



National Alliance to  
End Sexual Violence

## Position Statement on Body Worn Cameras Policies

July 2016

The National Alliance to End Sexual Violence (NAESV) seeks to provide clarity regarding issues that arise with the use of body worn cameras in initial sexual violence investigations. We will focus our efforts on whether body worn cameras used in sexual assault victim contacts properly ensure that victim privacy is protected. Without such protections in place for victims, law enforcement could see a chilling effect on reporting. Any efforts to improve community-police relations also need to address victim rights to truly make our communities safer. For our purposes, assuming a victim centered approach, we need to know whether the use of body worn cameras in encounters with victims of sexual violence creates an adverse impact on that victim.

NAESV understands the need for law enforcement to wear these cameras in order to instill confidence and create trust with the African-American community and other communities of color. NAESV is completely supportive of law enforcement wearing cameras in order to rebuild relationships damaged through instances of police brutality and misconduct. We greatly support the increased use of body worn cameras in policing and hope that their use facilitates better relations between law enforcement and the African-American community.

As body worn cameras have become more prevalent in policing, we have created a list regarding the pros and cons of their use. Many of the 'pros' of the use of body worn cameras relate to all crime victims as those positive aspects are universal. However, we'd like to introduce the 'cons' of their use as they specifically relate to sexual assault victims and better highlight the unique nature of these cases.

### Pros of body worn camera policies for victims:

- 1) Addressing general law enforcement obstruction of justice and denial of equal protection by dismissing, degrading, discouraging and dissuading victims, misinforming victims about their rights and police procedures and the viability of potential cases;

- 2) Assists law enforcement in building a better relationship with communities of color after a long history of mistrust regarding police and citizen interactions;
- 3) Can aid in identifying mistakes in initial police response and early investigations, such as:
  - a. Failure of law enforcement to ask key questions about threats, weapons, injuries, witnesses abuse history, evidence etc.;
  - b. Failure of law enforcement to write down critical elements of victims' rights;
  - c. Failure of law enforcement to provide adequate language interpreting;
  - d. Failure of law enforcement to follow up with questions on evidence leads in victim statements, failure to properly and fully take witness statements and child witness statements and failure to properly interview witnesses;
  - e. Law enforcement withholding critical law enforcement powers, failure to provide victim protections, failure to write reports etc.;
- 4) Better prosecutions, higher conviction rates, fewer trials and more pleas;
- 5) Better investigatory techniques;
- 6) Fewer recanting victims and fewer charges against those who do recant;
- 7) Determination of primary physical aggressor;
- 8) More tools for a prosecutor;
- 9) Eliminating the reliance on memory to recount incident months down the line in a courtroom;
- 10) Use of such recording in lieu of victim so long as it does not invoke *Crawford* concerns.<sup>1</sup>

Cons of body worn cameras for sexual assault victims:

- 1) Privacy Concerns:
  - a) Public records requests: The use of body worn cameras brings about several privacy concerns, particularly the ability for footage to be obtained by public records requests under FOIA and state public records disclosure laws. In an effort to maintain transparency, many states are developing legislation to ensure that body worn camera footage will be subject to public records disclosure. Though we understand the very important societal need for public records disclosure, the release of this footage could be devastating to survivors of sexual violence who may be filmed within a short time after the assault occurs.
  - b) Conflict with confidential communications: the vast majority of states recognize a victim advocate-survivor privilege. If these communications are a part of the initial footage, then we run the risk of allowing protected confidential

---

<sup>1</sup> *Crawford* held that the use of statements made to police in lieu of in court testimony may violate the defendant's right to face adverse witnesses. [*Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004)]

communications to become a part of a video that is subject to public records requests or given to defendants in criminal cases.

- 2) Revictimization and trauma to the victim;
- 3) Reduction of or chilling effect on reporting, particularly without proper privacy protections, when reporting rates for sexual violence are already low;
- 4) A lack of clarity for law enforcement officers regarding how long an interaction should be recorded or obtaining consent prior to recording;
- 5) No process for the victim to request that an interaction not be recorded or that the officer cease recording;
  - a) Improper handling by law enforcement officers regarding victim requests to stop filming;
- 6) Improper advisement by law enforcement officers regarding victims' rights not to self-incriminate during filming.

In an effort to avoid or mitigate the damage of the 'cons' listed above, our NAESV proposes that any policy for the use of body worn cameras must:

- 1) Balance the concerns of the public and the privacy of sexual assault survivors;
- 2) Specify how laws regarding confidentiality of survivors and access to public records will be reconciled;
- 3) Determine if the victim is the owner of the footage, with the ability to make decisions regarding who may have access to footage prior to criminal prosecutions;
- 4) Determine whether law enforcement is the custodian of the footage and how long and in what format the custodian must preserve this footage;
- 5) Create a time period during which victims can either request that footage be destroyed or consent to its use as evidence in a criminal proceeding. Any policy should also clarify law enforcement storage procedures if there is no criminal case as well as the release of footage to parties engaged in civil actions;
- 6) Analyze the constitutionality, as well as adherence to state and federal law, of any policy intended to protect victim confidentiality, particularly in criminal proceedings where constitutional rights of defendants have been clearly defined;
- 7) Determine when a criminal defendant or defense counsel has a right to the recording
- 8) Provide clear training to address the issues in the previous 'Cons' section;
- 9) Respect issues faced by victims of sexual violence. Policies should include provisions that will:
  - a. Assess the evidentiary value of recording and the victim's comfort with speaking on camera during an interview;
  - b. Inform victims when they are being recorded and provide them with the option to not be recorded;
  - c. Require written consent before recording interviews with crime victims and noting the same in the incident reports;
  - d. Note the use of the camera in the incident report;

- e. Allow officers to turn off cameras during conversations with crime victims/witnesses and the process for documenting whether to record;
- f. Expressly prohibit agency personnel from accessing recorded data and from uploading such data onto public websites and measures to prevent unauthorized access or release of said data;
- g. Create protocols for releasing recorded data externally to the public and news media that must be in compliance with state law as amended;
- h. Conduct evaluations and periodic reviews to analyze whether the use of the body cams creates a chilling effect on crime victims;
- i. Encourage prosecutors to create policies that:
  - i. Consider a victim's objection when deciding whether to use the recording in court; and
  - ii. Consider whether the recording should be turned over to the defense.
- j. Provide victims with the legal right to prevent the recording or parts of the recording from appearing on the news and any civil legal recourse available when the media violates the victim's rights and reveals his/her identity;
- k. Ensure that victims are informed of their rights regarding body worn cameras; and
- l. Require law enforcement, prosecutors, and other relevant parties to be trained on these issues.

In conclusion, any law or policy that is enacted must contain provisions that clearly highlight that the recording is not a public record and cannot be provided to the media, particularly in light of the increase in footage from body worn cameras that will contain identifiable information of victims. **Under no circumstances should the media, or any private citizen, be permitted to obtain this information via a public records request without the consent of the sexual assault victim depicted in the recording.** If there are adequate policies regarding access, confidentiality and exemptions, the use of body worn cameras for victims could be a great resource for law enforcement and survivors of sexual violence.

*For more information, please contact Ebony Tucker, NAESV Advocacy Director, at [ebony@endsexualviolence.org](mailto:ebony@endsexualviolence.org)*