

Problems associated with bodycams and my best attempt to find a means to mitigate each. As far as I can see, multiple serious problems cannot realistically be adequately mitigated.

1. Problem: There's substantial evidence that bodycam implementation increases filing of charges by prosecutors, especially for lower-level-crimes/misdemeanors (due to reduced rates of charge declination, etc.). 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. The increase in charging rates can be large and, apparently, most people charged plead out. Misdemeanors account for about 80% of all arrests and 80% of state criminal dockets. Bodycams are thus likely 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 BLM protesters has been an end to overcriminalization of Black residents. Bodycams will most likely to make this problem worse. 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. It's very clear (from randomized controlled trials) that criminal justice processing of juveniles for misdemeanors and low-level felonies increases their future criminal behavior (compared to diversion or doing nothing), and some data suggests the same may be true for adults (people with criminal records are less able to secure jobs, etc.), so for society, the net result is negative. Dane County has a restorative justice program and drug court, but capacity is low and criteria for acceptance are restrictive (e.g., the Community Restorative Court program only accepts people age 17-25, etc.).

My best attempt to mitigate the problem: Make implementation of bodycams contingent on the DA's Office committing to certain reforms. These would include using more stringent criteria to initiate prosecutions (e.g., adequately asking whether the prosecution is in the best interest of the community, etc.), enacting a default of not prosecuting many types of misdemeanors (e.g. Rachel Rollins, the DA of Suffolk County, has created a [long list of charges for which the default is to decline prosecuting](#)), and greatly expanding diversion programs. Bodycams could only be implemented if and when these reforms are enacted. This would offset/prevent the societally harmful increase in criminalization that bodycam implementation would otherwise likely produce.

Deficiencies of the approach: The current DA would be unlikely to agree to these reforms.

2. Problem: As Mike Gennaco noted, and as Groff et al substantiate, bodycams lead to increased charging by prosecutors, but in most cases, prosecutors do not review the video before issuing charges. Charges are issued at higher rates because prosecutors believe that, with bodycam video evidence, they'll be better positioned to sustain charges. Defendants and their attorneys generally don't obtain access to the videos until much later in the process, via discovery. In the interim, many defendants remain jailed. Most defendants plead out, to be released from incarceration or to move on with their lives, including many who are innocent of the crime charged. In net, bodycams thus lead to many additional people who are actually innocent but who have criminal records, must pay fines, are trapped in the probation system, etc.

My best attempt to mitigate the problem: Require that bodycam implementation be strictly contingent on the DA's Office first enacting a policy requiring that prosecutors always review bodycam video evidence, when it's available, before issuing any charges in a case (as suggested by Mike Gennaco). To facilitate this, also require that before bodycams are implemented, systems be set up to 1. permit immediate electronic access by the DA's Office to MPD bodycam video (for incidents involving suspects who are booked) and 2. have officers generate an annotation for the video, noting the relevant timepoints and events, to facilitate faster review of the video by prosecutors.

Deficiencies of the approach: Ozanne appeared to refuse to agree to enact such a policy, even if a system existed for immediate electronic access to the videos. He said that it was generally best for ADAs to review videos before charging, and noted an instance in which he told an ADA that they should review video of an incident before charging, but would not agree to a policy requiring it. ADAs are often under time pressure when making charging decisions, and it appeared that Ozanne was unwilling to require video review before all charging decisions (for cases with available bodycam video).

3. Problem: As a committee, we can work hard on composing a decent policy, but there's no reason to expect that MPD would actually adopt it. MPD will say "thanks for the suggestions", then do whatever they want, just as is currently happening with Ad Hoc Committee recommendations.

The Ad Hoc Committee generated 177 recommendations. But of Ad Hoc Committee recommendations, MPD has only implemented the recommendations or parts of recommendations they were fine with to begin with – haven't implemented anything they argued against (and even watered down much that they hadn't stated objection to). As just one example – OIR recommended, and the Ad Hoc Committee endorsed, four changes in foot pursuit policy, to reduce risk of adverse outcomes. Of the four, MPD only implemented one (the least important one), and even that was implemented in the most minimal manner possible.

One of the policy provisions in Keith's draft for bodycams would restrict application of biometrics (e.g., facial recognition technology) to bodycam video. But MPD is objecting to a draft ordinance four alders have introduced, to prohibit use of facial recognition technology.

Attempt to mitigate the problem: Recommend that bodycams would only be implemented contingent on the Council first issuing a lawful order that MPD implement the bodycam policy specified by our committee.

Deficiencies of the approach: The Council would be very loath to pass legislation ordering MPD to adopt a specific detailed policy. MPD would object to various of the policy provisions, so even if the Council passed such a resolution, the Council would likely water down the recommended policy. Practically speaking, the most likely outcome would be bodycam implementation without whatever policy we specify, or with a gutted version.

4. Problem: ICE has been issuing administrative subpoenas to access records, including of noncooperating law enforcement departments. Such subpoenas supersede state laws and local ordinances/policies. A federal court has upheld such ICE subpoenas (ruling against the Denver Sheriff's

Department when it contested an ICE subpoena). 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 (e.g. Clearview AI) to expand use of this technology (including for video). 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 bodycam video, accessed via administrative subpoena, may well be used to identify and locate undocumented Madison residents for deportation. Bodycam video would capture people in their homes, neighborhoods, and workplaces, and would be extremely valuable for identifying undocumented individuals living in Madison and their domiciles, workplaces, and places they frequent.

The GOP is now a full-blown anti-immigrant party and commands the support of close to half of the U.S. electorate. It has control of much of the apparatus of the U.S. government, and even though Biden won, we're likely to have another Republican President in the not distant future.

Biden beat Trump by only ~4% in the popular vote. As Zeynep Tufekci notes: "I don't think people are processing how close to getting reelected Trump got. Switch ~40,000 (a single stadium!) of the national vote in few states (out of ~160,000,000) and he'd get a second term." The Electoral College advantages the GOP (nationally, Democrats need roughly 4% more votes than Republicans to win the Presidency). Trump is talking about running again in 2024 and, even if he doesn't, it's likely that another anti-immigrant candidate will gain the GOP nomination. Democrats will probably lose the House in the next midterm election and given structural issues in our electoral system (gerrymandering, concentration of Democrats in urban areas), need ~4% more votes than Republicans nationally to win the House. Republicans control the Senate, and Democrats need ~7% more votes than Republicans nationally to control the Senate. Conservatives have a 6 to 3 advantage on the U.S. Supreme Court, and the majority of SCOTUS justices appear predisposed to support expansive power for a Republican President. I think they'd be likely to uphold broad ICE administrative subpoenas. The conjunction of rapid advances in facial recognition software and political circumstances render this a significant threat that can't readily be addressed by local policy or ordinance. Moreover, it may leave undocumented residents less willing to call for police service when it's needed.

My best attempt to mitigate the problem: Minimize the amount of bodycam video retained (e.g. have policies that require deleting the videos after the shortest practical time). This would reduce information that could be gleaned and used against undocumented individuals.

Deficiencies of the approach: Even if video is kept for a relatively short time (e.g. 180 days), there would still be a large amount of material that could be used by ICE to locate undocumented individuals. Also, retaining video for only the minimal time possible would somewhat undercut its efficacy – e.g. it would no longer be available if there was a substantial delay before someone filed a complaint against an officer, or if a resident was seeking it in their own defense after a substantial delay, etc.

5. Problem: Bodycams generate perceptual distortions. The most important and difficult to rectify is that viewers ascribe reduced intentionality to police officers and are less likely to judge that an officer should be indicted (relative to dashcam video or a written report). This occurs because the officer isn't the focal subject of the video. Research indicates that a combination of bodycam video and a written report reduces the likelihood of a decision to indict an officer relative to a written report alone.

Attempt to mitigate the problem: The Warrior360 is shoulder mounted bodycam and provides a 360 degree view (and thus includes the officer). No other current vendor product has such a capacity. The next best is the Panasonic Arbitrator, which provides a 180 degree view horizontally, and would intermittently capture the officer's hands, arms, and legs.

Deficiencies of the approach: The Warrior360 is used by few law enforcement departments, and batteries only last four hours. It's not really a well-tested viable option. The Panasonic Arbitrator is widely used, but will largely still suffer from the problem that the officer isn't a focal subject of the video (is mostly invisible).

Additional notes: Bodycams produce other perceptual distortions as well. With a chest mount, individuals an officer is interacting with appear larger/taller (and thus potentially more threatening). This could be mitigated with a head mount. Also, camera motion can generate an illusory perception of hectic resistance. This could potentially be somewhat mitigated with image stabilization technology.

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 bodycam recordings, the officers kept yelling "stop resisting" as they beat an individual lying passively on the ground. The bodycam 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 wasn't resisting at all. A jury would have been far more misled by the conjunction of the bodycam video and officer reports, compared to officer reports alone (i.e., might have questioned the officer reports, but not when buttressed by the convincing bodycam video). Bodycams turn police officers into cinematographers. It's quite easy for officers to learn to generate misleading verbal narratives during bodycam recordings, to manipulate where cameras are pointing, to capture planted evidence on video, 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 – "you are there") is powerful. Even if you could control when officers turn cameras on and off (to avoid how that might mislead, with what is and isn't captured), you can't control other aspects of officers acting as cinematographers. I see no way to adequately mitigate this problem.

6. Problem: Officers tend to turn the camera on and off to frame incidents as they'd like, not capturing critical info that would undercut a desired narrative, etc. This would create the opposite of transparency – an illusion of transparency providing a distorted understanding of events. Moreover, there is some data (albeit not conclusive) that suggests that officer discretion in turning cameras on and off may influence the effect of bodycams on use of force (with a potential increase in use of force if bodycams are implemented in a context that allows officer discretion in bodycam use).

Attempt to mitigate the problem: Have cameras set to turn on with appropriate automatic triggers and policy requiring officers to ensure they're turned on as soon as possible when responding to all calls for service and during all law enforcement encounters and activities involving the public. Have policy requiring that once a camera is turned on, incidents should be captured in an uninterrupted fashion until the incident has fully concluded and the officer has left the scene. If a camera is ever turned off while still on scene, require solid documentation of the reasons. Ensure this policy is strictly enforced, with strong sanctions for noncompliance.

Deficiencies of the approach: 1. MPD will insist on large exceptions to uninterrupted recording. For example, MPD will want, and Keith's draft policy states, that recording is prohibited for "Conversations among law enforcement personnel that are not participated in by civilians." Current MPD policy on mics states that "Officers may temporarily mute audio recording of conversations between police personnel when such discussions involve strategy, tactics, or supervisor's directives." The more expansive such exceptions are (the more exceptions are provided and the easier they are to invoke), the more they provide an easy opportunity (excuse) for officers to turn off their cameras whenever they wish. With the recent police-involved death in Monona, cameras/mics were turned off repeatedly as events progressed and were off the majority of the time during critical periods, generally under the rationale of excluding conversations among officers. 2. As OIR noted, MPD has a pattern of minimal disciplinary enforcement (avoiding major sanctions against officers even for serious infractions, etc.). In the death of Tony Robinson, Officer Matt Kenny's mic was turned off during the critical period (in violation of MPD policy), but it appears that the policy was not enforced (Kenny faced no sanction for this apparent violation). One might argue that the Independent Monitor will rectify this enforcement issue, but the Monitor will themselves have no disciplinary power (only power of persuasion). It seems unlikely that enforcement will be sufficiently strict to generate strong compliance with bodycam policy.

7. Problem: When residents wish to file a complaint and bodycam video is available, officers often seek to dissuade them by running through the video with them and arguing that no policy violation occurred. Because this is a situation that many residents would find intimidating, and because police officers are often viewed as authoritative, this can cause residents to decide not to file a complaint even when a complaint is justified. As 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."

Attempt to mitigate the problem: Have policy that doesn't allow an officer to play this role – instead have someone from the Independent Monitor's Office, rather than an officer, review the video with the resident. Alternatively, require that if a resident reviews video with an officer prior to filing a complaint, a personal attorney, representing the resident, must be present – though for various reasons (funding, etc.), this might not be practical.

8. Problem: A bodycam program is expensive – costs include the cost of cameras, the cost of data storage, and the additional police staffing costs required to review video for various purposes, and to redact video for open records requests. Many believe the city would be better off spending these large sums of money on other needs – such as violence prevention programs (e.g. the Focused Interruption Coalition; such programs are currently grossly underfunded and offer a very large return on investment), housing the homeless, social workers, lead remediation, an additional city ambulance, mental health ambulance service (24/7 crisis response team), etc.

Attempt to mitigate?: I see no viable way to mitigate this.