

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

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Madison, Wisconsin

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OVERVIEW

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;¹ by 2016, about half of U.S. law enforcement agencies (47%) had adopted BWCs.² 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.³ 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,⁴ 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.”⁵

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 Committee was still studying the matter, the Common Council moved forward and allocated funds for a potential police BWC

¹ U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS, 2013, 200 (2015).

² 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).

³ *Id.* at 25.

⁴ 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>.

⁵ Editorial, *Good to see solid funding for city police*, WISCONSIN STATE JOURNAL, Oct. 25, 2020, p. B3.

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.⁶

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. One high quality randomized controlled trial across 10 sites in 8 cities found that BWCs did not reduce use of force, but did significantly increase assaults against police officers.⁷ 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

⁶ 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).

⁷ Ariel

no strong feelings about BWCs themselves, they had some concerns about the potential for officer manipulation of camera data, cameras providing a false sense of security, and privacy issues. Our current Committee has worked hard 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 worked hard to address both of these critical issues.

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

⁸ 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, Kabjuang 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.

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

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-police 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. In interpreting these preferences, it is worth noting that, because BWCs are a new technology, our expectations of their impacts may not be thoroughly grounded in a matured body of experience – thus, a survey found that "Sixty-six percent of PDs [public defenders] agreed/strongly agreed that BWCs increased the likelihood of acquittals, whereas 61 percent of ADAs [assistant district attorneys] agreed/strongly agreed that they increased the likelihood of convictions"

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.¹⁰ A comprehensive, systematic review of the social science research on BWCs published in 2020 summarizes the research in this way:

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 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—

¹⁰ Lum 2019

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.¹¹

This Campbell systematic review further concludes:

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. It seems that overall, however, the expectations that BWCs might change officer or citizen behaviors (for better or worse) have not yet been consistently realized. Research has not addressed whether BWCs can increase police accountability or police–citizen relationships more generally.¹²

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

¹¹ 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>.

¹² *Id.*

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 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 undesirable 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 reconfiguring of police that envisions police as servants of the whole justice system and the whole community, not just enforcers of the law against certain members of 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—whether to recommend use of BWCs, and if so, what policies should be adopted to regulate them and what other conditions should be enacted, outside of MPD policy, to minimize their harms—are inextricably linked: Whether to recommend BWCs in Madison depends in part on how they will be used and regulated. That is to say, *whether* Madison should adopt BWCs depends in part 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—including pursuant to good policies and procedures and 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.^[1] 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.

^[1] 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.

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.

3. 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.

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

5. 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.

6. 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.

7. 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.¹³

8. 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.

¹³ 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.

9. 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

- **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, on perhaps a marginally less expansive basis, to the general public) 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. We have 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 (with ascription of reduced 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; our intention was to create a BWC program that is most likely to enhance the goal of transparency, as well as each of the other “pro”-camera factors set forth below, and to reduce the likelihood or impact of the “cons.”

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.”¹⁴ 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.”¹⁵ 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.”¹⁶

- **Increased trust in law enforcement**

¹⁴ Ashley Southall, *Police Body Cameras Cited as ‘Powerful Tool’ Against Stop-and-Frisk Abuses*, NY TIMES, Nov 30, 2020.

¹⁵ 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)

¹⁶ *Id.*

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, the research to date shows that hasn't 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.¹⁷ Further, the authors concluded, "There are disparities between the legitimacy afforded to the police by various groups, which does not seem to be remedied by BWCs."¹⁸ 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."¹⁹ 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."²⁰ 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."²¹

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.

¹⁷ 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).

¹⁸ *Id.*, p. 107

¹⁹ 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=2ahUKEwjY9pHGpruAhUMOs0KHWJuBssQFjABegQIBRAC&url=https%3A%2F%2Fperf.memberclicks.net%2Fassets%2Fbodyworncameraperceptions.pdf&usg=AOvVaw2GhM7nFEuXfOcsyfdDJDTb>

²⁰ *Id.*, pp. 7-8.

²¹ *Id.*, p. 6.

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 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. This concern is real, at least for some segments of the community. The Committee has no way to assess empirically that sentiment, or whether those concerns might be adequately addressed by tightly structured BWC policies, other than to note that most groups and individuals who presented to the Committee, on balance, were at least not opposed to BWCs. As with all other considerations, if BWCs are implemented in Madison, real sensitivity and care will have to be paid to this concern. In our model policy, we have built in rules to try to minimize the degree that BWCs can be misused for monitoring and controlling marginalized groups, although at this point we of course cannot know if those measures will be adequate.

- **Increased accountability for police misconduct**

The fuller evidentiary record 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 BWC cameras (e.g., they capture only what the officer sees, they can provide biased perspectives, etc.—concerns that are addressed elsewhere in this report), there is little doubt that BWCs can increase the quantity and, in some ways, the 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.”²² Whether they will in fact lead to greater accountability will almost certainly depend on how they are implemented. Again, our model policy is designed to enhance the prospects for increased accountability.

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 attention to 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. While 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 – they will have extensive investigative authority and were adopted by the City with the belief that their findings will have significant persuasive value. 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. Moreover, 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 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

²² Lum et al., p. 1.

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.”²³ 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.²⁴ As a ProPublica article noted, “The NYPD has regularly failed to turn over key records and videos to police abuse investigators at

²³ Ashley Southall, *Police Body Cameras Cited as ‘Powerful Tool’ Against Stop-and-Frisk Abuses*, NY TIMES, Nov. 30, 2020.

²⁴ 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; 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.”

New York’s Civilian Complaint Review Board.”²⁷ 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.”²⁸ 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.³⁰ 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.

²⁷ Eric Umansky & Mollie Simon. The NYPD Is Withholding Evidence From Investigations Into Police Abuse. ProPublica. Aug. 17, 2020.

²⁸ 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.

³⁰ 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.³¹

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.”³² 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.”³³ 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.”³⁴

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 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

³¹ 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.

³² *Id.*, p. 718.

³³ *Id.*, p. 712.

³⁴ *Id.*, p. 718.

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.

The Committee cannot emphasize enough that BWCs alone cannot create accountability; also needed is a real commitment by decisionmakers to use BWC footage and Madison’s other new accountability tools to hold officers accountable for misconduct. In this regard, the Committee concurs with the analysis of Jennifer Doleac, Associate Professor of Economics at Texas A&M University and Director of the Justice Tech Lab, which studies the effect of technology in the criminal justice system. In an opinion piece entitled, *Body Cameras Don’t Make Police More Accountable*, she writes:

Private companies have made a bundle from local officials’ desire to address citizens’ concerns.

Did the public get anything for this investment? This is a rare instance where there is a lot of research....

All in all, the research does not point to a definitive conclusion — except maybe that body cameras alone do not lead to better officer-citizen interactions.

One question is why this technology, which sounded so promising initially, didn’t have the intended benefits. It could be that most officers who use unnecessary force do so because they genuinely fear for their physical safety — even if, in retrospect, it appears they were overreacting. In other words, the unnecessary use of force might not be malicious. If someone fails to keep their cool in a stressful situation, then cameras alone are unlikely to deter officers’ behavior, because that behavior isn’t a really a choice.
...

As an economist, I love data. I also believe strongly in the power of incentives. Body-worn camera programs are an expensive attempt to find a way to build trust between police officers and their communities. Video footage alone can’t do that, however, if there are no consequences for the bad behavior it reveals.³⁵

³⁵ Jennifer Doleac, *Body Cameras Don’t Make Police More Accountable*, Bloomberg Opinion, July 29, 2020, <https://www.bloomberg.com/opinion/articles/2020-07-29/police-body-cameras-why-don-t-they-improve-accountability>.