



## Body-Worn Cameras

### A Guide for Criminal Defense Attorneys



1. What are they and how do they work?
  - a. Police body-worn cameras can be a useful tool in preserving evidence of police misconduct, but police can also use body cameras to surveil the people they interact with and third parties who may not know they are being filmed.
  - b. Many police departments use body-worn cameras provided for free by Axon (formerly Taser).
    - i. Under contracts with Axon, body-worn camera footage may be stored in a proprietary system, and defense counsel may have to agree to Axon's terms of service to access documents produced in discovery.
    - ii. Axon's system allows police to edit or delete stored footage, which has been alleged to have been used to destroy evidence of police misconduct.
2. Policy issues:
  - a. Data retention – Footage is often saved for years, without a mechanism for oversight of storage and security.
  - b. Biometric analysis – BWC videos could be subject to facial recognition or other biometric analysis.
  - c. Perspective Bias – Perspective influences perception.  
<https://eff.org/BWCBias>
  - d. Narrative discretion – without strict policies, officers have complete discretion over when to turn cameras on and off.



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- e. Access and control: Police officers may get to review videos before writing reports, which could undermine defense's ability to confront their perceptions and memories. Police also have control over when and how to release footage to the defense and the public, and may do so selectively to insulate themselves from claims of misconduct.
3. How do I obtain body-worn camera footage?
    - a. BWC footage should be available through discovery, although depending on the state, prosecutors may not be required to produce footage at a pre-trial detention hearing. See *Robinson* below.
    - b. Private parties, including journalists, may request BWC footage through public records act requests.

4. How do I challenge the use of BWC?



- a. BWC footage is subject to the same limitations as a police officer's visual observations. If police presence is found to be illegal, such as entering private property without a warrant, you can move to suppress.

- b. Also, applying facial recognition or other biometric techniques to body camera footage may constitute a 4<sup>th</sup> Am search requiring probable cause.

5. Some BWC cases:

- a. SDNY: *Floyd v. City of New York* (959 F. Supp. 2d 668 (2013)): Court ordered NYPD to adopt pilot BWC program to remediate discriminatory stop-and-frisk policy.
  - b. Supreme Court of New Jersey: *State v. Robinson* (2017 WL 1908548 (May 10, 2017)): Court held NJ state law did not require production of existing BWC footage at pre-trial detention hearing.

6. How do I learn more?

- a. Review EFF's letter detailing privacy concerns with LAPD's body-worn camera policy: <https://eff.org/BWCLAPD>
  - b. The Leadership Conference on Civil and Human Rights publishes a scorecard (<https://www.bwcorecard.org/>) of police department body-worn camera policies, showing which departments have policies limiting officer discretion in camera use and protecting privacy. Most police policies have limited protections against lengthy retention and misuse of BWC footage.
  - c. ACLU Policy paper: <https://eff.org/BWCACLU>
  - d. NACDL Report: <http://eff.org/BWCNACDL>

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