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**DOI'S OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD RELEASES RESULTS OF ITS FRONT LINE  
REVIEW OF NYPD BODY-WORN CAMERA PILOT PROGRAM**

Today, the Department of Investigation's (DOI) Office of the Inspector General for the NYPD (OIG-NYPD) issued the first comprehensive review of the New York City Police Department's (NYPD) volunteer body-worn camera (BWC) pilot program. The review included interviews with dozens of stakeholders, including police officers who used BWCs as well as all five District Attorney's Offices. OIG-NYPD found a number of concerns in reviewing the NYPD's operations order (Operations Order 48) that it believes must be addressed prior to any expansion of the program. Specifically, the Report focused on: (1) officer discretion regarding when to activate BWCs; (2) officer compliance with BWC policies; (3) NYPD, government and public access to video footage; and (4) retention and purging of footage. As part of its review, OIG-NYPD conducted interviews with 12 officers participating in the volunteer program and found, through a discussion of their personal experiences over the course of the past several months, disparate and inconsistent practices concerning camera activation, despite NYPD's written policies.

OIG-NYPD also solicited input from the NYPD, the Patrolmen's Benevolent Association, the Civilian Complaint Review Board, community advocates and reviewed BWC policies from over 20 other police departments around the country to form an informed and broad-based analysis. As a result, OIG-NYPD has made 23 recommendations for the improved use of BWCs during a transition from the current small-scale program to the long-term use of the cameras by the Department.

DOI Commissioner Mark G. Peters said, "This Report demonstrates what DOI does so well: find the facts, investigate them from all angles and recommend realistic reforms. This is an unprecedented view of New York City's police body-worn camera pilot program, outlining how these cameras are used by all relevant parties – from frontline officers to the five District Attorney's Offices. Their views and this Report will strengthen the program as it moves forward."

Inspector General Philip K. Eure said, "Our Report – one of the most detailed of its kind to date – is the result of significant analysis of the NYPD's policies guiding this pilot program, coupled with extensive discussions we had with major players in New York City's law enforcement and oversight arenas and a review of what is working in other large police departments around the country. The issues we raise mirror the concerns of citizens and those various police departments who continue to wrestle with the practical use of this new technology and its potential as a tool for furthering police accountability."

The NYPD's voluntary BWC pilot program began in mid-December 2014 with the small launch of 54 cameras deployed to patrol officers in six commands across the City, including East New York, East Harlem and Jamaica. The program was announced by Police Commissioner William Bratton in September 2014, ahead of a separate court-ordered program to be implemented as a result of stop-question-and-frisk litigation.

Chief among the concerns laid out in OIG-NYPD's Report is a disconnect between the policy and practice of when cameras are activated and the over-reliance on the Department's "reasonable suspicion" standard in its operations order, which can lead to different camera activation practices among officers. Through its officer interviews, OIG-NYPD found that while officers generally turn on their cameras during traffic stops and as arrests are being made, the use of BWCs in other situations was inconsistent. For instance, some officers told OIG-NYPD they recorded every interaction with members of the public, while others stated that they only began recording once probable cause for an arrest was established – a decision that would not capture the important initial seconds of an encounter. These examples indicated to OIG-NYPD a lack of understanding of the NYPD's operations order and the reasonable suspicion standard, and demonstrates a need for more extensive training than the two half-day sessions currently employed by NYPD.

Additionally, OIG-NYPD found through several interviews with District Attorney's Offices, significant concerns that the NYPD's current BWC policies do not explicitly address safety and privacy concerns for certain vulnerable populations, including victims of sex crimes, minors, undercover officers, and confidential informants. Moreover, the creation, retention, and potential redaction and disclosure of BWC video of these vulnerable populations and other members of the public create significant logistical and financial challenges for New York City that must be addressed as the NYPD's program moves forward.

OIG-NYPD also found that while the NYPD's operations order does offer guidelines on when to record and how officers should self-report issues with the BWCs, it does not go far enough in important areas like record retention and access to footage – areas that could have potentially negative effects on future civil and criminal cases. NYPD's Operations Order also does not include any provisions for quality assurance reviews to track officer compliance with the program or indicate how footage could affect an officer's evaluations or potential for discipline.

The following recommendations, among others detailed in its Report, should be implemented before any further development of NYPD's program:

- **NYPD should broaden and illustrate the standard for the mandatory activation of BWCs during street or investigative encounters.** NYPD should expand the situations where BWCs should be activated, including all street encounters or all investigative contacts. NYPD's policy should also include multiple examples to illustrate the broad range of covered police-citizen interactions.
- **NYPD should consider stricter limitations on recording vulnerable populations.** Prior to any expansion of the BWC program, NYPD must work with New York City's five District Attorney's Offices to consider restrictions on recording when officers become aware they are interacting with certain classes of individuals. These may include victims of sex crimes, abused children, undercover officers, confidential or citizen informants, and witnesses.
- **NYPD should establish a minimum retention period of at least 18 months.** NYPD currently states it will purge most footage after one-year, though members of the public can file civil or administrative claims against police officers up to 18 months after an incident. NYPD should lengthen the retention period and post a notice to its website advising people that they can request their footage be archived.
- **NYPD should limit citizens' and officers' right to view BWC footage during the course of investigations into misconduct.** NYPD should not permit officers or members of the public to

view footage prior to providing a statement for an investigation into alleged officer misconduct.

- **NYPD should establish a system for high-level, periodic review and a computerized random review of officer footage.** The NYPD should perform system-wide audits of footage to assess the effectiveness of its policies in an effort to refine and improve the program. In addition, NYPD should consider reviewing a random selection of patrol officer video on a monthly basis to ensure the program is being implemented consistently. Random checks will protect officers from arbitrary discipline by their supervisors for petty infractions like uniform issues.

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**The Office of the Inspector General for the NYPD (OIG-NYPD)** is an oversight office charged with investigating, reviewing, studying, auditing, and making recommendations relating to the operations, policies, programs, and practices of the New York City Police Department (NYPD). The goals of OIG-NYPD are to enhance the effectiveness of the police department, increase public safety, protect civil liberties and civil rights, and increase the public's confidence in the police force, thus building stronger police-community relations. OIG-NYPD is part of the New York City Department of Investigation and is independent of NYPD. Inspector General Eure reports to DOI Commissioner Peters.

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**New York City Department of Investigation  
The Office of the Inspector General for the NYPD (OIG-NYPD)**

**Body-Worn Cameras in NYC: An Assessment of NYPD's Pilot  
Program and Recommendations to Promote Accountability**



**Mark G. Peters  
Commissioner**

**Philip K. Eure  
Inspector General for the NYPD**

**July 2015**

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## **EXECUTIVE SUMMARY**

In September 2014, New York City Police Department (NYPD) Commissioner William Bratton announced the launch of a small-scale pilot program to test the use of body-worn cameras (BWCs) by New York City police officers (Volunteer BWC Pilot Program). In mid-December 2014, the Volunteer BWC Pilot Program began with 54 BWCs deployed to patrol officers across the City.

BWCs are mobile cameras worn by police officers that can capture audio and video recordings of encounters between police and members of the public. BWC technology has drawn national attention for its potential to improve policing while promoting transparency and accountability in law enforcement. Police departments using BWCs have reported positive changes in the conduct of both citizens and officers, as well as speedier resolutions to police misconduct complaints and litigation. As a result, BWC programs continue to spread rapidly across the country, and numerous organizations and advocacy groups have published reports and issued their own model BWC policies. However, with the potential benefits of BWCs come certain costs and concerns, including risks to the privacy and safety of both officers and the public.

As NYPD ventures into the new, evolving, and high-profile world of BWCs, it will need to ensure that the policies and procedures governing BWC use are fair, practical, legal, and transparent. To this end, the New York City Department of Investigation's (DOI) Office of the Inspector General for the NYPD (OIG-NYPD) has conducted a detailed review of NYPD's Volunteer BWC Pilot Program in order to assess how certain key topics are addressed and to identify areas not adequately covered by the policy. Specifically, OIG-NYPD focused on five topics at the forefront of the discussion surrounding BWCs:

- Officer discretion regarding when to record
- Notifications to citizens by officers when a BWC is activated
- Safeguards to ensure officer compliance with BWC policy
- Access to footage by officers and the public
- Retention and purging of BWC footage

These issues are critical components of any BWC policy and have stirred the greatest controversy among police executives, oversight agencies, officers, and the unions that represent them.

In order to better understand the Volunteer BWC Pilot Program in both theory and practice, OIG-NYPD conducted several meetings with the NYPD team that created, launched, and is overseeing the Volunteer BWC Pilot Program. Separately, OIG-NYPD interviewed multiple police officers who are participating in the program and wearing BWCs on patrol. As BWCs impact various groups, OIG-NYPD also consulted with entities that deal directly with NYPD — such as the Patrolmen's Benevolent Association (PBA), Civilian Complaint Review Board (CCRB), representatives from each of the City's five District Attorney's Offices, and community advocates. Lastly, OIG-NYPD's evaluation of the Volunteer BWC Pilot Program included a comparative examination of NYPD's Operations Order 48 "Pilot Program

- Use of Body-Worn Cameras” (Op Order 48) against the BWC policies of other police departments across the country and the policy recommendations of numerous independent studies. Through this work, OIG-NYPD was able to conduct a thorough and unique assessment of Op Order 48, specifically tailored to New York City’s distinct policing environment.

Based on the information gathered, OIG-NYPD developed 23 recommendations for improving the use of BWCs as NYPD transitions from its current pilot program to a more expansive long-term BWC program. **Several of these recommendations — based on interviews with police officials and prosecutors, as well as the experiences of police departments nationwide — involve the safety of officers and witnesses as well as the integrity of the prosecution process. These issues, noted below, should be resolved prior to any expansion of the BWC program.**

Notably, NYPD’s Volunteer BWC Pilot Program has commenced prior to the launch of a similar but separate BWC program that was ordered by a federal judge in the *Floyd v. City of New York* lawsuit. This Report does not address the court-ordered BWC program, which is still under development and was recently reported on by the court-ordered Monitor. However, the issues considered in this Report are relevant to any BWC program.

#### **I. OFFICER DISCRETION TO RECORD**

Determining when officers should and should not activate their BWCs — as well as how much latitude officers should be given in deciding when to do so — are policy questions central to every BWC program. Any activation protocol must balance the benefits of capturing a full range of police encounters with the public against the privacy and safety risks BWCs may pose for both citizens and officers as well as the technical limitations of the BWC device.

On this issue, Op Order 48 has adopted a “limited discretion” model. Activation is only required during specific law enforcement encounters, such as in “reasonable suspicion” street encounters, traffic stops, and incidents involving the use of force. Further, activation is prohibited in certain other situations, such as in areas where there is a reasonable expectation of privacy and upon the request of a victim or witness. In between, NYPD officers are also given considerable discretion regarding when to activate the BWC in situations not specifically outlined in Op Order 48. Allowing such discretion recognizes that activating a BWC may not always be practical in certain dynamic, rapidly-developing, and precarious situations. Under Op Order 48, NYPD officers may also choose not to activate their cameras if doing so would compromise their safety or jeopardize their ability to secure cooperation from vital witnesses.

By comparison, BWC programs of police departments across the country represent a full spectrum of activation policies, ranging from mandating that every citizen encounter be recorded to allowing officers full discretion in determining when to record. Many BWC policies are similar to NYPD’s “limited discretion” policy.

Ultimately, OIG-NYPD has found that NYPD's reliance on a "reasonable suspicion" standard for when activation of BWC's is mandatory is too restrictive to fully capture the wide range of police-community encounters. Reasonable suspicion may also be an impractical threshold given the dynamic nature of law enforcement-related situations. Critical events often transpire before an encounter rises to the level of reasonable suspicion, and an officer may find it difficult to initiate a recording while an event is unfolding.

Further, OIG-NYPD finds that the important officer safety exception to activating the BWC requires clarification. Separately, OIG-NYPD conducted extensive interviews with the five District Attorney's Offices. These interviews demonstrate that the use of BWCs may provide discoverable recordings that could endanger certain witnesses or impede prosecutions.

***OIG-NYPD Recommendations Include:***

- **NYPD should broaden and illustrate the standard for the mandatory activation of BWCs during street or investigative encounters.** Because the "reasonable suspicion" standard for BWC activation presents multiple challenges, NYPD should broaden the situations where BWCs should be activated, including all street encounters or all investigative contacts. NYPD's policy should likewise include multiple examples to illustrate the broad range of covered encounters, as such examples may assist officers with recalling and interpreting the policy while on duty.
- **NYPD should consider stricter limitations on recording vulnerable populations.** Prior to any expansion of the BWC program, NYPD should work with New York City's five District Attorney's Offices to consider general prohibitions and restrictions on recording when officers become aware they are interacting with certain classes of individuals. These may include victims of sex crimes, abused children, undercover officers, confidential or citizen informants, and witnesses.

**II. NOTIFICATIONS**

Various studies, as well as substantial anecdotal experience from large police departments, demonstrate that providing citizens with a notification that they are being recorded may encourage compliance with officers' orders and calm potentially volatile encounters. Op Order 48 requires officers to provide such a notification whenever "practicable and consistent with officer safety," but does not guide officers on how best to notify individuals.

***OIG-NYPD Recommendations Include:***

- **NYPD should provide an example notification phrase.** NYPD should provide officers with a model notification phrase to advise members of the public that they are being recorded, such as, "I am advising you that our interaction is being recorded." While not mandatory for every citizen contact, a model notification phrase might serve to standardize notifications during encounters with the public

and minimize the likelihood that an officer's choice of words will escalate a situation. It also ensures that members of the public are receiving necessary information and provides officers with professional language to fall back on should an encounter become confrontational.

### **III. SAFEGUARDS FOR COMPLIANCE WITH POLICY**

As with any operational policy or procedure, establishing and maintaining internal controls and safeguards for compliance is vital to ensuring that the policy is followed properly and consistently. Coupled with such controls is the need for regular audits and quality assurance reviews. Finally, discipline should be considered for non-compliance with policies. Together, these elements deter abuse and help identify areas for improvement.

Op Order 48 already exceeds the policies of most other police departments in the sophistication of its procedures for reporting and investigating situations where an officer fails to record all or parts of an incident in which recording is required. Unlike the policies of other departments, however, it does not establish a system for quality assurance reviews of footage; such reviews would enhance NYPD's ability to audit compliance with Op Order 48.

#### ***OIG-NYPD Recommendations Include:***

- **NYPD should require supervisors to review footage related to documented incidents.** Under Op Order 48, each incident report — which already requires a supervisor's review — must note whether a corresponding BWC recording exists. NYPD should have reviewing supervisors check related recordings for compliance with BWC policy upon approving officers' reports. This will ensure that officers are activating and deactivating their BWCs in accordance with Op Order 48.
- **NYPD should include disciplinary language when the BWC program is more established and formalized.** As a limited, voluntary pilot program, the current BWC policy understandably does not include disciplinary consequences for non-compliance. A final BWC policy, however, should emphasize that it is a violation of Department policy to willfully or negligently fail to record any portion of an incident absent an authorized exception, and that such a failure may result in disciplinary action.
- **NYPD should establish a system for periodic high-level review.** NYPD should consider having a central NYPD unit, such as the Office of the Deputy Commissioner, Legal Matters, or the Quality Assurance Division, perform periodic, system-wide audits of random BWC footage to assess the efficacy of established policies.

#### **IV. ACCESS TO VIDEO FOOTAGE BY OFFICERS AND THE PUBLIC**

Establishing and refining procedures for granting various parties access to BWC footage is a complex and controversial topic. As OIG-NYPD found in its multiple interviews, police officers and their supervisors, prosecutors, oversight and other governmental agencies, citizen complainants, and the general public have separate, often competing interests with respect to who should have access to BWC video. A comprehensive BWC policy must strive to maintain fairness between these interests while also taking into account resource and technological limitations.

Op Order 48 designates precinct Integrity Control Officers (ICOs) as custodians of BWC footage generated within their command, but does not specify which, if any, additional supervisors might have access to stored recordings. Officers are additionally permitted to view their footage prior to providing testimony in court or to an investigative body. By contrast, Op Order 48 does not include specific written procedures for access to BWC footage by outside governmental agencies such as OIG-NYPD and CCRB, or for citizen complainants and the general public. However, NYPD has confirmed that it will produce BWC recordings to OIG-NYPD and CCRB as necessary.

OIG-NYPD has identified several additional access issues that are not adequately addressed by Op Order 48. First, when officers become subjects of an internal or external complaint or investigation regarding potential misconduct, they should not be permitted to view BWC footage of the relevant incident until after providing a statement. Similarly, citizen complainants who file misconduct complaints should not be permitted to view BWC footage until after providing an official statement to investigators. Such provisions help to ensure fairness and the integrity of the investigative process.

Second, OIG-NYPD believes that supervisors must have general access to footage so that they can perform random quality assurance reviews, identify compliance issues, and address exigent investigative needs. Protections should be in place, however, to ensure such access does not subject officers to discipline for minor infractions (e.g., dress code violations).

Lastly, the public has an interest in the availability of BWC video to further transparency. However, as detailed in this Report, such access presents very real privacy, safety, and law enforcement concerns. Because BWC video is a public record and thus subject to the provisions of the New York Freedom of Information Law (FOIL), NYPD should develop a process for addressing the unique challenges that BWC FOIL requests will pose prior to embarking on any expansion of this program.

##### ***OIG-NYPD Recommendations Include:***

- **NYPD should grant supervisors general access to BWC footage with restrictions on arbitrary review.** Supervisors should have general access to footage for emergent investigative and quality assurance purposes. However, NYPD should make it a clear violation of policy for any supervisor to arbitrarily review footage

solely to uncover violations or to use BWC videos to selectively discipline officers for minor infractions.

- **NYPD should prohibit pre-statement review of BWC recordings for internal or external investigations regarding officer misconduct.** Officers should be restricted from viewing footage of an incident when they are a subject or a witness in an internal or external investigation until after the officer has provided an official statement.
- **NYPD should ensure fairness between officers' and complainants' rights to view BWC footage.** NYPD should not permit individual members of the public to view footage prior to providing an official statement for an investigation in any circumstance.
- **NYPD should develop FOIL protocols for BWC footage.** Because BWC video constitutes a public record under the New York Freedom of Information Law, NYPD should establish procedures for handling public access and FOIL requests that also protect the privacy and safety of vulnerable populations.

#### **V. RETENTION AND PURGING**

A complete BWC policy must include procedures that balance the need to make BWC video available for a wide array of criminal, administrative, and civil proceedings, with the privacy concerns inherent in the retention of any footage.

Op Order 48 requires that all BWC recordings to be retained for a minimum of one year unless archived indefinitely pursuant to an arrest, civil claim, citizen complaint, internal investigation, or as requested by the officer who recorded the video. There is no provision in Op Order 48 for purging archived footage. Other police departments vary in the minimum amount of time they preserve footage, ranging from seven days to five years. Additionally, some law enforcement agencies outline procedures for purging video once its utility in any relevant proceedings has been exhausted.

NYPD's current one-year retention period may be insufficient because it fails to capture the entirety of CCRB and NYPD's 18-month statute of limitations on filing administrative charges and specifications and the three-year statute of limitations on filing federal civil rights claims. While logistical constraints may prevent the indefinite or even three-year retention of all BWC recordings, the minimum retention period should be extended to at least 18 months.

#### ***OIG-NYPD Recommendations Include:***

- **NYPD should establish a minimum retention period of at least 18 months.** Extending the minimum retention period for all BWC footage to 18 months will ensure its availability for any administrative proceeding.

- **NYPD should ensure expeditious purging of archived BWC video that no longer holds evidentiary value.** Protocols should be established to expeditiously purge BWC footage that is no longer needed. NYPD should consult with the District Attorney's Offices and related entities regarding any relevant legal constraints to purging BWC video.

## I. INTRODUCTION

In September 2014, New York City Police Department (NYPD) Commissioner William Bratton announced the launch of a small-scale pilot program to test police officer use of body-worn cameras (BWC) in New York City (Volunteer BWC Pilot Program). BWCs — which are also referred to as body-worn video, portable digital recording devices, or wearable video recorders — are compact, mobile cameras worn by police officers that can capture audio and video recordings of street encounters, traffic stops, arrests, use-of-force incidents, pursuits, executions of warrants, and other police interactions with members of the public. In mid-December 2014, 54 BWCs were deployed across six precincts, and NYPD's Volunteer BWC Pilot Program was underway.

Among the many innovations that permeate modern policing, BWC technology has drawn national attention from both law enforcement agencies and the public for its potential to improve policing while supporting transparency and accountability in law enforcement. Nine of the ten largest municipal police departments in the country are in some phase of a BWC program, and numerous smaller departments have also deployed BWCs. Other private entities have published reports and issued model policies on the use of BWCs. Additionally, at least 30 state legislatures have begun drafting BWC legislation setting forth minimum guidelines for police departments considering a BWC program.<sup>1</sup> Collectively, these programs and studies have produced a useful pool of data to draw on for insights and lessons.

Police departments using BWCs have reported several benefits, including decreases in the number of pursuits, use of force incidents, and citizen complaints against officers, increased civility during officer encounters with members of the public, and speedier resolutions to criminal proceedings.<sup>2</sup> Notwithstanding these potential policing gains, BWC use must similarly

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\* NYC Department of Investigation Commissioner Mark G. Peters and Inspector General for the NYPD Philip K. Eure thank the staff of OIG-NYPD for their efforts, persistence, and insight in researching and writing this Report, especially Sandra Musumeci, Deputy Inspector General; Asim Rehman, General Counsel; Thomas Mahoney, Director of Investigations; V-Tsien Fan, Senior Policy Manager; Cynthia Kao, Examining Attorney; Andrew Guinan, Special Investigator; Adrian Amador, Policy Analyst; Christopher Tellet, Policy Analyst; and Kanika Khanna, Policy Analyst. Commissioner Peters and IG Eure also recognize the important contributions made by Lesley Brovner, First Deputy Commissioner. Commissioner Peters and IG Eure also extend thanks to the New York City Police Department and other agencies and organizations noted for their cooperation during the investigation of this Report.

<sup>1</sup> NAT'L CONF. OF STATE LEGISLATURES (NCSL), [www.ncsl.org/research/civil-and-criminal-justice/law-enforcement.aspx](http://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement.aspx) (last visited Jul. 8, 2015). South Carolina is the first state making BWCs a requirement for every police department. NCSL, [www.ncsl.org/blog/2015/06/10/south-carolina-first-state-to-require-body-worn-police-cameras.aspx](http://www.ncsl.org/blog/2015/06/10/south-carolina-first-state-to-require-body-worn-police-cameras.aspx) (last visited Jul. 8, 2015).

<sup>2</sup> MICHAEL D. WHITE, OFFICE OF CMTY. POLICING SERVICES, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE (2014), *available at* <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>; POLICE EXECUTIVE RESEARCH FORUM (PERF), IMPLEMENTING A BODY-WORN CAMERA PROGRAM:

respect and accommodate the public's interest in transparency, privacy, and police accountability, while also considering law enforcement goals and officer safety.

Through a careful analysis of NYPD's current BWC policy, the experiences and practices of other police departments, the perspectives of interested and affected parties, expert research, and the unique nature of policing in New York City, the New York City Department of Investigation's (DOI) Office of the Inspector General for the NYPD (OIG-NYPD) has compiled a series of recommendations for NYPD's own BWC program. OIG-NYPD's recommendations focus on several specific topics at the forefront of the discussion surrounding BWCs:

- Officer discretion regarding when to record
- Notifications by officers when a BWC is activated
- Access to footage by officers and the public
- Safeguards to ensure officer compliance with BWC policy
- Retention and purging of BWC footage

These issues are critical components of any BWC policy, and a police department's stance on these issues is illustrative of the department's perspective on public safety, care for the rights and safety of officers, and protecting civil liberties. Not surprisingly, these issues have stirred the greatest controversy between police executives, oversight agencies, officers, and the unions that represent them. For example, in response to inquiries from OIG-NYPD, the Civilian Complaint Review Board (CCRB) has suggested that NYPD's BWC policy should be more robust, while the Patrolmen's Benevolent Association (PBA) expressed opposition to the use of BWCs generally. The individual officers interviewed by OIG-NYPD have shown still a different set of concerns.

OIG-NYPD offers the findings and recommendations in this Report to assist NYPD as it transitions from the current Volunteer BWC Pilot Program to what may be a broader, more permanent BWC program. OIG-NYPD recognizes that the Volunteer BWC Pilot Program is still ongoing and that the issues discussed in this Report are not exhaustive. Indeed, news concerning the use of and experiences with BWCs across the country continues to emerge every week. Like the policies of other police departments, the Volunteer BWC Pilot Program may change as it matures to incorporate feedback from officers and the public. To that end, the recommendations in this Report, if implemented, will help ensure accountability and transparency, protect the rights and safety of officers, and help build a stronger relationship between NYPD and members of the public.

While the issues identified in this Report are relevant to any BWC program, OIG-NYPD's Report and recommendations are based on NYPD's Volunteer BWC Pilot Program and do not

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RECOMMENDATIONS AND LESSONS LEARNED (2014), *available at*  
<http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

address the separate and distinct court-ordered BWC program (which is summarized at page 6, *infra*).

### **NYPD Volunteer BWC Pilot Program**

The NYPD Volunteer BWC Pilot Program was developed to help NYPD “determine whether [use of BWCs] contributes to officer safety, provides evidence for criminal prosecutions, helps to resolve personnel complaints and fosters positive relations with the community.”<sup>3</sup> To meet this goal, NYPD researched the practices of other departments, assessed the available technology, developed a pilot program, identified precincts and commands that would be part of the program, and issued an Operations Order to govern the program.<sup>4</sup> Currently, there is no specific termination date for the Volunteer BWC Pilot Program.

NYPD selected two BWC models to test for its Volunteer BWC Pilot Program: the Axon Flex manufactured by TASER® (pictured right) and the LE3 manufactured by VIEVU® (pictured below).<sup>5</sup> The BWC’s recording mechanism is typically activated by pushing or sliding the power button



located on the camera. Most BWCs can record continuously for at least four hours. At the end of an officer’s tour, BWC footage from the camera is uploaded to either a local server maintained by the police department or a cloud-based storage platform maintained by the BWC manufacturer. Some manufacturers provide proprietary software that enables officers to access, flag, and retrieve their own BWC footage. Officers can also “tag” their footage by adding identifying details, such as arrest or complaint numbers. Some manufacturer software also maintains an audit trail by preserving a record each time BWC footage is accessed.<sup>6</sup>

<sup>3</sup> N.Y.C. POLICE DEP’T (NYPD), OPERATIONS ORDER 48 PILOT PROGRAM – USE OF BODY-WORN CAMERAS (Op Order 48) (2014).

<sup>4</sup> To learn more about implementing such a program, members of NYPD visited several west coast police departments, including the Los Angeles Police Department (LAPD) which had commenced its own BWC pilot program in January 2014, [http://lapdonline.org/chiefs\\_message/content\\_basic\\_view/55699](http://lapdonline.org/chiefs_message/content_basic_view/55699). Funding for the Volunteer BWC Pilot Program was provided by the New York City Police Foundation, a non-profit organization independent of NYPD.

<sup>5</sup> VIEVU® LE3 photo courtesy of VIEVU®. Axon photos courtesy of TASER® International. Neither BWC model is equipped with night vision or enhanced audio. For images and detailed specifications of the TASER® Axon Flex and VIEVU® LE3, see Appendices B and C.

<sup>6</sup> NAT’L INST. OF JUSTICE, U.S. DEP’T OF JUSTICE, BODY-WORN CAMERAS FOR CRIMINAL JUSTICE: MARKET SURVEY (2014), available at <https://www.justnet.org/pdf/Body-Worn-Camera-Market-Survey-508.pdf>.

NYPD identified six commands throughout New York City's five boroughs for the program, and 54 officers within these commands participated in the program.<sup>7</sup> The commands are:

- 23<sup>rd</sup> Precinct located in East Harlem, Manhattan
- 40<sup>th</sup> Precinct located in the South Bronx
- 75<sup>th</sup> Precinct located in East New York, Brooklyn
- 103<sup>rd</sup> Precinct located in Jamaica, Queens
- 120<sup>th</sup> Precinct located in northeast Staten Island
- Police Service Area 2, which patrols housing developments in Brownsville and Crown Heights, Brooklyn

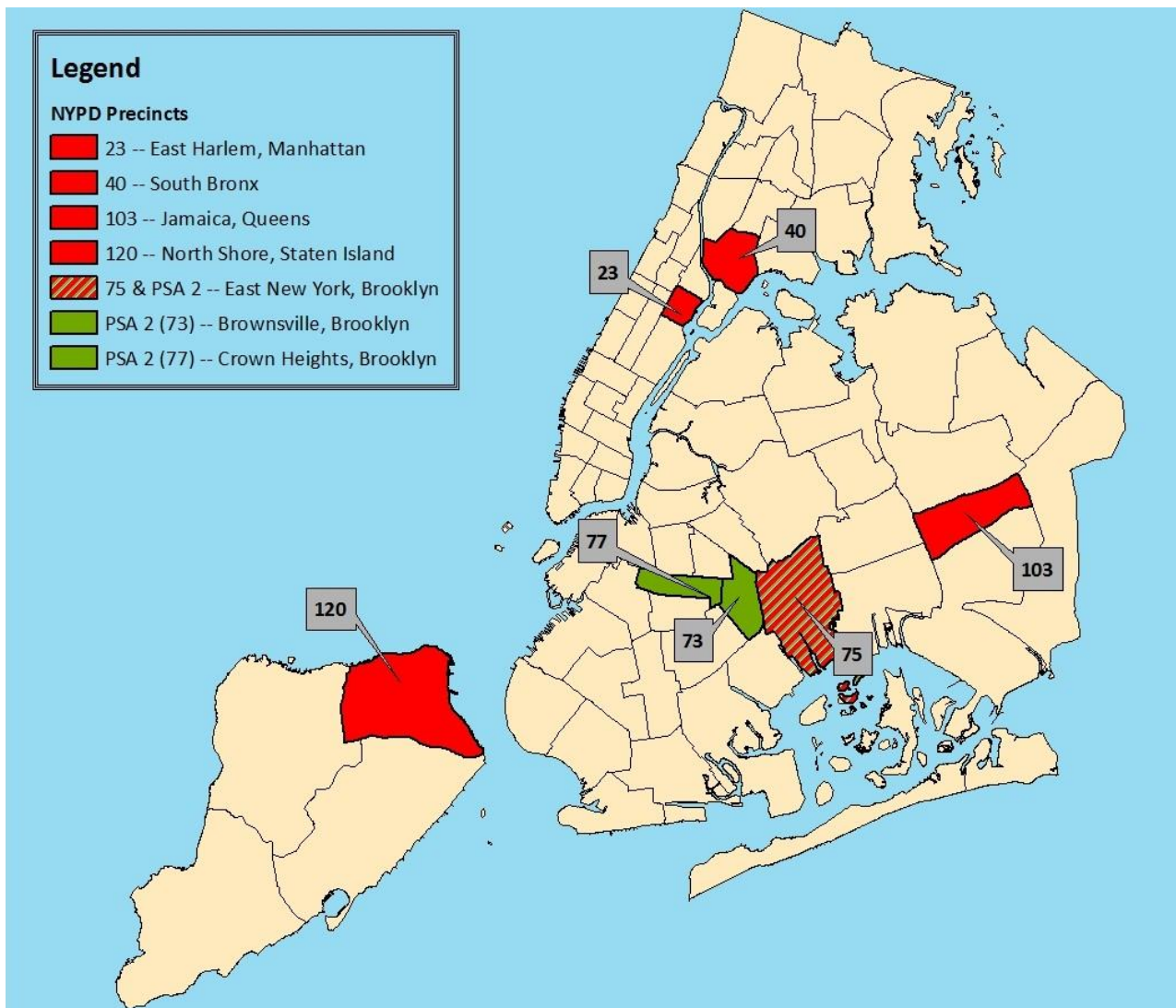
Prior to the implementation of the Volunteer BWC Pilot Program, the participating officers attended a day-long BWC training session. They integrated the BWCs into their patrol duties in mid-December 2014 and have since engaged in various feedback sessions to inform NYPD of their experiences with the devices.

In conjunction with the deployment of its Volunteer BWC Pilot Program, on December 2, 2014, NYPD issued Operations Order 48 "Pilot Program - Use of Body-Worn Cameras," a set of guidelines governing the use of BWCs during the pilot program (Op Order 48.). A copy of Op Order 48 is provided at the end of this Report at Appendix A.

<b>NYPD Volunteer BWC Pilot Program</b>	
<i>Volunteer officers</i>	54 total
<i>Commands participating</i>	6 total
Bronx	40 PCT
Brooklyn	75 PCT and PSA 2
Manhattan	23 PCT
Queens	103 PCT
Staten Island	120 PCT
<i>BWC models tested</i>	2 models
VIEVU® LE3 model	3 commands
TASER® Axon Flex model	3 commands
<i>Training</i>	2 half-day sessions
<i>Roll-out date</i>	Mid-December 2014

<sup>7</sup> A few officers in the BWC Volunteer Pilot Program are not volunteers. In one command, some supervisors are wearing BWCs.

**NYPD Commands Participating in Volunteer BWC Pilot Program**



### **The Court-Ordered BWC Program**

Prior to NYPD Commissioner Bratton's September 2014 announcement regarding the Voluntary BWC Pilot Program, the use of BWCs in New York City had also been addressed by a federal court decision in the *Floyd v. City of New York* lawsuit (*Floyd*).<sup>8</sup> Plaintiffs in *Floyd* challenged NYPD's stop-question-and-frisk practices. The court ultimately ordered the City of New York to "institute a pilot project in which body-worn cameras will be worn for a one-year period by officers on patrol in one precinct per borough — specifically the precinct with the highest number of stops during 2012."<sup>9</sup> To ensure that the court-ordered remedial measures were properly executed, a court-appointed monitor was installed to oversee the process.

The court-ordered BWC program is expected to begin in no sooner than 12 months and may expand from five precincts to twenty precincts.<sup>10</sup> In June 2015, NYPD received funding to solicit an additional 1,500 BWCs for use during this program, though NYPD may seek to purchase up to 5,000 as the program expands.<sup>11</sup>

The Volunteer BWC Pilot Program is different from and independent of the court-ordered process. As noted above, OIG-NYPD's Report and recommendations focus exclusively on Op Order 48 and the Volunteer BWC Pilot Program.

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<sup>8</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013), *inj. granted*, *Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. Aug. 12, 2013).

<sup>9</sup> See *Opinion and Order*, 08 Civ. 1034 (SAS) and 12 Civ. 2274 (SAS) in *Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013); see also, *Ligon v. City of New York*, 12 Civ. 2274 (S.D.N.Y. Aug. 12, 2013), and *Davis v. City of New York*, 10 Civ. 0699 (S.D.N.Y. Jan. 7, 2015).

<sup>10</sup> Correspondence from Peter L. Zimroth to the Honorable Analisa Torres, United States District Court, Southern District of New York, (July 9, 2015).

<sup>11</sup> PETER L. ZIMROTH, FIRST REPORT OF THE INDEP. MONITOR (2015); N.Y.C. CITYWIDE ADMIN. SERVICES, Body Cameras for the NYPD and Related Hardware and Data Storage Solution, *available at* <http://a856-internet.nyc.gov/nycvendoronline/vendorsearch/asp/Postings.asp>.

## II. METHODOLOGY AND SCOPE

In furtherance of this Report, OIG-NYPD met with the NYPD team tasked with drafting Op Order 48 and overseeing the Volunteer BWC Pilot Program, which included the Deputy Commissioner - Legal Matters, Assistant Chief of Office of the Police Commissioner, Commanding Officer of Strategic Technologies Division, Director of Quality Assurance, Director of Office of Management, Analysis, and Planning, and other professionals involved with the program. OIG-NYPD also interviewed a subset of the officers participating in the Volunteer BWC Pilot Program — two from each of the commands to which BWCs have been deployed. OIG-NYPD led a group discussion with the 12 officers related to the topics addressed in this Report in order to learn about their personal experiences, the public's reaction to the BWCs, and their concerns, if any, with the devices and Op Order 48.

Additionally, OIG-NYPD reviewed the BWC policies of over 20 police departments across the country, some of which have been using BWCs for several years. A sample of these departments included:

- Phoenix Police Department, Arizona
- Chicago Police Department, Illinois
- Bay Area Rapid Transit, California
- Los Angeles Police Department, California
- Oakland Police Department, California
- San Diego Police Department, California
- Denver Police Department, Colorado
- Albuquerque Police Department, New Mexico
- Cleveland Police Department, Ohio
- Pittsburgh Police Department, Pennsylvania
- Chesapeake Police Department, Virginia
- Metropolitan Police Department, Washington, D.C.
- Seattle Police Department, Washington
- Spokane Police Department, Washington

While no other police department in the country comes close to NYPD in terms of the number of sworn officers, OIG-NYPD looked to six of the nation's largest departments (by headcount) for comparable experiences, including:

- Chicago Police Department, Illinois
- Los Angeles Police Department, California
- Metropolitan Police Department, Washington, D.C.
- Phoenix Police Department, Arizona

OIG-NYPD also considered model recommendations of numerous studies, reviewed the testimony and written views of civil liberties groups, and consulted with government entities that deal directly with NYPD, including CCRB and senior representatives from all five of the

City's District Attorney's Offices.<sup>12</sup> Considering that BWCs may become an integral part of the patrol experience, OIG-NYPD likewise sought and received written input from the PBA.

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<sup>12</sup> OIG-NYPD reviewed studies and model BWC policies formulated by numerous entities, including but not limited to, the INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (IACP), BODY-WORN CAMERAS MODEL POLICY (2014), *available at* <http://www.aele.org/iacp-bwc-mp.pdf>; NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, A PRIMER ON BODY-WORN CAMERAS FOR LAW ENFORCEMENT (2012), *available at* <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf>; PERF, *supra* note 2; and recommendations of various local monitors to their related police departments in cities such as Baltimore, Washington, D.C., and Denver. OIG-NYPD considered the recommendations and viewpoints of advocacy groups such as the American Civil Liberties Union (ACLU) and its various local affiliates including the New York Civil Liberties Union (NYCLU), as well as the Constitution Project and the Center for Constitutional Rights (CCR).

### III. OFFICER DISCRETION TO RECORD

The questions of when officers should activate the recording function on their BWCs and which interactions between officers and members of the public should be recorded are issues of primary concern. While BWCs have an unparalleled ability to capture evidence for use in criminal investigations and administrative proceedings, they may also potentially record every person, regardless of involvement, within the camera's field of vision. Consequently, any BWC policy must balance the need to record enforcement activities against the need to protect the privacy and safety both of members of the public and officers on duty. For example, activating the BWC only after a suspect is handcuffed — or alternatively, deactivating the BWC before a use of force — will likely not promote transparency and police accountability. By contrast, while continuous activation of the BWC may arguably aid in promoting police accountability, it would inevitably infringe on both the public's and officers' privacy interests.

BWC policies across the country run the gamut on this issue, ranging from mandating that officers record every encounter with members of the public to requiring recording only in encounters which involve specified enforcement actions, and finally, allowing officers full discretion in determining when to record.

#### **Op Order 48**

By articulating specific scenarios where activation of BWCs is mandated, where it is prohibited, and where officers have discretion, Op Order 48 creates a "limited discretion" model.

#### ***When to record - mandatory***

Op Order 48 requires officers to activate BWCs "prior to initiating, or as soon as practical after initiating, the following seven police actions":<sup>13</sup>

- a. "All enforcement encounters where there is at least a reasonable suspicion the person(s) has committed, is committing or may be involved in criminal activity [consistent with NYPD's stop-and-frisk policy]...This includes, but is not limited to, self-initiated stops and radio runs"
- b. "All enforcement encounters where there is reason to believe that the individual is committing a violation/petit offense for which a summons may be issued (e.g., TAB summons, ECB summons, Criminal Court summons, etc.)"
- c. "All vehicle stops"
- d. "Taking or attempting to take an individual into custody (e.g., arrests, protective custody of an emotionally disturbed person, etc.)"

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<sup>13</sup> Op Order 48, *supra* note 3, §6.

- e. "All incidents involving the use of force"
- f. "Any public interaction, regardless of context, that escalates and becomes adversarial so long as it is not one of the prohibited situations..."
- g. "All interior vertical patrols of non-Housing Authority buildings and Housing Authority buildings.... The BWC must be activated upon entering the building and will not be deactivated until exiting the building and terminating the interior vertical patrol along with any associated police action, if any."

Notwithstanding these mandatory scenarios, however, an officer can still choose not to activate the BWC if, in the officer's judgment, "it is unsafe or impractical" to do so, or "where a malfunction or other mechanical issues impeding the use of the device exists."<sup>14</sup> Once activated, however, the BWC is not to be deactivated until the police encounter has concluded.<sup>15</sup>

#### ***When to record - discretionary***

In addition to the scenarios above, officers are also encouraged to record "where, in the uniformed member's judgment, it would be beneficial to record, so long as it is not one of the prohibited situations" as described below.<sup>16</sup>

#### ***When not to record***

Op Order 48 generally prohibits activation of BWCs in areas where there is a reasonable expectation of privacy, where no enforcement action is anticipated or taken, or where a victim or witness requests deactivation of the BWC. More specifically, officers are not to record in the following seven situations:<sup>17</sup>

- a. "Encounters not directly related to official activities in the proper performance of police duties"
- b. "Performance of non-enforcement functions of administrative duties within a Department facility"
- c. "Places where a reasonable expectation of privacy exists (unless taking police action outlined...above), such as, but not limited to, hospital emergency rooms, locker rooms and restrooms"

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<sup>14</sup> *Id.*, at 2.

<sup>15</sup> *Id.* §11.

<sup>16</sup> *Id.* §7.

<sup>17</sup> *Id.* §8.

- d. "Attendance at events covered under the "Handschu Guidelines"<sup>18</sup>...unless taking police actions outlined...above"
- e. "A potential witness who requests to speak to an officer confidentially or desires anonymity"
- f. "A victim or witness who requests that he or she not be recorded and the situation is not confrontational"
- g. "A victim who requests that he or she not be recorded as condition of cooperation and the interests of justice require such cooperation."<sup>19</sup>

As noted, unless enforcement action is anticipated or taken, officers are not to activate their BWCs in areas where there is a reasonable expectation of privacy, such as inside a person's home. Additionally, so long as a police encounter with a member of the public is non-confrontational, Op Order 48 instructs officers to honor a victim's or witness's request not to be recorded. (The policy does not include a blanket prohibition against recording individuals of specific status, such as sexual assault victims or minors.) Finally, BWCs are not to be activated when officers are off-duty or within an NYPD facility where administrative duties are being performed, such as evidence vouchering or searches of arrestees within a police precinct.<sup>20</sup> This latter stipulation ostensibly prohibits officers from covertly recording their colleagues outside of an enforcement context.

### **Alternative Policies**

Variations among activation policies used by other departments fall along a spectrum involving complete officer discretion in determining when to record to no discretion at all. The majority of recording policies used by other large police departments, however, have controls that are generally consistent with those used by NYPD. The Phoenix Police Department (Phoenix PD), for example, requires that officers record "all enforcement and investigative encounters, including consensual investigative encounters."<sup>21</sup>

Most policies also provide a similar list of scenarios in which recording is prohibited, and many include an explicit prohibition on the covert recording of fellow officers. Some departments, including Phoenix PD, permit officers broad discretion in deactivating their

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<sup>18</sup> The *Handschu* Guidelines are a set of regulations codified by NYPD Patrol Guide Procedure 212-72, which establishes procedures and oversight for the investigation of constitutionally-protected political activity. The *Handschu* Guidelines were established under consent decree with NYPD in 1971 and modified in 2003. For further information, see *Handschu v. Special Services Division*, 273 F. Supp. 2d 327 (S.D.N.Y. 2003).

<sup>19</sup> Op Order 48, *supra* note 3, §8(b).

<sup>20</sup> *Id.*

<sup>21</sup> PHOENIX POLICE DEP'T (PHOENIX PD), OPERATIONS ORDER 4.49 BODY WORN VIDEO TECHNOLOGY – PILOT (2013).

cameras based on their own judgment or a member of the public's request, so long as there is an articulable justification for the interruption or a record of the request.<sup>22</sup>

By contrast, other departments, such as the Washington, D.C., Metropolitan Police Department (MPD), require an officer to continue recording and summon a supervisor to the scene when a member of the public continuously protests the otherwise appropriate use of a BWC. In addition, the assigned Privacy Officer and MPD Office of Risk Management coordinate to ensure that videos do not violate the rights of members of the public.<sup>23</sup>

Exceptions to these officer discretion models also exist. For example, the Albuquerque Police Department is the only department surveyed by OIG-NYPD that required officers to record every contact with a member of the public.<sup>24</sup> Such an absolute model protects against abuse of discretion by officers and the possibility that they may forget to activate their cameras in a dynamic enforcement situation. This model, however, poses a heightened risk of intrusion on the privacy of both officers and members of the public. It also presents organizational challenges for large departments when compared with a model allowing for limited discretion on the part of officers. Indeed, citing logistical and organizational concerns, the Albuquerque Police Department recently decided to abandon its no-discretion policy and is currently in the process of rewriting its BWC policy to allow for greater discretion on the part of officers.<sup>25</sup>

### **Assessment of Op Order 48**

NYPD's use of a "limited discretion" model for BWC activation — requiring recording of certain interactions while still allowing for officer discretion — is supported by numerous organizations across the ideological spectrum such as International Association of Chiefs of Police (IACP), Police Executives Research Forum (PERF), and New York Civil Liberties Union (NYCLU).<sup>26</sup> Of particular note is NYPD's use of the "reasonable suspicion" standard to govern the activation of cameras during most interactions. Since NYPD officers are already taught to use the "reasonable suspicion" standard as the basis for initiating stop-and-frisk encounters, this policy may assist officers in integrating the use of the BWC into procedures with which they are already familiar and increase officer compliance in activating BWCs when mandated.

While the "reasonable suspicion" standard theoretically promotes consistency, this benchmark may pose issues in capturing the range of potentially volatile situations an officer

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<sup>22</sup> *Id.*

<sup>23</sup> D.C. METRO. POLICE DEP'T (MPD), SPECIAL ORDER 14-14 BODY-WORN CAMERA PILOT PROGRAM (2014).

<sup>24</sup> ALBUQUERQUE POLICE DEP'T (ALBUQUERQUE PD), GEN. ORDER 1-39 USE OF TAPE/DIGITAL RECORDERS (2013).

<sup>25</sup> Albuquerque PD recently determined that its no-discretion policy was unmanageable for officers and overall unenforceable. Numerous disagreements over policy violations had occurred with oversight agencies. Further, if no paper documentation was prepared regarding an encounter without an accompanying recording, the department was unable to verify that it had occurred at all. Citing these concerns, the department is currently in the process of rewriting its policy to follow a limited discretion model.

<sup>26</sup> Written testimony from NYCLU to President's Task Force on 21<sup>st</sup> Century Policing (Jan. 31, 2015), <http://www.nyclu.org/content/testimony-regarding-risks-of-police-body-worn-cameras> (last visited Feb. 3, 2015); IACP, *supra* note 12, at 3; PERF, *supra* note 2, at 55.

may encounter. In opposing the use of BWCs in general, the PBA, in response to OIG-NYPD's request for input, suggested that BWC footage may fail to capture the critical initial seconds of a police encounter to provide a truly impartial account of an incident. For example, many incidents which result in an arrest or significant use of force begin with an encounter less substantial than a forcible stop. Only a record of events prior to the point at which a stop has legally occurred will allow for a thorough investigation of complaints to establish that an officer either acted or did not act with the proper level of suspicion. As noted by CCRB, these situations and scenarios of potential interest to the public that fall below the "reasonable suspicion" standard might be lost to investigators based upon current guidelines.

Moreover, the "reasonable suspicion" standard required for BWC activation may also be problematic in application. While useful for assessing, after the fact, an officer's decision on whether to record, it may be difficult to apply in situations that require immediate decision-making as events unfold. Indeed, the City of Denver's Office of the Independent Monitor (OIM) raised similar concerns in its recommendations on the Denver Police Department's BWC pilot program. OIM's report stressed the importance of training officers to begin recording prior to initiating any enforcement-related encounter with a member of the public, as these interactions may quickly escalate and preclude officers from initiating a recording later.<sup>27</sup>

Furthermore, NYPD officers surveyed by OIG-NYPD themselves reported employing disparate and varied thresholds for activating their BWCs. While officers clearly understood and abided by requirements to activate their cameras during traffic stops and arrests, several officers stated that they begin recording only upon establishing probable cause for an arrest (which may or may not occur prior to actual contact with a subject), a practice which they acknowledged had prevented them from activating their BWCs altogether in encounters that escalated rapidly.<sup>28</sup> Another officer reported recording every interaction with a member of the public. When reviewing footage received from NYPD, one District Attorney's Office reported observing similar discrepancies when officers were activating their BWCs. They noted that in at least one case, an officer began recording in the middle of an interaction with a citizen and did not capture the encounter's significant initial moments.

The disparity of officer experience illustrates that the "reasonable suspicion" standard of BWC activation may not be feasible for application in the field, particularly when juxtaposed with other requirements to activate the BWC, such as when "taking or attempting to take a person into custody." This language suggests that an officer may activate a camera only upon physically effecting an arrest or similar procedure. In response to OIG-NYPD's request for comment, CCRB raised similar concerns regarding Op Order 48's provisions for terminating a recording. CCRB noted that individual officers may have greatly varying definitions of when an incident has concluded, leading to yet further disparities in the use of BWCs. Additional training may be necessary as the deployment of BWCs expands across NYPD in order to standardize use

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<sup>27</sup> DENVER'S OFFICE OF THE INDEP. MONITOR (OIM), 2014 ANNUAL REPORT 21 (2014).

<sup>28</sup> Probable cause requires a higher level of proof than reasonable suspicion.

among officers and ensure that BWC recordings capture all relevant portions of citizen encounters.

Op Order 48 is one of a handful of BWC policies nationwide which allow officers the breadth of discretion to record whenever they believe it may be beneficial and to stop recording in limited situations where the interests of justice demand it. Trusting officers to use their best judgment in limited circumstances gives a flexibility to the use of BWCs, which has the potential to enhance both community relations and the quality of policing by increasing the cooperation of witnesses who may be reluctant to speak while the camera is on. The NYPD officers interviewed by OIG-NYPD generally advocated for discretion. Empowering police officers with some discretion may appease opponents who believe the BWC program is meant only to monitor or restrict police behavior. At the same time, allowing such discretion accounts for the fact that activating a BWC may not always be practical in certain dynamic, fast-developing, and precarious situations.

Additionally, like other BWC programs and policies, Op Order 48 clearly defines the rights of medical patients, identifies First Amendment activities not to be recorded, and protects the rights of officers not to be under surveillance outside of enforcement duties, a concern conveyed to OIG-NYPD by the PBA. To prevent possible underreporting of crimes, Op Order 48 is respectful of crime victims and witnesses by permitting officers to deactivate their BWCs upon request.

In spite of these provisions, several District Attorney's Offices expressed concerns that Op Order 48 was not sufficiently restrictive to protect populations susceptible to retaliation and thereby uphold the integrity of the criminal justice process. Specifically, with respect to BWC footage of victims of sex crimes, a prosecutor's discovery obligations to turn over footage of victim statements to the defense early in the prosecutorial process may have a chilling effect on sex crime victims' willingness to report such crimes, talk to officers, or cooperate with prosecutors. Disclosure of BWC footage in such cases might also lead to witness intimidation. Undercover officers and informants — whether registered with NYPD or citizens with information pertaining to criminal activity — are additionally at risk for retaliation if BWC footage with their images and voices is disclosed prior to trial. Lastly, the knowledge that a camera is running may additionally dissuade other potential witnesses from approaching officers at the scene of an incident. **These are serious concerns expressed to OIG-NYPD during the course of multiple interviews with prosecutors on the front lines of law enforcement.** Prior to any expansion of existing BWC programs, NYPD should therefore work with the District Attorney's Offices to consider potential limitations on recording these and other vulnerable populations via BWC footage.

Op Order 48's only deviation from officers' limited discretion is the mandate that officers record every interior vertical patrol of New York City Housing Authority (NYCHA) and non-NYCHA property, from the time of "entering the building," until "exiting the building and terminating the interior vertical patrol." Such a provision is understandable given the potential

for unexpected citizen contacts, often in poorly lit, confined spaces. However, it raises privacy concerns for citizens, particularly as the recording may take place in areas surrounding residents' homes. The PBA echoed these privacy concerns for officers as well, noting to OIG-NYPD that building tenants who recognize officers may initiate conversations involving officers' personal information. This practice also lends itself to significant logistical issues regarding the amount of footage that would be generated and require review. Indeed, officers surveyed by OIG-NYPD deemed such footage of little or no value and added that encounters with the public rarely occur during vertical patrols.

Once activated, officers also should not be permitted to deactivate their cameras prior to speaking with a victim or witness absent a scenario where recording is specifically prohibited or absent an explicit request by the individual not to record. The latter may require officers to clearly announce to citizens that a BWC is in use. As practiced in other departments, it may also be beneficial for officers to narrate their reasons for ending or interrupting a recording, and to state on camera, the name and shield number of any supervisor ordering them to do so. Such a policy would provide an officer's justification for interrupting a recording if later questioned about the interruption.

In addition, while OIG-NYPD appreciates the need to protect officer safety at all times, the stipulation that BWCs are "not required to be activated ... if it is unsafe or impractical to do so" requires some concrete guidance. Clearly, officers should only invoke this activation exception when a clear and articulable threat has prevented them from activating their BWCs in a timely manner. Such a threat should be articulated at the end of the tour when the BWC footage is vouchered.

In response to OIG-NYPD's inquiry, the PBA has argued that any requirement for officers to activate their BWC's will place them in danger by forcing them to manage more tasks than they are accustomed to undertaking during dynamic enforcement encounters, and causing them to hesitate while activating their BWCs. They also contend that the BWCs themselves may be the targets of theft or increased violence by perpetrators. NYPD officers surveyed by OIG-NYPD, however, denied the claims raised by the PBA, noting the ease with which the cameras can be activated either by tapping a large button or sliding a panel on the front of the camera. While they expressed some concerns about newer officers' ability to police effectively while making decisions regarding when BWCs should be activated, they stated that their experience allows them to focus on citizen encounters without hesitation, while integrating the task of activating their BWCs whenever possible.

Based on these observations, OIG-NYPD recommends broadening the "reasonable suspicion" standard with respect to street encounters to include all investigative encounters and narrowing the officer safety exception to the rules of activation. OIG-NYPD additionally recommends that NYPD consider stricter limitations on recording vulnerable populations and expand and improve officer training on the operation of BWCs as their use becomes more widespread. These recommendations are further detailed at the conclusion of this Report.

#### IV. NOTIFICATIONS

Should officers verbally notify members of the public that a BWC has been activated? Providing members of the public with a verbal notification that they are being recorded has been shown to decrease their resistance to officer instructions and improve officer behavior during enforcement encounters.<sup>29</sup> Officers of various large departments have also stated anecdotally that members of the public who are advised of BWC use often become immediately compliant and that issuing such a notification reminds officers themselves that their conduct is also being captured on camera. On the other hand, a notification requirement may saddle officers with an additional task in difficult or unpredictable law enforcement situations.

##### **Op Order 48**

While New York is a one-party consent state and does not require officers to inform members of the public that they are being recorded in any context, NYPD has elected to institute a policy instructing officers to “inform subjects being recorded by BWC that the interaction is being recorded, when practical and consistent with officer safety.”<sup>30</sup>

##### **Alternative Policies**

Officers in other one-party consent states are not required by law to issue notifications to members of the public, and not all departments in these jurisdictions address this question. BWC policies in one-party consent states often recommend that officers provide a notification, particularly if it is safe to do so, since anecdotal evidence suggests that notifications may assist in obtaining compliance from members of the public.<sup>31</sup> At least one department reported explicitly training its officers to use notifications and their cameras as compliance tools while another, whose policy made no mention of notifications, reported permitting its officers total discretion on whether to issue them.

By contrast, officers in two-party consent jurisdictions are legally required to provide a notification when recording on BWCs, though they are generally not required to obtain

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<sup>29</sup> The Rialto, California Police Department produced one of the first empirical studies on the effect of BWCs on officer-citizen interactions. This department's work cited numerous studies revealing a socially-facilitating effect caused by the knowledge that one is being watched, and posited that the same effect might be achieved through the use of BWCs. It is reasonable to infer that explicitly providing a warning could be useful for encouraging causing desired behavior. TONY FARRAR AND ARIEL BARAK, SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE-OF-FORCE (2013), *available at* <http://www.policefoundation.org/content/body-worn-camera>.

<sup>30</sup> Op Order 48, *supra* note 3, §10. Identifying a state as a “one-party consent” or “two-party consent” jurisdiction refers to the individual state's tape-recording laws. One-party consent states, such as New York, permit individuals to record conversations without informing other individuals in the same conversation that they are being recorded. Two-party consent states require that all parties to the same conversation give consent before recording. For more information on each state's recording laws, refer to REPORTER'S COMMITTEE FOR FREEDOM OF THE PRESS, REPORTER'S RECORDING GUIDE (2012), *available at* <http://www.rcfp.org/rcfp/orders/docs/RECORDING.pdf>. New York's recording laws can be found in N.Y. PENAL LAW, ARTICLE 250 OFFENSES AGAINST THE RIGHT TO PRIVACY (2015).

<sup>31</sup> PERF, *supra* note 2, at 56.

consent. The state of Illinois has contemplated requiring any officer in the state to provide a notification to citizens as soon as practicable that a BWC recording is in progress whenever a reasonable expectation of privacy exists.<sup>32</sup> The specific policies of the Chicago Police Department (Chicago PD) and MPD require notifications, and make no explicit exceptions for officer safety. Both also include example phrases to guide officers in issuing notifications to members of the public, such as: "The police camera is recording and you are being audibly and visually recorded," or, "I am advising you that our interaction is being recorded."<sup>33</sup>

### **Assessment of Op Order 48**

Requiring NYPD officers to provide notification that a BWC is being used could enhance the quality of policing and reduce the potential for confrontation between officers and members of the public. Several of the officers participating in the Volunteer BWC Pilot Program who were surveyed by OIG-NYPD stated not only that they regularly, if not always, issue notifications to members of the public that a BWC is in use, but that such notifications were successful in quickly calming tense encounters, in particular traffic stops, and deterring verbal abuse against officers. Indeed, no officer surveyed recalled an instance in which a citizen's knowledge that a BWC was in use further angered the person or escalated the encounter. According to these officers, all persons who were alerted allowed the recordings to continue.

Again, Op Order 48 recognizes the importance of protecting officer safety by providing an exception to the notification requirement when issuing a notification would be unsafe or impractical. This exception, however, may be overly broad and could potentially lead officers not to advise members of the public of recording in situations where there is only a hypothetical threat to safety but no articulable danger.<sup>34</sup> Officers should therefore be obligated to articulate this threat at the close of their tour when the BWC footage is vouchered.

Currently, Op Order 48 does not provide any model notification language to guide officers' communication. Accordingly, OIG-NYPD recommends that Op Order 48 provide an example notification phrase when officers inform members of the public that they are being recorded. Additionally, narrowing the safety exception to the notification requirement to a specific articulable threat to safety may prevent overuse of the safety exception.

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<sup>32</sup> ILL. S.B. 1304, 99<sup>th</sup> Gen. Assemb. (2015).

<sup>33</sup> CHI. POLICE DEP'T (CHICAGO PD), DEP'T NOTICE D15-01 BODY WORN CAMERA PILOT PROGRAM – PHASE 1, §VI-B, (2015); MPD SPECIAL ORDER 14-14, *supra* note 23, §IV(G).

<sup>34</sup> Vehicle stops, for example, nearly always present an inherent danger to officer safety. Yet officers should not automatically invoke the safety exception as a blanket justification for failing to advise drivers and passengers they are being recorded.

## V. SAFEGUARDS FOR COMPLIANCE WITH POLICY

While the “limited discretion” model is an appropriate approach for a BWC program, such a model requires strict safeguards to ensure compliance. Compliance checks, including rigid electronic and paper audits to track deviations from recording policy, should be integrated into random quality assurance reviews of footage. Occasions in which an officer fails to record a required interaction should be documented and systems set up to investigate these incidents.

Review of BWC footage for quality assurance purposes is also essential to identify general deficiencies in training, assess the efficacy of the pilot program, and maintain compliance with policy. Care must be taken to ensure that any review policy does not cause officers to feel that the Department is infringing on their privacy. Such an effect could have adverse consequences on officer morale and willingness to accept the risks associated with policing.

### **Op Order 48**

Officers are required to “document in [their] activity log[s] as well as in the narrative of any Department report [such as an Unusual Occurrence Report...Complaint Report...On Line Booking System Arrest Worksheet...Stop Question and Frisk Report Worksheet...] any time a recording is captured of an incident.”<sup>35</sup> Presumably, this encompasses all recordings without consideration as to whether the BWC was appropriately activated or whether the incident was captured fully. In addition to the narrative, officers must also include the BWC’s serial number as well as the time and date of the incident.<sup>36</sup>

#### **1. Self-reported non-compliance**

To ensure that officers comply with activation and deactivation guidelines under the Volunteer BWC Pilot Program, Op Order 48 includes detailed protocols for reporting, investigating, and notifying when such guidelines are not followed.

Officers must document any non-compliance with BWC activation and deactivation guidelines in their activity logs and immediately notify the desk officer in the following instances:<sup>37</sup>

- Failing to record one of the enumerated police encounters under Op Order 48, whether or not the failure was a result of human error or equipment malfunction.<sup>38</sup>

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<sup>35</sup> Op Order 48, *supra* note 3, §5.

<sup>36</sup> *Id.* §5(a).

<sup>37</sup> The desk officer is responsible for all the activities that occur within the precinct, which include accounting for personnel changes and maintenance of police equipment, as well as being notified of any unusual incidents occurring on patrol.

<sup>38</sup> Op Order 48, *supra* note 3, at 2.

- The recording is interrupted — whether inadvertently or intentionally — before the enforcement encounter has concluded.<sup>39</sup>
- Activating, or failing to deactivate, the BWC during one of the enumerated prohibited scenarios under Op Order 48.<sup>40</sup>

Depending on the nature of the non-compliance, Op Order 48 then provides for additional steps that must be taken.

***Failure to record due to equipment malfunction or loss***

If an enforcement encounter is not recorded because the BWC was “not functioning properly, has become damaged, or is otherwise unaccounted for during a uniformed member’s tour of duty,” the desk officer is required to conduct an immediate investigation and comply with NYPD policies governing accidents involving Department property or loss or theft of Department property. A record of such “discrepancies” must also be entered into the precinct’s Command Log.<sup>41</sup>

***Failure to record due to human error or interruptions of recording***

If human error resulted in the failure-to-record or a recording was interrupted, the desk officer is required to conduct an immediate investigation and:

- a. “Make a determination regarding the propriety of the circumstances surrounding the failure to record and document results in Command Log”
- b. “Ensure that any resulting failure to record is documented in uniformed member’s activity log”
- c. “Prepare report on typed letterhead detailing the investigation, findings, and actions taken and forward a copy to:
  1. Deputy Commissioner, Legal Matters
  2. Chief of Department
  3. Chief of Patrol
  4. Chief of Housing Bureau or Transit Bureau if incident occurred in Housing Authority development or in the subway system.”<sup>42</sup>

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<sup>39</sup> *Id.* §11(a).

<sup>40</sup> *Id.* §9.

<sup>41</sup> Command logs are maintained by the precinct’s desk officer, who records all activities that occur within the precinct. Such activities include, but are not limited to: roster changes; arrests; summonses; and equipment inspections and assignments, such as BWCs.

<sup>42</sup> Op Order 48, *supra* note 3, §18.

### ***Recording prohibited scenarios***

Where the non-compliance involves recording a prohibited scenario, the Integrity Control Officer (ICO) must notify the Commanding Officer.<sup>43</sup> The Commanding Officer is then required to conduct an investigation by reviewing the BWC footage at issue. “[W]here it is determined that [the BWC] video was in fact a recording prohibited [by Op Order 48], submit to the Legal Bureau a report on typed letterhead (direct) detailing the findings of the investigation and request that the video be purged.”<sup>44</sup>

#### **2. Quality assurance review**

By contrast, Op Order 48 does not set forth any quality assurance reviews to track compliance with BWC guidelines, and, as noted by the PBA, does not suggest how BWC footage might affect an officer’s evaluations or lead to discipline.

### **Alternative Policies**

#### **1. Self-reported non-compliance**

The policies in use by other large departments to ensure compliance with recording requirements are similar to Op Order 48. Four of the nation’s ten largest police departments, including Chicago PD, MPD in Washington, D.C., and Phoenix PD, require that officers note in reports that an incident has been captured by a BWC. Additionally, these same departments mandate that their officers report any BWC damage or malfunction to their supervisors, while MPD and two others require officers to note any failure to record in writing, either in a personal log or an incident report.<sup>45</sup> One department also requires that a supervisor be notified in these situations. None of these departments’ policies, however, describe any specified mechanism for addressing such a failure, and several rely only on random quality assurance checks or review of footage for internal investigations to identify deficiencies.

Unlike NYPD, at least three large municipal departments, including Chicago PD, require officers to narrate into the device if and why they intend to deactivate their cameras when confronted with a prohibited recording scenario (such as a conversation with a confidential informant). Chicago PD and one other department require officers to narrate any reason for interrupting a recording before the entire incident is recorded.<sup>46</sup> MPD further requires that if

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<sup>43</sup> An Integrity Control Officer (ICO) is a supervisor, generally at the rank of lieutenant, who is responsible for implementing and maintaining integrity monitoring and anti-corruption programs within the assigned command. The ICO conducts investigations into violations of Department regulations independently and upon referral from IAB or Borough Investigations Units. The ICO may also advise the precinct’s Commanding Officer regarding discipline for infractions. Op Order 48 instructs only that the officer inform the desk officer if a recording of a prohibited scenario has occurred but provides no direction to the desk officer of what further steps must be taken. Accordingly, it is unclear how the ICO becomes aware that a recording of a prohibited scenario has occurred.

<sup>44</sup> Op Order 48, *supra* note 3, §24(a).

<sup>45</sup> CHICAGO PD DEP’T NOTICE D15-01, *supra* note 33, §VII-A-1; MPD SPECIAL ORDER 14-14, *supra* note 23; PHOENIX PD OPERATIONS ORDER 4.49, *supra* note 21.

<sup>46</sup> CHICAGO PD DEP’T NOTICE D15-01, *supra* note 33, §VI-G.

ordered to deactivate a recording by a superior, the officer identify the supervisor's name and shield number in the recording.<sup>47</sup> A bill recently passed by the Illinois State Legislature would additionally require any officer deactivating a BWC at the request of a victim or witness to capture this request on the video whenever possible.<sup>48</sup>

MPD places an additional onus on officers to mark their own footage of sensitive incidents requiring supervisory review and to report any misconduct by other officers observed while reviewing their own footage. Sensitive incidents may include uses of force, public fatalities, First Amendment activities, or any other event that the officer believes may result in a complaint. These incidents, once flagged, must be reviewed by a supervisor within 24 hours.<sup>49</sup>

## **2. Quality assurance review**

The BWC policies of many large police departments include some mechanism for random review of footage by police supervisors. Several departments mandate regular random supervisory review of footage while other departments allow supervisors unlimited access to the BWC footage of their subordinates. The frequency and quantity of videos to be reviewed for quality assurance are not always specified and vary among departments — from weekly reviews of random footage to six videos per month to biannual reviews of all officers' footage.<sup>50</sup>

In general, most departments make senior officers within a command responsible for coordinating regular reviews of footage, sometimes with the assistance of a coordinator who may be a sergeant or higher rank. Two departments additionally provide for higher-level review of footage. Chicago PD requires lieutenants to submit reports to Department leaders based on footage review, detailing "recommendations for the use of the BWCs." These recommendations are eventually made available to a BWC Pilot Program Evaluation Committee.<sup>51</sup> Meanwhile, MPD tasks its risk management personnel with ensuring that footage is audited for officer performance and compliance with policy.<sup>52</sup>

One large department analogized its unique approach to random supervisory review of footage to random drug testing. At the beginning of each month, a computer chooses a random day from the previous month, selecting ten percent of the officers from each command working on that day for review. The list is then automatically transmitted to the shift commander, who reviews those officers' BWC recordings for the day. According to sources consulted, this randomized solution effectively calmed mounting tensions between police unions and the department concerning the rights of officers.

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<sup>47</sup> MPD SPECIAL ORDER 14-14, *supra* note 23, §V-A-9(c).

<sup>48</sup> Ill. S.B. 1304, *supra* note 32, §10-20(a)(4).

<sup>49</sup> MPD Special Order 14-14, *supra* note 23, §V-A-9(c).

<sup>50</sup> The IACP Model Policy recommends monthly supervisory review of footage. IACP, *supra* note 12, at 2.

<sup>51</sup> CHICAGO PD DEP'T NOTICE D15-01, *supra* note 33, §§IX-A-2 and IX-B-2.

<sup>52</sup> MPD SPECIAL ORDER 14-14, *supra* note 23, §VI(l).

Finally, the Los Angeles County Sheriff's Department (LASD) maintains a unique policy of requiring supervisors to review every use-of-force incident report, as well as all accompanying video footage, prior to allowing deputies to view their own footage.<sup>53</sup> Deputies may then submit an addendum to their reports based on their viewing of the footage. Logistical concerns aside, such a policy affords supervisors the opportunity to screen every significant piece of BWC footage for compliance with recording procedures.

### **Assessment of Op Order 48**

While Op Order 48 does provide for supervisory review for self-reported non-compliance — a feature lacking in the policies of some other police departments — NYPD would benefit from stronger controls with respect to supervisory review and quality assurance.

#### **1. Self-reported non-compliance**

By outlining a detailed, formal process for supervisors to review officer-reported instances of non-compliance with activation and deactivation guidelines, Op Order 48 surpasses the policies of many other departments which require, at most, that the officer make a simple notification to a supervisor. Indeed, Op Order 48 draws nearly all entities responsible for regulating the Volunteer BWC Pilot Program into the oversight process, from first-line supervisors to the Deputy Commissioner, Legal Matters. The success of these controls, however, relies heavily on the individual officer's duty to report; if an officer fails to document or report non-compliance, the effectiveness of Op Order 48's rigorous review system for non-compliance is greatly reduced.

Op Order 48, however, is silent on what consequences — disciplinary or otherwise — may apply when an officer intentionally fails to record any part of a required incident or fails to self-report non-compliance. Furthermore, while Op Order 48 repeatedly cites an officer's duty to report any failure-to-record incidents as well as any interruptions in a recording, there is no directive to report a delayed activation of a BWC.

This silence is understandable given the voluntary and pilot nature of the program. First, given the need to recruit volunteer officers into the pilot program and build experience with the program, the absence of a disciplinary process is a rational trade-off at this early stage. Second, NYPD has an interest in understanding how officers are actually carrying out Op Order 48 before it creates compliance rules. Nevertheless, these areas must be addressed when the Volunteer BWC Pilot Program is more established and formalized.

Overall, Op Order 48 provides a strong framework for transparency for first-line supervision to oversee officers' compliance with recording procedures. Clear regulations governing when to record and not to record, mandatory marking of recorded incidents, and

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<sup>53</sup> OFFICE OF INDEPENDENT REVIEW (OIR), ELEVENTH OFFICE OF INDEPENDENT REVIEW ANNUAL REPORT (2013), *available at* [http://shq.lasnews.net/shq/LASD\\_Oversight/OIR-Eleventh-Annual-Report.pdf](http://shq.lasnews.net/shq/LASD_Oversight/OIR-Eleventh-Annual-Report.pdf). In this Report, OIR reviewed LASD's policy relating to use of footage obtained from fixed surveillance cameras within the county jail.

robust reporting procedures for failing to record allow supervisors to readily note and investigate deviations from policy, creating the opportunity for expedient corrective action.

## **2. Quality assurance review**

Based on a review of other departments' policies, OIG-NYPD recommends that NYPD adopt a system of random footage review which balances the need for robust oversight and quality assurance with the rights of officers not to be disciplined for minor infractions. This could entail, on a command level, monthly random reviews of BWC footage by an authorized supervisor. Computerizing the random selection of officers for review ensures that officers are not arbitrarily singled out by supervisors.

NYPD could consider additionally requiring a supervisor from a different squad or tour to conduct the random review of footage from a particular group of officers. Such a policy may assist in maintaining the trust between officers and their direct supervisors, which may be eroded if officers feel overly scrutinized by a supervisor with whom they interact regularly.<sup>54</sup> The uniquely large size of NYPD and some of its patrol commands caters particularly well to this strategy. Randomly selected officers may still be identifiable to their direct supervisors upon review of BWC video, while supervisors from one squad or tour may be only somewhat, if at all, familiar with the officers from another. This would help to ensure the objectivity of random quality assurance review.

Moreover, establishing a central unit — such as the Quality Assurance Division — to conduct regular Department-wide audits of random BWC footage not only provides an additional layer of review but also assists in assessing the efficacy of established policies.

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<sup>54</sup> PERF, *supra* note 2, at 63.

## **VI. ACCESS**

Access to BWC footage is a complex issue which touches nearly every aspect of establishing a BWC program. A department's approach as to who has authority to view or possess BWC footage affects many stakeholders, including law enforcement personnel, external oversight bodies, and the public at large. A discussion of how each of these groups' potential access to BWC footage may be shaped by policy follows below.

### **1. Supervisory Access**

Questions over the rights of police supervisors to access their subordinates' BWC video have caused persistent debate within police departments and created tensions among police unions, department management, and officers. On the one hand, BWC footage may capture minor infractions of department procedure by officers on duty requiring corrective action. On the other hand, officers have a right to privacy and security in the workplace. Overly intrusive, or arbitrary and capricious, supervisory access to footage may infringe on the rights of officers not to be retaliated against by management or to be cited selectively for trivial violations of departmental procedure.

#### **Op Order 48**

Op Order 48 does not identify which supervisors, aside from the ICO, may access BWC video. Nor does it cite under what circumstances the ICO may access a BWC recording (other than upon a request from an officer to review footage). Op Order 48 also does not explicitly indicate how minor officer infractions — such as uniform violations — captured by BWCs are to be addressed.

#### **Alternative Policies**

Many departments surveyed by OIG-NYPD share similar policies regarding minor, non-BWC infractions observed during random reviews of BWC video. Supervisors are not precluded from taking action if they observe officer misconduct and, in particular, egregious or repeated violations. MPD and one other large department, however, explicitly prohibit supervisors from using their review authority for the express purpose of uncovering violations absent a specific complaint. The Denver Police Department prohibits supervisors from reviewing officers' footage except for the purpose of an internal investigation in order to implement a performance improvement plan, or with the approval of a commanding officer. Three other departments emphasize officer training or performance counseling. Only one large department surveyed treats minor officer infractions observed in BWC footage as part of the normal disciplinary process.

Representatives from two departments have also reported that BWC recordings can be integrated into their early intervention programs, in particular, force monitoring.<sup>55</sup> While not addressed directly by these departments' written policies, such usage would allow supervisors and department executives to perform more frequent and targeted reviews of BWC footage for officers under specific performance monitoring programs.

### **Assessment of Op Order 48**

While protocols relating to supervisory access in NYPD's Volunteer BWC Pilot Program may have been deliberately omitted for purposes of this limited pilot program, regular supervisory quality checks could help NYPD determine the effectiveness of its BWC program and afford the opportunity to improve officer training by regularly including quality checks.

Moreover, establishing parameters in which supervisors and ICOs are authorized to access BWC recordings for review purposes would allay officers' concerns that BWC footage reviews may be arbitrarily or maliciously conducted. While all of the NYPD officers surveyed by OIG-NYPD agreed that egregious misconduct discovered during any review of video should be addressed swiftly and appropriately, they feared being disciplined for minor violations captured on BWC footage. Of further concern is that BWC footage capturing only a portion of a legitimate law enforcement action might be automatically viewed as misconduct by supervisors if officers are not given the opportunity to add context. The PBA raised concerns to OIG-NYPD, specifically that officers' evaluations and careers might be negatively affected by footage which only captures a portion of a citizen encounter, particularly if officers are not permitted to comment on the footage before it is reviewed. Any system of review must balance the need for quality assurance against officers' right to be free from undue scrutiny over minor rule infractions while on duty.

To this end, supervisors should not be permitted to review BWC video for the sole purpose of uncovering minor infractions and imposing discipline. Instead, BWC footage should be used to enhance training and improve officer performance. Minor infractions captured on BWC footage may be used to retrain officers outside of the Department's disciplinary system. BWC recordings may also assist in strengthening NYPD's force monitoring program as it has in other departments.

While NYPD officers interviewed by OIG-NYPD agreed that egregious misconduct captured on tape must be addressed by supervision regardless of how it is uncovered, Op Order 48 does not explicitly mandate officers to report such misconduct. Accordingly, Op Order 48

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<sup>55</sup> Early Intervention Systems are digital databases employed by police departments across the country, which use a variety of parameters to identify officers in need of intervention. Parameters vary from department to department, but may include arrest and summons statistics, number of citizen complaints, or frequency of line-of-duty injuries. Force monitoring is a particular type of Early Intervention System used by NYPD to track officers with an increased risk of engaging in excessive force. It is triggered when an officer receives three or more citizen complaints in a one-year period.

should clarify that officers have a duty to report serious misconduct or corruption captured on BWC video in accordance with Patrol Guide Procedure 207-21.<sup>56</sup>

For these reasons, OIG-NYPD recommends that supervisors be prohibited from reviewing BWC footage solely to discipline officers for minor infractions; when such infractions are observed, they should be used as retraining tools in an informal mentorship capacity.

## **2. Review of Footage by Police Officers**

When and for what purposes officers should be permitted to access their own BWC footage presents significant questions involving accountability and police oversight. OIG-NYPD's multiple discussions with district attorneys, senior law enforcement and police oversight officials (both in New York City and elsewhere), and patrol officers demonstrates that this question poses a delicate balance of competing priorities and one that should be resolved prior to any further expansion of the BWC program. Specifically, the integrity of both internal and outside investigations into police conduct as well as the efficacy of law enforcement actions generally depends on striking an appropriate balance between using BWC footage to ensure the accuracy of officer reports and testimony and the need to preserve an officer's independent recollection of an incident when providing a statement. While NYPD must ultimately craft detailed rules for resolving this balance, OIG-NYPD proposes several best practices below.

### **Op Order 48**

Under Op Order 48, the ICO must "allow uniformed members to review any video pertaining to an event captured from their own BWC prior to giving testimony (either sworn or unsworn) or being interviewed or appearing before an investigative body (e.g., Civilian Complaint Review Board, Department of Investigation, Internal Affairs Bureau, Investigations Unit, etc.)."<sup>57</sup> NYPD does not expect officers to recall every detail depicted in their BWC recordings. They are therefore asked to distinguish between events recalled independently, those memories refreshed by reviewing video footage, and new information learned from such a review.<sup>58</sup> Op Order 48 makes no comment on whether officers are permitted to view their own footage at any time outside the context of a pending investigation or proceeding, including for the purpose of preparing incident reports. Officers currently participating in the Volunteer BWC Pilot Program reported, however, that while they may view footage from a particular tour while processing it in the stationhouse, they must request permission from the ICO to view the recording once it has been uploaded.

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<sup>56</sup> All NYPD officers have an "absolute duty to report any corruption or other misconduct, or allegation of corruption or other misconduct, of which they become aware." NYPD, PATROL GUIDE PROCEDURE 207-21 ALLEGATIONS OF CORRUPTION AND OTHER MISCONDUCT AGAINST MEMBERS OF THE SERVICE. An officer may be subject to discipline for failing to do so.

<sup>57</sup> Op Order 48, *supra* note 3, §22.

<sup>58</sup> *Id.* §14(b).

### **Alternative Policies**

The conditions under which officers are permitted to view their recordings vary among departments. At least five of the ten largest law enforcement agencies either permit or require their officers to review BWC footage prior to preparing reports concerning an incident. In contrast, LASD prohibits officers from reviewing video footage prior to report-writing, citing a need to preserve an officer's independent recollection of an incident. Instead, deputies must first have their footage and reports reviewed by a supervisor prior to reviewing the video themselves. They are then permitted to attach a post-review addendum to a report, if appropriate.<sup>59</sup>

Policies concerning review of BWC recordings by officers subject to internal investigations generally align with policies governing review prior to filing reports. Several departments prohibit officers from viewing footage in the internal investigation context, while another permits officer review only with IAB approval. In several departments surveyed, officers subject to internal investigations are permitted to view their BWC videos prior to providing oral statements only in the presence of the investigating officer or legal representative. This is particularly common after officer-involved shootings. One department surveyed restricts officers from viewing footage only when the officer is facing criminal charges.<sup>60</sup>

### **Assessment of Op Order 48**

Multiple police departments and prosecutors have argued that it is important to allow officers to view recordings prior to making written statements, noting that such pre-viewing has certain measurable benefits: more accurate reporting; swifter resolution of criminal proceedings; and dispelled concerns regarding officer credibility. Several police departments dismissed questions of accountability, stating that officers will be forced to justify any questionable conduct captured on video regardless of whether they have viewed the footage prior to providing a statement.<sup>61</sup>

Balanced against these benefits is the concern that allowing officers to review their recordings during active internal investigations, oversight proceedings, or inquiries into serious uses of force can impact investigative integrity. While Op Order 48 deems BWC footage analogous to a memo book entry in terms of utility to refreshing an officer's independent recollection — a position that the District Attorney's Offices also generally embraced — such a comparison is not fully accurate. Both BWC footage and memo book entries may be used to refresh an officer's independent recollection of an incident, but memo book entries are

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<sup>59</sup> OFFICE OF INDEPENDENT REVIEW (OIR), ELEVENTH OFFICE OF INDEPENDENT REVIEW ANNUAL REPORT (2013), *available at* [http://shq.lasdnews.net/shq/LASD\\_Oversight/OIR-Eleventh-Annual-Report.pdf](http://shq.lasdnews.net/shq/LASD_Oversight/OIR-Eleventh-Annual-Report.pdf).

<sup>60</sup> MPD SPECIAL ORDER 14-14, *supra* note 23, §V(D).

<sup>61</sup> PERF, *supra* note 2, at 29.

themselves reflections of an officer's independent recollection and therefore provide no information an officer did not ostensibly know at the time of the incident.

By contrast, BWC footage has no limitation on focus, attention, or recollection, and may capture events that officers themselves did not perceive, did not observe, or could not reasonably recall. Exposing officers to events to which they may not have been privy at the time of the incident affects the ability of investigators to assess the officer's contemporaneous appraisal of the circumstances which led him or her to take the actions under investigation.

Further, assessing an officer's independent testimony about events on camera may also serve as a litmus test to assess the accuracy of the officer's recollection of events which occurred, for whatever reason, off camera. Moreover, even officers' honest recollections of an incident may be altered inadvertently by viewing video footage, leading them to omit events they recall, but which were not captured on camera. CCRB noted to OIG-NYPD that, in its experience with conducting police misconduct investigations, these effects additionally undermine the ability of officers to distinguish between facts independently recalled and those learned or refreshed by viewing the BWC recording, as is required by Op Order 48.

Finally, NYPD officers interviewed by OIG-NYPD did not themselves appear particularly concerned about having the ability to review their recordings in any context. Only one officer reported reviewing footage after capturing it, with the majority stating that their experience with policing and their personal knowledge of incidents they handled obviated the need to review their BWC video.

Ultimately, NYPD must resolve these competing imperatives and must provide a detailed set of rules on exactly when an officer may and may not review recordings prior to providing written statements on a matter. These rules should be established prior to any expansion of the BWC program.

Based upon OIG-NYPD's extensive interviews and research, OIG-NYPD suggests the following guidelines: Where a police officer is the subject of or witness to a misconduct investigation either by CCRB, IAB, a District Attorney, or OIG-NYPD, the officer should be precluded from reviewing any recordings as soon as the investigating entity informs NYPD it has commenced an investigation. The officer should only then be permitted to review the video after providing a formal statement and completing any incident-related paperwork. In all other instances, officers should be permitted to review footage consistent with their normal practices and direction from supervisors. However, where they do review recordings, officers should be required to note in their reports and statements when they reviewed the recordings.<sup>62</sup>

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<sup>62</sup> This rule, if adopted, leaves open the possibility that an officer who is ultimately under investigation by one of the above-named entities could nevertheless review BWC footage prior to that entity informing NYPD of the investigation and thus, prior to the officer making any formal statement. It is unclear how often this will occur and, where it does occur, what impact it will have on such investigations. However, if NYPD adopts this protocol, OIG-

Finally, in all instances, officers should be permitted to review video after an initial report and an official statement have been made, and file supplemental reports in order to document details of an incident recalled through footage review and maintain a complete and accurate record of events surrounding an incident. In this regard, consideration of any mitigating factors leading to differences between BWC footage and officer testimony should be considered before officers are disciplined for these discrepancies, and officers should not be sanctioned without clear evidence they intentionally and materially obscured the truth.

### **3. Release of Footage to Prosecutors, Municipal Attorneys, and Oversight Agencies**

Among other reasons, BWC programs are developed to assist in the expeditious resolution of criminal and civil proceedings involving the police department and to facilitate reaching objective, fact-driven conclusions. To further these goals, prosecutors and municipal attorneys involved in investigations and proceedings need ready access to pertinent video.

#### **Op Order 48**

Op Order 48 provides protocols for notifying prosecuting agencies and the New York City Law Department (Law Department) about the existence of BWC recordings. After uploading BWC footage of an arrest to an NYPD computer, officers are required to burn a copy of the video to a CD or DVD and invoice it as evidence. Consistent with legal rules regarding evidence transfer, Op Order 48 also instructs the officer to notify the appropriate assistant district attorney or assistant corporation counsel.<sup>63</sup>

#### **Alternative Policies**

Access policies of other departments are generally dictated by the type of storage system used to retain BWC footage. Departments employing cloud-based storage platforms often create accounts for their local prosecutor's office through which prosecuting attorneys can electronically retrieve footage on their own without the need to create hard copies. The same can be done for any party authorized by the police department. In many cases, however, only prosecutorial agencies are given their own accounts. City attorneys may be granted limited electronic access as civil claims arise. Electronic access options exist for local server storage models as well.

Two of the police departments surveyed by OIG-NYPD indicated that their local police oversight agencies have access to BWC footage upon request.

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NYPD will consider conducting a review of such occurrences to determine whether additional guidelines are necessary.

<sup>63</sup> NYPD has stated that the Manhattan District Attorney's Office has direct electronic access to the database in which BWC footage is stored. It is the first New York City District Attorney's Office to have this type of access.

### **Assessment of Op Order 48**

Although Op Order 48 is silent regarding the availability and ready access of BWC recordings to oversight agencies including OIG-NYPD and CCRB, NYPD has been and remains committed to releasing BWC footage from the Volunteer BWC Pilot Program to oversight agencies consistent with the mission and mandate of those agencies. NYPD has confirmed that it will produce BWC recordings to OIG-NYPD as OIG-NYPD deems necessary. CCRB has already confirmed to OIG-NYPD filing several requests for BWC footage through the IAB Liaison Office, which serves as its normal mechanism for obtaining NYPD records.

#### **4. Access by the Public**

##### ***Public Access through Freedom of Information Law (FOIL)***

The detailed evidence captured by BWCs potentially provides a powerful platform for promoting accountability. This same breadth of footage, however, raises troubling privacy concerns if access to recordings by third parties outside of NYPD is not properly controlled. To ensure that BWC video is only released under appropriate circumstances, regulations concerning the dissemination of BWC recordings must consider the public's right to know against the privacy interest of the individual, concerns for witness and officer safety, and the prosecutorial process.

Unlike other government records made publicly available through local Freedom of Information Law (FOIL) requests, video captured during police enforcement encounters can reveal private details about the lives of police officers and individual citizens, some of whom may not have been the subject of police enforcement. At times, the very identity of these officers and witnesses may be sensitive. Moreover, once any BWC recording is released to the public, it is frequently and rapidly disseminated over the Internet.

Further, and also unlike written records made publicly available through FOIL requests, BWC video presents unique technological challenges to the disclosure process. The volume of data associated with BWC video, as well as the logistical and financial cost associated with categorizing, searching, and, if needed, redacting or blurring BWC video, will present significant new burdens to police departments when responding to FOIL requests for records.

**Because video created cannot be “uncreated,” resolution of the issues noted above — privacy, safety, and technological — should occur before any expansion of the BWC program.**

As the existence of FOIL attests, there is a need for transparency, oversight, and public discourse on government records relating to matters of public concern, particularly when incidents of serious police misconduct generate widespread media coverage. The sheer quantity of information revealed in any video released to the public, however, may make the cost to a citizen's privacy unacceptably high.

If carefully implemented, public access to BWC footage could improve police-community relations and build the public's trust in the police. Achieving this requires a deliberate weighing of individual privacy considerations against the compelling public interest for transparency and police accountability.

### **Op Order 48**

Op Order 48 does not set forth explicit protocols on how NYPD will handle public requests for BWC footage via FOIL. NYPD is, however, assessing the various logistical, technological, and legal issues involved with addressing FOIL requests for BWC footage.

### **Alternative Policies**

In most departments, public requests for BWC recordings are processed through state open records laws in the same manner as requests for other forms of police records. In response to privacy concerns, the substantial financial and logistical burden some departments would face in filling requests for footage, and the possibility that public disclosure could have a chilling effect on policing, as many as 16 states and jurisdictions — such as Florida, Missouri, Minnesota, Iowa, Washington, Oregon and Washington, D.C. — have attempted to amend open records statutes by exempting certain, or all, BWC footage from being made publicly available.<sup>64</sup> This practice is consistent with the PBA's own concern for officers' privacy. These policies vary, but may include releasing footage only to those directly involved in an incident. Civil liberties groups have criticized such legislative efforts, arguing that shielding BWC video from open records disclosure would only undermine efforts aimed at promoting greater transparency and police accountability.<sup>65</sup>

The Seattle Police Department has sought a unique compromise between financial, privacy, and accountability concerns by publishing a YouTube channel containing heavily redacted versions of the BWC footage generated by its officers.<sup>66</sup> Video is edited to obscure not only the faces of those in view of the camera, but the entire image, and audio is removed prior to segments of video being uploaded to the Internet. This policy protects the privacy of both officers and citizens, and likely greatly diminishes the financial cost associated with identifying, copying, and releasing footage pursuant to individual requests. It further permits

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<sup>64</sup> *Bills That Would Restrict Access to Body Camera Footage*, N.Y. TIMES, Mar. 19, 2015, available at <http://www.nytimes.com/aponline/2015/03/19/us/ap-us-body-cameras-public-access-bills.html>. See also Aaron C. Davis, *D.C. Mayor Warns of Big Costs If City Must Release Police Body-Camera Video*, THE WASHINGTON POST, June 23, 2015, available at [http://www.washingtonpost.com/local/dc-politics/dc-mayor-warns-of-big-costs-if-city-must-release-police-body-camera-video/2015/06/23/0b269d14-19d6-11e5-93b7-5eddc056ad8a\\_story.html?tid=hpModule\\_ba0d4c2a-86a2-11e2-9d71-f0feafdd1394&hpid=z8](http://www.washingtonpost.com/local/dc-politics/dc-mayor-warns-of-big-costs-if-city-must-release-police-body-camera-video/2015/06/23/0b269d14-19d6-11e5-93b7-5eddc056ad8a_story.html?tid=hpModule_ba0d4c2a-86a2-11e2-9d71-f0feafdd1394&hpid=z8).

<sup>65</sup> ACLU of Florida, *Coalition Letter Opposing Senate Police Body Cameras Bill*, Mar. 6, 2015, available at <https://aclufl.org/2015/03/06/civil-rights-groups-oppose-current-police-body-camera-bill-in-florida-senate/>.

<sup>66</sup> SPD BODYWORNVIDEO, <https://www.youtube.com/channel/UCcdSPRnt1HmzkTL9aSDfKuA> (last visited June 4, 2015).

citizens to preview BWC recordings and identify segments and make specific, follow-up public records requests for clear footage of events they believe are significant.<sup>67</sup>

### **Assessment of Op Order 48**

In implementing the Volunteer BWC Pilot Program, NYPD sought to “foster[ ] positive relations with the community.”<sup>68</sup> Releasing BWC footage to the public solely when such footage exonerates an officer of misconduct or criminal liability could create a larger wedge in NYPD-community relations. In contrast, a policy that favors public disclosure of BWC recordings under appropriate circumstances “demonstrat[es] that [the police] are committed to transparency and accountability.”<sup>69</sup>

However, any public disclosure policy must balance the substantial privacy, safety, and law enforcement concerns particular to BWC video against the pressing public interest in transparency. BWC footage is unique in its potential to display citizens' most compromising moments and identifiable private spaces, even if the likenesses of individuals are obscured. Further, there is a need to protect the identity of undercover officers — or officers who may later work undercover — informants, and vulnerable witnesses. NYPD should develop procedures for thoroughly anonymizing footage, particularly recordings involving vulnerable populations in the community, such as minors, those who lack the ability to give informed consent, and other groups protected by law. To this end, CCRB recommended to OIG-NYPD that such disclosure procedures be codified within Op Order 48 itself to minimize any ambiguity regarding when BWC footage might be disclosed under FOIL. Furthermore, considering that BWC video presents unique technological challenges to the FOIL disclosure process — including the complicated logistics and potentially high cost associated with categorizing, searching, retrieving, and redacting or blurring BWC video — NYPD should develop protocols for addressing the volume of FOIL requests that it may receive for BWC video. Again, these issues should be resolved prior to expansion of the BWC program and the creation of tens of thousands of hours of video.

### ***Viewing of BWC Footage by Citizen Complainants***

While investigators looking into allegations of police misconduct should consider sharing BWC video with citizen complainants, the timing of such access is important. Whether a member of the public who files a complaint against the police should be shown BWC footage prior to being interviewed by an investigator and providing an official statement warrants analysis.

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<sup>67</sup> *Id.*

<sup>68</sup> Op Order 48, *supra* note 3, at 1.

<sup>69</sup> PERF, *supra* note 2, at 64.

### **Op Order 48**

Op Order 48 does not address whether a member of the public who has filed a complaint against the police may view BWC video prior to being interviewed by an investigator and providing an official statement.

### **Alternative Policies**

Police departments surveyed by OIG-NYPD differ on whether to allow a member of the public who is making a complaint to view BWC footage prior to giving an official statement. Only one department surveyed reported routinely allowing complainants who wish to make police misconduct complaints to view video before giving formal statements. Most departments do not expressly prohibit this practice, preferring instead to leave this decision to the discretion of the individual investigator.

OIG-NYPD found that several departments surveyed engage in the unofficial practice of showing a walk-in complainant BWC video of an encounter even before a formal complaint is filed. According to representatives of these departments, doing so often obviates the need for an investigation, especially when the footage fails to corroborate the complainant's account of events. In effect, showing the complainant the BWC recording sometimes deters the complainant from ever filing a misconduct complaint.

### **Assessment of Op Order 48**

For the same reasons an officer subject to a misconduct investigation should not have access to BWC video prior to making an official statement, a member of the public who files a complaint against the police should not be permitted to view BWC footage before an investigator has had an opportunity to interview the complainant and obtain an official statement.

While BWC video could be the most crucial piece of evidence investigators consider, investigations into police misconduct made by members of the public should proceed in the usual manner irrespective of what is depicted on the recording.

Under no circumstance should a walk-in complainant be shown or permitted to view BWC video prior to the filing of a complaint against the police. While it is worthwhile to resolve citizen complaints against the police in an expeditious manner — particularly meritless allegations — it is important that a properly-trained investigator make that determination. Investigators of police misconduct should treat BWC video in the same manner as any other evidence gathered; BWC footage should not be used in lieu of conducting proper investigations. Moreover, based on information gathered by OIG-NYPD, the practice of showing a walk-in complainant BWC video prior to the filing of a police misconduct complaint may discourage members of the public from making such complaints, especially where footage has captured complainants in unflattering predicaments.

## VII. RETENTION AND PURGING

A complete BWC policy requires clear protocols setting forth the retention and storage of BWC recordings and the impact such decisions will have on privacy concerns. In theory, BWC footage should be preserved according to its evidentiary value, and, where no evidentiary value exists, purged immediately to address privacy concerns. Finding the right balance is a delicate task and requires a cautious approach. While issues involving retention may inevitably be dictated by financial resources, the subject warrants thoughtful discussion.

### **Op Order 48**

Currently, Op Order 48 mandates that all BWC recordings be preserved for a minimum retention period of “one year, at which time it will be automatically deleted” unless it has been archived.<sup>70</sup> BWC footage “that captures an arrest and any related footage” is automatically archived.<sup>71</sup> Current archived BWC footage is retained indefinitely and must be manually purged.

#### **1. Requests from NYPD Personnel to Archive BWC Footage**

Where the BWC video did not result in an arrest but is the subject of a citizen complaint or involved a non-arrest situation:

“A member of the service may [make a request to the desk officer] that a BWC recording be archived and retained beyond the prescribed retention period. BWC recordings will be considered for archival [sic] if the recording is required for a criminal investigation/prosecution, internal investigation, pending civilian complaint, pending disciplinary matter or other circumstance deemed appropriate by the Deputy Commissioner, Legal Matters. Requests to archive a recording will be submitted to the commanding officer of the uniformed member who recorded the video in question.”<sup>72</sup>

The desk officer is responsible for “notify[ing] the commanding officer of any requests to archive any BWC recording related to a citizen complaint involving a member of the command, or any other BWC recording a member of the command requests to be archived.”<sup>73</sup> The notification to the Commanding Officer should detail the “relevant BWC serial number, uniformed member’s name, justification for the request and date/time of occurrence [of the incident].”<sup>74</sup>

Upon receipt of the request for archiving non-arrest BWC footage from the desk officer, the Commanding Officer must “submit to Legal Bureau a request on typed letterhead (direct) to

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<sup>70</sup> Op Order 48, *supra* note 3, at 6.

<sup>71</sup> *Id.* §13.

<sup>72</sup> *Id.* at 5.

<sup>73</sup> *Id.* §20.

<sup>74</sup> *Id.* §20(a).

archive any BWC recording related to a citizen complaint involving a member of the command, or any other BWC recording a member of the command requests through the desk officer to be archived.”<sup>75</sup>

In addition to individual officers requesting that BWC footage be archived, Op Order 48 allows for members assigned to other NYPD bureaus to make such requests as well. These include “[IAB], Investigations Unit, and members of the Deputy Commissioner, Legal matters and the Legal Bureau.”<sup>76</sup>

## **2. Requests from Non-NYPD Entities to Archive BWC Footage**

Op Order 48 does not provide a mechanism for non-NYPD entities to request archiving of BWC video.

### **Alternative Policies**

A review of model policies and other police department policies suggests that where contact with a member of the public did not result in any law enforcement action, a shorter period of retention is strongly recommended.<sup>77</sup> By contrast, recordings with evidentiary value — whether to be used in a criminal, civil, or administrative proceeding — should remain preserved in keeping with the statute of limitations for the type of incident captured. Automatic flagging has been recommended for any recording that relates to a use of force, an arrest, a detention, or instances where a public complaint has been filed. Some departments have additionally established procedures for purging flagged footage once the proceeding has concluded or, in the case of an arrest, when the case is resolved or, if charges have not been filed, when the statutes of limitations on the relevant crimes have expired. The majority of police departments have adopted some form of this “evidentiary and non-evidentiary value model” regarding the preservation and retention of BWC footage.<sup>78</sup>

### **Assessment of Op Order 48**

While OIG-NYPD supports the “evidentiary” model adopted by NYPD and used by many departments, NYPD’s current one-year retention period for recordings is too limited. This concern was voiced by all five District Attorney’s Offices in interviews with OIG-NYPD. Op Order 48’s current retention period precludes access to footage for the full 18-month statute of

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<sup>75</sup> *Id.* §23.

<sup>76</sup> Op Order 48, *supra* note 3, at 6.

<sup>77</sup> NYCLU, *supra* note 26; The Constitution Project, *The Use of Body-Worn Cameras by Law Enforcement*, in written comments submitted on Jan. 28, 2015 to President’s Task Force on 21<sup>st</sup> Century Policing citing STANLEY and PERF.

<sup>78</sup> The most common retention period for non-evidentiary video was between 60 and 90 days. PERF, *supra* note 2, at 17. To illustrate the spectrum of BWC retention policies in police departments nationwide, in Fort Collins, Colorado, non-evidentiary video is preserved for seven days; meanwhile in Oakland, California, all BWC recordings are to be retained for a minimum of five years. OAKLAND POLICE DEP’T (OAKLAND PD), DEPARTMENTAL GEN. ORDER I-15.1 (2014). In the case of juveniles, some departments delete footage of crimes when subjects reach their 21<sup>st</sup> birthday.

limitations pertaining to administrative misconduct complaints and the three-year statute of limitations for filing federal civil rights lawsuits.<sup>79</sup> In fact, in response to OIG-NYPD's inquiry, several of the District Attorney's Offices advocated for indefinite retention of all footage. The District Attorney's Offices suggested that failure to retain all BWC footage may regularly deprive prosecutors of video which might be needed at indefinite points in the future. CCRB additionally noted that, under the current policy, it would be unable to access footage for complaints filed more than one year after the incident date.

One of the District Attorney's Offices echoed the concerns raised by CCRB, recommending that the archiving of footage should not be limited only to instances of arrest, but extended to any incident for which a criminal complaint report is prepared. Such a policy would preserve footage of alleged crimes until an arrest can be made, leaving potentially invaluable evidence available for any subsequent legal proceedings. Similar policies exist in other departments, such as the Bay Area Rapid Transit Police Department in Northern California, which utilizes a tiered retention structure by preserving footage related to open criminal complaints for the duration of the statute of limitations applicable to the alleged offense.<sup>80</sup> NYPD should consult with the District Attorney's Offices to determine the feasibility of implementing such a system on top of a minimum 18-month retention period.

While under ideal circumstances all BWC recordings would be retained for a minimum of three years to ensure availability for any potential administrative or civil proceeding, logistical concerns over the volume of footage generated may make this impractical. Of paramount importance, however, is that oversight agencies such as CCRB have access to video necessary to support their investigations. Therefore, the minimum retention period for all BWC footage should be extended to at least 18 months to accommodate CCRB's statute of limitations for filing administrative charges. Additionally, making NYPD's BWC video retention policy available to the public would encourage citizen complainants who intend to file federal civil right lawsuits more than 18 months from the incident date to request archiving and preservation of their video.

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<sup>79</sup> Owens v. Okure, 485 U.S. 235 (1988).

<sup>80</sup> BAY AREA RAPID TRANSIT POLICE DEP'T, POLICY 451 USE OF THE AXON FLEX 451.2.1 (2013).

**Comparison of BWC Video Retention Periods**

POLICE DEPARTMENT <sup>81</sup>	MINIMUM RETENTION PERIOD BEFORE DELETION	EXTENSIONS OF RETENTION PERIOD
Las Vegas Metropolitan Police Department	45 days	May be retained for various periods up to 7 years based on crime committed or officer action taken
Cleveland Police Department	90 days	May be retained for various periods up to indefinitely based on crime committed or officer action taken
Phoenix Police Department	1 year	May be retained for various periods based on need for use during legal proceedings
Denver Police Department	1 year	May be retained for longer periods based on need for use during legal proceedings or administrative investigations
NYPD	1 year	May be retained indefinitely if an arrest is made or at the direction of the Legal Bureau
New Orleans Police Department	2 years	May be retained for longer periods based on a “written request...for a legitimate law enforcement purpose”
Oakland Police Department	5 years	None
San Diego Police Department	“[S]hall be preserved until that matter is resolved and/or in accordance with the law”	None

<sup>81</sup> LAS VEGAS POLICE DEP’T, GEN. ORDER GO-009-14 SUPP No 2 BODY WORN CAMERAS (2014); CLEVELAND DIV. OF POLICE, GEN. POLICE ORDER NO. 3.2.20 WEARABLE CAMERA SYSTEM 10 (2015); PHOENIX PD OPERATIONS ORDER 4.49, *supra* note 21; DENVER POLICE DEP’T, 111.11 BODY-WORN CAMERA – TESTING AND EVALUATION POLICY (2014); NEW ORLEANS POLICE DEP’T, PR447 BODY-WORN CAMERA PROCEDURE MANUAL; OAKLAND PD DEPARTMENTAL GEN. ORDER I-15.1, *supra* note 78; SAN DIEGO POLICE DEP’T, NO. 1.49 ADMIN. - AXON BODY WORN CAMERAS (2014).

Furthermore, unlike BWC footage that has not been archived but is automatically purged at the end of the retention period, Op Order 48 offers no explicit mechanism for purging archived recordings. Nor does it provide for the immediate purging of inadvertent, non-evidentiary footage,<sup>82</sup> even, as noted by the PBA in response to OIG-NYPD's request for input, when such purging is requested by the recording officer. BWC video must be available for the full duration of any relevant proceeding and purged expeditiously upon completion of the proceeding. Such policies can be a significant safeguard to the privacy of individuals captured on BWC footage and prevent a police department from indefinitely retaining footage of people with no relationship to the criminal justice or oversight systems. As in other departments, this purging may occur in a variety of circumstances, such as when a criminal, civil or administrative proceeding has concluded.

Given these considerations, OIG-NYPD recommends that NYPD extend its current minimum retention period of BWC video and institute mechanisms to have archived footage expeditiously purged.

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<sup>82</sup> NYPD officers interviewed by OIG-NYPD cited instances in which the sliding switch on the VIEVU® LE3 BWC caused the device to activate inadvertently during physical activity or altercations, recording hours of unnecessary footage. NYPD may consider these instances when determining when and how non-evidentiary recordings are to be purged.

## VIII. INPUT AND FEEDBACK

As evidenced by the valuable input OIG-NYPD received from government entities in researching this Report, NYPD should likewise take advantage of the many valuable resources regularly produced by various levels of government. These may include New York City's five District Attorney's Offices and CCRB. Furthermore, when considering the prevailing research on BWCs, one perspective has been notably absent in this extensive debate both in New York City and nationally — the public. While officer feedback on the use of BWCs is essential, community feedback is equally important and will add value in shaping a thoughtful BWC policy. In New York City, given the early stages of the Volunteer BWC Pilot Program and the limited number of officers and precincts using BWCs, the number of residents who have currently encountered BWCs may be relatively small. As the BWC program develops, however, that number will grow and input from the public will be essential. Allowing this type of feedback will make the BWC process more transparent and will further Op Order 48's goal of "foster[ing] positive relations with the community."<sup>83</sup>

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<sup>83</sup> Op Order 48, *supra* note 3, at 1.

## **IX. RECOMMENDATIONS**

Overall, Op Order 48 touches upon several core issues raised by police use of BWCs. While Op Order 48 offers guidelines on certain issues, such as when to record and self-reporting of non-compliance, other areas, such as quality assurance review and public access to recordings, require further clarification and more direction. OIG-NYPD offers the following recommendations to assist in improving the Volunteer BWC Pilot Program as it evolves and potentially expands.

Some of the recommendations below impact safety issues and/or issues that cannot be rectified after a large volume of footage is created (e.g. recommendations 1.3, 7.1, 8.1). These should be addressed prior to any expansion of a BWC program.

### **1. Officer Discretion to Record**

**1.1 NYPD should broaden and illustrate the standard for the mandatory activation of BWCs during street or investigative encounters.** While the “reasonable suspicion” standard may be useful for legal clarity in oversight and internal investigations, it is potentially problematic for officers’ use on the street when they are subject to a variety of situations. NYPD should adopt language that broadens the situations when BWCs should be activated — such as “all street encounters,” or “all investigative contacts” — with additional examples provided for guidance, which will encompass a broader range of encounters appropriate for recording and may be easier for officers to recall and interpret while on duty. Reasonable suspicion stops may be included among the examples.

**1.2 NYPD should redefine the safety exception for recording.** When “unsafe or impractical,” Op Order 48 excuses an officer from recording an otherwise mandatory scenario. Officers should only be permitted to rely on this exception when they can articulate a specific threat to an officer’s or bystander’s safety or other exigency. To prevent improper use of the safety exception, the language of Op Order 48 should be redefined to reflect this. The threat or exigency must also be recorded in the officer’s memo book and reported to the precinct desk officer as required under the reporting provisions already contained in Op Order 48.

**1.3 NYPD should consider stricter limitations on recording vulnerable populations.** Prior to any expansion of the BWC program, NYPD should work with New York City’s five District Attorney’s Offices to consider general prohibitions or restrictions on recording when officers become aware they are interacting with certain classes of individuals. These may include victims of sex crimes, abused children, undercover officers, confidential or citizen informants, and witnesses.

**1.4 NYPD should expand BWC training for officers using the BWCs.** In order to ensure that officers utilizing BWCs follow similar standards for activating their cameras and capture the entirety of citizen encounters whenever possible, NYPD should expand training on

the operation BWCs with an emphasis on procedures for activation and deactivation of the devices.

## **2. Notifications**

**2.1 NYPD should provide an example notification phrase to advise members of the public that they are being recorded.** While not mandatory, a model notification phrase — such as “I am advising you that our interaction is being recorded” — will serve to standardize notifications issued during encounters with the public and minimize the likelihood that any particular officer’s word choice will escalate a situation. It also ensures that members of the public are receiving all necessary information and provides officers with professional language to fall back on should an encounter become confrontational.

**2.2 NYPD should redefine the safety exception for notifications.** To prevent improper use of the safety exception by officers, NYPD should include language in Op Order 48 to specify that officers may only refrain from issuing a notification that an interaction is being recorded when there is a specific or articulable threat to their safety or that of another officer or member of the public. The threat or exigency should also be recorded in the officer’s memo book and reported to the precinct desk officer as required under the reporting provisions already contained in Op Order 48.

## **3. Compliance**

**3.1 NYPD should require supervisors to review footage related to documented incidents.** Under Op Order 48, each incident report, such as a complaint or arrest report, already requires a supervisor’s review and must note that a BWC recording exists. NYPD should have reviewing supervisors check related recordings for compliance with BWC policy upon approving an officer’s report. This will serve to ensure that officers are activating or deactivating their BWCs in accordance with Op Order 48.

**3.2 NYPD should address discipline when the BWC program is more established and formalized.** A final BWC policy should emphasize that it is a violation of Department policy to willfully or negligently fail to record any portion of an incident absent an authorized exception, and that such a failure may result in disciplinary action. To enforce the policy once formalized, NYPD should identify measures that might be taken should the policy be violated. Describing potential consequences for violations increases accountability and promotes greater transparency and fairness, for officers and the public alike.

**3.3 NYPD should computerize the random selection of officers for review.** NYPD should consider implementing a randomized system of quality assurance review. A possible model might include random selection of a certain number of patrol officers from each squad within each command to be reviewed on a monthly basis. No officer’s footage should be reviewed twice before the remainder of his or her command has been selected. Such random

checks will ensure that all officer footage is reviewed equally and that encounters which did not generate Departmental reports can be reviewed.

**3.4 NYPD should establish a system for high-level and periodic review.** NYPD should consider having a central unit, such as the Office of the Deputy Commissioner, Legal Matters, or the Risk Management Bureau, perform periodic, system-wide audits of random BWC footage to assess the efficacy of established policies. These audits should be focused on refining and improving BWC policy as opposed to checking for individual compliance.

#### **4. Access for Quality Assurance Review**

**4.1 NYPD should grant supervisors general access to BWC footage with restrictions on arbitrary review.** OIG-NYPD recognizes the need for supervisors to have general access to BWC footage for emergent investigative purposes, investigations of failure-to-record incidents, training, and to ensure the accuracy of reports. However, NYPD should make it a clear violation of policy for any supervisor to arbitrarily review footage solely to uncover violations or to use BWC videos to selectively discipline officers for minor infractions.

**4.2 NYPD should integrate BWC footage review into NYPD's field training program.** NYPD should consider allowing senior officers to review the footage of their junior partners in an informal mentorship capacity. Such practice would allow senior officers to more clearly point out errors as they occur and illustrate tactical alternatives. Similar policies exist in other departments and provide a useful alternative to supervisory intervention and discipline.

**4.3 NYPD should solicit feedback and suggestions for improvement from supervisors performing quality assurance reviews and officers participating in the Volunteer BWC Pilot Program.** Uniformed members who are included in the BWC program will be more likely to accept it if they have an active role in providing feedback to NYPD as its BWC program expands. Input based on officers' on-the-ground experience could generate good ideas and be incorporated into more formal, Department-wide training. By example, the input of officers participating in the pilot program was invaluable to OIG-NYPD's review.

#### **5. Mitigating Officer Infractions Recorded on BWCs**

**5.1 NYPD should develop policies to guide supervisors when officer infractions are observed on BWC footage.** NYPD should use BWC footage that reflects minor infractions as an opportunity to informally educate or provide feedback to officers. NYPD should not include these minor infractions in the relevant officer's personnel record. Supervisors should not, however, be precluded from acting on obvious or serious misconduct.

**5.2 NYPD should institute mandatory reporting procedures.** Officers should be required to report gross misconduct by NYPD colleagues observed when reviewing their own footage for any purpose.

**5.3 NYPD should integrate BWC recordings into NYPD's existing force monitoring programs.** While supervisors should not arbitrarily scrutinize individual officers' BWC footage, an exception should be made to allow supervisors to perform consistent and selective reviews of any footage generated by officers who have been placed on force monitoring. Supervisors would be able to more specifically identify the root dysfunction of an officer's interaction with the community and ensure compliance with interventions.

## **6. Access by Officers**

**6.1 Access to BWC recordings should be limited where officers are under investigation or are witnesses in misconduct investigations.** Where CCRB, IAB, a District Attorney or OIG-NYPD informs NYPD that an officer or incident is under investigation or is a witness in such a matter, the notification should trigger a hold on that officer's review of relevant BWC recordings until after the officer has provided a formal statement. Officers should, however, be permitted to submit supplemental reports after reviewing video footage, inasmuch as their initial testimony diverges from the relevant video, and NYPD should not discipline officers solely on the basis of discrepancies absent evidence of intent to mislead.

**6.2 In all other instances, access to recordings prior to making statements should be noted in those statements.** NYPD should require officers to note in Departmental incident reports when they have reviewed BWC footage to assist in their preparation.

## **7. Public Access**

**7.1 If and when disclosing BWC video, NYPD should provide privacy and safety protections for vulnerable populations.** Because BWC video constitutes a public record under the New York Freedom of Information Law, NYPD should establish procedures for conducting appropriate legal evaluations to determine whether footage sought in individual requests may be disclosed or is subject to applicable FOIL exemptions. Additionally, NYPD should establish protocols to obscure the identities of certain persons captured on camera, including undercover police officers and vulnerable populations such as minors and others protected by law, if and when such footage is disclosed publicly.

**7.2 NYPD should ensure fairness between citizens' and officers' right to view BWC footage.** NYPD should not permit members of the public to view footage prior to providing a statement for an investigation in any circumstance. This is consistent with OIG-NYPD's recommendation aimed at officers under investigation.

## **8. Retention and Purging**

**8.1 NYPD should establish a minimum retention period of at least 18 months.** NYPD should extend the one-year minimum retention period for all BWC recordings to 18 months in order to ensure its availability for any administrative proceeding. A notice posted conspicuously on NYPD's website should advise the public of this retention period so that individuals intending to file a civil claim can request their footage be archived.

**8.2 NYPD should ensure expeditious purging of archived BWC footage that no longer holds evidentiary value.** Op Order 48 automatically purges non-archived BWC footage once the minimum retention period has passed. BWC footage that has been archived — either based on special request or its evidentiary value — can be retained indefinitely under the current terms of Op Order 48. It is therefore important that once archived video is no longer needed, protocols are established so that such video is expeditiously purged. NYPD should consult with the District Attorney's Offices and related entities regarding any relevant legal constraints to purging BWC video.

## **9. Public, Government, and Expert Input**

**9.1 NYPD should incorporate government and public input in continuing to build the BWC program.** NYPD should take advantage of the many valuable resources regularly produced by various levels of government. These may include New York City's five District Attorney's Offices and CCRB. Like other cities including Minneapolis and Los Angeles, NYPD should also expressly design and incorporate mechanisms for obtaining input from citizens and community stakeholders, such as focus groups or surveys, as it continues to grow and revise its BWC program.

### ***Please contact us at:***

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## **APPENDIX A**

### **Operations Order 48**

#### **Pilot Program – Use of Body-Worn Cameras**



# OPERATIONS ORDER

SUBJECT: <b>PILOT PROGRAM - USE OF BODY-WORN CAMERAS</b>	
DATE ISSUED:	NUMBER:
<b>12-02-14</b>	<b>48</b>

1. The Department is issuing body cameras to certain uniformed members of the service as part of a voluntary “Body-Worn Camera” (BWC) pilot program. The BWC system has proven to be an effective tool in documenting on-duty-related police activity. The BWC pilot program will be examined to determine whether it contributes to officer safety, provides evidence for criminal prosecutions, helps to resolve personnel complaints and fosters positive relations with the community.

2. Therefore, upon the deployment and training in the voluntary use of the Body-Worn Camera, uniformed members of the service will adhere to the following procedure when so equipped:

**PURPOSE** To visually and audibly record specific categories of interactions between uniformed members of the service and the public and to retain associated video for a period of time.

**SCOPE** As part of a voluntary, pilot “Body-Worn Camera” (BWC) system program, the Department is issuing body cameras to certain uniformed members of the service. BWC systems have proven to be an effective tool in documenting on-duty-related activity. The BWC program will be examined to determine whether it contributes to officer safety, provides evidence for criminal prosecutions, helps to resolve personnel complaints and fosters positive relations with the community.

**PROCEDURE** When a uniformed member of the service is equipped with a “Body-Worn Camera” (BWC):

**UNIFORMED MEMBER OF THE SERVICE**

1. Prior to roll call:
  - a. Draw the personally assigned BWC from the charging location
  - b. Inspect the BWC to ensure that the battery is fully charged and the device(s) is/are assembled correctly and operational
  - c. Immediately report if a BWC is not functioning properly, becomes damaged or is otherwise unaccounted for to the desk officer and document in **ACTIVITY LOG (PD112-145)**
  - d. Position the BWC on the uniform to facilitate optimal recording field of view.

**NOTE** *The BWC is only intended to record anything a uniformed member of the service could potentially observe or hear using his or her sense of sight and sound. The BWC is not equipped with night-vision, infrared technology or enhanced audio technology.*

2. Deploy BWC only when personally issued and authorized by the Department to record activity.
  - a. The use of any other recording device is strictly prohibited.

**UNIFORMED  
MEMBER OF  
THE SERVICE  
(continued)**

3. Notify desk officer if a BWC is not functioning properly, becomes damaged or is otherwise unaccounted for at any point during the tour and document in **ACTIVITY LOG**.
4. Dock BWC in the designated location in the Department facility for transfer of data and to charge the battery at end of tour.
5. Document in **ACTIVITY LOG** as well as in the narrative of any Department report (e.g., **UNUSUAL OCCURRENCE REPORT (PD370-152)**, **COMPLAINT REPORT (PD313-152)**, **ON LINE BOOKING SYSTEM ARREST WORKSHEET (PD244-159)**, **STOP, QUESTION AND FRISK REPORT WORKSHEET (PD344-151A)**, etc.) any time a recording is captured of an incident.
  - a. Include the serial number of the device as well as the date/time of the incident.
6. Activate BWC prior to initiating, or as soon as practical after initiating, the following police actions:
  - a. All enforcement encounters where there is at least reasonable suspicion the person(s) has committed, is committing or may be involved in criminal activity consistent with *P.G. 212-11*, “*Stop and Frisk*.” This includes, but is not limited to, self-initiated stops and radio runs
  - b. All enforcement encounters where there is reason to believe that the individual is committing a violation/petit offense for which a summons may be issued (e.g., TAB summons, ECB summons, Criminal Court summons, etc.)
  - c. All vehicle stops
  - d. Taking or attempting to take an individual into custody (e.g., arrests, protective custody of an emotionally disturbed person, etc.)
  - e. All incidents involving the use of force
  - f. Any public interaction, regardless of context, that escalates and becomes adversarial, so long as it is not one of the prohibited situations in step “8” below
  - g. All interior vertical patrols of non-Housing Authority buildings and Housing Authority buildings conducted pursuant to *P.G. 212-59*, “*Vertical Patrol*” and *P.G. 212-60*, “*Interior Vertical Patrol of Housing Authority Buildings*.” The BWC must be activated upon entering the building and will not be deactivated until exiting the building and terminating the interior vertical patrol along with any associated police action, if any.

**NOTE**

*The BWC is not required to be activated as per step “6” above if it is unsafe or impractical to do so, or where a malfunction or other mechanical issues impeding the use of the device exists. In any case of a failure to record an incident as required in step “6,” such failure to activate and the reason for such failure to activate must be properly documented in the uniformed member’s **ACTIVITY LOG** and immediately reported to the desk officer.*

**UNIFORMED  
MEMBER OF  
THE SERVICE  
(continued)**

7. Consider activating the BWC during any activities where, in the uniformed member's judgment, it would be beneficial to record, so long as it is not one of the prohibited situations in step "8" below.
8. Do not activate the BWC to record any of the following:
  - a. Encounters not directly related to official activities in the proper performance of police duties
  - b. Performance of non-enforcement functions or administrative duties within a Department facility
  - c. Places where a reasonable expectation of privacy exists (unless taking police action outlined in step "6" above), such as, but not limited to, hospital emergency rooms, locker rooms and restrooms
  - d. Attendance at events covered under the "Handschu Guidelines" (see *P.G. 212-72, "Guidelines for Uniformed Members of the Service Conducting Investigations Involving Political Activities"*), unless taking police actions outlined in step "6" above
  - e. A potential witness who requests to speak to an officer confidentially or desires anonymity
  - f. A victim or witness who requests that he or she not be recorded and the situation is not confrontational
  - g. A victim who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation.
9. Notify desk officer if an activity was recorded that should not have been recorded as per step "8" above, and document in **ACTIVITY LOG**.
10. Inform subjects being recorded by BWC that the interaction is being recorded, when practicable and consistent with officer safety.
11. Do not terminate recording until the completion of the police action, once the BWC has been activated.
  - a. If for any reason a recording is interrupted, document the reasons for or factors contributing to the interruption in **ACTIVITY LOG** and notify the desk officer.
12. Notify the following when necessary:
  - a. Appropriate assistant district attorney/assistant corporation counsel when a member of the service has knowledge that any portion of an incident relating to an arrest, prosecution or other criminal matter before the court is captured by a BWC
  - b. Assigned detective/investigator any time a recording is made at the scene of a police incident or crime under investigation
  - c. Legal Bureau any time a member of the service becomes aware of civil litigation involving a matter captured by the BWC.
13. Use the storage software to mark for automatic archival any portion of a BWC recording that captures an arrest and any related footage.
  - a. For a BWC recording that captures an arrest, use the manufacturer's software to burn a compact disc/digital video disc (CD/DVD) of the relevant footage and enter the CD into evidence, as per *P.G. 218-01, "Invoicing Property – General Procedure."*

**UNIFORMED  
MEMBER OF  
THE SERVICE  
(continued)**

- b. All other archival requests should be made to the desk officer, who will comply with step “20” below.
- 14. Request from the integrity control officer access to review any video pertaining to an event captured from the personally assigned BWC when notified to give testimony (either sworn or unsworn) or to be interviewed in any criminal, civil or administrative case or matter or appear before an investigative body (e.g., CCRB, Internal Affairs Bureau, Investigations Unit, etc.).
  - a. This is consistent with refreshing one’s recollection by reviewing **ACTIVITY LOG** and Department reports.
  - b. Be cognizant of and distinguish between facts recalled independently, recollection refreshed by review of video and other sources, and facts not previously known but learned by reviewing the video.

**NOTE**

*The BWC is intended to record anything the uniformed member could potentially observe using his or her sense of sight. That does not mean that the uniformed member is required or expected to have seen or recollect everything documented in the footage.*

**SUPERVISOR  
CONDUCTING  
ROLL CALL**

- 15. Inspect uniformed members who are issued BWCs for their personally assigned BWCs and ensure that they are properly affixed to the uniform and functioning properly.
- 16. Conduct an immediate investigation when notified that a BWC is not functioning properly, has become damaged, or is otherwise unaccounted for during roll call, and comply with *P.G. 217-10, “Accidents – Department Property”* or *P.G. 219-20, “Loss or Theft of Department Property,”* as appropriate.

**DESK OFFICER**

- 17. Conduct an immediate investigation when notified that a BWC is not functioning properly, has become damaged, or is otherwise unaccounted for during a uniformed member’s tour of duty and comply with *P.G. 217-10, “Accidents – Department Property”* or *P.G. 219-20, “Loss or Theft of Department Property,”* as appropriate, and record discrepancies in the Command Log.
- 18. Conduct an investigation when notified that a recording was interrupted or an incident that is required to be recorded per step “6” was not recorded:
  - a. Make determination regarding the propriety of the circumstances surrounding the failure to record and document results in Command Log
  - b. Ensure that any resulting failure to record is documented in the uniformed member’s **ACTIVITY LOG**
  - c. Prepare report on **Typed Letterhead** detailing the investigation, findings, and actions taken and forward a copy to:
    - (1) Deputy Commissioner, Legal Matters
    - (2) Chief of Department
    - (3) Chief of Patrol

**DESK OFFICER  
(continued)**

- (4) Chief of Housing Bureau or Transit Bureau if incident occurred in Housing Authority development or in the subway system.
- 19. Ensure that all BWCs are returned to their docking station for video upload and/or charging at the end of tour.
- 20. Notify commanding officer of any requests to archive any BWC recording related to a citizen complaint involving a member of the command, or any other BWC recording a member of the command requests to be archived (aside from recordings of arrests, which are handled as per step “13”).
  - a. Provide commanding officer with the relevant BWC serial number, uniformed member’s name, justification for the request and date/time of occurrence.

**NOTE**

*A member of the service may request that a BWC recording be archived and retained beyond the prescribed retention period. BWC recordings will be considered for archival if the recording is required for a criminal investigation/prosecution, internal investigation, pending civilian complaint, pending disciplinary matter or other circumstance deemed appropriate by the Deputy Commissioner, Legal Matters. Requests to archive a recording will be submitted to the commanding officer of the uniformed member who recorded the video in question.*

**INTEGRITY  
CONTROL  
OFFICER**

- 21. Notify commanding officer of any events recorded by a BWC that are prohibited to be recorded as per step “8,” above.
- 22. Allow uniformed members to review any video pertaining to an event captured from their own BWC prior to giving testimony (either sworn or unsworn) or being interviewed or appearing before any investigative body (e.g., Civilian Complaint Review Board, Department of Investigation, Internal Affairs Bureau, Investigations Unit, etc.).

**COMMANDING  
OFFICER**

- 23. Submit to Legal Bureau a request on **Typed Letterhead** (direct) to archive any BWC recording related to a citizen complaint involving a member of the command, or any other BWC recording a member of the command requests through the desk officer to be archived (aside from recordings of arrests, which are archived as per step “13”).
  - a. Provide Legal Bureau with the relevant BWC serial number, uniformed member’s name, justification for the archival request and date/time of occurrence.
- 24. Conduct an investigation and review the video in question when notified of any prohibited video recorded in error (as per step “21” above).
  - a. In cases where it is determined that video was in fact a recording prohibited by step “8” above, submit to the Legal Bureau a report on **Typed Letterhead** (direct) detailing the findings of the investigation and request that the video be purged.

**ADDITIONAL  
DATA**

**OPERATIONAL CONSIDERATIONS:**

*The BWC as well as video, audio and data captured by the BWC, irrespective of the content, are at all times the property of the Department. Uniformed members of the service may not copy, publish, share or disseminate any audio, video, image or data to anyone except as authorized by the Department. Furthermore, members of the service may not edit, delete or alter any video or audio captured by the BWC or stored on the Department's network or approved storage media.*

*For technical assistance with the BWC, contact the Information Technology System Division (ITSD) Wheel Supervisor, 24/7 at: 646-610-7614 and provide the following:*

- *Name*
- *Tax Number*
- *Command*
- *Call Back Number (cell phone, if possible)*
- *Body-Worn Camera Serial Number*
- *Detailed description of issue including events during malfunction*

*For additional CDs/DVDs for burning of arrest footage, email [bwc@nypd.org](mailto:bwc@nypd.org)*

*Video captured by BWCs will be preserved for one year, at which time it will be automatically deleted, unless it is otherwise accepted for archival or directed to be archived by the Legal Bureau (with the exception of BWC recordings of arrests, which are archived as per step "13"). In addition to commanding officers, entities who may request archival of video include the Internal Affairs Bureau, Investigations Units, and members of the Deputy Commissioner, Legal Matters (DCLM) and the Legal Bureau, by complying with the procedure in step "23" above. Such archived material shall be retained and preserved until directed otherwise by the Legal Bureau or DCLM.*

**RELATED  
PROCEDURES**

*Vertical Patrol (P.G. 212-59)  
Interior Vertical Patrol of Housing Authority Buildings (P.G. 212-60)  
Guidelines for Uniformed Members of the Service Conducting Investigations Involving Political Activities (P.G. 212-72)  
Accidents – Department Property (P.G. 217-10)  
Invoicing Property – General Procedure.(P.G. 218-01)  
Loss or Theft of Department Property (P.G. 219-20)  
Stop and Frisk (P.G. 212-11)*

**FORMS AND  
REPORTS**

**ACCIDENT REPORT-CITY INVOLVED (PD301-155)**  
**ACTIVITY LOG (PD112-145)**  
**UNUSUAL OCCURRENCE REPORT (PD370-152)**  
**COMPLAINT REPORT (PD313-152)**  
**ON LINE BOOKING SYSTEM ARREST WORKSHEET (PD244-159)**  
**STOP, QUESTION AND FRISK REPORT WORKSHEET (PD344-151A)**  
**Typed Letterhead**

3. Operations Order 45, series 2014 is hereby **REVOKED**.

4. Commanding officers will ensure that the contents of this Order are immediately brought to the attention of members of their commands.

**BY DIRECTION OF THE POLICE COMMISSIONER**

**DISTRIBUTION**

**All Commands**

**APPENDIX B**  
**TASER® Axon Flex**



## AXON flex™

- ▶ **More Options for Officers** - With multiple mounting configurations... the officer chooses what works best.
- ▶ **An End-to-End Solution** - A simple to use solution to manage digital data when paired with EVIDENCE.com.
- ▶ **The TASER Experience** - World-class customer service, support, quality and training.

AXON flex is a breakthrough point-of-view video system that improves transparency between law enforcement agencies and their communities, while protecting officers from false claims. Officers can mount AXON flex on their eyewear, ball cap, collar, helmet, epaulette, body, or simply on the dash of the cruiser.

SMARTPHONE COMPATIBLE  
FOR WIRELESS VIEWING



APP AVAILABLE FOR APPLE IOS OR ANDROID.

**TASER.COM/FLEX**

▶ scan this QR code to learn more



## FEATURES & BENEFITS



### POV Video

Reduces false complaints and lawsuits by accurately capturing video from the officer's perspective.



### Full Shift Buffer

Pre-event buffer yields the best reduction in complaints and lawsuits when actions leading up to the incidents are recorded.



### Multiple Mounting Options

The officer chooses, mounts on the eyewear, ball cap, collar, helmet, epaulette, body, or simply on the dash of the cruiser.



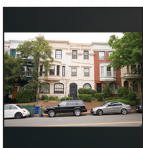
### Retina Low Light

Recording with Retina Low Light will show best what the human eye actually sees in dark conditions.



### EVIDENCE.com Integration

This simple to use, end-to-end solution will manage digital data when paired with EVIDENCE.com.



### Wide-Angle Lens

A 75-degree lens provides for a greater field of view – allowing officers to capture more of what they experienced.



### Weather Proof

Greater resistance to rain, humidity and other elements.



### AXON Mobile

Live Bluetooth® streaming to smartphone application, allowing officers to preview, review and add notes to recorded events.

## SPECIFICATIONS

- ▶ **Weather Resistant** – IPX2-MIL-STD 810F Method 506.4 procedure 1 (Rain & Blowing)
- ▶ **Housing** – ≤.1 lux
- ▶ **Configurable A/V Settings** – Bit Rate (Multiple Settings to Optimize File Size and Upload Speed) Audio – On/Off
- ▶ **Video Sensor Settings** – 30 FPS
- ▶ **Video Resolution** – 640 x 480
- ▶ **Server Configurable** – EVIDENCE.com Connected or Local Download
- ▶ **Field of View** – 75 Degrees
- ▶ **Record Time** – 4 - 13 Hours Based on Setting
- ▶ **12+ Hour Pre-Event Buffer** – Captures Previous 30 Seconds from Start with No Audio
- ▶ **Battery Stand by Time in Buffering** – 12+ Hours
- ▶ **Recharge Time** – 12 - Hour Use in about 6 Hours
- ▶ **Power Activation** – Slide Switch
- ▶ **Record Activation** – Push Button – Double-Press to Start Recording, 3-Second Hold to End Recording
- ▶ **Volume Control** – 4 Step Momentary Press
- ▶ **Video Playback** – via Phone App or MDT App
- ▶ **GPS Coordinates** – via Phone App
- ▶ **Operating Temperature** – -4° F [-20° C] to 122° F [50° C]
- ▶ **Drop Test** – 6 Feet
- ▶ **Humidity** – 80% Non Condensing
- ▶ **Warranty** – (Camera/Controller) - 1 Year on Camera, Accessories 90 Days
- ▶ **Storage** – 8 GB



# **APPENDIX C**

## **VIEVU<sup>®</sup> LE3**



# VIEVU Product Line



Body Worn Video Cameras



Accessories



Software

## Body Worn Video Cameras



### LE3

The LE3 is rugged, waterproof, and easy to use. The camera clips to a uniform to record both the actions of the wearer and those in its field of view. LE3 features include HD video resolution, 16GB internal memory and up to 12 hours of record time. Video from the LE3 camera is securely stored in the cloud or on-site using VIEVU's proprietary software. A FIPS 140-2 compliant digital signature process is used to verify the video has not been altered. Additionally, if the camera is lost or stolen, VIEVU's VidLock security software will prevent unauthorized access to video evidence.



### VIEVU<sup>2</sup>

Now a law enforcement grade camera is available for professionals. It is hands free, rugged and waterproof. Best of all, it streams and stores real time video on your iPhone or Android Smartphone. The VIEVU Smartphone App lets you record, edit, and share video right from your phone – no computer required.

## Accessories



### LE3 Multi-Dock

An automated download and recharge station for up to 15 LE3 cameras. Simply place the LE3 into the Multi-Dock and it will automatically download the video files, metadata and recharge the battery. Automated download requires a USB connection to a computer and VERIPATROL software.



### LE3 Car Kit

The Car Kit is a suction-mount cup holder with adjustable arm that can be used to attach an LE3 camera to any nonporous surface. The Car Kit includes a USB cable and 12V car adapter. It can easily attach to a window and can swivel to allow recording inside or outside the vehicle. The Car Kit can also attach to a nonporous desktop surface at various viewing angles to record interviews, depositions or other work processes.



### LE3 Cradle

The LE3 Cradle is a durable plastic fixture for easily connecting an LE3 camera for downloading or charging. Securely mounts to any flat surface such as a desk or in the patrol car. Requires connecting to a LE3 download or charging cable (not included). The LE3 Cradle includes a piece of foam tape and two mounting screws.



### VIEVU<sup>2</sup> Helmet & Tripod Mount

The Helmet & Tripod Mount is a versatile aluminum and steel mounting accessory that can be used to secure the VIEVU<sup>2</sup> in a variety of situations. The helmet mount includes an elastic head band for wearing on a helmet, several pieces of foam tape to securely attach the camera to a wide range of surfaces and a tripod adapter to mount the camera on any universal tripod accessory.

## Software



### VIEVU Solution | Cloud Hosted Evidence Management

VIEVU Solution is the next generation fully-hosted cloud evidence management system. Built on Microsoft Azure Government\*, the first enterprise cloud to directly support CJIS, VIEVU Solution allows you to securely upload videos and documents directly from your computer or smartphone eliminating the hassle and maintenance of an on-site storage solution.

VIEVU Solution is fully hosted and can be accessed from any modern web browser. An optional IP restriction feature allows you to control the locations where the system can be accessed preventing unauthorized access.

VIEVU partnered with Microsoft® to develop the VIEVU Solution™ Cloud platform on Microsoft® Azure Government\*, which is the first – and only – hyper-scale commercial infrastructure cloud platform contractually committed to helping federal, state and local governments meet CJIS Policy requirements. The VIEVU Solution allows government customers to store their data in the Cloud without concern over CJIS compliance. Microsoft® Azure Government has statutory CJIS compliance to state laws, regulations, agency requirements and is FBI-certified.

VIEVU Solution includes a lightweight case management feature allowing you to upload and store all file types including videos, pictures and documents in one secure location. Use the VIEVU Solution to centralize all of your electronic evidence storage needs.



### VERIPATROL | On-Site File Management

VERIPATROL is a fully network capable software system that allows for the retrieval, storage and management of video files for the LE3 camera. A customizable retention period automatically removes unwanted videos to ensure that the storage location does not exceed maximum capacity. Videos may be marked to be saved and held for an indefinite period of time.

To download videos from an LE3, the user simply connects the camera to the computer, launches the VERIPATROL Client application, enters their unique login ID and password and clicks download; VERIPATROL handles the rest. When the download is complete, the memory is cleared so it is ready to record again.

Administrators have access to search for videos by officer, case number or date and time. They may review and make copies of video files as needed. Each time an administrative task is performed, such as copying or deleting a video, the database log records the date, time, user ID and purpose for accountability.

VERIPATROL includes VIEVU's VidLock Security Suite. VidLock includes several layers of security protection to ensure chain of custody and evidence protection. Once a camera has been paired with an installation, the videos can only be downloaded to your specific installation. If the camera were to be lost or stolen, the video files cannot be downloaded to another installation of VERIPATROL.



### VERIPATROL | Hybrid

VERIPATROL Cloud is a unique hybrid platform that combines an on-site VERIPATROL server and the power of the Cloud to efficiently store your video files. When VERIPATROL is connected to Microsoft Azure Government\*, you benefit from the speed and efficiency from an on-site solution combined with the infinite scalability and streaming performance of the cloud.



### VERIPATROL Mobile

VERIPATROL Mobile is an optional add-on to VERIPATROL that allows for interacting with VIEVU LE cameras from computers installed in vehicles where a connection to the server is not available. VERIPATROL Mobile has 2 operating modes: Mobile and Mobile+. Mobile is a free add-on that allows you to review and add metadata to video files currently stored on a camera for report writing and analysis in the field. Mobile+ is a licensed add-on that allows for the download, review and transfer of video files over WiFi/3G/4G from cameras to the VERIPATROL server using BeeNetworkx's proprietary and patented technology called LinkPro.



### VIEVU Smartphone App

The VIEVU smartphone app connects the VIEVU<sup>2</sup> camera to your iPhone or Android smartphone to stream live video, make settings changes on the VIEVU<sup>2</sup> camera and act as a viewfinder. It also has a built-in video editing feature to trim the video length. Video can easily be uploaded to YouTube, Twitter, Facebook, Dropbox, Email, or Texted directly from your smartphone – no computer required.

## Product Images, Logos and Sample Video

Additional information and content is available for download including:

1. Product image files for internet and print distribution.
2. VIEVU logo image files for internet and print distribution.
3. Promotional videos for products.

**Download Link:** <http://www.viewu.com/news-and-media/media-kit/>

## LE3 Detailed Specifications



### Video

Video Resolution	1280×720 (HD) or 848×480 (Widescreen SD)
Recording Speed	30 Frames Per Second
Recording Format	MPEG-4, H.264 Codec, AVI Container
Lens Field of View	68 Degrees (Diagonal)
Date and Time Stamp	GMT or Local Time. Embedded on Video

### Audio

Recording Format	ADPCM
Mute	Ability to Disable/Enable Audio Recording

### Environmental Conditions

Minimum Working Temperature	- 4° F (- 20° C)
Maximum Working Temperature	+ 122° F (+ 50° C)
Recommended Storage	+ 68° F (+ 20° C) < 75% Relative Humidity
Water Ingress Testing	Waterproof, Non-Submersible (IPX5)
Drop Testing	10' Onto Hard Surface

### Battery

Type	Lithium-Ion (Non-Removable)
Recording Life	5 Hours at SD, 3 Hours at HD*
Standby Life	72 Hours *
Charge Cycles	500 Cycles > 75% Capacity *
Recharge Time from Empty	3 Hours *
External Battery Pack Compatible	Yes



### Storage

Raw Storage Capacity	16 GB (Non-Removable)
Video Storage Capacity	12hr at SD Resolution, 6hr at HD Resolution *

### Design

Dimensions (without clip)	3" × 2.1" × .85" (76 mm x 53mm x 22mm)
Weight (without clip)	2.8 oz. (79 g)

### Certifications

FCC Class B	Yes
CE 2004/108	Yes
RoHS	Yes
WEEE	Yes
Environment Testing	Water Ingress: IPX5 (Non-Submersible)

### Warranty

Manufacture Warranty	90 Days
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### Software Compatibility

VIEVU Smartphone App	No
VERIPATROL File Management	Yes



\* Environmental Conditions and Age May Increase or Decrease Specification

## VIEVU<sup>2</sup> Detailed Specifications



### Video

Video Resolution	1920x1080 (FHD), 1280x720 (HD), 640x360 (SD)
Recording Speed	30 Frames Per Second
Recording Format	MPEG-4, H.264 Codec, AVI Container
Lens Field of View	95 Degrees (Diagonal)
Date and Time Stamp	Embedded on Video

### Wi-Fi

Wi-Fi Protocol	802.11 G
Mode of Operation	Access Point (AP)
Security	WPA2

### Audio

Recording Format	PCM
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### Battery

Type	Lithium-Ion (Non-Removable)
Recording Life	1.5hr+ at 1080. 2hr+ at lower resolutions *
Standby Life	3 Hours *
Recharge Time from Empty	3 Hours *
External Battery Pack Compatible	Yes



### Storage

Raw Storage Capacity	16 GB (Non-Removable)
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### Design

Dimensions (without clip)	1.9" x 1.9" x .75" (50mm x 50mm x 19mm)
Weight (without clip)	2.4 oz. (68 g)

### Certifications

FCC Class B	Yes
CE 2004/108	Yes
RoHS	Yes
WEEE	Yes
Environment Testing	Water Ingress: IPX5 (Non-Submersible)

### Warranty

Manufacture Warranty	90 Days
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### Software Compatibility

VIEVU Smartphone App	Yes
VERIPATROL File Management	No



\* Environmental Conditions and Age May Increase or Decrease Specification