

The Impact of Body-Worn Cameras on a Prosecutor

By Kay Chopard Cohen

Prosecutors are elected by the people to uphold the law and ensure public safety. Advances in technologies – including the implementation of body-worn cameras – are critical achieving this mission.

Certainly the impetus for body-worn cameras grows out of concerns about decreased police-community relations. But body-worn cameras can also provide accurate and reliable evidence that may lead resolution of investigations without factual dispute.

I had the opportunity to participate in the Body-Worn Camera Expert Panel hosted by the Bureau of Justice Assistance (BJA), where we discussed the implications of body-worn cameras on prosecutors. The most concerning aspect of these programs is the impact on the time it takes for prosecutors to prepare their cases and the complexities caused by the cameras. While law enforcement agencies often view the use of these cameras as a tool to hold their officers accountable and enhance community trust, they are in fact creating evidence in every potential criminal case. The burden of time-consuming reviews have the potential to be crushing to a prosecutor's office and staff. Prosecutors' concerns about body-worn cameras fall in at least five categories:

1. cost (including the cost borne by the prosecutor's office to review and redact),
2. when to record,
3. marking for use in criminal prosecution,
4. release of video to the public, and
5. the acceptance of limitations of body-worn cameras.

Costs for this technology are uncertain, but clearly significant. The real costs lie in storage and accessibility of the recordings by police agencies, prosecutors, and the courts. Depending on a department's policy on when and what to record, an officer can be expected to generate hours of video on each shift. Multiply this by the number of officers who cover the city every hour of every day, then multiply it by the days the videos must be retained; it is easy to see how the amount of data—and its concomitant cost of storage—skyrockets.

Perhaps the most difficult and pressing decision for prosecutors and law enforcement agencies is creating policies outlining when to record. Although many law enforcement agencies want a policy that requires to "record everything," the reality of such a policy must be considered in the context of law enforcement everyday duties and situations. Privacy and other constitutional rights may prohibit the recording of every minute a police officer spends on shift. May victims and witnesses require the cameras be turned off when the officer responds? If they may not, will this have a chilling effect on the reporting of domestic and family violence cases? What should an officer do about recording in situations involving child victims, juveniles, and hospitals? Officers often respond to calls in locations where people generally have an expectation of privacy, such as their homes or when seeking medical care. How will the use of body-worn cameras impact that expectation of privacy? These policy decisions should be made

jointly in consultation with prosecutors and police leadership prior to implementing a body-worn camera program. Prosecutors and police should also consider involving other stakeholder groups as policies are developed, including courts, public defenders, victim advocate groups, and community organizations.

Prosecutors are bound by ethical and legal requirements to make police and other reports available to the defense in a timely manner. Additional hours of video recordings will place heavy demands on police to properly mark and tag the video, and put more demands on prosecutors who are required to review the video. While most police incidents are tracked by police report number, recordings will have to be properly marked so they can accurately be placed with the proper case file. Any time recordings are lost, mishandled, or not appropriately stored or cataloged will present practical and legal problems. In addition, most prosecutors work with a large number of law enforcement agencies that are independent and may not always use the same equipment or have the same policies and protocols, and will have various levels of implementation. There is no control and oversight in police budgets or staffing decisions by prosecutors who must respond to whatever those agencies provide to them.

Policies for releasing information and video evidence, including to the media and members of the public, must be considered. Body-worn cameras will record information, and those being recorded may not want that information released. In addition to sexual assault victims, child victims, and others circumstances previously discussed, consider situations where an officer investigating a home burglary is likely to document the layout of the home and places where the victim suffered damage or loss. Should the public be allowed to access that video? Police typically collect personal information during an investigation, including social security numbers, dates of birth, and other personal information. Should the public be allowed to view or hear that information? These are questions that need to be considered. The redaction of this information and other irrelevant material will be time-consuming and labor-intensive.

Placing body-worn cameras on police officers may not completely resolve police-community tension, however, they are a good tool in a larger problem-solving strategy. Although current research is limited, police agencies have seen a reduction in community member complaints with the implementation of a body-worn camera program. Although body-worn cameras may be helpful in recording police activities, they are not a silver bullet. The technology itself is limited by what the camera is able to view. While the cameras may be placed in a variety of places, they still can only videotape what is in their view. They cannot swivel like a human head or use peripheral vision. The public and law enforcement must accept there will still be limitations to the technology itself.

Cameras will likely become an indispensable part of criminal investigations and prosecution. We hope that prosecutors will maintain a significant voice in discussions surrounding the cameras' integration into law enforcement practices. The Body-Worn Camera Toolkit, available at <https://www.bja.gov/bwc/>, includes resources on how to

help prepare prosecutors for the new technology and addresses several other common concerns and questions surrounding its implementation.