



**VERMONT
NETWORK**

Testimony on Body Worn Cameras
House Committee on Government Operations
January 18, 2017

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Policy Director

Thank you for inviting the Network to share our concerns regarding body worn cameras. We appreciate that the legislature is taking this time to carefully consider the possible impact of body cams on victims in domestic violence and sexual assault cases. This is a very complex issue. Body cams may strengthen law enforcement officer accountability and provide valuable information for prosecutions, however, without policy and procedures which recognize the traumatic circumstances experienced by victims of domestic violence and sexual assault crimes such recordings may also come at the cost of victims' well-being and their right to privacy.

In our effort to inform your deliberations, we have consulted numerous colleagues across the nation, including domestic violence policy advocates in Washington DC, Texas and Minnesota. We have also received information from the Battered Women's Justice Project and the National Network to End Domestic Violence. Body cameras are being used in many jurisdictions to monitor and improve civil rights relations between law enforcement and those disproportionately affected by law enforcement response. As you know, various cases in recent years have raised serious questions regarding the criminal justice system's response to crime, or lack thereof, in African-American and other communities of color. Such cases have spurred local, state and national policy makers to look for funding to support increased use of cameras by law enforcement.

We know that victims' control over the use of information about their victimization is a key component to their physical, sexual and emotional safety, and is vital to their trauma recovery. When victims cannot control information about their victimization and the purposes for which it is used, they are often reluctant to reach out for help. Additionally, if victims initially reach out for help and subsequently their information is misused, they are less likely to seek help in the future.

Body cameras are different from dash cameras - dash cameras do not enter our homes, bathrooms, children's bedrooms and other private spaces including hospitals and domestic violence shelters where victims receive confidential care and support. If victims of a broken bathroom window or television theft are uncomfortable with body camera video of their home circulating on social media, imagine the impact for victims of a highly personal, violent crime when they see images and recordings of themselves at their most vulnerable on Facebook and Twitter.

Because of these concerns, the Network's two primary areas of focus regarding body-cams have been:

1. What interactions with the police are being **recorded**?
2. What footage will be disclosed and will victims have any control or input into **disclosure** decisions?



LEAB Report and Model Policy Recommendation on Body Worn Cameras

Having reviewed the Law Enforcement Advisory Board report and Model Policy recommendation as received on December 16, 2016, the Network recommends this committee consider the following changes:

1. RECOMMENDED CHANGES re: RECORDING:

#5 on Page 5: "A recording may be stopped in cases of a sensitive nature such as domestic assault or sexual assault, once the offender has been removed from the scene and the body camera user has recorded an initial account from the victim and recorded the scene of the alleged offence. In these circumstances the user should consider whether continuing to record through statement-taking or other administrative processes is appropriate or necessary."

#7 on Page 5: "Officers should, when reasonable and when circumstances allow, obtain consent prior to recording interviews with crime victims."

These sections clearly acknowledge the potentially sensitive nature of certain cases, however the guidance for law enforcement officers in these situations is somewhat vague.

The Network recommends the following more detailed wording in order to clarify **recording procedures**:

Crime Victim Interaction:

When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, ask the apparent crime victim, if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime victim responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera. If victims of incidents that are sensitive in nature, such as domestic violence or sexual assault, request not to be recorded, the officer will comply with the request and disengage the body camera.

In the case of victims of serious sexual offences, the victim's explicit permission for video recording of the initial disclosure should be sought and if the victim is in any way unsure of the need for the recording to be made or is uncomfortable with the thought of being recorded then the user should not record using video.ⁱ

If the victim does not consent to being video recorded the user may consider the option to divert the camera away from the victim, or obscuring the lens and then record the encounter using the audio only facility. Again in these circumstances the explicit consent of the victim must be obtained prior to audio only recording.

In all cases, the officer must obtain explicit consent from crime victims before recording any victim interviews.ⁱⁱ



The Model Policy also does not make any provision for **recording in confidential spaces such as domestic and sexual violence shelters:**

See Page 6:

“Officers should record all contacts in their entirety unless the officer enters a location where another recording device is available to continue recording the contact, or a citizen in their residence asks not to be recorded.”

The Network recommends the inclusion of language protecting the privacy and confidentiality of domestic and sexual violence shelter location and identifiers as well as the privacy and safety of crisis worker staff.

2. RECOMMENDED CHANGE re: DISCLOSURE

See Page 7:

“Exemptions from Disclosure Under the Public Records Act

1 VSA 317 (c) and all subsections under (c) specify those records that are exempt from public viewing and copying. Additionally, recordings made in violation of this policy may, at the discretion of the agency CEO, be withheld from public review.”

While it is understood that this section is intended to protect sensitive recordings, such language may allow for wide discretion by a CEO. In concurrence with the ACLU recommendation, the Network also recommends the legislation include a statement of intent to guide agencies and courts in their interpretations of when a particular exemption is appropriate:

It is the intent of the General Assembly that, consistent with 1 V.S.A. § (c)(5)(D), footage depicting an apparent victim of a crime of sexual or domestic violence or of a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation be presumptively treated as exempt from disclosure under 1 V.S.A. § 317(c)(5)(iii). This presumption can be overcome if: (1) the subject of the footage consents to disclosure; or (2) the public benefit of disclosure substantially outweighs the risk of harm to the subject. If that presumption is overcome, the footage may be disclosed only after redacting, blurring, or otherwise anonymizing the subject, unless the subject consents to disclosure of the unaltered footage.

This language serves to protect the victim from the unnecessary disclosure of highly sensitive footage.



Body Worn Camera Policy – Further Concerns

INPUT FROM THOSE MOST EFFECTED:

To date, the development of this model policy has not involved any representatives from organizations or entities representing the interests of communities of color and immigrant communities. This is vital to the ultimate success of any BWC Model Policy. The Vermont Network recognizes that domestic violence and sexual assault occur within the larger context of intersecting oppressions. Victims of color and immigrant communities may also have strong views on this topic. The legislature should invite these perspectives into these deliberations. It is critical to consider that a victim who is also an immigrant may be far less likely to call a police officer if s/he learns that body cams are the norm. On the other hand, a victim who is also a person of color may want a body cam to ensure law enforcement accountability at the scene. These are viewpoints that must be heard in order to develop a meaningful and just policy and practice.

IMPLEMENTATION:

1. Law Enforcement Training: Extensive and continued body cam training for law enforcement, with a slow roll-out. In El Paso, the ADA goes to regular shift meetings at the police substations to communicate the prosecutorial needs and to help them understand the need for safety, compassion and overall care using the cameras. This will better enable local law enforcement and the prosecution to continue to work together when problems arise.
2. A slow roll out of body cam use: This will allow time for further improvement of the statewide model policy and for shared best practice to emerge from those officers who have answered domestic violence or sexual assault calls while using body cams, and those prosecutors who have used such footage in court.
3. Prosecutions: It is critical that Vermont prosecutors continue to maintain their commitments to broad, community-coordinated perpetrator accountability. Cameras cannot be the only response that communities use to hold offenders accountable in court or otherwise. A holistic coordinated community response must be at the heart of the use of the cameras and systemic, evidenced-based, and victim sensitive prosecution must become the norm in every case, no matter how severe.

Thank you.

ⁱ ACPO (2009) Guidance on Investigating and Prosecuting Rape.

ⁱⁱ Police Executive Research Forum, Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned. pp. 13; 18–19; 40-41. 2014. Available at: [http://www.policeforum.org/assets/docs/Free Online Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf](http://www.policeforum.org/assets/docs/Free%20Online%20Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf)