

STATEMENT FROM THE OREGON JUSTICE RESOURCE CENTER ON THE PORTLAND POLICE BUREAU'S BODY-WORN CAMERA PILOT PROJECT POLICY

Summary

OJRC recognizes that the pilot agreement and accompanying policies include some best practices for a body-worn camera program. However, it is our view that the policies fail to capitalize on the advantages of body-worn cameras as a tool to enhance police accountability. Nor do the policies address the inherent risks associated with the misuse of body-worn cameras. The City of Portland should pause the pilot program and have the body-worn camera policy thoroughly reviewed by civil rights experts.

Accountability

Issue: Permitting review of body-worn camera footage before writing reports, investigating, or making statements.

As currently written, PPB's policy hampers the police accountability system. Best practices would require officers to write reports and provide statements explaining why they used force against a community member *before* reviewing the footage from their body-worn camera.

By contrast, PPB's current policy allows officers to review body-worn camera footage in all cases prior to writing reports, conducting an investigation, or providing any testimony about what happened. There are no exceptions for any use of force, including incidents resulting in the death of a community member. In deadly force incidents, an officer is required to provide Internal Affairs with "a perceptual statement" before watching body-worn camera footage, but it is not clear how robust that statement will be.

The law requires that an officer's use of force be reasonable based on what the officer knew at the time force was used, not with the benefit of hindsight. The officer's explanation as to why they used force should be based on what they perceived at the time, not what they were later able to see and hear on video. Permitting review of footage gives officers the opportunity to justify their use of force based on the video rather than on the reasons they used force at the time.

Other use of force issues:

- For deadly uses of force, limiting the investigator's access to information by preventing them from viewing body-worn camera footage prior to obtaining the "perceptual statement" from the officer that used deadly force.

- For deadly uses of force, limiting an officer's statement to an investigator before viewing body-worn camera footage to a "perceptual statement" without clearly explaining what that statement entails.
- Dividing up the investigative process by force categories (e.g., deadly force versus intermediate use of force) may create a confusing and difficult to implement procedure to follow after an incident.

Other accountability issues.

- PPB's body-worn camera policy fails to create a system that will ensure officers are complying with policy requirements. For example, the policy does not outline a random audit or review system to ensure cameras are used according to policy, including whether officers are turning their cameras on, leaving them on throughout their encounters with the public, and leaving the sound on.
- The policy is not clear about how an officer's supervisor can use body-worn camera footage in performance reviews. The policy states that supervisors should review three body-worn camera events as part of an annual performance review, but it is not clear whether that is a minimum. Limiting the number of events a supervisor can review is nonsensical and simply hampers the ability of supervisors to review and correct officer performance.

Privacy

Body-worn cameras pose significant risks to privacy and free speech rights of community members. PPB's policies for the pilot fail to include adequate protections that could limit these risks.

There are some ways in which the policy does follow best practices:

- The policy prohibits the use of facial recognition or biometric technology on body-worn camera footage, preventing police from using the cameras as surveillance tools.
- The policies prohibit recording of some sensitive locations or victims of crime, for instance prohibiting recording of victims of sexual assault or child abuse or in hospitals, mental health treatment facilities, or inside a courthouse. However, the policies ignore other potentially sensitive locations or populations, such as schools or children.

There are other ways in which the policy does not follow best practices:

- Vague and potentially problematic guidance on when police should manually turn on the camera. Police will have discretion on whether to turn on the camera for a "legitimate law enforcement purpose" but the policy does not clarify what those purposes might be.
- The policy allows officers to have cameras on during "public order events" which we interpret to mean protests. This may serve an important accountability purpose since protests have been the site of unchecked police brutality but the knowledge that police are

recording protestors may deter people from participating and thereby dampen free speech rights.

Proposed revisions to the policy

OJRC asks the City of Portland to pause moving forward with the pilot program and reevaluate the provisions of the policy discussed above, especially those allowing pre-review by officers, the lack of supervisory oversight over officer use of cameras, and the lack of privacy protections for community members.

However, if City Council approves the policy as written, the City should:

1. Clearly communicate the timeline for body-worn camera implementation;
2. Develop a comprehensive and independent system to evaluate the pilot, including how well the policies are followed during implementation and the effects on misconduct investigations; and
3. Most importantly, the City of Portland should remove the body-worn camera policy discussion from exclusively closed-door negotiations with the Portland Police Association and meaningfully engage with the public and community groups, provide an opportunity for public comment on the policies, and revise the City's body-worn camera program in light of the community's feedback.

Statement to be attributed to Amanda Lamb, Law Enforcement Resource Counsel, Oregon Justice Resource Center.