

BRENNAN CENTER FOR JUSTICE

at New York University School of Law

Recording Circumstances

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No department we looked at requires officers to have their body-worn cameras recording for the entire shift. This is due to both technological limitations and privacy concerns. As such, every policy must specify when the officer turns the camera on and off. This chart, in combination with the “Recording Exceptions” chart, outlines those circumstances.

“Who wears”: Some departments have provided BWCs to all of their officers. Among those that have fewer cameras, or that are in a pilot phase, some allow officers to volunteer for their program, while others assign cameras to officers based on high-crime districts or other factors. Some specify uniformed officers only, while others have plainclothes officers wear cameras as well.

“When to record,” “Notable omissions from required list,” and “When not required, does officer have discretion to record?”

Most of the policies contain a list of types of law-enforcement encounters where recording is required. These categories do not include the full lists, but rather pull out notable features of each policy. A typical full list might include:

1. All calls for service and while en-route to emergency calls.
2. Pedestrian stops, including consensual encounters and “Terry stops” (a brief detention of a person by police on reasonable suspicion of involvement in criminal activity).
3. Traffic stops.
4. Foot and vehicle pursuits.
5. Consensual or warrantless searches.
6. Executing search warrants.
7. Arrests and detentions.
8. Transports (driving with a prisoner).
9. Other adversarial encounters or situations where criminal activity is likely to be recorded.

If any of these key activities is missing from the list in a given policy, it will be noted in the “notable omission from required list” column. If the list includes a category such as “other circumstances when the officer believes recording would be appropriate” or the policy otherwise allows discretionary recording, it will be noted as a “yes” under “does officer have discretion to record in unspecified

circumstances?” If there is a list of prohibited recording circumstances constraining this discretion, then it will be noted in the same column. If the prohibited recording pertains to witnesses or victims, privacy, or First Amendment activity, then it will instead be noted in our separate “Privacy and First Amendment Protections” chart.

“Notify person being recorded?”: Some departments require or encourage an officer with a BWC to inform members of the public that they are being recorded. There are two frequently-cited reasons for this approach. One is a concern for privacy. Another is the possibility that people will be less confrontational when they know they are being recorded. The counterarguments are that notification is inconvenient for the officer, and that a person in the presence of a police officer already has a low expectation of privacy and thus does not need to be explicitly notified they are being recorded as well.

City	Who Wears	When to Record	Notable Omissions From Required List	When Not Required, Does Officer Have Discretion to Record?	Notify person being recorded?
<u>Austin</u>	Assigned officers	When there is a likelihood of detaining or arresting a person, with a list of examples.	Consensual encounters (listed as optional) and searches.	Yes, though only for “law enforcement purposes.”	Not specified
<u>Baltimore (pilot)</u>	Assigned officers	“At the initiation of a call for service or other activity that is investigative or enforcement in nature,” and during any confrontational encounter.	N/A	Not specified	Yes
<u>Charlotte, NC</u>	Assigned officers	Calls for service and interactions with citizens, with list of examples, including when recording is requested by a citizen.	None	Yes, except recording must stop during “non-enforcement activities” and officers shall not record “any person or conversation that is not involved in a call for service or event as outlined in this directive.”	Not specified

City	Who Wears	When to Record	Notable Omissions From Required List	When Not Required, Does Officer Have Discretion to Record?	Notify person being recorded?
<u>Chicago</u> (pilot)	Assigned members with field duties	Enumerated law-enforcement activities, including “any other instance when enforcing the law.”	Arrests, transports, and searches other than high-risk warrants.	Yes	Yes
<u>Dallas</u>	Assigned officers	All contacts in an official law enforcement capacity. Policy enumerates examples, including while conducting a field sobriety test and while inventorying seized narcotics, money, or high value property.	None	No	Officer discretion, but must respond if subject of recording asks if they are being recorded.
<u>Denver</u>	Officers and corporals in line assignments, including all police Districts, the Gang Unit, and Traffic Operations.	Some calls for service and “any officer initiated contacts involving actual or potential violations of the law,” with enumerated examples.	Transports, search warrants, and calls for service unless they involve reported weapons, suicidal individuals, or the need for a Crisis Intervention Team officer.	Yes	Encouraged
<u>Ferguson</u>	All patrol officers and detectives.	Contacts with the general public by an officer or detective performing official duties.	N/A	Not specified	Not specified

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<u>Las Vegas</u>	“All officers hired on or after July 1, 2013 are required to wear a BWC (based on assignment).” Others may volunteer.	Enumerated law-enforcement citizen contacts.	None	Yes, but outside of required circumstances officers should consider a citizen request to stop recording. Recordings of “informal, non-law enforcement related contacts with the public” are discouraged.	Encouraged
<u>Los Angeles</u>	Uniformed personnel	Enumerated law-enforcement activities. List includes “crowd management and control involving enforcement or investigative contacts.”	None	Not specified	Notice encouraged but consent not required if officers are legally in area.
<u>Mesa, AZ (pilot)</u>	Assigned uniformed officers	Calls for service or any contact with the public; includes list of examples.	None	Yes	Not specified
<u>Minneapolis</u>	Assigned officers	Enumerated law-enforcement encounters. Includes off-duty employment and any adversarial contact.	None	Yes	Encouraged in general. If asked, an officer must inform those inquiring that body cam is recording, unless it would be unsafe to do so.

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New Orleans	Most officers, uniformed or plainclothes.	Enumerated law-enforcement activities. Includes domestic violence calls, any adversarial contact, and when likely to record actual or potential criminal conduct.	Search warrants	Yes	Not specified
New York (draft for public comment)	Selected officers performing patrol functions in 20 commands	Enumerated “investigative or enforcement actions,” calls for service, and interior patrols of Housing Authority and Trespass Affidavit Program buildings.	None	Yes, outside of prohibited recordings list which includes “off-duty activity, including paid details.”	Yes
Oakland, CA	All personnel with primarily field-based responsibilities and others as assigned.	Enumerated law-enforcement activities, including assessments for psychiatric detention.	Explicitly not required to record taking a report when the suspect is not on scene.	Yes	Not specified
Orlando	Assigned officers when in uniform, including on law enforcement-related overtime details.	Enumerated law-enforcement activities.	Search warrants and transports	Yes	Not specified

City	Who Wears	When to Record	Notable Omissions From Required List	When Not Required, Does Officer Have Discretion to Record?	Notify person being recorded?
<u>Phoenix, AZ</u> (pilot)	Assigned officers	All investigative or enforcement contacts, including list of examples.	Arrests and searches	Yes. However, there is a list of prohibitions, including surreptitiously recording conversations of citizens and employees, and recording work in an off-duty capacity.	Not specified
<u>Rialto, CA</u>	Not specified	Required for enforcement encounters with reasonable suspicion and any other adversarial contact. The policy does not specifically list types of encounters.	N/A	Yes	Encouraged
<u>San Diego</u>	Uniformed officers issued a BWC.	Required for all enforcement related contacts, with list of examples.	None	Unclear, but there is a long prohibited recording list, including “informal or casual encounters with members of the public.”	Encouraged
<u>San Jose</u> (pilot)	Assigned uniformed officers	Enumerated police actions, including probation & parole supervision.	None	Yes	Not required in general, but encouraged. Required during a consent search of a home.
<u>Seattle</u> (pilot)	Volunteers	Enumerated law-enforcement activities.	Consensual encounters	Not specified	Yes

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<u>Tampa</u>	Assigned officers	Enumerated law-enforcement activities.	None	Yes, and “if there is any doubt the system should be activated.”	Only for victims.
<u>Tucson</u>	Assigned officers	Calls for service, searches, and citizen contacts in an investigative or enforcement capacity, with enumerated examples.	None	Yes	Not specified
<u>Washington, D.C.</u>	Trained MPD employees who are on-duty and working in an official law enforcement capacity.	List of events, including all calls-for-service, DUI and consumption of marijuana investigations, mental health consumer encounters, school-based events, inventorying seized money, hospital guard duty, and interacting with citizens inside a police facility. Do not turn off based on a citizen’s request.	Explicitly not required to record non-investigatory contacts such as business checks.	Unclear, but there is a prohibited recording list including outside employment.	Yes. When practicable, members shall provide non-English proficient persons with a notice in the appropriate language (notice included in policy).

Model Policies

Org	Who Wears	When to Record	Notable Omissions From Required List	When Not Required, Does Officer Have Discretion to Record?	Notify Person Being Recorded?
<u>ACLU Model Statute</u>	“Only law enforcement officers with the authority to conduct searches and make arrests.”	Calls for service and law enforcement or investigative encounters.	N/A	No	Yes
<u>International Association of Chiefs of Police</u>	Uniformed personnel, preferably all of them.	All contacts with citizens in the performance of official duties.	N/A	Not specified	Yes
<u>Police Executive Research Forum</u>	Policies should state which personnel wear cams. If voluntary, policy should state when it can be required.	Only “law enforcement-related encounters and activities.”	N/A	Departments may choose to allow discretion in recording witnesses, people sharing information, situations where there are privacy concerns, and informal interactions.	Yes