



**Statement of the ACLU of Minnesota
Regarding the St. Paul Police Department's Body Worn Camera Pilot Policy
November 2, 2016**

The ACLU of Minnesota (ACLU-MN) is a nonpartisan, nonprofit organization dedicated to protecting the civil liberties of all Minnesotans under the United States and Minnesota constitutions. We have over 15,000 supporters throughout Minnesota, and promote our mission through litigation, public education and lobbying efforts.

The ACLU-MN has a number of concerns with the St. Paul Police Department's draft Body Camera Pilot Policy ("Draft Policy"). We have supported the use of body cameras as a tool to establish public trust in the police through enhanced transparency and accountability. Unfortunately, the current Draft Policy makes clear that body cameras will primarily be used by St. Paul police as an evidence gathering and surveillance tool.

In order to address these concerns, we suggest that department-level policies should be implemented based on the following standards and principles:

(1) Limiting officer discretion on when to activate and deactivate cameras:

Police should activate their body cameras at the inception of every law enforcement encounter with a member of the public, and turn them off only at the conclusion of the entire encounter. These police-civilian encounters include stops, frisks, searches, arrests, consensual interviews and searches, enforcement actions, and any encounter that becomes in any way hostile or confrontational. If police officers are given discretion over when to activate and deactivate body cameras, their value for accountability and transparency will be severely undermined.

The Draft Policy includes a specific list of circumstances that require mandatory activation; however, it also gives the officer discretion to record, or not record, in most other situations. We believe that this approach allows for the exclusion of videos that would be rightfully captured under a policy that instructs officers to simply activate their cameras at the inception of every law enforcement encounter with a member of the public. For example, an officer may use his or her discretion to record an encounter that they believe could lead to evidence against a civilian, but would not be required to capture evidence of their own inappropriate and/or unlawful conduct.

(2) Prohibition on recording generalized activity:

Police body cameras should only be used to capture specific police-citizen encounters and *not* generalized activity. Body cameras should not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is



unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public.

While the Draft Policy does not specifically address the recording of generalized activity, it does give officers the ability to record at their discretion “anytime they believe it should [be] activated based on their training, experience, and judgment, except when recording is prohibited under this policy.” We believe there should be a stated prohibition on recording generalized activity rather than leaving this issue to an officer’s discretion.

(3) Prohibition on recording in schools:

As a general policy, body cameras should not be used in elementary or secondary schools, except when responding to an imminent threat to life or health.

While the Draft Policy prohibits recording in a number of circumstances, including in locations where there is a reasonable expectation of privacy, inside a courtroom during court proceedings, and in healthcare facilities, it is silent on the issue of using a body camera to record in schools.

(4) Privacy considerations:

Body cameras have more of a potential to invade privacy than traditional video surveillance of public places. Police officers often enter individual’s homes and encounter bystanders, suspects and victims in a wide variety of sometimes stressful and extreme situations. Accordingly, there should be exceptions to the recording policy for legitimate privacy concerns. A policy should contain specific sections to address: (1) giving individuals the option to discontinue recording in a private residence, and (2) providing the option to discontinue use with those who are reporting a crime, providing information about an ongoing criminal investigation, or an apparent crime victim.

While the Draft Policy generally prohibits recording at “any location where a reasonable expectation of privacy exists, such as a bathroom or locker room,” it does not prohibit nonconsensual recordings of individuals in a private residence. The Draft Policy allows for an officer to deactivate the camera upon request by a victim or witness after considering the totality of the circumstances. This approach leaves too much discretion and does not ensure that the officer will respect a request for deactivation under the privacy considerations listed above.

(5) Notification of recording:

Citizens must be provided with notification that the camera is recording the encounter. Without notice, citizens will not know that video of their police encounter, which may be of value to them, has been captured. Moreover, providing notice will increase the possibility that recording will deter bad behavior by both citizens and police. An officer should notify the subject(s) of the



recording that they are being recorded by a body cameras as close to the inception of the encounter as is reasonably possible.

The Draft Policy takes the opposite approach, stating that “officers are not required to notify citizens when recording.” Furthermore, officers are not required to be truthful when asked if a camera is recording, though the policy notes that “the officer *should* confirm whether the incident is being recorded on a BWC if asked” (emphasis added). We disagree with this position and believe that while some officers may use their discretion to notify civilians in certain situations, this provision encourages officers to use body cameras for surreptitious surveillance over the promotion of transparency and accountability.

(6) Officer review of footage:

Officers should not be able to review or receive an accounting of body cameras footage prior to completing any required initial reports, statements, and interviews regarding the recorded event. Allowing officers to view body camera footage before writing reports could undermine the legitimacy of their investigations. This is especially problematic when there are complaints of excessive use of force and in any officer-involved shootings.

The Draft Policy explicitly allows for officer review prior to preparing a report. In cases of a critical incident resulting in great bodily harm or death, officers may review the footage after meeting with the investigative entity. The issue of officer review was extremely controversial at the Legislature and similar language allowing officer review nearly led to a veto by Governor Dayton before the offending provision was removed.

(7) Disciplinary procedures for officers who violate body camera policies:

Three types of actions should be required when a police officer assigned to wear a body camera fails to record or otherwise interferes with camera video: (1) direct disciplinary action against the individual officer; (2) the adoption of rebuttable evidentiary presumptions in favor of criminal defendants who claim exculpatory evidence was not captured or destroyed; and (3) the adoption of rebuttable evidentiary presumptions on behalf of civil plaintiffs suing the government, police department and/or officers for damages based on police misconduct.

The Draft Policy is silent on disciplinary procedures for officers who violate provisions of the policy.

(8) Audits:

Retained body camera footage should be periodically audited to determine whether: (1) cameras are activated and deactivated according to the policy; (2) proper notification of recording is provided to civilians; (3) civilian requests that the camera be turned off are handled



appropriately; and (4) cameras are fully operational, including whether the audio and visual components are functioning properly.

The Draft Policy does not provide a procedure for internal or external audits. Without a mechanism to audit the footage, the only value of body cameras will be to gather evidence.

The ACLU-MN appreciates the opportunity to comment on the Draft Policy, and we hope that the City Council and St. Paul Police Department give these suggestions due consideration as the final policy is developed. We believe that with good policies in place, recording of police-civilian encounters can promote police accountability, deter officer and civilian misconduct, and provide objective evidence to help resolve civilian complaints against officers without significantly infringing on privacy. At the same time, body cameras can do more harm than good if they are primarily used by the police as an evidence gathering and surveillance tool.