



## **MCCA Policy Recommendation: Review of Body-Worn Camera Footage by Officers Following Critical Incidents<sup>1</sup>**

The Major Cities Chiefs Association (MCCA) believes body-worn cameras are an invaluable tool for documenting police-civilian interactions, providing evidence in criminal cases, and helping to provide an objective record of events in the case of a complaint or allegation of officer misconduct. The use of body-worn cameras in American policing has increased dramatically in the past ten years. A 2020 Bureau of Justice Statistics survey found that nearly 80% of local police agencies and 70% of sheriff's departments utilized body-worn cameras and that usage continues to grow every year.<sup>2</sup>

At the same time, the proliferation of BWCs has posed new challenges for the police and the public regarding privacy, access, retention, and the release of footage while criminal and administrative investigations may still be underway. Among other challenges associated with the expansion of BWC usage is the question of when officers should be permitted to review BWC recordings and whether officers should be allowed to review footage prior to giving a statement about the events recorded by the cameras.

***For the reasons outlined below, the MCCA believes that officers should be permitted to review BWC recordings before they are required to give a statement or write an official report about a critical incident in which they were involved.***

### **Human Memory is Fallible**

Ample research evidence demonstrates that eyewitness memory is fallible.<sup>3</sup> Even well-practiced observers like police officers are subject to the same forces that make recollection imperfect for ordinary witnesses. Research on the perceptual challenges that regularly occur when individuals are placed under extreme stress and forced to recall from memory events that may have

---

<sup>1</sup> By Michael R. Smith, J.D., Ph.D. on behalf of the Major Cities Chiefs Association.

<sup>2</sup> Goodison, S.E. & Brooks, C. (2023). Local police departments, procedures, policies, and technology, 2020 – Statistical Tables. Bureau of Justice Statistics: <https://bjs.ojp.gov/document/lpdppt20st.pdf>.

<sup>3</sup> Howe, M.L. & Knott, L.M. The fallibility of memory in judicial processes: Lessons learned from the past and their modern consequences. *Memory*, 23(5), 633-656; Pezdek, K. (2012). Fallible eyewitness memory and identification. In B.L. Cutler (Ed.). *Conviction of the innocent: Lessons from psychological research*. (pp. 105-124). Washington, D.C.: American Psychological Association.



transpired in seconds or even tenths of seconds show that such memories often contain gaps and distortions.<sup>4</sup> Such distortions vary greatly across individuals. However, a 2009 study of more than 100 officers involved in shooting incidents found that 94% reported altered perceptions of reality either before or during the firing of their weapons.<sup>5</sup> A police psychologist who conducted numerous debriefings with officers involved in shootings found that many officers did not realize the extent of their memory distortions *until confronted with evidence to the contrary*.<sup>6</sup>

In one of the few studies to empirically test (in an experimental setting) whether viewing body-worn camera footage improves the accuracy of police reporting, Dawes et al. (2015) found that officers were, on average, able to correct multiple minor, moderate, and even major errors in reports initially prepared without the benefit of watching their BWC footage of simulated use of force incidents. The authors concluded that many of the errors corrected by the officers could have led to challenges to the officers' credibility or other negative, unwarranted outcomes."<sup>7</sup>

Requiring officers to make statements or write reports about critical incidents from memory will likely result in varying degrees of misperception and error through no intentional misrepresentation by the officers involved. Much of the available research on the use of video recordings to enhance memory suggests that BWC footage can be useful to improve recall, particularly for complex or stressful events. Research evidence also exists outside of police settings suggesting that events an officer did not originally perceive could be encoded into the officer's memory after watching BWC footage or that the process of refreshing memory by viewing BWC footage may result in other memories of the event being lost.<sup>8</sup>

## **Accuracy and Police Credibility Are Paramount Concerns**

While definitive research evidence on the impact on memory of watching BWC footage has yet to be developed, the rules of evidence have long allowed police and other witnesses to refresh

---

<sup>4</sup> Engel, R.S. & Smith, M.R. (2009). Perceptual distortion and reasonableness during police shootings: Law, legitimacy, and future research. *Criminology & Public Policy*, 8(1), 141-150.

<sup>5</sup> Klinger, D.A. & Brunson, R.K. (2009). Police officers' perceptual distortions during lethal force situations: Informing the reasonableness standard. *Criminology & Public Policy*, 8(1), 117-140.

<sup>6</sup> Artwohl, A. (2002). Perceptual and memory distortion during officer-involved shootings. *FBI Law Enforcement Bulletin*, 71, 18-24.

<sup>7</sup> Dawes, D., Heegaard, W., Brave, M., Paetow, G., Weston, B., & Ho, J. (2015). Body-worn cameras improve law enforcement officer report writing accuracy. *Journal of Law Enforcement*, 4(6), 1-21

<sup>8</sup> Blaskovits, B., & Bennell, C. (2020). Exploring the potential impacts of body worn cameras on memory in officer-involved critical incidents: A literature review. *Journal of Police and Criminal Psychology*, 35, 251-262.



their memories from notes or other relevant writings prior to testifying about a matter.<sup>9</sup> The purpose of this rule is to promote the search for credibility and memory. The use of BWC recordings serves an analogous purpose – to refresh the witness officer’s memory and allow for the most accurate account by the officer of what the officer saw and did during a critical incident.

Organizations such as the ACLU and The Leadership Conference argue that allowing officers to watch BWC recordings after the fact can create false memories or facilitate officer lying, and therefore, it is better to get officers “on the record” before allowing them to review BWC footage.<sup>10</sup> Yet those same organizations would be the first to use officers’ statements against them if they varied from what was apparent on BWC footage recorded in real-time. Criminal defense lawyers, plaintiffs’ attorneys, and organizations like the ACLU are willing and perhaps even obligated (in the case of criminal defense lawyers) to attack the veracity and credibility of a police officer whose initial recollections of a critical incident varied from the video evidence due to nothing more than the organic fallibility of human memory, especially while under stress.

While even BWC recordings have limitations, including poor lighting, oblique camera angles, and the temporal limitations of available recordings, the MCCA believes that BWC footage is often the best available evidence of what transpired during a critical incident. Thus, officers should have access to such evidence to jog their memories and improve the accuracy of their official statements, which is of primary importance in the initial reporting by officers of critical incidents.

At bottom, the credibility of officers should not be called into question during the investigative process or resulting legal or administrative proceedings merely because their initial reporting of an incident varied from the video evidence when the means to improve their recollection – the video evidence itself – is readily available to be watched by them *before* they are required to give an official statement. Once a statement is made or memorialized in an official report, it cannot be unsaid. On balance, and with accuracy and the credibility of police witnesses on the line, the

---

<sup>9</sup> Federal Rules of Evidence. (2021). Rule 612. Writing used to refresh a witness’s memory. Washington, D.C.: U.S. Government Publishing Office. [https://www.uscourts.gov/sites/default/files/federal\\_rules\\_of\\_evidence\\_-\\_december\\_2020\\_0.pdf](https://www.uscourts.gov/sites/default/files/federal_rules_of_evidence_-_december_2020_0.pdf).

<sup>10</sup> Stanley, J. & Bibring, P. (2015). Should officers be permitted to view body camera footage before writing their reports? American Civil Liberties Union. <https://www.aclu.org/news/national-security/should-officers-be-permitted-view-body-camera-footage-writing-their-reports>; The Leadership Conference on Civil and Human Rights & Upturn. (2017). *Police body worn cameras: A policy scorecard*. <https://www.bwccscorecard.org/#:~:text=This%20scorecard%20evaluates%20the%20body,departments%20could%20improve%20their%20policies.>



MCCA believes the public interest is best served by allowing law enforcement officers to review available BWC footage prior to making an official statement about a critical incident.

## The PERF Reports

In December 2023, the Police Executive Research Forum (PERF) released a report entitled *Body-Worn Cameras a Decade Later: What We Know*.<sup>11</sup> The report revisited and updated a COPS Office-sponsored, PERF-authored document from 2014 on *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*.<sup>12</sup> The 2014 report was written when body-worn cameras (BWCs) were still relatively new in policing, while the 2023 report sought to review and incorporate a decade of research and experience with the use of body-worn cameras in U.S. law enforcement agencies.

Among the issues addressed in both the 2014 and 2023 PERF reports was whether, or when, officers should be permitted to review their own BWC footage following a critical incident such as an officer-involved shooting. In 2014, PERF recommended that officers be permitted to review the BWC footage of an incident in which they were involved prior to being required to make a statement about the incident. PERF cited four reasons for its 2014 recommendation: (1) most agencies then permitted officers to review footage prior to making a statement,<sup>13</sup> (2) the review of footage allows for better and more accurate recollection and documentation of events, (3) real-time recordings are the best evidence of events as they actually transpired and are not affected by officers stress and other factors, (4) inconsistencies between officer statements and camera recordings could negatively and unfairly undermine an officer's credibility.

In its recent 2023 report, however, PERF modified its recommendation regarding the review of BWC footage by officers in favor of a “perceptual interview” approach:

*Officers involved in a critical incident should be interviewed before watching relevant BWC footage. During the “perceptual interview,” they should describe their perceptions (what they saw, heard, felt, believed, experienced before arriving, etc.) before, during, and after an incident. After the perceptual interview, officers should be given the opportunity to provide a video-informed statement by reviewing BWC footage and offering clarifications that they feel are appropriate.*

---

<sup>11</sup> Police Executive Research Forum (2023) *Body-worn cameras a decade later: What we know*. Washington, D.C.: Author.

<sup>12</sup> Miller, L., Toliver, J., & Police Executive Research Forum. (2014). *Implementing a body-worn camera program: Recommendations and lessons learned*. Washington, DC: Office of Community Oriented Policing Services.

<sup>13</sup> The MCCA recently surveyed its member agencies and found that among those that responded, 60% permit officers to review BWC recordings prior to making a statement about a critical incident.



## **Perceptual Interviews Don't Solve the Problem**

The updated recommendation from PERF doesn't solve and indeed perpetuates the problems of perceptual distortion and faulty recall common during and after critical incidents. Perceptual interviews with investigators are not informal, "off the record" conversations. At the very least, they will be memorialized by investigators in their field notes, and they likely will be audio or videorecorded. Police agencies will be left with records of perceptual interviews that potentially can be subpoenaed or otherwise reached through legal process, and those records may contain statements by officers potentially tainted by the flaws associated with human memory and recall under stress.

Subsequently allowing officers to review BWC footage and amend their initial recollections may exacerbate the problem, as the official record of the event will then include different or even conflicting statements from the same police witnesses. These conflicting statements can become fodder for attorneys, members of the media, and interest groups to call into question the motives of the officers and the truthfulness of their accounts. A far better approach is to allow officers to refresh their recollections of events by reviewing available BWC recordings before they make their initial statements to investigators.

## **Conclusion**

Most agencies surveyed by PERF<sup>14</sup> and the MCCA allow officers to review BWC recordings before giving statements or writing reports about a critical incident. Although not without challenges, this practice is likely to produce the most accurate accounting of what transpired during these incidents, and it reduces the influence of perceptual distortion and stress-induced recall errors in the official record that can later be used to impugn the motives, credibility, and integrity of police witnesses. For these reasons, the MCCA endorses the review of body-worn camera footage by officers involved in critical incidents *prior* to requiring them to give statements or write reports about such incidents.

---

<sup>14</sup> Police Executive Research Forum (2023) *Body-worn cameras a decade later: What we know*. Washington, D.C.: Author.