

## **Privacy and First Amendment Protections**

Last Updated: July 19, 2019

**“Limits on Recording Witnesses and Victims,” “Limits on Recording Private Situations,” and “Limits on Recording 1st Amendment Activity”:** Some policies include restrictions on recording in circumstances with greater potential for abuse. It is valuable for police to have recordings of witness and victim statements, but recording also might make people reluctant to talk. A few policies restrict recording of First Amendment activity, such as protests and religious meetings, to avoid the possibility of targeting people based on this activity or creating a chilling effect. Other policies, however, insist on recording it, often based on a history of police abuses at protests. Most have some mention of heightened privacy expectations in places such as restrooms and locker rooms, and some provide special rules for recording inside a private home.

**“Limits on Facial Recognition Technology”:** Facial recognition technology has the potential to fundamentally change the nature of how body-worn camera video can be used. Technology that is either currently available or under development would allow departments to scan their databases of video footage for a particular suspect, to keep a database of the locations and movements of everyone they record, or to analyze video in real-time so an officer can identify suspects or passers-by based on pictures in police records or online. This functionality could help find suspects faster and augment police officers’ ability to identify and remember people they encounter. Privacy advocates worry that combining BWCs with facial recognition could create an unprecedented level of intrusion into private moments and everyday activities, effectively eliminating anonymity in public. Furthermore, because individuals may not always be correctly identified, people who simply look like the intended target run the risk of being tracked or arrested. Due to these concerns, departments may wish to set limits on the application of facial recognition technology to the BWC recordings. So far, Baltimore’s is the only policy on our list to address this issue.

City	Limits on Recording Witnesses & Victims	Limits on Recording Private Situations	Limits on Recording 1st Amendment Activity	Limits on Facial Recognition Technology
<a href="#">Arlington, TX</a>	BWC shall not be used to record encounters with confidential informants. Officers should notify individuals that they are being recorded when it is safe to do so.	Recording should not be enacted in situations where a reasonable amount of privacy is expected, such as a residence, unless the recording is made as part of an ongoing investigation or to document police action during a call to service, a search warrant, an arrest or after an offense observed by the officer.	None	None
<a href="#">Atlanta</a>	BWC shall be activated to record statements made by suspects, victims or witnesses while interviewing.	BWC shall not be activated in dressing rooms, locker rooms and restrooms unless performing legitimate law enforcement action. Officers “should limit recording” of individuals receiving treatment in medical treatment environments, and “[w]hen possible,” should refrain from recording exposed genitals or sexually sensitive areas.	None	None
<a href="#">Austin</a>	Recording witness and victim interviews is encouraged to collect evidence. However, if a witness or victim is reluctant to make a statement on camera, the officer should use their own discretion to decide whether to deactivate the BWC or keep it recording. Officers should inform individuals they are being recorded unless it is impractical, unsafe or will impact a criminal investigation.	BWC will not be activated in public or private locker rooms, changing rooms, restrooms, doctor’s or lawyer’s offices, medical or hospital facilities, schools where minor children are present and, in any magistrate’s, or judge’s office or courtroom, unless taking police action.	Officers will not activate BWC to “monitor persons based solely upon the person’s political or religious beliefs or upon the exercise of the person’s constitutional rights to freedom of	None

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			speech and religious expression, petition, and assembly under the United States Constitution, or because of the content or viewpoint of the person’s protected speech.”	
<a href="#">Baltimore</a>	An officer has discretion to stop recording if a victim, witness, or other person wishes to make a statement and requests on camera not to be recorded.	BWC shall not be activated inside a medical facility until just prior to meeting with the victim on a call for service or when encountering an on-view incident which would ordinarily require BWC activation. Officers shall be aware of patients’ rights to privacy in hospital settings and shall not record during medical or psychological evaluations or treatments. Officers shall avoid recording other people and medical documents. Officers shall not activate BWC to record court proceedings unless confronting a violent suspect. While conducting a strip search, officers shall ask the person being searched if they would like the camera to be deactivated and shall act according to the person’s request.	No limit on recording, but a recording of a “constitutionally protected activity” cannot be used to identify persons present unless they are suspected of criminal activity.	BWC video “shall not be used to create a database or pool of mug shots,” “be used as fillers in photo arrays,” or “be searched using facial recognition software.” This does not prohibit using recognition software on the video of a “particular

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				incident” when a supervisor “has reason to believe” a specific suspect is on the recording.
<a href="#">Boston</a>	Officer has discretion to stop or continue recording when victim or witness is giving an account of a crime. If the victim is uncomfortable with the thought of being recorded, the officer shall inform the civilian that he or she may request to have the BWC turned off.	“Officers should be mindful of locations where recording may be considered insensitive or inappropriate” (i.e. locker rooms, places of worship, certain locations in hospitals, residences etc. At such locations, at the officer’s discretion and based on the circumstances, the officer may turn off the BWC. In residences, “officers shall be mindful not to record beyond what is necessary to the civilian contact.”	“The recording of civilians based solely upon the civilian’s political or religious beliefs or upon the exercise of the civilian’s constitutional rights to freedom of speech and religious expression, constitutional petition and assembly is prohibited. BWC footage shall not be reviewed to identify the presence of individual participants at such events who are not	BWC will not include facial recognition technologies.

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			engaged in unlawful conduct.”	
<a href="#"><u>Charlotte, NC</u></a>	During consent searches, officers must record themselves asking for consent to record as well as the citizen’s response.	Unless “present in an official capacity,” BWC will not be used in: “bathrooms, locker rooms, or other places where there is an expectation of privacy,” in patient care areas, in court, in classrooms, or during discussions with attorneys. Prior to conducting a strip search, officer must verbally record the reason for turning the BWC on and record a 360-degree video of the location where the search will be executed. If a citizen withdraws consent for recording during a consent search in a “non-public” place, the officer shall stop recording and continue as normal without recording.	None	None
<a href="#"><u>Chicago</u></a>	Must stop recording if a victim or witness requests not to be recorded, unless exigent circumstances exist or officer has reasonable articulable suspicion that a victim or witness has committed a crime.	BWC shall not be activated to record individuals in residences or private areas unless there is a crime in progress or other circumstances that would allow the officer to be lawfully present without a warrant. No recording inside medical facilities, except when directly relevant and necessary to an investigation. No recording of appearances at	None	None

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		court or hearings. No recording of strip searches.		
<a href="#">Cincinnati</a>	Officers are not required to initiate or cease recording an event solely at the request of a citizen. Officers are not required to inform citizens they are being recorded since the contact between an office and an individual does not constitute an environment where there is a “reasonable expectation of privacy.”	Officers may use BWC inside a private home “as long as they have a legal right to be there (e.g., call for service, valid search warrant, consent of owner)”. Officers shall not record in any place where there is a “reasonable expectation of privacy”, such as a restroom, locker room, detention facility, or hospital facility, except during an active incident. BWC footage containing sensitive or private situations (e.g. interview of a victim of sexual assault; individual who is partially or completely unclothed) will be redacted.	None	BWC footage shall not “be used to create a database or pool of mug shots” or “be searched using facial recognition software”. This does not prohibit the use of facial recognition software to analyze a recording of an incident where there is “reasonable suspicion” that a suspect (or person in need of assistance) may be a

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				subject of a particular recording.
<a href="#">Cleveland</a>	Can get permission to stop recording from supervisor if witness or victim, including juveniles and victims of sexual assault, refuses to be recorded. Must include victim's request to turn WCS off in the recording.	No recording in private homes and buildings without consent or a warrant or any place with reasonable expectation of privacy (i.e. restrooms, dressing rooms).	None	None
<a href="#">Dallas</a>	Officer is not required to obtain consent from a private person when in a public place or in a location where there is no "reasonable expectation of privacy". Officer has discretion to decide whether to inform person that they are being recorded. If the person asks whether they are being recorded, officer shall inform the person of the active BWC.	No recording in places "where individuals have an expectation of privacy, such as bathrooms or locker rooms" unless needed for evidence; limited use in medical setting. But "[w]hen in a private residence in an official capacity, officers are not required to advise the resident they are recording."	Protests are defined as a "law enforcement activity" and must be recorded.	None
<a href="#">Denver</a>	Officer can stop recording if a victim or witness requests not to be recorded.	In places with reasonable expectation of privacy such as locker-rooms, restrooms, or patient-care areas, only official law enforcement activity should be recorded. For strip searches, officers should only capture audio, not video. Officers will not activate	None	None

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		BWC on grounds of public, private, or parochial elementary, middle or high school, unless required by policy.		
<a href="#">Ferguson</a>	Officer may deactivate BWC to respect the dignity of the victim or witness when nude or sensitive areas are exposed. If active BWC limits or impedes the cooperation of victim or witness, officer may deactivate BWC after receiving authorization from a supervisor.	“Places where a heightened expectation of privacy exists, such as public restrooms, jails, or hospitals, unless for direct law enforcement purpose such as a crime in progress or the recording of the location is material to a criminal investigation.”	“People who are lawfully exercising their freedom of speech, press, association, assembly, religion, or the right to petition the government for redress of grievances.”	None
<a href="#">Jacksonville</a>	There is no requirement that the officer discontinue use of BWC upon individual’s request. However, officer shall inform victim of sexual assault that they are being recorded and provide the option to not be recorded.	“If an Officer is lawfully present (e.g. arrest warrant, search warrant, criminal investigation, exception to the warrant requirement) at a location where a person has a reasonable expectation of privacy (e.g. residence, restroom, dressing room, locker room, hospital, or mental health facility), there is no requirement that the Officer inform the person that video is being taken. Additionally, there is no requirement that the Officer discontinue use of the BWC upon an individual's request.” However, if an officer is invited into a location where a person has a reasonable expectation of privacy, and the	Officers may record protests, but they shall not record First Amendment assemblies for the purpose of "identifying and recording the presence of individual participants who are not engaged in unlawful conduct.”	None



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		Officer has no lawful right to occupy that space, the officer must inform the person that they are being recorded and the person can request deactivation of the BWC.	BWCs will not be used to record particular individuals based on race, color, gender, religion, national origin, sexual orientation etc.	
<a href="#"><u>Las Vegas</u></a>	May record initial statements but use discretion. In the case of sexual assault & other sensitive crimes, explicit recorded permission from the victim is required. Recording juvenile victims & witnesses requires parental permission.	No recording in “places where a reasonable expectation of privacy exists, such as locker rooms, dressing rooms or restrooms.” In other places where recording may be inappropriate, such as places of worship, hospitals, law offices, and day care facilities, officers have discretion to stop recording. When an officer’s legal basis for a residence search is based solely on consent, officer is required to advise and obtain consent to record.	None	None
<a href="#"><u>Los Angeles</u></a>	An officer has discretion to stop recording if a victim or witness refuses to provide a recorded statement.	Not required to record if recording would interfere with investigation or be inappropriate because of “victim or witness’s physical condition, emotional state, age, or other sensitive circumstances,” or in healthcare facilities unless an enforcement action is taken.	None	None

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<a href="#">Mesa, AZ</a>	An officer has discretion to stop recording if a victim requests not to be recorded.	No recording in “places where a reasonable expectation of privacy exists, such as dressing rooms or restrooms, unless during an active law enforcement investigation.”	None	None
<a href="#">Minneapolis</a>	Officer’s discretion. Officer should attempt to gain consent from victim or witness to record statement.	BWC may be turned off inside centers for domestic or sexual violence victim advocacy or assistance, if there is no interaction with a suspect. BWC shall be turned off for courtroom proceedings, depositions or any similar legal proceeding. Strip searches must be recorded with camera positioned to collect audio data only.	No recording “solely for the purpose of surveillance of, or identification of individuals engaged in constitutionally protected activities conducted in a lawful manner.”	None
<a href="#">New Orleans</a>	An officer may stop recording with supervisor authorization if the officer believes recording would limit the cooperation of a victim or witness.	At a medical facility, restrict recording in accordance with facility privacy protocols. No recording in places “where an employee has a reasonable expectation of privacy, such as locker rooms, dressing rooms or restrooms” unless a crime took place there, in which case avoid “recording videos of persons who are nude or when sensitive areas are exposed.”	None	None
<a href="#">New York</a>	No recording a victim of a sex crime. Officers may deactivate the BWC “upon the request of a member of the public if a suspect is not present,” keeping in mind reasons of privacy and confidentiality.	No recording of strip searches, the inside of a medical facility or the proceedings of court.	Officer shall not record protests, demonstrations or political events, since the Technical Assistance and	None

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			Response Unit (TARU) is responsible for documenting such incidents. However, if these public interactions “escalate and become adversarial” officer may activate BWC.	
<a href="#">Oakland, CA</a>	No recording statements from child abuse or sexual assault victims. Consent required to record other victims and witnesses.	Can deactivate recording at a hospital if recording may compromise patient confidentiality. No recording “at Department facilities where a reasonable expectation of privacy exists (e.g., bathrooms, locker rooms, showers)” unless required by policy.	No, though Incident Commander can give special orders during crowd control, protest, or mass arrest incidents.	None
<a href="#">Orlando</a>	An officer has discretion to stop recording if a victim, witness, or community member requests not to be recorded, as long as suspect is not present.	No recording in “places where a reasonable expectation of privacy exists, such as, but not limited to, locker rooms, dressing room, or restrooms” unless part of official law enforcement incident.	None	None
<a href="#">Philadelphia</a>	Officer’s discretion. Officer must “balance the value of obtaining a recording with the reluctance of a victim, witness or informant to	Officer shall deactivate BWC when recording would “capture gruesome images, persons nude that are not involved in criminal activity or when private areas of the human body are	None	None

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	provide information while being recorded.”	exposed”. No recording in individuals’ residences, religious institutions during services or hospital rooms and private patient areas in a hospital.		
<a href="#">Phoenix, AZ</a>	Officer’s discretion. Officer may deactivate BWC if it is “in the best interest of the Department and they are able to justify the deviation: for example, contact with victims of a crime where the details of the crime are sensitive in nature or interaction with citizens who wish to remain anonymous.”	No recording in “a place where a reasonable expectation of privacy exists, such as dressing rooms, precinct locker rooms, and restrooms.”	None	None
<a href="#">Rialto, CA</a>	None	No recording in places “where a reasonable expectation of privacy exists,” like locker rooms, dressing rooms, or restrooms. Officers should use discretion in determining whether or not to record in medical settings, courthouses, individual residences, and during interviews when the use of a camera causes emotional distress, such as interviews of rape victims.	None	None
<a href="#">San Antonio</a>	None	No recording in private areas such as restrooms and locker rooms, along with patient care areas of medical and mental health facilities, court facilities and secured governmental facilities, and any legal proceedings, such as depositions and city	None	None

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		council meetings.		
<a href="#">San Bernardino</a>	Victim and witness interviews should always be recorded. Domestic violence victims must also be recorded unless a domestic violence victim expressly refuses to be recorded.	No recording in a private residence unless officer is lawfully present due to a warrant, consent or exigent circumstances. No recording in locker rooms, dressing rooms, or restrooms. No recording of exposed areas of the body. No recording of patients during medical and psychological evaluations. No recording inside jail facilities.	Officer should refrain from recording peaceful demonstrations unless there is reason to believe the event has the potential for unlawful activity.	None
<a href="#">San Diego</a>	Generally, do not record witnesses and victims. However, officer may record domestic violence victims with serious injuries and their children.	No recording in places like locker rooms, dressing rooms, or restrooms, or in medical or jail facilities unless use of force is likely. Can record in homes without consent or notice if there is a lawful reason for presence of officers, including consent searches.	Generally, “refrain from video recording or photographing peaceful demonstrations.”	None
<a href="#">San Francisco</a>	No recording of sexual assault and child abuse victims during a preliminary investigation. However, if officer believes that exigent circumstances require recording, officer may record. No recording of witnesses if officer is concerned about BWC inhibiting information gathering efforts.	No recording in hospitals if patient confidentiality is likely to be compromised. No recording of strip searches.	Not specified	None

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<a href="#">San Jose</a>	Must stop recording if a victim or witness requests not to be recorded.	No recording in “public or private locker rooms, changing rooms, restrooms,” “doctor’s or lawyer’s offices,” “medical or hospital facilities,” or “other places where individuals unrelated to the investigation are present and would have a reasonable expectation of privacy” unless the officer is taking a listed police action. When an officer’s legal basis for a residence search is based solely on consent, the officer is required to advise and obtain consent to record.	Recording someone based solely on First Amendment activity is prohibited.	None
<a href="#">Seattle</a>	None	No recording in places with heightened expectation of privacy, such as restrooms, jails, and the interiors of medical, mental health, counseling, or therapeutic facilities unless for a direct law enforcement purpose. Consent required for homes unless circumstances exist that allow officer to be lawfully present without a warrant.	Unless there is reasonable suspicion to believe criminal activity is occurring, officers may not record people exercising their First Amendment rights.	None
<a href="#">Tampa</a>	Must stop recording if a victim requests not to be recorded and victims should be notified that interviews are recorded unless they object.	BWCs shall not “be used to record any personal activity.”	None	None

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<a href="#">Tucson</a>	An officer has discretion to stop recording if a victim requests not to be recorded.	No recording “in places where privacy would be expected, such as locker/dressing rooms or restrooms, except in the official performance of a law enforcement function.”	None	None
<a href="#">Washington, D.C.</a>	Citizens can request camera be turned off to provide an anonymous tip. If responding to an intrafamily event, officers are to avoid recording discussions between the On-Call Advocacy Program and the victim, and to position themselves “as to afford the victim as much privacy as possible.”	No recording “on private space unless present for a lawful purpose,” no recording “gratuitous or obscene images, such as the effects of extreme violence or imagery” except as needed for evidence, and no recording “in places where a reasonable expectation of privacy exists, such as locker rooms or restrooms.” No recording patients during medical or psychological treatment unless engaged in police action; when recording in medical facilities, avoid recording anyone but suspect, complainant, and witnesses. <a href="#">DC law</a> prohibits recording at primary or secondary schools or while engaged in “non-critical contacts with students.”	Officers are to record First Amendment assembly, but not “for the purpose of identifying and recording the presence of” law-abiding participants. Recordings are kept for 3 years (versus 90-day default for other recordings). Officers shall not record a particular person based on membership in a listed protected class (e.g. race, religion, political affiliation).	None

**Model Policies**

Org	Limits on Recording Witnesses & Victims	Limits on Recording Private Situations	Limits on Recording 1st Amendment Activity	Limits on Facial Recognition Technology
<p><u>ACLU Model Statute</u></p>	<p>Must stop recording at the request of a victim or person seeking to anonymously report a crime.</p>	<p>Prior to entering a home without a warrant or in non-exigent circumstances, officer must ask if the occupant wants the officer to stop recording; if occupant so requests, camera must be turned off. No recording at schools except when responding to imminent threat to life or health.</p>	<p>“Body cameras shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion.”</p>	<p>Video not marked for a minimum 3 years of retention shall not “be subjected to facial recognition or any other form of automated analysis or analytics of any kind,” unless a judicial warrant is obtained or the authorizing court finds probable cause to believe the footage contains</p>



				evidence relating to an ongoing criminal investigation. No limits on facial recognition specified for other video.
<a href="#"><u>International Association of Chiefs of Police</u></a>	Policies should offer some discretion for sensitive situations.	Officers should not record in “any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.” In a residence, individuals may decline to be recorded unless the recording is being made pursuant to an arrest or search.	None	None
<a href="#"><u>Police Executive Research Forum</u></a>	Obtain consent before recording.	Include a consideration for places with heightened expectation of privacy.	None	None