

# Regulation of Use of Body Cameras and Their Data by Law Enforcement

Andrew T. Phillips

Hector de la Mora

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# What's a BWC?

- Police body-worn cameras are small video cameras—typically attached to an officer's clothing, helmet, or sunglasses—that can capture, from an officer's point of view, video and audio recordings of activities, including traffic stops, arrests, searches, interrogations, and critical incidents such as officer-involved shootings.

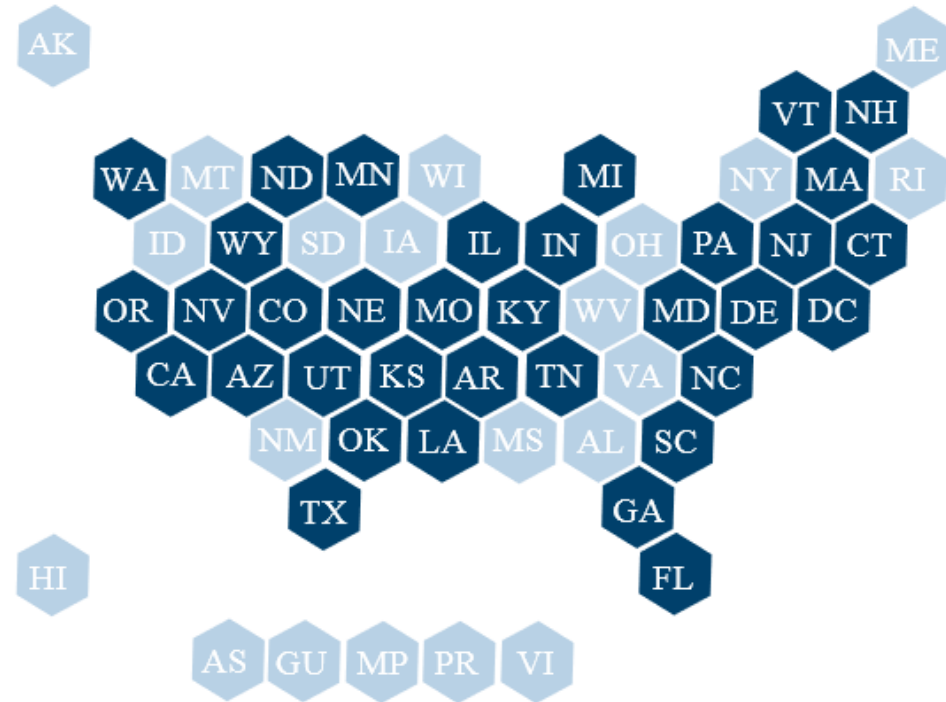






# BWC Legislation Elsewhere

- As of February 28, 2018, according to the National Conference of State Legislatures (NCSL) thirty-five (35) states and the District of Columbia had created laws for body cameras.



# History

- Remember August 9, 2014? Michael Brown, an 18-year-old resident of Ferguson, Missouri, was shot and killed by police officer Darren Wilson.
- According to the *Washington Post*, the events in Ferguson led to expanded use of police body-worn cameras. U.S. DOJ grants were given to 73 local agencies in 32 states.<sup>1</sup>

# Effectiveness not Conclusive

- Police officer body-worn cameras (BWCs) have been promoted as a technological mechanism that will improve policing and the perceived legitimacy of the police and legal institutions. While there is a national movement to deploy BWCs widely, evidence of their effectiveness is limited.
- One of the theories of change underlying the anticipated effects of BWCs is that both officers and civilians on the street will behave differently if under the watchful lens of a camera. A wide range of research, dating back to the classic experiments at **Hawthorne Works**, has suggested that people act differently when they believe they are being watched.<sup>2</sup>



# Effectiveness not Conclusive

- Cameras are expected to:
  - encourage officer adherence to departmental protocols
  - deter police from engaging in unprofessional behavior or misconduct
  - civilians interacting with a BWC-equipped officer may be less likely to engage in inappropriate behavior

# Effectiveness not Conclusive

- Cameras are expected to have evidentiary value for
  - internal affairs
  - criminal investigations
- Camera footage could help resolve cases
  - in a timely, judicious manner
  - more efficient use of investigative resources

# Arguments Supporting BWCs

- Documents evidence
- Facilitates officer training
- Prevents and resolves complaints by members of the public
- Strengthens police transparency
- Improves police performance
- Fosters police accountability

# Arguments Opposing BWCs

- May under certain circumstances, make it more difficult for police officers to perform their duties and increases workload (downloading, tagging videos, changing cameras, documenting videos in reports)
- May pose a risk to individual privacy
- Officers may not be taken at their word – if it didn't happen on video, it didn't happen
- May add significant costs to already burdened municipal budgets
- Over scrutinizes by multiple slow motion views of instantaneous events
- Empirical research remains limited and in some cases contradictory

# Suggested Policy Elements In New Legislation

## SUGGESTED POLICY FORMULATION AND ADMINISTRATION ELEMENTS IN NEW LEGISLATION:

1. Use of BWCs
2. Maintenance of BWCs
3. Storage of BWCs
4. Use of BWC's Data
5. Maintenance of BWC's Data
6. Storage of BWC's Data
7. Identification of the police officer units or staff required to wear BWCs
8. Statement of any limitations applicable to any BWC recordings of situations, encounters or persons by a police officer.

# Suggested Agency Obligations in New Legislation

- Train all officers wearing BWCs on that agency's policies pertaining to BWCs.
- Train all employees that use, maintain, store or release BWC data about that agency's policies pertaining to BWC data including its retention and the protocol restrictions affecting its release.
- Periodically review the practices within the agency to ensure:
  - compliance with its policies regarding BWC's data
  - retention
  - disclosure

# Suggested Retention of BWC Data in New Legislation

- ALL DATA FROM A BWC SHOULD BE RETAINED FOR A MINIMUM OF 120 DAYS AFTER DATE OF RECORDING AND SHOULD BE DESTROYED UNLESS:
- DATA RECORDING PERTAINS TO ANY *ACUTE ENCOUNTER*:
  - ◇ AN ENCOUNTER THAT RESULTED IN THE DEATH OF ANY INDIVIDUAL, OR ACTUAL OR ALLEGED INJURY TO AN INDIVIDUAL;
  - ◇ AN ENCOUNTER THAT RESULTS IN A CUSTODIAL ARREST;
  - ◇ AN ENCOUNTER INVOLVING SEARCH DURING AN AUTHORIZED TEMPORARY QUESTIONING PERMITTED BY WIS. STAT. §968.24 AND §968.25.<sup>3</sup>

# Suggested Retention of BWC Data in New Legislation

- DATA OBTAINED UNDER AN *ACUTE ENCOUNTER* CAN BE RETAINED FOR AN EXTENDED PERIOD OF TIME UPON THE SUBMISSION OF A *PRESERVATION DEMAND* TO THE LAW ENFORCEMENT AGENCY THAT HAS IT IN CUSTODY WHEN DELIVERED WITHIN 120 DAYS OF ITS RECORDING:
  - A LAW ENFORCEMENT OFFICER,
  - A LAW ENFORCEMENT AGENCY,
  - A BOARD OF POLICE AND FIRE COMMISSIONERS,
  - A PROSECUTOR,
  - A DEFENDANT,
  - A COURT THAT DETERMINES THAT THE DATA HAVE EVIDENTIARY VALUE IN A PROSECUTION.



# Suggested Retention of BWC Data in New Legislation

- IF DATA IS THE SUBJECT OF A *PRESERVATION DEMAND* AND NEEDED FOR:
  - A CIVIL PROCEEDING,
  - A CRIMINAL PROCEEDING,
  - AN ADMINISTRATIVE PROCEEDING

SUCH DATA SHOULD NOT BE DESTROYED UNTIL THERE IS A FINAL DISPOSITION.

- A FINAL DISPOSITION SHOULD OCCUR ONLY WHEN A COURT OR A HEARING EXAMINER MAKES A DETERMINATION THAT THE DATA IS NO LONGER NEEDED BY ISSUING AN ORDER TO THAT EFFECT.

## BWC Data Should be Confidential, but ...

- BWC Data is Confidential and Not Open to Inspection or Copying Under Wis. Stat. §19.35 Unless the Data Records Images or Audio involve an *Acute Encounter*.
- Where an *Acute Encounter* results in data deemed to be disclosable by a law enforcement agency, a *known victim*, a known witness and an *owner* can refuse to give permission for the disclosure of that data.
- When a law enforcement agency decides to permit access for inspection and copying of data from a body camera that has been obtained under an *Acute Encounter*, it must first receive permission from every *known victim*, *known witness* and/or *owner* associated with the location that was recorded before making the data available to a requester.

# BWC Data Should be Confidential, but ...

- A law enforcement agency, intending to permit access, should contact each involved *known victim*, *known witness* and/or *owner* in person or by U.S. mail. If written permission is not received within at least 14 or more business days following its request(s) for permission to release the data, access to the requester must be denied.
- To be a *known victim* or *known witness* eligible to deny permission for access to data resulting from an *Acute Encounter*, all of these should apply:
  - there is a depiction of the individual or the individual's voice is audible in the recording;
  - the individual's identity is known to the law enforcement agency;
  - the individual is not suspected of committing a crime or other violation of law in connection with the law enforcement officer's presence in the location that was recorded.

## BWC Data Should be Confidential, but ...

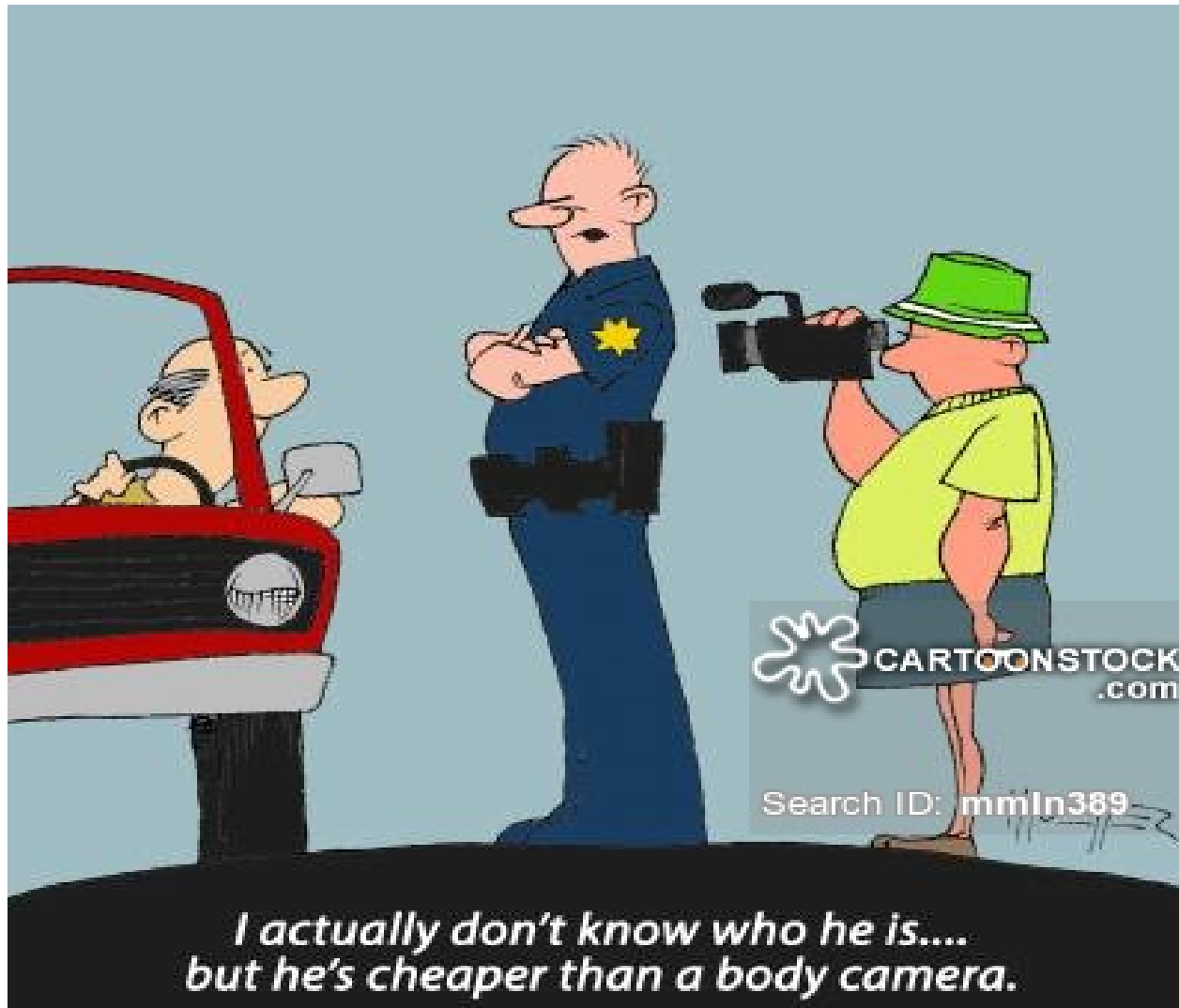
- To qualify as an *owner* eligible to deny permission for access to data resulting from an *Acute Encounter*, all of these should apply:
  - the individual owns or otherwise controls the property at the location that was recorded;
  - the individual is not suspected of committing a crime or other violation of law in connection with the law enforcement officer's presence in the location that was recorded.

## BWC Data Should be Confidential, but ...

- Only one request for written permission to each known victim/witness or owner should be required to be processed.
- All correspondence regarding BWC data should be preserved as long as the data is retained.
- Reasonable Expectation of Primary Data
  - If BWC data shows a “location where an individual may have a reasonable expectation of privacy” , no release should be allowed without written permission.

# BWC Data Should be Confidential, but ...

- In the Interest of Justice
  - Except for “reasonable expectation of privacy”, data lacking written permission, a law enforcement agency should be able to release data “in the interest of justice.”
- The *Legal Custodian* of BWCs’ records should be the Law Enforcement Agency involved
  - All other authorities, even with custody of BWCs’ records must deny requests under Wis. Stat. § 19.35(1).



*I actually don't know who he is....  
but he's cheaper than a body camera.*

# Endnotes

- 1 - Evaluating the Effects of Police Body-Worn Cameras: *A Randomized Controlled Trial*--WORKING PAPER | OCTOBER 20, 2017 The Lab @ DC, Office of the City Administrator, Executive Office of the Mayor, Washington, DC, USA.
- 2 - <http://www.economist.com/node/12510632>
- 3 - **968.24 Temporary questioning without arrest.** After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.



# Endnotes

- **968.25 Search during temporary questioning.** When a law enforcement officer has stopped a person for temporary questioning pursuant to s. [968.24](#) and reasonably suspects that he or she or another is in danger of physical injury, the law enforcement officer may search such person for weapons or any instrument or article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law abiding persons. If the law enforcement officer finds such a weapon or instrument, or any other property possession of which the law enforcement officer reasonably believes may constitute the commission of a crime, or which may constitute a threat to his or her safety, the law enforcement officer may take it and keep it until the completion of the questioning, at which time the law enforcement officer shall either return it, if lawfully possessed, or arrest the person so questioned.