effects were not uniform: “the variability in our results also tells us that the BWVs worked *in some places, some of the time*, but did not work in others.”<sup>48</sup> In this study as well in as some others, BWCs exacerbated use of force in some cities in statistically significant ways. The authors hypothesized, “One direct explanation might be that BWVs escalate an already inflamed police–public encounter, which results in more rather than less force being used. It might be that when BWVs are introduced into some ongoing police–public interactions, the suspect, officer or both become more aggressive.”<sup>49</sup>

While the general trend in the research has been to show no effect on police use of force, the results are not uniform, and so it is possible that BWCs can have more positive or negative effects in some places, under some circumstances, than others. Researchers have noted that some of the variability in research results might be in part a result of variation in agency policies regarding how the devices should be used.<sup>50</sup>

Nonetheless, from the available research, the Committee concluded that BWCs alone are not likely to have significant positive effects on reductions in police uses of force. If BWCs are employed in Madison, they must be viewed as only one tool, and they must be adopted in conjunction with a wide range of other reforms aimed at minimizing force incidents and improving police/community relations. What is most important is that the City guard against relying too much on BWCs, at the expense of following through with the other 177 recommendations made by the Ad Hoc Committee.

Moreover, similar to the findings around police transparency discussed earlier, the research suggests that BWCs can only be expected to have any positive impacts or effects on police uses of force if police are not given

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<sup>44</sup> Lum et al. (2020), p. 2.

<sup>45</sup> Lum et al. (2020), p. 1.

<sup>46</sup> Lum et al. (2020), p. 2.

<sup>47</sup> Ariel et al. (2016), p. 752 (emphasis in original).

<sup>48</sup> Ariel et al. (2016), p. 752.

<sup>49</sup> Ariel et al., (2016), p. 752.

<sup>50</sup> Lum, C., Stoltz, M., Koper, S.K., & Scherer, J.A. (2019). Research on body-worn cameras: what we know, what we need to know. *Criminology & Public Policy* 18:93-118,

discretion about when to turn on and off the video recording equipment. To be effective, it is essential that recording be automatic and non-discretionary in appropriate situations, to the greatest extent possible, and that officers be permitted to stop recording only under carefully prescribed and monitored circumstances. In a post hoc re-analysis of the multisite randomized experiment data cited above, which showed no reduction in police use of force, Professor Barak Ariel and his colleagues found that use of force by officers decreased by 37% in three sites with high compliance to a BWC policy that required officers to record every interaction with the public and to notify citizens that they were being recorded at the beginning of the encounter.<sup>51</sup> Ariel and his colleagues also reported a 71% increase in officer use of force in four sites with low compliance to this BWC policy.<sup>52</sup> Because this study was merely a re-analysis of previous data, the results should not be taken as conclusive, but they are suggestive. Moreover, these results align with the results of a meta-analysis by Lum et al. (2020) across 22 trials, suggested a lower use of force where departmental policies provided less discretion. Lum et al. (2020) also observed, “Additional studies, however, are needed to establish whether use of force can be reduced when an agency restricts officer discretion in how they use BWCs.”<sup>53</sup> Nonetheless, these findings reinforce the Committee’s conclusion that any BWC system the City might adopt must dramatically reduce officer discretion about use of the cameras. Our model policy incorporates these checks on discretion.

- **Quicker case resolution**

BWCs may lead to faster resolution of cases. The Las Vegas Metropolitan Police Department found reduced time to investigate an average misconduct complaint when BWC evidence was present.<sup>54</sup> A New York Times article has noted, “[P]olice officials from Oakland to Greensboro, N.C., all cited the swift resolution of complaints against officers as one of the primary benefits body cameras had offered.”<sup>55</sup> There also may be an impact on processing of criminal charges. A study in Los Angeles found that filing decisions for misdemeanor criminal charges occurred more rapidly for cases in which BWC video was available. Prosecutors there only

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<sup>51</sup> Barak Ariel et al. (2016). Increases in Police Use of Force in the Presence of Body-Worn Cameras are Driven by Officer Discretion: A Protocol-Based Subgroup Analysis of Ten Randomized Experiments, *Eur. J. Criminology* 12:453-\_\_\_, 459.

<sup>52</sup> *Id.*

<sup>53</sup> Lum, C., Koper, C.S., Wison, D.B., Stoltz, M., Goodier, M., Eggins, E., Higginson, A., & Mazerolle, L. (2020). Body-worn cameras' effects on police officers and citizen behavior: A systematic review. Source. *Campbell Systematic Review*.

<sup>54</sup> Braga, A., Coldren J.R. Jr., Sousa, W., Rodriguez, D., Alper, O. (2017). The benefits of body-worn cameras: New findings from a randomized controlled trial at the Las Vegas metropolitan police (Cent Naval Analyses, Arlington, VA), Technical Report 251416.

<sup>55</sup> Ian Lovett, In California, a Champion for Police Cameras, *N.Y. TIMES* (Aug. 21, 2013), <https://www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html>

viewed the BWC footage in a small fraction of cases before they filed charges – it appears that the mere presence of BWC evidence led them to file charges more quickly.<sup>56</sup>

Three older studies in the U.K. reported an increase in the rate of guilty pleas in cases with BWC footage,<sup>57</sup> but the number of cases was small and, as Lum et al. (2019) note, “Conclusions from these studies should be taken cautiously, however, given the weaknesses in their research designs.”<sup>60</sup> A study in Phoenix reported an increase in the number of guilty pleas, but the percentage of cases resolved with pleas was small and no test of statistical significance was done for changes in plea rates.<sup>61</sup>

However, not all research found this to be the case, and the addition of BWCs can lead to an *increase* in time required to process a case. A large randomized controlled trial in Washington, DC found no significant change in the rate of guilty pleas in criminal cases with BWC footage available.<sup>63</sup> A large randomized controlled trial by the Western Australia Police Force also found no change in the rate of guilty pleas when BWC footage was available.<sup>64</sup> The Phoenix study also found that “when we examined the number of days it took to process a case [i.e., to a final disposition], and compared our post-test comparison group to our post-test camera group, our findings suggested that body cameras resulted in an increase in the amount of time that it takes to process a case to completion by about 80 percent” (a mean of 44 versus 78 days).<sup>65</sup> This data is again a bit hard to interpret, however, because the study authors noted that case processing time overall went down after the introduction of BWCs, but that it went down more for cases with no BWC footage: “we found that there were significant declines in the number of days it took to dispose of a case from the pre-test to the post-test period, with a pre-test case

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<sup>56</sup> Groff, E.R., Ward, J.T., and Wartell, J. (2018). The Role of Body-worn Camera Footage in the Decision to File. Report for the Laura and John Arnold Foundation, p. 35. Philadelphia, PA: Criminal Justice Department, Temple University.

<sup>57</sup> Goodall, M. (2007). Guidance for the police use of body-worn video devices: Police and Crime Standards Directorate. London: Home Office; Ellis, T., Jenkins, C., & Smith, P. (2015). Evaluation of the introduction of personal issue body worn video cameras (Operation Hyperion) on the Isle of Wight: Final report to Hampshire Constabulary. Portsmouth: Institute of Criminal Justice Studies, University of Portsmouth; ODS Consulting [Andrew Fyfe]. 2011. Body worn video projects in Paisley and Aberdeen, self evaluation.

<sup>60</sup> Lum, C., Stoltz, M., Koper, C. S., & Scherer, J. A. (2019). Research on body-worn cameras: What we know, what we need to know. *Criminology & Public Policy*, 18(1), 93–118.

<sup>61</sup> Katz, C. M., Choate, D. E., Ready, J. R., & Nuño, L. (2014). Evaluating the impact of officer body worn cameras in the Phoenix police department. Phoenix: Center for Violence Prevention and Community Safety, Arizona State University.

<sup>63</sup> Yokum, D., Ravishankar, A., & Coppock, A. (2019). A randomized control trial evaluating the effects of police body-worn cameras. *Proceedings of the National Academy of Sciences of the United States of America*, 116(21), 10329–10332.

<sup>64</sup> Clare, J., Henstock, D., McComb, C., Newland, R., & Barnes, G.C. (2019). The results of a randomized controlled trial of police body-worn video in Australia. *Journal of Experimental Criminology*. Published online.

<sup>65</sup> *Id.* at p. 38.

averaging 96 days to process compared to a post-test average of 44 (comparison) and 78 days (camera). We also found that following camera implementation there was a significant change in both time to dismissal and guilty pleas, each declining during the post-test period. It should be noted that case processing time declined the greatest among the non-camera wearing comparison group. This may be attributed to changes in the administrative management of cases after camera deployment.”<sup>66</sup>

BWCs might also affect time to resolution in civil court cases. This could potentially include an increase in the rate of summary judgements<sup>67</sup> (see, also, “Potential decreased access to jury trial and an increase in inappropriate summary judgements in civil cases” in the “cons” section of this report).

- **Training opportunities**

Video footage provides an opportunity for training—both in one-on-one review of incidents with involved officers, and in academy or other classroom settings for groups of officers. With such footage, other officers may be able to learn from officer experiences and refine their techniques and responses to volatile situations. In their report on the Milwaukee experience with BWCs, representatives of the Milwaukee Police Department told the Committee that they are able to use bad examples from BWC footage to show officers what is unacceptable, and they routinely hear from officers that they watched their camera footage, and they were glad they had it because they knew they had to behave in a way that was like being on TV. They said that in Milwaukee the Department stresses the need to use BWC footage for training and learning. Similarly, representatives of the Fitchburg Police Department told the Committee that BWC footage provides a valuable training opportunity.

- **More evidence for resolving complaints and charges**

BWCs add to the quantity and quality, of evidence available to fact-finders. Whether that is a net positive or negative depends on how the evidence is collected, interpreted, and used, but the addition of BWC footage does indeed provide more evidence to help fact-finders determine what happened.

In discussions about BWCs, additions to the evidentiary picture are typically considered in the context of sorting out what happened in a discrete police/civilian encounter. But BWCs can also add to the collection of evidence, and hence to the system’s ability to find the facts accurately, on a wide range of incidents beyond the discrete officer/civilian encounter captured in the video. One effect of BWCs, which is often overlooked in the debates about BWCs, is that BWCs can provide recordings not only of police confrontations with suspects in the field, but also with *all witnesses* whom they interview.

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<sup>66</sup> Katz et al., p. 38.

<sup>67</sup> Wasserman, H.M. (2015). Moral Panic and Body Cameras, 92 Wash. U. L. Rev. 831, 844.



A significant reform in police investigation practices from recent years has been the widespread requirement for electronic recording of custodial interrogations of suspects. To almost everyone's surprise, the study of wrongful convictions in the last 30 years has revealed that a leading contributor to conviction of the innocent, present in nearly 25% of the DNA exoneration cases, is false confessions—that is, confessions, often to very serious crimes such as rapes or murders, that the suspect actually did not commit. And one of the reasons that false confessions have been so alarmingly prevalent in even very serious cases is that police were able to employ coercive and suggestive interrogation techniques in the secrecy of the stationhouse interrogation room. Electronic recording of custodial interrogations—which became a requirement under Wisconsin law in 2005—changed that. While false confessions still occur, electronic recording of interrogations has been universally heralded as a deterrent to misconduct in the interrogation room, and as a truth-revealing process that exposes both the tactics employed by police and the full truth about what suspects said—which sometimes benefits the police and prosecution, and sometimes benefits the suspect, depending on what actually occurred in the interrogation, as revealed by the recordings. BWCs can offer recordings of interviews conducted in the field, thus capturing interviews in less formal settings, and increase visibility to false confessions.

Statements from third-party witnesses are even more prevalent in criminal cases than are statements from suspects, but currently nothing compels (or would even make it practical) to electronically record witness interviews, or even suspect interviews outside the custodial setting. Yet disputes arise routinely in criminal cases about what police told the witnesses, and what the suspects said. Without recordings, all that is available for fact-finders is a swearing contest between the police officer and the witness (often people of color or other marginalizing background). In such cases, as Judge Everett told the Committee, the police win those swearing contests almost every time—even if they are, unbeknownst to the factfinder, not telling the truth.

BWCs can remedy that imbalance by providing a verbatim electronic recording of all of those investigative encounters. One thing we heard from the Fitchburg police was that, even in instances where the video portion of their BWC footage is blurred, misdirected, or grainy, the audio portion of the recordings is almost always crystal clear. No doubt in many cases recordings of witness interviews will confirm the police investigator's version of the interview. In some cases, however—no doubt a smaller percentage of cases, but a very important percentage indeed—those recordings may reveal what the police officer's retelling of the interview alone often will not—that the witness was inappropriately led or pushed to make an incriminating statement, or in fact said something entirely different in substance or emphasis than the officer thought they heard or that they reported.

Legal analysts routinely report that the existence of BWC footage reduces fact-finding burdens on courts because it provides a more reliable, and verifiable account of the facts rather than depending simply on competing narratives of officers and subjects. That was the message the Committee heard from a variety of legal experts, including Judge Everett Mitchell, Mike Gennaco, representatives of the State Public Defender's Office, and District Attorney Ismael Ozanne.

Additional anecdotal evidence also supports this potential benefit of BWCs. In 2013, Judge Shira A. Scheindlin of the federal district court in New York City issued a ruling finding police stop and frisk practices to be

unconstitutional because police were targeting people for stops based on their race.<sup>68</sup> Judge Scheindlin noted that her decision in the case was handicapped by the reality that she was “relegated to finding facts based on the often conflicting testimony of eyewitnesses” since there was “no contemporaneous recording of the stop (such as could be achieved through the use of a body-worn camera) . . . .”<sup>69</sup> To remedy the constitutional violation and address this problem, Judge Scheindlin ordered, among other things, “a trial program requiring the use of body-worn cameras in one precinct per borough . . . .”<sup>70</sup> However, it is also worth noting that while NYPD has readily provided access to the resulting BWC footage for prosecution of civilians defendants, it has obstructed access by police abuse investigators, prompting Judge Scheindlin (now retired) to note, “This just seems like contempt. I understand privacy concerns. But they’re refusing to meet their obligations.”

BWCs can also bring evidentiary value in helping to protect police officers from false allegations of misconduct or abuse, and can thereby increase accountability for civilians as well as for police. With a video record, it will be inherently more difficult for civilians to make false or misleading claims of police misconduct.

However, in considering all the above, it is important to note that MPD officers operating squad cars with dashcams wear microphones, and audio record some encounters with the public. Many of the aforementioned argued benefits of BWCs concern verbal interactions (e.g., police interrogations) and other auditory evidence. When the evidence that matters is auditory (e.g., what police said, what suspects said, what witnesses said, someone’s yell, etc.), it theoretically can be captured by microphones without BWCs. However, under current policies, audio recording is not required nearly extensively as the use of BWCs under this committee’s Model Policy.

Dane County District Attorney Ismael Ozanne and State Public Defender Kelli Thompson both told the Committee that video footage has been used both to help solidify charges against suspects and to vindicate criminal defenses and civilian complaints against police, in ways that would not have been possible without the footage. Survey data from McCluskey et al. (2019) shows that both prosecutors and defense attorneys support the implementation of BWCs as an evidence-collection tool.<sup>71</sup> “[A] statistically reliable contrast between the groups of

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<sup>68</sup> *Floyd v. City of New York*, 959 F.Supp.2d 540 (S.D.N.Y. 2013).

<sup>69</sup> *Id.* at 562.

<sup>70</sup> *Id.*

<sup>71</sup> John McCluskey et al., *The Evidentiary Value of Body-Worn Camera Footage: A survey of Prosecutors and Public Defenders* (Jan. 2019), available at [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.bwctta.com\\_sites\\_default\\_files\\_Files\\_Resources\\_Evidentiary-2520Value-2520of-2520BWC-2520Footage-5FFINAL-5F0.pdf&d=DwMF-g&c=byefhD2ZumMFFQYPZBagUCDuBiM9Q9twmxaBM0hCgII&r=GX4Y7xW57tUvnbPi\\_LoBPVDIRG5jZglbjCaSa0DMvBcmqT7Db0NcUOrfIojpq1&m=n55iYj-0I0cIWFLWAzU8jZAMRQPo-rlaxfhvLPcTrKI&s=3IsY3J8AN5y6wH\\_i-DG\\_btN3tzkRvGRUrVkneB2YNgg&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.bwctta.com_sites_default_files_Files_Resources_Evidentiary-2520Value-2520of-2520BWC-2520Footage-5FFINAL-5F0.pdf&d=DwMF-g&c=byefhD2ZumMFFQYPZBagUCDuBiM9Q9twmxaBM0hCgII&r=GX4Y7xW57tUvnbPi_LoBPVDIRG5jZglbjCaSa0DMvBcmqT7Db0NcUOrfIojpq1&m=n55iYj-0I0cIWFLWAzU8jZAMRQPo-rlaxfhvLPcTrKI&s=3IsY3J8AN5y6wH_i-DG_btN3tzkRvGRUrVkneB2YNgg&e=).

respondents[—prosecutors (ADAs) and public defenders (PDs)—]involved the statement, ‘Attorneys in your office support the use of BWCs by law enforcement.’ Surprisingly, 81 percent of the PDs strongly agreed with this statement whereas 56 percent of the ADAs strongly agreed.”<sup>72</sup> “86 percent of PDs agreed or strongly agreed that BWCs could produce major differences with testimony, but only 18 percent of ADAs agreed or strongly agreed. General agreement between prosecutors (ADAs) and public defenders (PDs) were found in that both groups believe that BWCs improved their respective abilities to defend or prosecute cases.”<sup>73</sup> Both prosecutors and public defenders agree that BWCs increase pleas.<sup>74</sup> “Slightly more than two-thirds of PDs (67.5 percent) agreed or strongly agreed that BWCs would increase the likelihood of dismissal, compared to 30 percent of ADAs.”<sup>75</sup> “Sixty-six percent of PDs agreed/strongly agreed that BWCs increased the likelihood of acquittals, whereas 61 percent of ADAs agreed/strongly agreed that they increased the likelihood of convictions.”<sup>76</sup>

Meanwhile, in a separate national survey of state prosecutor’s offices (i.e., surveying 321 lead prosecutors), 79.5% indicated that prosecutors in their offices support BWC use, and large majorities believed that BWC evidence will help the prosecution more than it will assist the defense (62.7%), producing increases in convictions.<sup>77</sup> Likewise, a recent separate survey of public defenders in Virginia who have experience working with BWC footage revealed that “public defenders were overwhelmingly supportive of BWC use by their local law enforcement agencies.”<sup>78</sup> Public defenders reported that BWCs assisted them in learning how police do business, preparing a good defense for their clients, identifying potential otherwise unknown witnesses or defense options, alerting them to defenses or avenues they should *not* pursue (thereby saving time and helping them to avoid going down dead-ends), helping them to better prepare for client interviews and hearings, and helping to mitigate client expectations of reasonable case outcomes.<sup>79</sup> In sum, the research found that, after working with BWC footage, public defenders said that “BWC footage can also bring *everyone* involved in the case closer to resolution. As one

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<sup>72</sup> *Id.* at 7.

<sup>73</sup> *Id.*, p. 11.

<sup>74</sup> *Id.*, p. 12.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Merola, L.M., Lum, C., Koper, C.S., and Scherer, A. (2016). *Body Worn Cameras and the Courts: A National Survey of State Prosecutors*. Report for the Laura and JohnArnold Foundation. Fairfax, VA: Center for Evidence-Based Crime Policy, George Mason University.

<sup>78</sup> Gaub, J.E., Naoroz, C., Malm, A. (2019). *Understanding the Impact of Police Body-Worn Cameras on Virginia Public Defenders*, A report submitted to the Virginia Indigent Defense Commission. Retrieved from [https://www.researchgate.net/publication/340260677\\_Understanding\\_the\\_impact\\_of\\_police\\_body-worn\\_cameras\\_on\\_Virginia\\_public\\_defenders](https://www.researchgate.net/publication/340260677_Understanding_the_impact_of_police_body-worn_cameras_on_Virginia_public_defenders), p. 4.

<sup>79</sup> *Id.*, pp. 5-7.

attorney described, ‘It brings you, the Commonwealth, your client—it brings everybody to an agreed understanding of the case much sooner.’”<sup>80</sup>

Mike Gennaco of OIR, who presented to our committee, noted of BWCs, and the time burden they impose on public defenders:

This has had a real impact on public defenders who have had to deal with this in so many ways. They just are overwhelmed with this information.... Sifting through all that information is making it very difficult for public defenders. I think an unintended consequence is, as a result of that, we’re getting more pleas. Because the public defenders don’t have the resources to go through that body of evidence.

The recent survey of public defenders in Virginia referenced above found that public defenders agree— BWCs increase their workload. But public defenders believe BWCs are nonetheless worth the extra effort: Public defenders reported that “BWCs create a time-intensive burden on public defenders, but are deemed to be exceptionally useful.”<sup>81</sup>

### **Effect on liability**

Some have speculated that BWC implementation might beneficially impact misconduct lawsuits and settlements. However, data to this point in cities where this has been tracked does not appear to bear that out, or show any clear, consistent pattern. Given that randomized controlled trials of BWCs have not, on average, shown a reduction in use of force, this may not be surprising. In addition, Bill H. Nesbitt, CPP, president of Security Management Services International, Inc. notes that body cameras may create additional liability if an officer fails to adhere to the proper protocols.

The Police Executive Research Forum analyzed the impact on lawsuits and settlements in three cities that have implemented BWCs on large scale.<sup>82</sup> Dallas data only included suits with payouts. After BWC implementation, number of such suits per year decreased slightly (-12%) and the average and median payouts increased (+287% and +262%). Data from Mesa and Phoenix included all suits, whether or not there was a payout. In Mesa, after BWC implementation, the number of suits per year increased (+71%) and the average number per year that resulted in payouts remained largely unchanged (-4.5%), while the average and median payouts of suits with payouts decreased (-97% and -90%). In Phoenix, the average number of suits per year and number of suits per year with payouts decreased (-37% and -58%), and the average payout in suits with payouts decreased (-52%) while the median payout in suits with payouts increased (+67%). A separate study of Oakland found that, after

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<sup>80</sup> *Id.*, p. 7.

<sup>81</sup> *Id.*, p. 4.

<sup>82</sup> Police Executive Research Forum. (2018). Costs and Benefits of Body-Worn Camera Deployments: Final Report.

BWC implementation, the number of suits decreased (-43%) and the average payout increased (+23%).<sup>83</sup> Though it is important to note that Oakland was under a strict consent decree, implementing many other reforms, so it is not really possible to isolate the effect of BWCs. Overall, there is no consistent pattern apparent. If BWCs do impact liability, the effects may be negative or positive.

## ANALYZING THE “CONS”: THE POTENTIAL DOWNSIDES OF BWCs

- **Increased criminalization, particularly affecting minorities**

One of the most challenging problems the research identifies with BWCs is the potential they have to increase criminalization—that is, the potential to increase rates at which especially low-level crimes are pursued through arrest, detention, and ultimately prosecution.

While a full and accurate understanding of the facts of an incident appears on its face to be desirable, body cam footage, which might facilitate such fuller understanding, remains just a tool. Whether that tool and the increased evidence it produces is a net social good or social cost depends again on how that tool is used. Over-criminalization based on that enhanced access to camera footage might in fact be a net harm, rather than a benefit.

The reality is that not all crime, and especially not all low-level crime, is observed, reported, investigated, or prosecuted. Nor could we prosecute all such crime, as our institutional capacity for processing all the cases and sanctioning all the wrongdoing is nowhere close to what we would need to do that. Nor would we really want full enforcement of the laws, as such full enforcement would produce massive injustices and unintended consequences. As a society, we neither want nor could we afford full enforcement of all minor traffic, drug, or morality laws (e.g., adultery), for example. Few among us would want to see prosecuted the woman who provides her prescription anti-nausea medications to her horribly nauseated pregnant sister after her sister failed to refill her own prescription on time, although the act would constitute an illegal drug distribution. Few among us would want us all stopped and ticketed every time we fail to engage our turn indicators at precisely the right time, or every time we turn into the wide lane of traffic rather than the near one, or cruise in an otherwise safe manner five miles per hour above the speed limit. The same sense of justice should make us unwilling to pursue every, or an increased number of, low-level street incidents or victimless crimes, like sharing a marijuana cigarette on a street corner, or driving to work without incident in a car with lapsed license plates because of an inability to pay the registration renewal fee, or hanging out longer than a police officer deems appropriate in a public place (loitering).

While prosecution of some low-level offenses is no doubt unavoidable and can in the right circumstances serve legitimate purposes, an increase in arrests, detention, and prosecution for such offenses simply because of the happenstance of having bodycam footage runs the risk of increasing patterns of injustice and heightening

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<sup>83</sup> Nicolas Berdjis. (2016). A Descriptive Study on Police Body Cameras and Civil Liability Cases. Master's Thesis, University of Colorado.

community/police distrust. Moreover, social science research reveals that prosecuting some crimes can have a net negative impact on community stability and safety, by removing breadwinners, interrupting natural social structures, and making it in the end more difficult for prosecuted individuals to find work and housing and to become contributing members of their communities. A recent study, for example, found that adolescent boys (primarily Black and Latino) who are stopped by police “report more frequent engagement in delinquent behavior 6, 12, and 18 months later, independent of prior delinquency, a finding that is consistent with labeling and life course theories.”<sup>84</sup> The study concludes: “Police stops predict decrements in adolescents’ psychological well-being and may unintentionally increase their engagement in criminal behavior.”<sup>85</sup>

There is evidence in the research that supports the concern that BWC implementation might increase the filing of charges by prosecutors, especially for lower-level crimes or misdemeanors. The increase in charging rates can be large and most people charged plead out. Misdemeanors account for about 80% of all arrests and 80% of state criminal dockets. BWCs thus have the potential to exacerbate the problem of overcriminalization, with the effect falling most heavily on the most highly policed communities (Black and Brown residents). In Madison, the proportion of arrests and charges that are against Black residents has continued to grow dramatically over the last two decades. One of the primary demands of Black Lives Matter protesters has been an end to overcriminalization of Black residents. This research suggests that BWCs could make this problem worse.

Several studies suggest that BWC officers make more arrests and citations relative to their non-BWC counterparts.<sup>86</sup> A Phoenix, Arizona quasi-experimental evaluation concluded that BWCs increased officer productivity when measured by the number of arrests.<sup>87</sup> The evaluators reported that the number of arrests increased by about 17% among officers in the BWC treatment group compared to 9% among officers in the comparison group.<sup>88</sup> In Essex in the United Kingdom, a randomized controlled trial found that incidents attended by BWC officers were more likely to result in criminal charges as compared to incidents attended by control officers.<sup>89</sup> Researchers Ready and Young used a quasi-experimental analysis of field contact reports to examine

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<sup>84</sup> Juan del Toro et al. (2019). *The criminogenic and psychological effects of police stops on adolescent black and Latino boys*, PNAS, 116:8261-8268. <https://upenn.app.box.com/s/8qhyqawosea3l9oadpeb16f09h7q6aq3/file/737124787611>

<sup>85</sup> *Id.*

<sup>86</sup> Braga et al., p. 514-15; CHARLES KATZ ET AL., EVALUATING THE IMPACT OF OFFICER WORN BODY CAMERAS IN THE PHOENIX POLICE DEPARTMENT 31 (2014); CATHERIN OWENS ET AL., THE ESSEX BWV TRIAL: THE IMPACT OF BWV ON CRIMINAL JUSTICE OUTCOMES OF DOMESTIC ABUSE INCIDENTS 14–15 (2014); Justin Ready & Jacob Young, *The Impact of On-Officer Video Cameras on Police-Citizen Contacts: Findings from a Controlled Experiment in Mesa, AZ*, 11 J. EXPERIMENTAL CRIMINOLOGY 445, 452 (2015).

<sup>87</sup> Katz et al., p. 31.

<sup>88</sup> *Id.*

<sup>89</sup> Owens et al., p. 14-15.

whether BWCs influenced Mesa, Arizona, Police Department officer behavior during police-citizen encounters over a ten-month period.<sup>90</sup> The analysis suggested that BWC officers were less likely to perform stop-and-frisks and make arrests, but were more likely to give citations and initiate encounters.<sup>91</sup>

This appears to be a consistent pattern across multiple studies that have examined the question. Prosecutors file more charges because they believe that, with bodycam video available, they have more evidence to sustain convictions. Many of the additional residents charged will actually be guilty of the crimes charged, but the overall impact on communities likely will be negative and increase racial disparities.

One of the most significant studies leading to this conclusion was conducted in 2018 for the Laura and John Arnold Foundation by Dr. Elizabeth Groff and her colleagues. In that study, which examined the effects of BWCs in Los Angeles County, Groff et al. noted at the outset that “little research exists on changes to charging patterns when BWC evidence is available.”<sup>92</sup> To address that gap, they sought to compare charging outcomes in misdemeanor cases in Los Angeles in cases with BWC footage with those in misdemeanor cases without BWC footage. Their conclusion was that, when BWC evidence is associated with a case, the likelihood that the case is filed increases. The increase in probability of charging in cases with BWC footage was quite large (~2.4 times as likely) and highly statistically significant. Interestingly, the researchers also found that, while prosecution rates went up when BWC footage existed, that BWC footage had that effect only when prosecutors failed to review the footage prior to charging; when the prosecutors actually viewed the footage prior to charging, the rate of charging was lower than if video was not viewed.<sup>47</sup> This might be because prosecutors were more likely to view video to make a decision in cases in which they were uncertain whether a charge was supportable (weaker cases that were less likely to be charged in the first place) or because watching the video reduced the likelihood of charging.<sup>93</sup>

It is not entirely clear whether the research that has shown charging increases across all jurisdictions examined to date means that similar charging increases are inevitable if BWCs were implemented in Madison, especially if Madison were to implement any BWC program in ways intentionally designed to prevent this effect. . Unique features of the research and differences between contexts and policies could affect the impact on charging decisions.

Several factors caution against assuming that the research means charging rates will necessarily rise if Madison implements BWCs. First, while the data clearly show that cases with BWC footage are charged at a higher rate than cases without BWC footage, that does not necessarily mean that BWC led to an *increase* in

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<sup>90</sup> Ready & Young, pp. 448–49.

<sup>91</sup> *Id.*, p. 454.

<sup>92</sup> *Id.*, p. 5.

<sup>93</sup> Groff, E.R., Ward, J.T., and Wartell, J. (2018). *The Role of Body-worn Camera Footage in the Decision to File. Report for the Laura and John Arnold Foundation*, p. 35. Philadelphia, PA: Criminal Justice Department, Temple University.

charging or criminalization. What it shows rather is that, in the same time period, BWC-footage cases are charged more frequently than non-BWC-footage cases. Theoretically, it could be that BWCs have actually led to a decrease in charging in cases that lack video footage, rather than any increase in charging or criminalization overall. However, this would be extremely implausible. For example, in Los Angeles (the site analyzed by Groff et al), across the entire study period, cases where BWC evidence was available represented a very small fraction of all cases. Having BWC footage available in only a small fraction of cases would not cause a large reduction in charging rates in all the cases that lack BWC footage. In addition, the availability of BWC footage appears to result in faster case resolution, with defendants pleading out. This would reduce time constraints on prosecutors and allow for more prosecutions.

[note]

The Groff finding that charging rates *declined* when prosecutors actually viewed the footage,, along with an on-the-ground explanation of practices in Los Angeles by Mike Gennaco, supports the possibility that BWCs might reduce charging in some cases. In the research, charging in cases that had BWC footage was in the aggregate higher than in cases where there was no BWC footage, despite the fact that prosecutors had a lower charging rate when they viewed BWC footage, because prosecutors rarely viewed the footage prior to charging. Groff explained that, in Los Angeles, “the fundamental issue is that staffing levels [in the prosecutor’s office] are too low to keep up with the current number of cases that need to be evaluated for filing. As one attorney remarked ‘each day is triage’ ...”<sup>94</sup> Moreover, under the system employed in Los Angeles, prosecutors did not have automatic access to BWC footage, but instead had to request access. As Gross concluded, “This decreases the likelihood a DCA [prosecutor] will take the time to consider video evidence.”<sup>95</sup> The result was that in the vast majority of cases, prosecutors made charging decisions without ever viewing the BWC footage—BWC video was viewed by the filing attorney 1.6% of the time and not viewed in 98.4% of the cases that had BWC footage.

Mike Gennaco of the OIR Group, who resides and works in Los Angeles, provided a first-hand explanation of what was happening in Los Angeles. He said that the District Attorney in Los Angeles County has declared that if there is no body camera footage, the DAs will not file (again, supporting the possibility that the existence of BWC footage in some cases might lead to a reduction of charging in others). Gennaco also said that the anecdotal information available in Los Angeles suggests, by contrast, that if there is BWC footage to support the arrest, the DA’s office has an inclination to file the charges, even without viewing the footage first (supporting the finding that BWCs produce a higher charging rate). Indeed, consistent with Groff’s findings, Gennaco told the Committee that, because of a lack of resources, charging decisions are almost always made without viewing the BWC footage first. If the footage is eventually viewed, and it doesn’t match up with the police report in the case, the case will then be dismissed. But in the meantime, negative consequences from the initial charging decision accrue—the defendant will have been arrested, will typically remain in jail unable to make bail, will lose work, and will face pressures to plead out to the case just to get out of jail.

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<sup>94</sup> *Id.*, p. 19.

<sup>95</sup> *Id.*, p. 19.



An essential component of a BWC system is that all measures reasonably possible must be taken to ensure that prosecutors have and review BWC footage prior to making charging decisions. One way to do that is to get a commitment from the Dane County District Attorney's Office, prior to adopting a BWC program, that the DA's Office will review BWC footage prior to charging in every case, absent unavoidable complications that make it impossible or impractical in a given case. When Dane County District Attorney Ismael Ozanne presented to our Committee, a Committee member asked him if the DA's Office would commit to adopting a formal policy requiring the prosecuting attorney to view BWC footage prior to charging. Mr. Ozanne responded, "We'd love to have bodycam footage so we can review it at charging." He said that his office has been in discussions with law enforcement already about facilitating the transfer of video footage to his office promptly. He added, "I think it is very important for us to view the best evidence we have while we're going to make a charging decision." When asked if he would commit to a process in which BWC footage is obtained and reviewed promptly prior to charging, Mr. Ozanne said, "We are trying to actually get to that point." But he said he cannot control law enforcement, and therefore he needs to work with them to set up an electronic transfer system to ensure prompt access to the footage. Mr. Ozanne concluded, "Hopefully we will be at that level soon where we will have the video as soon as possible and be able to view it at charging, in all cases. ... And, yeah, I would like that to be where we are. That would be, I guess, best practice." When asked if he would adopt a policy that, when police are able to get his prosecutors the footage promptly, his attorneys would be required to view the footage prior to charging, he answered, "Yeah, I believe if we had the video we would view it, yes." He added: "If we have the video we will be looking at the video to make charging decisions, yes."

The Committee is encouraged by the DA's receptiveness to viewing video footage prior to charging, though it would be more encouraged by a commitment to a thorough review policy. Because it appears that viewing footage prior to charging is so important to a successful BWC program, the Committee urges the City to pursue a more formalized agreement with the District Attorney's Office to ensure that footage is viewed whenever available prior to charging, and to make adoption of a BWC program contingent upon such formal agreement. Moreover, to make prompt viewing possible, the Committee recommends that the City, through the Madison Police Department, work with the Dane County District Attorney's Office and the State Public Defender's Office to create a technology system that permits prompt or immediate electronic transfer of BWC footage to those offices. Without such measures, BWCs run a significant risk of exacerbating racial disparities and racial tensions in Madison.

Dr. Groff's research suggests another important measure to facilitate pre-charging review of footage as well. One of the significant problems confronting prosecutors and defense attorneys is that BWC footage can often be voluminous. An incident may run many hours in length, and it may be captured by multiple officers on different cameras. The volume of footage can therefore make prompt review infeasible. To facilitate that reviewing process, Dr. Groff found that it was critical that police officers note in writing the points in the video that depict the significant events at issue (since the officers, having experienced the incident first-hand, will know where to direct the lawyers without searching through hours of footage).<sup>96</sup> The Committee therefore recommends that officers be

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<sup>96</sup> Groff et al., p. 20.

required to annotate any footage sent to prosecutors and defense attorneys to direct them to the relevant portions of the footage to aid in their review.

Finally, to ensure that BWCs are not creating unintended consequences in terms of increased criminalization of primarily Black and marginalized community members, the Committee recommends that deliberate steps be taken to create a culture that guards against such an effect. This might be accomplished in part through training on the need to avoid increased criminalization, and through appropriate record-keeping. It is for this reason that the Committee recommends that any policy require police to make initial charging recommendations prior to viewing BWC footage, and to write a separate report noting any changes to that initial charging recommendation that might be made after the officers review BWC footage, along with a written explanation for such changes. These measures might reinforce the seriousness of changing the charging recommendations after viewing footage, and create a record of any patterns. It is also for this reason that the Committee recommends that the Department widely and regularly publicize to its officers, through training and other communications, that no officer will be disciplined in any way for failing to recommend charges that subsequent video review suggests were appropriate. The MPD should then maintain records of all arrest and charging patterns among BWC-equipped officers to discern whether BWCs are having the unintended consequence of increasing charging for low-level offenses. If so, and particularly if this is exacerbating racial disparities, the City should be prepared to reconsider its use of BWCs. And officers should be trained to be aware that such increases in charging recommendations could imperil the continued use of BWCs.

- **Perceptual biases**

Ample research establishes that BWC footage can present a biased perspective of incidents that can enhance the appearance of chaos, danger, and threat posed by recorded subjects and reduce perceived intent and potential culpability of an officer. This occurs for a number of reasons. First, BWCs only show the perspective of the police officers wearing them, and may fail to capture critical context. Research shows that by focusing only on what the officer sees—and that means especially by focusing on the civilian subject—the cameras produce an effect that biases the viewer in favor of the officer and against the subject. One study found, for example, that viewer perspective—whether the viewer focused on the civilian or the officer—influenced interpretations of the video. Study participants who reported focusing on the civilian more than the officer or both reported more negative views of the civilian’s actions, but no difference in their assessments of the civilian’s character compared to those who reported focusing on the officer or both.<sup>51</sup> Participants who reported focusing on the civilian conversely rated the police officer more positively in their subjective judgments of the officer, the officer’s character, and the officer’s guilt than those who reported focusing on the police officer or both individuals.<sup>52</sup> However, viewer perspective did not affect how viewers reported the facts of the incident. The study concluded, “These findings taken together suggest that individuals make similar basic judgments when little interpretation about the police officer’s actions is needed, regardless of their focus during the encounter. When subjective judgments are

<sup>51</sup> Kalle & Hammock, *Bias in Video Evidence: Implications for Police Body Cameras* (2019):

<sup>52</sup> *Id.*



made, focus away from the officer or focusing on the entire encounter results in more positive views of the officer.”<sup>53</sup>

Another important perceptual distortion unique to BWCs is termed “deceptive intensity” – an interaction in BWC video can appear more intense than it actually was. As one study notes:

The attachment of the body cam to the uniform of the officer leads to an imbalanced representation of perspectives. The police perspective is emphasized by the footage that is literally taken from their perspective, in which others are filmed slightly from below, making them look bigger and more overwhelming. Also, the police officers’ movements create shaky footage with deceptive intensity that invokes the image of a hectic situation that calls for police action. Secondly, it is the officer who decides when to wear a camera and when to start and stop recording. This leaves the potential to not record any misconduct. Thirdly, access to the recorded images, whilst in theory open to police and citizens alike, is in practice exclusively for the police. Within the current regulatory framework, body cams are thus not neutral reporters of interactions between civilians and the police....

This imbalance was clearly visible in the imagery produced with the bodycams of the police officers that shot Arlon Sterling in the US in 2016. This imagery gives a hectic physical impression, sometimes called “deceptive intensity,” because of the jerkily moving images, the police screaming “Don’t fucking move!” and “Get on the ground!,” and the heavy breathing of the police officers. However, the same incident was filmed by a wall-mounted security camera. From this video it became clear that Sterling was not aggressive at all and that the shaky images were created because the police attacked him.<sup>97</sup>

Perhaps the most important perceptual distortion is one in which BWC video of an incident results in lower observer judgments of the intentionality of police behavior (a measure of culpability) than dash cam video of the same incident.<sup>57</sup> This is closely connected to the concept of illusory causation - when the camera is focused on something, you assume they are the cause of what you are watching. As one study explains: “In general, attention is naturally drawn to the human form. Observers tend to attribute intentionality as a function of the visual salience of, and hence attention to, the focal actor. When an actor is visually deemphasized, judgments of the intentionality of that actor are reduced. The body cam wearer is typically less visually salient when depicted in body versus dashcam video, which corresponds with lower observer intentionality judgments.”<sup>58</sup> This is distinct from the effect of taking the wearer’s perspective. When the researchers asked some participants to “take the perspective of the police officer” it didn’t make much of a difference, suggesting that perspective-taking wasn’t the key factor driving people’s tendency to not blame the officer. Interestingly, however, this study also found that body cameras that captured even parts of the officer—arms and legs—eliminated the difference in intentionality assessments between viewers of footage from bodycams and dashcams.<sup>59</sup>

Moreover, as an article about this study notes, the effect of the BWC video dominated other forms of evidence:

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<sup>97</sup> Houwing, Lotte, and Gerard Ritsema van Eck. (2020). Police Bodycams as Equiveillance Tools?: Reflections on the Debate in the Netherlands. *Surveillance & Society* 18(2):284-287.

They found that people who watched a body cam version of an interaction—anything from the wearer bumping into someone to a police shooting—were less likely to believe that the person instigating that action did it on purpose, as compared to people who saw the same interaction filmed by a dash cam. There was a “diminished sense of blame or responsibility for the person who’s wearing the body cam,” Roesse says.....

In a lab experiment, the researchers asked 203 people to read the report. Some participants also viewed body cam or dash cam footage of the incident. Then they had to decide whether the officer should be indicted on several different charges. Seventy-one percent of dash cam viewers recommended indicting for assault, 69 percent for battery, and 60 percent for aggravated battery. But among body cam viewers, those figures were only 49 percent, 53 percent, and 49 percent, respectively.

Surprisingly, people who read the report without watching any videos were about as likely to indict as the dash cam group. The researchers don’t know why, but they speculate that when people do watch a video, they tend to focus on that and pay less attention to the report. “Video dominates written words,” Turner says. “It’s almost like the report exists less when there’s a body cam.””

Another study similarly found that participants who watched body-camera footage, compared with people who watched surveillance footage of the same encounter, perceived the officer's behavior as being more justified and made more lenient punishment decisions.<sup>54</sup> The researchers concluded: “Our results demonstrate that some body-camera footage—specifically videos that capture an officer using his or her body to apprehend a civilian—can lead to biased perceptions of police encounters that benefit the officer. Our findings suggest that this occurs because: (i) in body-camera footage, the civilian is the more easily visible figure, thus making less salient the officer's role in the encounter; and (ii) the body camera—attached to an officer's uniform—is unable to adequately capture certain use of force movements that are important in determining an officer's intent.”<sup>55</sup> This perceptual distortion may insulate officers from accountability when video from their own BWC is available, especially when they were the only officer present, exacerbating the sense of a lack of accountability of police officers.

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<sup>53</sup> *Id.*, p. XX.

<sup>54</sup> Jones, Crozier, & Strange, *Look there! The effect of perspective, attention, and instructions on how people understand recorded police encounters* (2019)

<sup>55</sup> *Id.*, p. XXXX.

<sup>56</sup> Houwing & van Eck, *Police Bodycams as Equiveillance Tools?: Reflections on the Debate in the Netherlands* (2020).

<sup>57</sup> Turner et al., *Body camera footage leads to lower judgments of intent than dash camera footage* (2019). PNAS.

A related problem noted in one paper is that, over time, officers will learn how to manipulate the impression generated by recordings. For example, in one case involving BWC recordings, the officer kept yelling “stop resisting” as the officers beat an individual, Derrick Price, lying passively on the ground. The BWC recordings, with the “stop resisting” verbalizations and hectic jostling of the cameras, conveyed strong apparent evidence of resistance. But this impression was entirely erroneous—a CCTV camera also captured the incident, and showed that the individual was not resisting at all.<sup>98</sup> A jury would have been far more misled by the conjunction of the BWC video and officer reports, compared to officer reports alone (i.e., might have questioned the officer reports, but not when buttressed by the convincing BWC video). BWCs turn police officers into cinematographers, and it is possible for officers to learn to generate misleading verbal narratives during BWC recordings, to capture planted evidence on camera, etc.—and the impact of such misleading video (which appears to directly provide a viewer with the ground truth of what occurred at the scene) is powerful.

These studies and concerns make a powerful argument against BWCs. But the argument is not conclusive in itself. It is important to remember that *all* evidence is biased to one degree or another. Witness reports always reflect the perspectives and biases of the witness. Bystander video reflects other biases of perspective. Officers bent on framing a civilian can do so effectively without BWCs. While it is important to recognize the biases inherent in BWC footage, that does not necessarily mean that BWCs on balance obscure the “truth” more than they illuminate it. The question remains—despite its inherent limitations and biasing potential, does BWC footage on balance enhance a fact-finder’s access to the truth about an incident when compared to reviewing the incident without such footage, forcing the fact-finder to rely instead on, for example, competing police officer and subject verbal accounts of the incident.

On the other hand, the conjunction of biases unique to BWC video may distort judgements of viewers in ways that are quantitatively greater and specific to BWC evidence, posing unique risks. First, as with other video evidence, people tend to perceive BWC footage as providing an objective and unbiased form of evidence, such that people tend to believe that what they judge video to show is “obvious”. The U.S. Supreme Court has subscribed to such a view of video evidence (more information on this below). Secondly, as noted above, BWC footage appears to generate stronger and different forms of perceptual biases than other video evidence (such as CCTV footage from a fixed camera) – with reduced perception of police officer intent/culpability and deceptive intensity having particularly pernicious and misleading effects on human judgement (potentially worsening a fact-finders access to the truth about an incident, rather than improving it). In combination, these effects can result in an “illusion of accuracy”. These issues, with respect to BWC evidence, are highlighted in an article discussing the work of BWC expert Seth Stoughton:

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<sup>98</sup> Harlan Yu and Miranda Bogen, Sakira Cook, Shin Inouye, Tyler Lewis, Patrick McNeil, Leslie Paluch, and Corrine Yu. (November 2017). The Illusion of Accuracy. How Body-Worn Camera Footage Can Distort Evidence. Upturn and The Leadership Conference.

The law professor had one main message for prosecutors when he came to town: You shouldn't always believe your eyes.... [P]rosecutors took an afternoon last week to learn how to use that evidence in court. "As a prosecutor, any time we can have video footage of significant events in a criminal action it's essential for us," Chief Assistant State Attorney Mac Heavener said before the training. "The jury essentially becomes a witness to the things that happened." But then Seth Stoughton, a University of South Carolina law professor and one of the foremost body camera experts, raised his hand to interject. "Actually, I'm going to spend time this afternoon about why that's not true."... "When we're talking about body-worn cameras as evidence, there are cases where it will help, cases it obviously won't help, then cases where it looks like it will help but it actually hinders or harms." He said the cameras could even potentially result in wrongful convictions or acquittals."

Seth Stoughton has also produced three BWC videos of simulated interactions involving police officers, highlighting such issues of interpretation.<sup>99</sup>

In this regard, it is worth keeping in mind something that Mike Gennaco of OIR told the Committee. To reiterate, Gennaco said that BWC footage is most often useful in the low-level encounters, where there is no physicality, no chaotic shaking of the camera, and the real question is, for example, who said what, when. In those circumstances, the biasing effects of cameras are least pronounced, and the camera can clearly explain the encounter. Gennaco said, "in the routine conduct, when an officer comes up to a civilian, and the civilian at the end of that contact believes that the officer did not behave professionally in one way or another, the body camera will tell you what happened. Because there's no obstruction, there's no physicality, it's all there. And you can use that information once you have it to persuasively get a department to take remedial action if remedial action is called for in those kinds of cases."

But where such conditions do not hold, there's greater reason for concern. Again, as Jessica Chapman notes, part of the crux of the problem of the potentially misleading effects of perceptual biases in BWC video for a fact-finder is: "Our tendency to privilege what we can see over experiences mediated by our other four senses is deeply tied to our understanding that what we see is the truth. Jay argues that this is the result of a visually privileged order of knowledge, where what we see rests at the top of the hierarchy (1991, p.23). ...Despite significant proof to the contrary, we continue to believe that what we see is a one true reality." And news headlines such as "perfect, no. But bodyworn police cameras place an impartial set of eyes on what is increasingly a volatile and controversial job"<sup>100</sup> and "police say body-worn cameras provide an unbiased and accurate account of their interactions with the public"<sup>101</sup> exemplify this ubiquitous understanding that BWC video provides direct, unmediated access to truth. Along these lines, Jessica Silbey (Associate Professor of Law, Suffolk University Law School) discusses the privileged position afforded video in courts:

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<sup>99</sup> Timothy Williams, James Thomas, Samuel Jacoby, and Damien Cave. (April 1, 2016). Police Body Cameras: What Do You See? New York Times. <https://www.nytimes.com/interactive/2016/04/01/us/police-bodycam-video.html>

<sup>100</sup> The Calgary Sun. June 24, 2015.

<sup>101</sup> City Centre Mirror. May 28, 2015.

This Article explores a puzzle concerning the authority of certain film images that increasingly find themselves at the center of lawsuits in the United States. These are surveillance or “real time” film images that purport to capture an event from the past about which there is a dispute. Increasingly, this kind of “evidence verité”—film footage of arrests, criminal confessions, and crime scenes—is routinely admitted in U.S. courts of law as the best evidence of what happened. This kind of evidence tends to overwhelm all other evidence, such as witness testimony, paper records, and other documentary evidence. Evidence verité also tends to be immune to critical analysis. It is rarely analyzed for its ambiguity, its bias, or its incompleteness. To the contrary, it is most often admitted without any cross-examination at all.

Because the biasing effect is real, however, any BWC program must be designed to minimize those biasing effects as much as possible. That is why the Committee’s Model Policy requires cameras with a wide angle of view—180 degrees if possible—to capture as much of the scene as possible, including the officer’s own arms and legs and other officers on the scene.

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58 *Id.*, p. XXX

59 *Id.*, p. XXX





the Committee recommends that cameras be worn on the body as high as possible, but in no event lower than shoulder level, to minimize the camera angle making civilians look larger and more menacing than they are. Though we will note that no mount position is ideal in every way. A head or glasses mount poses a number of reported issues. Officers cannot always wear glasses. Some officers have also reported that the headband cameras are uncomfortably tight, and some expressed concern about the potential of injury when wearing a camera so close to the eye area. Meanwhile, a shoulder or collar mounted BWCs can be blocked when an officer raises their arms, and cameras can more readily be knocked off the shoulder. However, in our judgement, the importance of reducing perceptual distortions of a low-mounted BWC outweighs these issues.<sup>102</sup>

A desire to reduce these distortions is also why the Committee's policy requires the use of image stabilization software, to the extent feasible, to reduce the exaggerated sense of chaos and danger that otherwise can arise from the officer's body movements. It is also why the Committee's policy requires that all officers on the scene engage their cameras, and that the Department accept civilian or third-party videos on the same basis as BWC footage, to capture the incidents from as many perspectives as possible, and not just from the perspective of one officer focused on a subject, or worse, attempting to manipulate the recording to twist reality. Though it is important to keep in mind that there is no way to fully compensate for these perceptual distortions (e.g. a BWC will always point away from an officer, and there is no feasible BWC providing a 360 degree view). Thus, these measures will not eliminate these perceptual biases, but they can at least reduce them to some degree. Similarly, the Committee is recommending that viewers of MPD BWC video be formally informed of the most important perceptual distortions associated with BWC video and instructed to attempt to compensate for them. The research literature is mixed on the efficacy of such instruction (it is notoriously difficult to get people to successfully compensate for cognitive biases), but there is evidence of a degree of mitigation from such instructions in similar contexts.<sup>103</sup>

## Cognitive illiberalism

One important limitation of video evidence, which is not adequately appreciated, and which may be especially important in BWC footage (when superimposed on perceptual distortions with BWCs, compromising interpretation), is cognitive illiberalism. This refers to a form of cognitive bias - an inability to recognize how cultural background influences one's own (as opposed to others') perceptions; psychic pressure individuals experience to conform their perceptions of risk and related facts to their cultural values. Howard Wasserman (Associate Professor of Law at the Florida International University College of Law) notes:

as Dan Kahan and his co-authors showed, what any viewer "sees"—and the inferences and conclusions she draws—are influenced by the viewer's cultural, demographic, social, political, and ideological characteristics. Video speaks "only against the background of preexisting understandings of social reality that invest those facts with meaning."<sup>104</sup>

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<sup>102</sup> 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

<sup>103</sup> Elek, J. K., Ware, L. J., & Ratcliff, J. J. (2012). Knowing when the camera lies: Judicial instructions mitigate the camera perspective bias. *Legal and Criminological Psychology*, 17(1), 123–135

<sup>104</sup> Howard M. Wasserman, Moral Panic and Body Cameras, 92 Wash. U. L. Rev. 831, 844 (2015)

Upon reviewing video evidence, this leads to questionable interpretations and inappropriate certainty in interpretations, since people tend to subscribe to a naïve realism and believe video “speaks for itself”. A paradigmatic case of cognitive illiberalism can be found in the U.S. Supreme Court case *Scott v Harris* (2007). Harris was clocked traveling 73 mph in a 55-mph speed zone on a county road in Georgia and, after a 6 minute chase, Officer Scott rammed Harris’ vehicle as a way of ending the chase. Harris’ car crashed, rendering him quadriplegic. Harris sued Scott and Coweta County under 42 U.S.C. § 1983, alleging a violation of his Fourth Amendment right to be free from excessive use of force. Scott moved for summary judgment, asserting an affirmative defense of qualified immunity. Summary judgement is supposed to be reserved for cases in which there’s no substantive questions about the facts – with a court proceeding by viewing the facts and drawing reasonable inferences in the light most favorable to the non-movant (i.e., the court adopts the plaintiff’s version of the facts). But in this case – with a central question of whether Harris’ conduct posed a danger to pedestrians or other motorists or vehicles – the two sides offered substantially different versions of events, which would generally render the case inappropriate for summary judgement.

However, in *Scott v Harris*, the Supreme Court majority insisted that summary judgement was appropriate because of the “added wrinkle” of a video of the chase recorded from Scott’s dash-mounted camera, which captured the chase from the moment he switched on his siren light. The majority held that this was “a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury.” The ordinary requirement that the court view the facts in favor of the non-movant gave way to the court viewing the facts based on their interpretation of the videotape. As Wasserman notes:

But in treating the video as truthful, unbiased, objective, and unambiguous, and thus deserving of controlling and dispositive weight on summary judgment, the Court silently bought into the three basic, related myths that Jessica Silbey has identified about video evidence and evidence verite. The first is that film is an objective, unbiased, transparent moral observer, producing an evenhanded reproduction of reality. Video evidence is the “proverbial smoking gun,” raw evidence incontrovertibly showing what happened in the real world. The video becomes “an unimpeachable eyewitness ... testifying to the only version of what happened.” In fact, video replaces the eyewitness, making live testimony and corroboration unnecessary. Or, on summary judgment, allowing the court to disregard testimony altogether in favor of the video. This was captured by the Court’s insistence that the video could “speak for itself.” The second myth is that the meaning of the video is unambiguous and obvious to the viewer, the “last and best word on what happened” in the real-world events. The third myth is that the video transforms the viewer into an eyewitness to real events, the video “merely an extension of the jury’s eye.” Viewers believe they are witnessing the events as they occur and thus fully understand the truth and meaning of those events....

Justice Stevens recognized these myths in his sharply worded dissent. Stevens watched the same video, but saw a different event— not only was there not obviously a danger to the public in the chase, there were not even any “close calls.” The video told Stevens that no pedestrians, parked cars, or private residences were visible in the video at any point, meaning there was no risk to person or property in the chase; Harris never lost control of the car and signaled whenever he changed lanes or went across the center line to pass; and the cars that he did pass already had pulled over to the side of the road, perhaps in response to the police siren. Stevens’ larger, though unstated point, was that the chase video, as with other film evidence, was not unambiguous and its narrative not single or obvious. Nor did the video alone tell the entire story.<sup>105</sup>

A study by Dan Kahan and colleagues found that when Scott’s dashcam video was shown to a diverse sample of 1350 Americans, there were sharp differences of opinion on the facts of the events, along cultural, ideological, regional, racial, and other lines, inconsistent with the view of the Supreme Court majority that the video spoke for itself and provided only one obvious

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<sup>105</sup> Howard Wasserman. (2008). Video Evidence and Summary Judgment: The Procedure of *Scott v. Harris*, 91 *Judicature* 180.

“reasonable” view of the facts.<sup>106</sup>

### **Potential decreased access to jury trial and an increase in inappropriate summary judgements in civil cases**

In addition to cognitive illiberalism constituting a general issue for BWC video, the case described above creates the following specific issue, as noted by Wasserman:

[T]he Supreme Court shows no sign of moving from its view that video can be (and often is) so conclusive and unambiguous that the court can determine its meaning and jury consideration is not required. Paradoxically, body cameras may prove worse for civil rights plaintiffs — more constitutional cases will feature video, offering courts more opportunities to misuse video evidence and more opportunities to keep cases away from civil juries.<sup>107</sup>

In combination with the perceptual phenomena described earlier (e.g., ascription of reduced intent to BWC wearers given their invisibility in BWC footage), this may have an adverse effect on accountability of law enforcement officers. Ample research establishes that BWC footage can present a biased perspective of incidents that can enhance the appearance of chaos, danger, and threat posed by a civilian. This occurs for a number of reasons. First, BWCs only show the perspective of the police officers wearing them, and may fail to capture critical context. Research shows that by focusing only on what the officer sees—and that means especially by focusing on the civilian subject—the cameras produce an effect that biases the viewer in favor of the officer and against the subject. One study found, for example, that viewer perspective—whether the viewer focused on the civilian or the officer—influenced interpretations of the video. Study participants who reported focusing on the civilian more than the officer or both reported more negative views of the civilian’s actions, but no difference in their assessments of the civilian’s character compared to those who reported focusing on the officer or both.<sup>108</sup> Participants who reported focusing on the civilian conversely rated the police officer more positively in their subjective judgments of the officer, the officer’s character, and the officer’s guilt than those who reported focusing on the police officer or both individuals.<sup>109</sup> However, viewer perspective did not affect how viewers reported the facts of the incident. The study concluded, “These findings taken together suggest that individuals make similar basic judgments when little interpretation about the police officer’s actions is needed, regardless of their focus during the encounter. When subjective judgments are made, focus away from the officer or focusing on the entire encounter results in more positive views of the officer.”<sup>110</sup>

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<sup>106</sup> Dan M. Kahan, David A. Hoffman, and Donald Braman, *Whose Eyes Are You Going To Believe?* Scott v. Harris and the Perils of Cognitive Illiberalism, 122 HARV. L. REV. 837 (2009).

<sup>107</sup> Howard M. Wasserman, Moral Panic and Body Cameras, 92 Wash. U. L. Rev. 831, 844 (2015)

<sup>108</sup> Kalle & Hammock, *Bias in Video Evidence: Implications for Police Body Cameras* (2019):

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*, p. XX.

Another study similarly found that participants who watched body-camera footage, compared with people who watched surveillance footage of the same encounter, perceived the officer's behavior as being more justified and made more lenient punishment decisions.<sup>111</sup> The researchers concluded: “Our results demonstrate that some body-camera footage—specifically videos that capture an officer using his or her body to apprehend a civilian—can lead to biased perceptions of police encounters that benefit the officer. Our findings suggest that this occurs because: (i) in body-camera footage, the civilian is the more easily visible figure, thus making less salient the officer's role in the encounter; and (ii) the body camera—attached to an officer's uniform—is unable to adequately capture certain use of force movements that are important in determining an officer's intent.”<sup>112</sup>

Yet another study found:

The attachment of the body cam to the uniform of the officer leads to an imbalanced representation of perspectives. The police perspective is emphasized by the footage that is literally taken from their perspective, in which others are filmed slightly from below, making them look bigger and more overwhelming. Also, the police officers' movements create shaky footage with deceptive intensity that invokes the image of a hectic situation that calls for police action. Secondly, it is the officer who decides when to wear a camera and when to start and stop recording. This leaves the potential to not record any misconduct. Thirdly, access to the recorded images, whilst in theory open to police and citizens alike, is in practice exclusively for the police. Within the current regulatory framework, body cams are thus not neutral reporters of interactions between civilians and the police.<sup>113</sup>

Finally, another study similarly found that body cam video of an incident results in lower observer judgments of the intentionality of police behavior (a measure of culpability) than dash cam video of the same incident.<sup>114</sup> The study explained: “In general, attention is naturally drawn to the human form. Observers tend to attribute intentionality as a function of the visual salience of, and hence attention to, the focal actor. When an actor is visually deemphasized, judgments of the intentionality of that actor are reduced. The body cam wearer is typically less visually salient when depicted in body versus dashcam video, which corresponds with lower observer intentionality judgments.”<sup>115</sup> Interestingly, however, this study also found that body cameras that captured even parts of the officer—arms and legs—eliminated the difference in intentionality assessments between viewers of footage from bodycams and dashcams.<sup>116</sup>

A related problem noted in one paper is that, over time, officers will learn how to manipulate the impression generated by recordings. For example, in one case involving BWC recordings, the officer kept yelling “stop resisting” as the officers beat an individual lying passively on the ground. The BWC recordings, with the “stop resisting” verbalizations and hectic jostling of the cameras, conveyed strong apparent evidence of resistance.. But this impression was entirely erroneous—a CCTV camera also captured the incident, and showed that the

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<sup>111</sup> Jones, Crozier, & Strange, *Look there! The effect of perspective, attention, and instructions on how people understand recorded police encounters* (2019)

<sup>112</sup> *Id.*, p. XXXX.

<sup>113</sup> Houwing & van Eck, *Police Bodycams as Equiveillance Tools?: Reflections on the Debate in the Netherlands* (2020).

<sup>114</sup> Turner et al., *Body camera footage leads to lower judgments of intent than dash camera footage* (2018):

<sup>115</sup> *Id.*, p. XXX

<sup>116</sup> *Id.*, p. XXX

individual was not resisting at all. A jury would have been far more misled by the conjunction of the BWC video and officer reports, compared to officer reports alone (i.e., might have questioned the officer reports, but not when buttressed by the convincing BWC video). BWCs turn police officers into cinematographers, and it is possible for officers to learn to generate misleading verbal narratives during BWC recordings, to capture planted evidence on camera, etc.—and the impact of such misleading video (which appears to directly provide a viewer with the ground truth of what occurred at the scene) is powerful.

These studies and concerns make a powerful argument against BWCs. But the argument is not conclusive. It is important to remember that *all* evidence is biased to one degree or another. Witness reports always reflect the perspectives and biases of the witness. Bystander video reflects other biases of perspective. Officers bent on framing a civilian can do so effectively without BWCs. While it is important to recognize the biases inherent in BWC footage, that does not necessarily mean that BWCs on balance obscure the “truth” more than they illuminate it. The question remains—despite its inherent limitations and biasing potential, does BWC footage on balance enhance a fact-finder’s access to the truth about an incident when compared to reviewing the incident without such footage, forcing the fact-finder to rely instead on, for example, competing police officer and subject verbal accounts of the incident.

In this regard, it is worth keeping in mind what Mike Gennaco of OIR told the Committee. To reiterate, Gennaco said that BWC footage is most often useful in the low-level encounters, where there is no physicality, no chaotic shaking of the camera, and the real question is, for example, who said what, when. In those circumstances, the biasing effects of cameras are least pronounced, and the camera can clearly explain the encounter. Gennaco said, “in the routine conduct, when an officer comes up to a civilian, and the civilian at the end of that contact believes that the officer did not behave professionally in one way or another, the body camera will tell you what happened. Because there’s no obstruction, there’s no physicality, it’s all there. And you can use that information once you have it to persuasively get a department to take remedial action if remedial action is called for in those kinds of cases.”

Because the biasing effect is real, however, any BWC program must be designed to minimize those biasing effects as much as possible. That is why the Committee’s model policy requires cameras with a wide angle of view—180 degrees if possible—to capture as much of the scene as possible, including the officer’s own arms and legs and other officers on the scene. That is why the Committee recommends that cameras be worn on the body as high as possible, but in no event lower than shoulder level, to minimize the camera angle making civilians look larger and more menacing than they are, and it is why the Committee’s policy requires the use of image stabilization software, to the extent feasible, to reduce the exaggerated sense of chaos and danger that otherwise can arise from the officer’s body movements. It is also why the Committee’s policy requires that all officers on the scene engage their cameras, and that the Department accept civilian or third-party videos on the same basis as BWC footage, to capture the incidents from as many perspectives as possible, and not just from the perspective of one officer focused on a subject, or worse, attempting to manipulate the recording to twist reality. These measures will not eliminate bias, but they can at least reduce it to some degree.

- **Officers as cinematographers**

BWCs are under the control of police officers. Given incentives officers have, with respect to the content of video and the understanding of events that it would generate in viewers, this creates a greater breadth of issues than is often recognized. Understanding of events captured in video can be manipulated not just by an officer turning a camera on and off (e.g., to film only favorable material), but also in a host of other ways (intentionally or otherwise). For example, by providing misleading accompanying verbal narratives that manipulate understanding, by controlling where the camera is pointed to distort understanding, by recording of

staged scenes as with planted evidence (a has been occasionally occurring), etc. It is for this reason that the Committee recommends...

In “Becoming the Camera: Body worn video and shifting expectations of police work”, Jessica Chapman outlines the basic nature of the problem – explicating what remains invisible in the dominant discourse:

Providing a glimpse of these underlying motivations of control, professor Christopher Schneider, an expert in the area of police and technology, explained to several media outlets, “police are rolling out these cameras so that when they have the recording on their chest, this becomes the official or authorized recording of the situation” (Mehta, May 16, 2015). Schneider goes farther, “in a world where cellphone videos of police interactions with the public can be placed online within minutes, body-worn cameras might offer authorities a way to regain control of the situation’s narrative” (Mehta, May 16, 2015). Comments like Schneider’s give us glimpses of how the “war on visibility” is motivating the adoption of BWV and attempting to ensure that those who represent the state remain exempt from the negative implications of their place in the surveillant apparatus.

Rather than viral citizen video, the footage of police organizations will be privileged *evidence verité*, giving them authority to determine what is considered ‘official’. Police organizations will be able to frame the conversation surrounding their footage in a way that paints the police as favourably as possible. With current public perception of police perhaps at its lowest point in decades (Jones, 2015), having control over the visual evidence of their public interactions and conversations will give the police the opportunity to reframe how they are perceived. The result is that police organizations are embodying the technologies and techniques of the assemblage in order to impact it from within. The discourse surrounding the emergence of BWV as a policing tool has constructed a narrative that positions the device as superior, objective, and neutral. Acting as an extension of the officer’s eyes, ears, and memory, BWV is characterized as a purportedly objective solution to the fallible human....

Arguably the most significant consequence of using BWV as a policing tool is the emergence of what I call a cinematic logic. Cinematic logic refers to the approach and mentality that officers are developing in order to ensure that they gather the desired footage with their BWV. This logic forces officers to think like their cameras and consider their environments in much the same way a videographer would. The components of this logic include a thorough understanding of the technology, a conscious attempt to leverage factors such as lighting, angles, background noise, field-of-view, etc., a recalibration of bodily movement, a commitment to producing footage that will meet the demands of the legal system, and in some cases taking steps to frame footage through practices like narration. Essentially, officers must fully embody the technology and approach their work using the same logic as their cameras, making them the directors of their own BWV films and changing the way officers look. The result is that for better or worse, officers are learning how to construct their footage, and more importantly to construct “better” footage.... The shift toward a cinematic logic among officers can be observed in the way that BWV manufacturers discuss their products as well as the way that officer themselves describe their experiences.... The problem is that they are *constructing* it [i.e., the footage], that the footage they make will hold the privileged position of *evidence verité* with the assumed truth status that accompanies that....

The redefinition of police work that accompanies the adoption of BWV has been almost entirely overlooked by every actor involved in the discussion of BWV. Limiting the scope of conversation to exclude considerations of the cinematic logic necessary to “properly” utilize BWV is impactful, as any suggestion that the footage can be manipulated would undermine all notions of objectivity and accountability. By framing BWV in such a way that closes down this line of critique, the actors involved in constructing the conversation are able to push the adoption of these devices with little opposition. Moreover, it has been suggested in the preceding chapters that part of the appeal of BWV is that it presents the officer’s morally superior point-of-view meaning that any discussion of the agency or videography involved in using BWV would erode the attempts being made to ensure that the officer’s footage is automatically privileged on the grounds that it is superior to the citizen’s. Essentially, the war on visibility being waged by police officers is highly contingent on positioning BWV as non-threatening, making it crucial that the conversation avoids any explicit acknowledgement of the cinematic logic required for effective BWV use....

[T]here are... many ways in which these devices can be positioned and used to purposely highlight certain things and downplay – or exclude – others. These opportunities to infuse subjectivity into their footage further undermine claims of technological neutrality by suggesting that officers do some soft editing by learning from their footage and doing ‘better’ next time.... As BWV forces officers to become the camera, illusions of objectivity and moral superiority that underpin the dominant discourse surrounding the adoption of these devices as policing tools are eroded.... By ignoring issues of subjectivity, bias, manipulation, affordances, and logics actors are able to roll out BWV as a solution to misconduct and excessive force despite realities of subjectivity.... The result of technologically extending officers with BWV is that despite claims that these devices will provide much needed transparency and accountability, they are actually poised to undermine the level of visibility that citizens with smartphones had established.<sup>117</sup>

<sup>117</sup> Jessica Chapman. (2016). *Becoming the Camera: Body worn video and shifting expectations of police work*. Master’s thesis. Carleton University, Ottawa, Ontario.



- **Increased violence by civilians against officers**

At least one global multi-site study involved well-designed randomized controlled trials across ten sites in eight cities, found that the presence of BWCs had no effect on officer use of force on average, but actually increased the rate of assaults against officers (assaults against officers were 14% higher when cameras were present).<sup>118</sup> Importantly, however, the results were heterogeneous across sites—meaning the magnitude of the change in assault rates varied across locations. The

reason for this variation was not clear. Across cities, changes in rates of police use of force and changes in assault rates showed opposing trends (assault rates rising the most where rates of use of force fell). A follow-up analysis of the data suggested that police use of force fell somewhat where officers wearing BWCs didn't have discretion in activating their cameras and rose where officers had more discretion in activating cameras. Examining the effect of officer discretion was a planned post hoc analysis, but doesn't provide definitive evidence of an effect of discretion without further replication. Nonetheless, this points to a potential important effect of policy and policy enforcement.<sup>61</sup> A meta-analysis of 15 studies examining either assaults on officers/officer injuries or resistance to officers found an increase of similar magnitude, but it wasn't statistically significant. Though it is worth noting that this meta-analysis was combining two different constructs, rather than examining assaults alone. Given that the meta-analysis did not find a significant effect the Committee hopes that such an effect will not manifest in Madison, though it is a concern.

#### **Officers as cinematographers**

- **Increased violence by civilians against officers**

A global multi-site study, involved well-designed randomized controlled trials across ten sites in eight cities, found that the presence of BWCs increased the rate of assaults against officers (with a 14% increase in assaults when cameras were present), but, on average, had no effect on officer use of force.<sup>60</sup> Why there would be such an effect is not clear, though it is possible that an announcement to a subject that they are being filmed can exacerbate an already tense situation, or that over-restraint by officers may lead to the effect. However, it should be noted that the results were heterogeneous across sites—meaning the magnitude of the change in assault rates varied across locations (as has been observed with most other BWC outcomes across test sites).— The reason for this variation was not clear.

Across cities, changes in rates of police use of force and changes in assault rates showed opposing trends (assault rates rising the most where rates of use of force fell). A follow-up analysis of the data suggested that police use of force fell somewhat where officers wearing BWCs didn't have discretion in activating their cameras and rose where officers had more discretion in activating cameras. In this study, examining the effect of officer discretion was a planned post hoc analysis, but doesn't provide definitive evidence of an effect of discretion without further replication. Nonetheless, this points to a potential important effect of policy and

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<sup>118</sup> Ariel et al., *Wearing body cameras increases assaults against officers and does not reduce police use of force: Results from a global multi-site experiment* (2016).

policy enforcement<sup>61</sup>

A meta-analysis of 15 studies examining either assaults on officers/officer injuries or resistance to officers found an increase of similar magnitude to the study cited above, but it wasn't statistically significant ( $p = 0.143$ ). However it is worth noting that this meta-analysis combined two different constructs (resistance and assaults), rather than examining assaults alone. Nonetheless, the increase in assault rates should probably not be considered a definitive finding without further replication. Given some remaining uncertainty about this effect and the heterogeneity in assault outcomes across sites, the Committee hopes that such an effect will not manifest in Madison, though it is a significant concern.

- **Increased Officer Burnout**

There is evidence that BWCs increase officer burnout. A study of 271 officers across five police departments found that officers wearing BWCs reported higher levels of burnout compared to those who did not, and this difference was highly statistically significant.<sup>120</sup> BWCs also reduced perceived organizational support, and perceived organizational support mediated the relationship between BWCs and burnout. Though the level of statistical significance of these effects was high, there were some weaknesses in the experimental design (e.g., it was not a randomized controlled trial), such that further study of this question would be desirable. However, body-worn cameras can be seen as a form of electronic performance monitoring of officers, and studies on other forms of electronic performance monitoring have consistently shown increased burnout and stress, and a decrease in perceived organizational support. In addition, the results of this study are congruent with anecdotal reports from other BWC trials and ethnographic studies. For example, a BWC pilot program in Worcester noted "Officer morale — Officers in the pilot program felt less able to use their discretion at times. They thought that cameras caused them to become more "robotic" and less able to joke around and have fun while doing their jobs. Some officers felt pressure to maintain the demeanor of someone testifying in court. This has the potential to hurt officers' enjoyment of their jobs, and to reduce community engagement."<sup>121</sup>

Frontline law enforcement officers are already known to suffer higher rates of burnout than other professions, and this is linked to increases in suicides, substance abuse, and family stress. MPD has consistently expressed concern about officer burnout and rates of resignation. The inherent stress of always being "on camera" might exacerbate this problem.

- **Decreased civilian complaints**

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<sup>120</sup> Ian Adams & Sharon Mastracci. (2018). "Police Body-Worn Cameras: Effects on Officers' Burnout and Perceived Organizational Support." *Police Quarterly*, 22(1), 5-30.

<sup>121</sup> Worcester Police Department - Body Worn Camera Pilot Program Report. 2020.



A potential reduction in civilian complaints against officers is both a potential “pro” and a potential “con.” The “con” arises if BWCs discourage residents from making valid complaints against officers. As noted above, the research confirms that BWCs generally reduce civilian complaints, but it is not clear why. . Lum et al (2019) note “officers may be informally negotiating complaints by showing potential complainants or supervisors video footage of the encounter, which may discourage citizens from pursuing complaints for reasons unrelated to whether the complaint is legitimate. Goodall (2007) and Koen (2016), for example, observed these types of exchanges.”<sup>122</sup> A potential complainant with whom an officer is reviewing video may feel intimidated and may be discouraged from filing by authoritative assertions from the officer that the video shows no policy violations. Thus our model policy requires that “In-person review will specifically be provided by a representative of the Office of the Independent Monitor rather than by employees of the Madison Police Department.” The Committee has no way of assessing, based on the research, to what extent BWCs reduce valid complaints, invalid complaints, or both.

- **Decreased trust**

Just as it is possible that BWCs might increase trust in police, they might also have the opposite effect, especially if they are perceived as being used as a tool for monitoring of residents. As we heard from Freedom, Inc., and Upturn, some segments of the community will view cameras with suspicion, as another tool for police to use to oppress them. Moreover, researchers have hypothesized that “BWCs also might exacerbate an already challenged relationship between citizens and the police, especially if citizens expect cameras to be used to increase police accountability and transparency, but officers primarily use them to increase the accountability of citizens.”<sup>123</sup> That observation highlights the Committee’s emphasis that BWCs be adopted, if adopted at all, only in conjunction with other measures designed to increase police transparency and accountability and community trust, such as the 177 recommendations made by the Policy and Procedure Ad Hoc Committee. To date, however, we are not aware of any empirical research that shows that BWCs have in practice led to greater distrust.

- **Invasion of privacy**

One of the widely recognized threats posed by BWCs is its potential for serious invasion of privacy. Police officers frequently respond to incidents involving people in some of their most private, unflattering, and embarrassing moments—in domestic disputes, while injured or receiving medical care, while recounting a sexual assault, while suffering mental health breakdowns, while in states of undress, and the like. Recording these moments can sometimes infringe on legitimate privacy interests. In this regard, two aspects of BWCs—enhanced transparency and protection of legitimate privacy interests—are inherently in tension. Both interests can be respected, but doing so requires careful attention to providing extensive and

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122 Lum, C., Stoltz, M., Koper, C., & Scherer, J.A. (2019). Research on body-worn cameras: What we know, what we need to know. *Criminology & Public Policy*, 18(1), 93-118.

123 Lum, Stoltz, Koper, & Scherer, Research on body-worn cameras: what we know, what we need to know (2019).

uninterrupted recording and wide public access to the recordings when accountability and transparency concerns are at their highest, and limiting or preventing recording or public access when those concerns are less significant and privacy interests are paramount. And all of that must be done in a context in which officer discretion about whether to record or not is circumscribed. Accommodating all of these interests is not easy, but drawing on thoughtful legal literature on the privacy interests at stake,<sup>124</sup> the Committee's proposed model police makes a serious, and we believe sensible, attempt to prescribe specific rules that accommodate both interests while limiting officer discretion as much as possible.

- **Abuse of purpose**

Concern exists among some that, as frontline users of the BWC technology, officers might quickly become experts in uses of the cameras and may discover techniques that permit them to misuse the cameras or the footage by, for example, erasing footage if it shows them in an unfavorable light or reveals violations of policy or the law. Without any guardrails in place, police may simply use body camera footage when it benefits them, and block access when it does not. Leaving the footage solely in the hands of police may create a conflict of interest. To avoid this and other abuses of the BWC system, the Committee's model policy builds in various safeguards to ensure the integrity of the footage and the appropriate uses of the cameras.

- **Resident intimidation**

Some residents may feel fear due to the BWC recording them. This may lead them to act irregularly or drive them to not reach out to the police even when otherwise appropriate out of fear. It is possible that police might use the threat of recording to intimidate residents. While this concern exists, there is no research or empirical data showing that BWCs have had this effect. The only data the Committee has on this is the informal survey taken by Greg Markle of Operation Fresh Start, which revealed that a substantial majority of at-risk youths surveyed reported the opposite—that is, that they would be less fearful of and more trusting in police if they wore BWCs.



- **Misuse for immigration enforcement**

Immigration and Customs Enforcement (ICE) has been issuing administrative subpoenas to access records, including records of noncooperating law enforcement departments. Such subpoenas supersede state laws and local ordinances or department policies. A federal court in Colorado has upheld such ICE subpoenas. ICE has increasingly been using facial recognition technology (e.g., using administrative subpoenas to mine state driver's license databases, etc.) and is contracting with vendors, such as Cleaview AI, to expand use of this technology. Facial recognition technology can currently identify individuals in video, can be used to run video against large databases of faces (e.g., of individuals previously deported, etc.), and accuracy of the facial recognition software, and automation/ease-of-use, is evolving rapidly. In the near future, MPD BWC video, accessed via administrative subpoena, could be used to identify and locate undocumented Madison residents for deportation. BWC video, which will capture people

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<sup>124</sup> Hartzog, *Body Cameras and the Path to Redeem Privacy Law* (2018).

in their homes, neighborhoods, and workplaces, would be extremely valuable for identifying undocumented individuals living in Madison and their domiciles, workplaces, and places they frequent. If national authorities continue to pursue this practice, that is a matter that cannot readily be addressed by local policy or ordinance. Moreover, the risk of using BWC footage for such purposes might leave undocumented residents less willing to call for police service when it is needed.

While this risk is largely beyond local control, the City can minimize the amount of footage available for ICE scrutiny. The model policy proposed by the Committee seeks to do this by requiring that all footage, which is not needed as evidence for a criminal prosecution or an investigation into police conduct, along with a few other exceptions, must be deleted after six months.

### **Resources that need to be allocated to DAs and Public Defenders**

86% of PDs and 85.5% of ADA agreed/strongly agreed that BWCs increased case preparation time. There is considerable agreement that BWC use adds to the workload of PDs and ADAs. This is further illustrated in Table 7. Here, 90 percent of PDs and 95 percent of ADAs reported spending at least one hour reviewing case footage prior to hearings. Nearly a quarter of PDs and more than one-third of ADAs spent more than five hours viewing video for typical cases. Given caseloads in local jurisdictions, this time commitment is a substantial addition to the time already spent by ADAs and PDs working on prosecution and defense.

- **Facial Recognition Technology might be used against residents**

A significant concern about BWCs is that they will facilitate facial recognition technology to monitor individuals and groups. An increasing number of cases of mistaken arrests of Black men due to facial recognition technology have become apparent.<sup>125</sup> The Common Council has recently banned the use of facial recognition technology, so this issue might now be moot, at least as a matter of policy. Nonetheless, because it is possible that the City's ban on facial recognition technology might be repealed, the Committee has retained in its model policy a provision banning most uses of facial recognition technology.

- **Diminishing effect**

It is possible that, if BWCs have beneficial effects (e.g. on metrics like trust or certain measures of officer behavior) such effects might become less pronounced or reverse over time. For example, a study in Phoenix, Arizona, found that the rate of officer activation of BWCs was highest in the month immediately after officers received cameras.<sup>126</sup> A study in Milwaukee observed an immediate impact of BWCs on use of force (officers had 15% fewer use of force incidents in the month after receiving a BWC, a statistically significant reduction ( $p = .023$ )),

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<sup>125</sup> Kashmir Hill. Dec. 29, 2020. Another Arrest, and Jail Time, Due to a Bad Facial Recognition Match. New York Times.

<sup>126</sup> Katz, C. M., Kurtenbach, M., Choate, D. E., & White, M. D. (2015). Phoenix, Arizona, smart policing initiative: Evaluating the impact of police officer body-worn cameras. Bureau of Justice Assistance.

but then engaged in 2% more use of force incidents for each subsequent month they had a camera (a statistically significant increase ( $p = .008$ )), thus making the overall impact null.<sup>127</sup> Anecdotal reports also suggest potential changes in favorability of civilian perceptions of BWCs over time after implementation.<sup>128</sup> Moreover, studies have found that prosocial effects from other tracking devices designed to record people's activities are susceptible to habituation and often dissipate as wearers become accustomed to the technology.<sup>129</sup> Such potential time effects of BWCs have been under-researched and warrant further investigation. Currently, there aren't data available to draw definitive or comprehensive conclusions.

- **Cost**

BWCs involve serious costs, which must be factored into any decision about implementing a BWC system. The Committee is not well-positioned to make the judgments about whether BWCs are worth the cost, because that depends on a balancing of BWC costs against other budgetary demands and priorities, and the Committee has no information about and is not charged with assessing those expansive City budget considerations; those are matters that the Common Council, the Mayor, and the Police Department are much better situated to balance. But what the Committee can do is try to help those decision-makers understand the potential costs of implementing BWCs, so they can appropriately consider whether they are worth the budgetary trade-offs.

While it is surprisingly difficult to get a firm handle on potential costs, the Committee has been able to glean information about potential costs from a variety of sources. BWC program costs include expenses that arise from purchasing the cameras (and replacing them over time), training, maintaining the hardware, and processing, cataloging, redacting (when necessary), managing, and storing the footage. For a pilot project, preliminary estimates from the MPD are that the costs of a North District BWC pilot program could be in excess of \$136,000. More than \$72,000 of that total is for initial equipment acquisitions, which would not have to be incurred in subsequent years.

For a fully implemented BWC program, preliminary MPD estimates are that first-year startup costs would be approximately \$720,000. The \$720,000 startup figure would include purchasing 289 cameras (enough to outfit all patrol units with cameras) and managing their implementation (training, processing, storage, etc.) for \$575,000 plus another \$145,000 for additional equipment, specifically the hardware to permit automatic triggering of the cameras when squad car light bars are activated—an essential part of a successful BWC program, as discussed and recommended elsewhere in this report and Model Policy. MPD estimates, preliminarily, that thereafter annual operating costs might be approximately \$311,000 plus projected maintenance costs of \$65,000 per year, for an annual cost of approximately \$376,000. MPD cautions that these are all just preliminary predictions, based on estimates from its contract

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<sup>127</sup> Peterson, B.E. and Lawrence, D.S. (2020). Do the Effects of Police Body-Worn Cameras on Use of Force and Complaints Change Over Time? Results From a Panel Analysis in the Milwaukee Police Department. *Criminal Justice and Behavior*. Published online first.

<sup>128</sup> Nick Selby. (2016). Body-Worn Cameras. *Quality Policing Podcast*.

<sup>129</sup> Nasiopoulos, E., Risko, E. F., Foulsham, T., & Kingstone, A. (2015). Wearable computing: Will it make people prosocial? *British Journal of Psychology*, 106(2), 209–216.

with Panasonic (the vendor that currently provides MPD with its dashcams); these estimates are not, however, based a formal RFP process, and hence are just rough estimates. These estimates could vary significantly depending on the vendor selected and the specific features selected. These estimates also do not appear to include camera replacement costs, yet it can be expected that each camera will have a limited lifetime. If the City adopts an electronic file-sharing system to facilitate transfer of digital footage from police to prosecutors and public defenders, that will also impose additional costs (although over the long run the efficiencies of such a system might produce some offsetting cost savings, and the initial costs of such a system might be shared with the District Attorney’s Office and the Public Defender’s Office).

Also not included in these estimates are additional demands on officer and supervisor time that BWCs might create. In particular, it is likely that patrol officers will be required to spend a portion of each shift uploading, logging, and annotating footage, and supervisors will have to spend some time reviewing footage and supervising footage management. Currently, MPD does not anticipate a need to hire additional patrol or supervisory staff to make up for this increased workload demand. If not, any extra time required of officers will of necessity come at the expense of other activities they might otherwise undertake. MPD also noted—as have other departments—that some of this increased work time will likely be offset by reduced court time later in BWC cases (because the BWC footage is expected to reduce the range and number of litigable issues in cases).

Assessing just how much officer time will be required is very difficult, however. Survey data collected from officers in a few jurisdictions give one insight into the scope of the demands. In sum, the survey data suggests that officers believe they spend on average somewhere in the neighborhood of 39 minutes each shift classifying and/or reviewing video footage from the cameras.<sup>130</sup> Supervisors also spend time reviewing video footage. One survey reported that staff sergeants estimated that they spent roughly 25 minutes on average per shift reviewing body-worn camera footage, but that most said it did not require them to take overtime and “[t]hose who did require overtime said they did not claim it or adjusted their shift to accommodate the extra work.”<sup>131</sup> Additionally, “investigators estimated roughly that it took 3 to 5 hours a week toward the end of the pilot to review video and confirm what needed redaction; as cases involving body-worn camera video reach court, this time will increase. However, investigators also acknowledged that this longer time spent on case preparation could potentially cut down on the amount of court time required later.”<sup>132</sup>

Another glimpse into the potential total costs of the system comes from the Milwaukee Police Department. Milwaukee, which has 1110 patrol officers (compared to Madison’s 486 total officers) has a contract with Axon for a five-year camera and storage solution for a total of \$4,351,014. This system includes the added hardware that activates the cameras as soon as the squad lights go on or the officer starts running, or dispatch engages the system remotely. Milwaukee Police also informed the Committee that the costs of storage did not turn out to be as

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<sup>130</sup> <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/body-worn-camera-pilot-program-audit.pdf>; <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/tps-body-worn-camera-pilot-project-evaluation.pdf>.

<sup>131</sup> *Id.* p. 45.

<sup>132</sup> *Id.* p. 46.

big a problem as they thought it would, as their contract with the vendor includes unlimited cloud storage (currently, Madison, by contrast, stores all dashcam footage on site). But they said the big unexpected impact was the enormous amount of time it takes law enforcement agencies to process public records requests, because they must redact non-disclosable material in the footage. On the other hand, they reported that the redaction process itself turns out to be not that difficult, as the technology has made it pretty easy to do.

In Fitchburg, when the Police Department deployed cameras two years ago, it paid \$875 per camera, plus \$60 each for magnetic uniform mounts, \$225 each for software licenses, \$375 each for a 5-year protection plan (warranty and equipment damages), \$85 each for deployment and etching (for marking each unit with the Department's internal asset tag number and entering each the unit into the Panasonic/Arbitrator System), for a total up-front cost of \$1,620 per unit. They purchased 52 units, for a total start-up cost of \$84,240 for equipping all officers. Additionally, the Department spent \$575 for required hardware for each squad car to allow for light-bar activation, viewing on the in-car computer, classifying the video, and charging. They also spend \$57,000 for 60 TB of server storage space, but they have used only about 25% of that space, so that was far more than they needed. Finally, the Department also purchased an 8-Bay Charger, for \$1,549, which connects to the IT network/server for charging and downloading.

Lt. Hartwick from the Fitchburg Police Department, who presented to our Committee and then provided additional cost information subsequently, reported that it is very hard to assess how much time officers spend working with the cameras and footage, but his best estimate was that each officer spends just three to five minutes per shift. Officers almost never look at the BWC footage when writing their reports (except in OWI cases in which they often review dashcam videos to assess suspect performance on sobriety tests). Fitchburg uses a fairly simple video classification system, in which officers are required only to classify the footage from each shift as footage of an arrest or not, and as footage containing evidence or not (in relation to cases referred for prosecution, typically). The officers have the ability to annotate the videos with additional descriptive information, but usually they do not. If Madison were to adopt the policies recommended by this Committee, officer time would likely be greater here than in Fitchburg, because one of the Committee's recommendations is that officers annotate the footage to help prosecutors and public defenders find the relevant portions of the videos. That annotating would be required, however, only for footage that accompanied a case referral for prosecution; routine encounters that did not result in a referral for prosecution would not require such annotation.

Lt. Hartwick also reported that time spent processing footage for sharing with the DA's office, and for responding to Open Records requests, is quite minimal. He said that the DA has now implemented a new file-share program for electronic data transfer, which means that, from the time a file is created or requested to its completion for transfer to the DA's office or an open records request, it probably takes about ten minutes of officer time. He also said that processing Open Records requests has been surprisingly easy. Fitchburg has had fewer than a handful of cases in which they have received open records requests from someone other than a person in the video, so in most cases they don't have to consider redaction at all. He believed that, if there were a major incident, such as an officer-involved shooting, there could be many requests from outside individuals, but he said the software permits the Department to save redacted copies of the footage, so once they redacted the footage for one person they would not have to do any additional processing for subsequent requesters.

Other cities have reported markedly higher costs than these. The Worcester, MA, Police Department, for example, which is very similar in size to MPD (Worcester apparently has 461 officers and Madison has 486), reports that bids from three vendors came in at total costs ranging from \$9.75 million to \$11.05 million over five years.<sup>133</sup> Those bids, however, included purchasing many more cameras than MPD would purchase (Worcester budgeted for 453 cameras—apparently one for each individual officer—whereas MPD budgeted for 289 cameras—apparently planning for cameras to be shared and used by officers as they came on shift), and Worcester budgeted for purchasing tasers for every officer, while Madison has no need to purchase any tasers. Worcester also budgeted for purchasing cell phones for every officer, while MPD has proposed no cell phone purchases. It is safe to say, then, that whatever the cost in Madison might be, it will likely be lower than the projected costs in Worcester.

**COMMITTEE RECOMMENDATION:**

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