



Recommendations for Oregon Law Enforcement Body Camera Policies

Transparency and public input

As with any surveillance technology, department policies governing body cameras and the resulting video should be developed through an open process with public input. Draft policies should be released with an *opportunity for public comment on the specific proposed provisions* included in the draft policy. Final policies should be posted online on the department's website, so that people who have encounters with police know what to expect, how long they have to file a complaint, and how to request access to footage.

Defining when the camera must be on and off

Oregon law now requires policies to require “that a camera worn upon a law enforcement officer’s person be set to record continuously, beginning when the officer develops reasonable suspicion or probable cause to believe that a crime or violation has occurred, is occurring or will occur and the law enforcement officer begins to make contact with the person suspected of committing the offense. The policies and procedures must also require that the camera may subsequently cease recording no sooner than the termination of the officer’s participation in the contact.” Exceptions are allowed if based on:

- (i) Reasonable privacy concerns
- (ii) Exigent circumstances
- (iii) Safety of law enforcement or other persons

Needed additions to the general rule for continuous recording

The statutory requirement of continuous recording (of contact with individuals based on reasonable suspicion or probable cause) sets a floor—rather than a ceiling—on when recordings must occur. This means that police departments will need to determine whether there are additional circumstances where cameras must be set to record.

In order to capture all situations where misconduct may occur and truly allow body cameras to act as an effective tool for accountability, policies should require continuous recording *when an officer responds to a call for service or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the public.*

Such a requirement would include more than the statutory minimum, as it would also cover stops, frisks, searches, arrests, consensual interviews and searches, enforcement actions of all kinds, and any encounter that becomes hostile or confrontational.

Exceptions to the general rule

Body cameras don't advance accountability if police can simply turn them off when they don't want to be recorded. Therefore, exceptions to a policy's recording requirement need to be spelled out with sufficient clarity and specificity to eliminate officer discretion.

Reasonable privacy exception

Continuous recording, while ideal from an accountability perspective, raises many thorny privacy issues. The balance that needs to be struck is to ensure that officers can't manipulate the video record, while also placing reasonable limits on recording in order to protect privacy.

Along these lines, privacy concerns warrant an exception to the recording requirement if person gives *clear on-camera permission* to the officer to stop recording and the encounter is with (a) crime victims (especially victims of rape, abuse, and other sensitive crimes); and (b) witnesses who are concerned about retaliation if seen cooperating with police.

Departments should also adopt a policy under which officers ask residents whether they wish for a camera to be turned off before they enter a home during non-exigent circumstances. Civilian requests for cameras to be turned off must themselves be recorded to document such requests. Cameras should never be turned off in SWAT raids and similar police actions, because of the high degree of likelihood for use of force.

Exigent circumstances exception

Officers should be given clear guidance about what constitutes an exigency, so that this exception is not abused by officers who simply do not want to record in a certain situation. For example, if all that needs to happen is a simple press of the button to begin recording, exigent circumstances should be strictly limited. On the other hand, exigent circumstances may indeed exist if a camera runs out of batteries, and the officer doesn't have time to replace them before engaging in a dangerous and immediate situation. Another example of exigent circumstances may occur when an officer is not wearing their entire uniform and is suddenly called to an emergency situation.

Safety exception

It is unclear how requiring recording could negatively impact public and officer safety, so long as a clear reasonable privacy and exigent circumstances exceptions are included in the policy. Exceptions under this rationale will need to be evaluated on a case-by-case basis.

Prohibition on surveillance and monitoring of First Amendment activities

Under Oregon law, body cameras cannot be used for surveillance of the public, especially gathering of intelligence information based on First Amendment protected speech, associations, or religion. *See* ORS 181A.250 (previously codified as ORS 181.575). Body camera policies should include this prohibition, making clear that body cameras shall 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.

Review and use of recordings should be allowed only in connection with internal and external investigations of misconduct, when police have reasonable suspicion that a recording contains evidence of a crime, or as part of a randomized audit. Otherwise, there is no reason that stored footage should be reviewed by a human being before its retention period ends and it is permanently deleted.

Officer review of footage

Officers should not be permitted to view video footage before making a statement or writing an initial report, particularly when the officer was involved in a critical incident like a shooting or is facing charges of misconduct. Similarly, the officer should not be allowed to speak to anyone who viewed footage prior to making a statement or writing a report.

Just as police do not show video evidence to other subjects or witnesses before taking their statements, officers should be required to first make statements based on memory. Officers should then watch the video *after* their initial statement and have the chance to offer more information and context. This will provide the fullest picture of what happened without tainting officers' initial recollection. This will also eliminate the possibility that officers could use their review of body camera footage to cover up misconduct and not be held properly accountable.

Uniformed officers

Body cameras should generally be limited to uniformed police officers, so people know what to expect and to ensure that recording is obvious and not surreptitious. Exceptions should be made for non-uniformed officers involved in SWAT raids or in other planned enforcement actions or uses of force.

Notice

Statute requires that an officer notify individuals that they are being recorded if:

- (i) The officer has an opportunity to announce at the beginning of the interaction that the conversation is being obtained; and
- (ii) The announcement can be accomplished without causing jeopardy to the officer or any other person and without unreasonably impairing a criminal investigation.

To ensure individuals know they are being recorded, even when an officer does not have an opportunity to announce, departments should consider requiring officers to wear an easily visible pin saying "body camera in operation" or words to that effect. Cameras might also have blinking red lights when they record, as is standard on most other cameras.

Randomized audits

Body camera footage should be subject to regular, randomized review to identify problems with training or officer conduct before they result in complaints or incidents.

Video integrity

The public can only trust video evidence if there is no doubt officers cannot alter or delete the video they record. The devices and storage system must not allow officers to edit or delete video during their shift, during the upload process, or after footage has been uploaded to a secure server. Secure third-party storage should be considered, as it may be an effective way to limit the potential for tampering with video footage.

In addition, all access to video records should be automatically recorded with immutable audit logs. Even after routine deletion, audit logs should be retained. It is also important for systems to be architected to ensure that video is only accessed when permitted and that rogue copies cannot be made.

Enforcing compliance

Departments must enforce recording policies by auditing officers' compliance and imposing meaningful consequences for failure to activate cameras or tampering with equipment. Meaningful consequences should include direct disciplinary action against the individual officer for tampering or intentional failure to adhere to policy. Mandatory training may also be appropriate whenever a policy is not followed.

Requests for footage

Under Oregon law, body camera footage is subject to public records requests when "the public interest requires disclosure." *This provision was negotiated with the understanding that certain types of recordings are always in the public interest to disclose.* For example, it is in the public interest to disclose footage:

- (i) Involving a use of force;
- (ii) That leads to detention or arrest;
- (iii) Where either a formal or informal complaint has been registered;
- (iv) To a person whose image or voice is in the recording;
- (v) To the personal representative of the subject if they are deceased or unable to provide consent due to age or incapacity;
- (vi) To a third party if the subject consents; and
- (vii) To criminal defense lawyers seeking relevant evidence.

Items (i) through (iii) are included because these are recordings for which there is the highest likelihood of misconduct, and thus the ones where public oversight is most needed. Although privacy concerns are potentially implicated in such situations, the need for oversight generally outweighs the privacy interests at stake, and facial blurring may also mitigate privacy concerns.