



ROGER BALDWIN FOUNDATION  
OF ACLU, INC.

Illinois

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Dear Counsel and Monitor Hickey:

We write on behalf of the Coalition to comment on the proposed Chicago Police Department (“CPD”) Body Worn Cameras Policy (Special Order S03-14) (the “policy”).

As the U.S. Department of Justice’s (“DOJ”) pattern-or-practice investigation of CPD found, “[t]ransparency tools like dash- and body-cameras have perhaps unmatched potential to simultaneously confront the Department’s recognized code of silence and make the City safer for both officers and civilians.” U.S. Dep’t of Justice, *Investigation of the Chicago Police Department* 79 (2017) [hereinafter “DOJ Report”]. But “[s]trong foundational policies and long-term oversight is necessary to ensure their potential is realized.” *Id.* The Coalition has serious concerns that this policy fails to enact many of the foundational requirements and oversight mechanisms necessary for body-worn cameras to be an effective tool to promote transparency and accountability. Further, the policy was developed without adequate community engagement despite the fact that community members are deeply concerned about CPD’s lack of transparency and lack of accountability for officers who violate policy and the law in interactions with the public. We urge CPD to revise this policy, adopt the below recommendations, and undertake meaningful engagement with impacted communities.

**A. Deactivation After Use of Force Incidents**

The policy allows officers who were present when an officer shot, killed, or used force against a person to turn off their body-worn cameras (“BWCs”) as soon as the highest-ranking on-

scene supervisor “has determined that the scene is secured.” Sec. V.B.1.a.(4); Sec. X.A. This allows officers to shut off their BWCs within minutes of shooting or killing someone. For example, after the 2021 CPD officer killing of 13-year-old Adam Toledo, officers at the scene were instructed to turn off their BWCs just eight minutes after Toledo was killed. *See* Bob Chiarito, *Why Were Police Told To Turn Off Body Cameras Minutes After Adam Toledo Shooting? It’s Standard Policy, Department Says*, Block Club Chicago, Apr. 12, 2021, <https://blockclubchicago.org/2021/04/12/why-were-police-told-to-turn-off-body-cameras-minutes-after-shooting-adam-toledo-its-standard-policy-police-sergeant-says/>. CPD confirmed that the officers at the scene of Toledo’s killing were “follow[ing] department directives in shutting off their cameras after several minutes.” *Id.*

Allowing officers who commit or witness the most serious violence against community members to shut off their BWCs at a supervisor’s unilateral determination that the scene is “secured” conceals the aftermath of officer violence—when transparency is critical. Allowing BWCs to be turned off also enables officers to collude and coordinate stories. This is a documented, systemic problem within CPD, which impairs COPA’s ability to investigate officer violence and the public’s ability to hold officers accountable. The DOJ Report found several examples of officers colluding with one another after using deadly or serious force against a person—most notably in the aftermath of the murder of Laquan McDonald, the catalyst for the investigations and litigation leading to the Consent Decree. DOJ Report 57–58, 60. DOJ found “a culture in which officers have felt free to compare their accounts before meeting with investigators.” *Id.* at 61.

In order to counteract this ingrained code-of-silence culture and prevent officer collusion, the policy should require the following: Whenever an officer is involved in or a witness to a reportable force incident (or another incident that requires notification to COPA), the officers must be prohibited from deactivating their BWCs *until the end of their tour of duty or until they submit to a COPA interview*, whichever is earlier. DOJ expressly called for this. It recommended that “conversations” between “involved officers, witness officers, and civilian witnesses . . . be monitored to avoid contamination prior to interviews” and “to prevent collusion.” DOJ Report 152–53.

## **B. Supervision and Accountability**

If used and implemented appropriately, BWCs can be an extremely important tool for ensuring effective supervision of officers and meaningful accountability for officer misconduct. As the DOJ Report explained: “Real-time audio and video footage of alleged misconduct is one of the most effective tools in overcoming the code of silence and making credibility determinations.” *Id.* at 77. Yet, this policy fails to ensure that BWCs are the tool for effective supervision and accountability that they can be.

*First*, the policy’s system of randomized supervisor review of BWC footage is inadequate. The policy requires that each district watch operations lieutenant (“WOL”) review *only one* “randomly selected BWC recording on their respective watch per tour of duty” to ensure that the officers’ recorded conduct complies with CPD policy and to assess the need for additional training or corrective action. Sec. VIII.G. Meaningful supervision requires far more than having WOLs watch only a single recording per tour of duty. Under that system, misconduct will constantly

evade review. Instead, each district WOL should be required to review *all BWC footage related to a statistically significant number of incidents* per tour of duty.<sup>1</sup> And Sergeants should be required to do the same.

**Second**, the policy fails to require supervisory officers who are “investigating a complaint against an officer” to examine BWC recordings for evidence of officer wrongdoing. Sec. VIII.C.1. The policy merely states that the “supervisor *is encouraged* to view the relevant BWC recording for evidence of the allegation of misconduct or complaint.” Sec. VIII.C.1.NOTE (emphasis added). This weak language makes meaningful supervisory review of BWCs optional. Instead, the policy should *require* supervisors investigating complaints to look for evidence of misconduct in all BWC footage relating to the incident. The current draft’s hazy language perpetuates the problems of the former BWC policy, which the DOJ Report found “insufficient” due to its use of “vague or confusing” directives. DOJ Report 78.

**Third**, the policy fails to require supervisory officers to review the relevant BWC recordings when determining whether an arrest conducted by a subordinate officer was supported by probable cause. The policy again uses weak, vague language that makes it optional for the supervisor to watch the BWC footage when signing off on an arrest: “The watch operations lieutenant (WOL) will[,] *whenever operationally feasible*, review video of any arrest recorded by a BWC as part of the approval of probable cause.” Sec. VIII.F.2. (emphasis added). Instead, the policy should *require* supervisors to watch all relevant BWC videos as part of verifying that an arrest is supported by probable cause. Instituting this layer of supervision is critical to counteract the well-documented pattern of CPD officers arresting people on false or unsubstantiated grounds in order to cover up misconduct by presenting a false justification for officers’ excessive force—referred to as a “cover charge.” See DOJ Report 32, 79; Jonah Newman, *Chicago Police Use ‘Cover Charges’ To Justify Excessive Force*, The Chicago Reporter, Oct. 23, 2018, <https://www.chicagoreporter.com/chicago-police-use-cover-charges-to-justify-excessive-force/>.

**Fourth**, the policy fails to require any supervisory review of BWC footage taken during home raids. CPD should require a CPD supervisor of the rank of Deputy Chief or above to review all BWC footage for each execution of a residential search warrant to ensure officers’ compliance with policy and the law. (This recommendation is explained in greater detail in the Coalition’s July 11, 2022 letter (p. 17) to Judge Dow setting forth the Coalition’s recommended changes to CPD’s residential search warrant practices (hereinafter, “July 11, 2022 letter”).) It is important to include this requirement in the BWC policy in addition to the Search Warrants policy because the BWC policy sets forth the specific circumstances in which “Department supervisors are required to view [BWC] recordings.” Sec. VIII.C. Omitting home raids could leave supervisors with the incorrect impression that they are not responsible for reviewing BWC videos of home raids.

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<sup>1</sup> At the Coalition’s June 21, 2022 meeting with the Court, the Independent Monitor, the City, and the Office of the Attorney General, CPD General Counsel Dana O’Malley stated that each WOL must watch all BWC footage related to *one incident* per watch—which often means watching videos from multiple officers’ cameras to assess officer conduct during the incident. In addition to our recommendations above, the policy must be revised so that the process for randomized review comports with the process described by Ms. O’Malley. Otherwise, supervisors will review only a partial and incomplete snapshot of the incident and could very well miss key facts captured at other moments and from other perspectives.

### **C. Oversight to Ensure Compliance with BWC Requirements**

The policy lacks adequate oversight and accountability structures to ensure that individual officers, and CPD as a whole, are complying with the policy's BWC requirements. "[L]ong-term oversight" and "accountability measures" are vital to CPD's "successful" use of BWCs. DOJ Report 78–79. As DOJ concluded: "[O]fficers have become used to ignoring CPD rules requiring them to use . . . body-cams because such behavior was not being investigated or punished," and therefore "[i]t will take committed effort for CPD and IPRA [now COPA] to undo this attitude." *Id.* Despite DOJ's clear admonition, the policy's oversight components are deficient in a number of respects.

#### *1. CPD's Audit Division*

The policy establishes insufficient, minimal, and vague audit requirements. The policy states that the "Audit Division will regularly audit[] samples of BWC recording to assess the Department member's use of BWCs and compliance with this policy to identify any trends that warrant changes to policy, training, tactics, equipment, or Department practices." Sec. IX.C. This is not sufficient. The policy should specify the frequency of such audits and require that each audit must be based on review of a statistically significant sample of BWC footage for the relevant time period. Further, the policy should require auditing to ensure that CPD is complying with the SAFE-T Act's "flagging" requirement, pursuant to which certain categories of videos (*e.g.*, officer-involved shootings) must be retained for at least two years (as opposed to 90 days). 50 ILCS 706/10-20(a) (7) (B). The policy should also explicitly require the Audit Division to refer any officers for investigation by BIA or COPA if the Audit Division's review has identified a potential violation of law or policy.

In addition, the policy should require the Audit Division to prepare at least annual *public* reports describing BWC-use audits and its findings and recommendations for corrective action. CPD's consistent refusal to release publically Audit Division reports, via FOIA or otherwise, is unacceptable. The dual purpose of an audit report is to verify that CPD is following its own policies *and* to assure the public that CPD is holding itself accountable to its own policies. Cloaking Audit Division reports in secrecy is antithetical to the transparency principles that undergird the Consent Decree. The policy should require public release of these audits or, at a minimum, an annual public report explaining the methodology and findings of each audit conducted during the previous year and recommendations for corrective action.

Finally, there is nothing in the policy to ensure that CPD will actually implement the Audit Division's recommended "changes to policy, training, tactics, equipment, or Department practices." Sec. IX.C.1. The policy should require the Department to address the Audit Division's findings and enact its recommendations. There should be specific deadlines for the Chief of Operations to respond to the Audit Division's reports/recommendations in writing and to implement those recommendations. Other CPD policies set forth precisely this type of feedback loop.

One instructive example is the Department Review of Foot Pursuits Policy (G03-07-01). Under that policy, if the Tactical Review and Evaluation Division ("TRED") recommends some corrective action at the unit-level or Department-level, the relevant unit commanding officers "will

ensure” that “the recommendation is appropriately implemented”; will provide TRED with an “initial response” to the recommendation within 14 days; and will notify TRED of the status of implementation, including when implementation is complete. *See* G03-07-01, Sec. III.E. The BWC policy should contain analogous provisions to ensure that the Chief of Operations and unit-level commanding officers implement any BWC recommendations from the Audit Division.

## 2. Supervisory Officers’ Responsibilities for BWC Compliance

Beyond requiring periodic audits by the Audit Department, the policy must ensure that routine supervision and corrective action regarding BWC use is integrated into supervisory officers’ daily responsibilities over their subordinate officers. The policy should be revised to require that supervisors (a) randomly review incident reports and other documentation to identify officers who have *failed* to activate their BWCs as required, and (b) give extra scrutiny to officers who have a history of failing to activate their BWCs when required. To implement this recommendation, CPD must restructure its staffing to ensure that supervisors have a consistent group of subordinates, as required under the “span of control” and “unity of command” provisions of the Consent Decree, ¶¶ 357–68.

## 3. Body Worn Camera Program Evaluation Committee

The policy creates a Department-wide Body Worn Camera Program Evaluation Committee that meets quarterly to ensure that the BWC program is operating “within compliance of the law, Department policies, and best practices.” Sec. XIII.B. The policy fails to ensure that this committee will promote transparency and accountability in BWC use and supervision.

As an initial matter, the policy should more clearly distinguish the difference between the oversight function of the Audit Division and that of the Evaluation Committee. More problematic is that the Evaluation Committee, as currently constituted, is toothless. Just like the deficiencies in CPD’s proposed policy for the Audit Division addressed above, there is nothing in the policy to ensure that the Committee’s recommendations lead to *real, operational* changes. Specifically, the policy requires the Committee to “refer[] any recommended Department-wide actions (*e.g.*, training and policy recommendations) based on observed or reported trends . . . to the appropriate Department unit responsible for the implementation.” Sec. XIII.B.2. Merely “referring” recommendations to the appropriate unit is not enough. The policy should add a feedback loop to ensure that the given unit has in fact implemented the recommended corrective action. The BWC policy should adopt similar provisions as those already in existence in CPD’s foot pursuit policy for implementing TRED’s recommendations for changes to policy and practice. *See* G03-07-01, Sec. III.E. Doing so would establish the necessary feedback loop and ensure that unit-level commanding officers implement any recommendations of the Body Worn Camera Program Evaluation Committee.

## **D. Recording Related to Consent Searches**

While the policy requires BWC recording of “requests for consent to search” and the search itself, Sec. II.I.10–12, the policy should expressly require officers to record the person’s *response or lack of response* to the officer’s request for a consent search.

Whether an individual consented to an officer's request for a consent search is a "factual assessment which turns on the totality of the circumstances." *United States v. Johnson*, 495 F.3d 536, 541 (7th Cir. 2007). Factual disputes often arise regarding whether consent was freely and voluntarily given. Numerous factors can contribute to a lack of free and voluntary consent. A large body of research shows that most people respond affirmatively to a law enforcement officer's request for a consent search, even when they do not want to consent and in fact feel coerced to do so. In a 2019 study of people's responses to requests to search their cellphones:

Ninety-seven percent of participants faced with an onerous and intrusive request complied, mostly without hesitation or demurrals. Yet the vast majority of participants who were sitting in the exact same seat and looking at the exact same experimenter averred that a reasonable person would refuse to hand over their phone if asked. They also stated that they themselves would refuse to grant such a request.

Roseanna Sommers & Vanessa K. Bohns, *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, 128 Yale L.J. 1962, 1987 (2019). The researchers concluded that people systematically underestimate whether they would comply with an intrusive search request made in a laboratory setting (as was the experiment in question) or in the real world.

For all of these reasons, the policy should require officers to record a person's response (or lack thereof) to the request for a consent search.

#### **E. Recording of Home Raids**

The policy should affirmatively and unequivocally require that all CPD members—including SWAT, members of specialized units, and tactical teams—wear and activate their BWCs while executing a home raid during the entire course of the warrant execution. This recommendation is detailed further in the Coalition's July 11, 2022 letter (p. 18).

Currently, the policy addresses the use of BWC during home raids only in an indirect and confusing manner: as an exception to the general ban on recording inside a person's residence. *See* Sec. VI.A.1.b. A clearer and more specific requirement mandating BWC recording during home raids is essential, particularly because CPD's draft Search Warrants policy (S04-19) refers officers to the requirements of the Body Worn Cameras policy. *See* S04-19 Sec. IV.D.3.a.; Sec. IX.C.2.; Sec. IX.D.1.a. An officer reading CPD's policy on BWCs should have no uncertainty about the imperative of recording during a home raid. Indeed, given CPD's documented pattern of violent and traumatic home raids, the accountability and transparency afforded by BWC recording is particularly important in this context. Yet members of SWAT and other specialized units who commonly execute home raids continue to lack BWCs, enabling CPD to avoid accountability for its conduct during raids. *See, e.g.,* Heather Cherone, *Chicago Officer Who Shot, Killed Man Sunday Was Not Equipped With Body-Worn Camera*, WTTW (Apr. 4, 2022), <https://news.wttw.com/2022/04/04/chicago-officer-who-shot-killed-man-sunday-was-not-equipped-body-worn-camera>.

## **F. Restrictions on Officers Viewing BWC Footage**

The policy prohibits officers, in certain circumstances, from viewing BWC footage before writing their initial incident report. *See* Sec. VII.B.6.a. (when an officer is involved in or witnesses an “officer-involved” shooting or death; use of deadly force or force resulting in great bodily harm; or if an officer is “ordered to write a report in response to a complaint or misconduct investigation.”). However, there is nothing in the policy to enforce this prohibition. CPD should add a mechanism for verifying that officers have not watched the video footage before writing an incident report in circumstances where doing so is prohibited. An example of one such mechanism would be the following: Every time an officer views a recording on CPD’s “Evidence.com” platform and enters their unique user access credentials (*see* Sec. XI.C.), the platform should generate a timestamp. Then, as part of reviewing an incident report, the supervising officer should be required to verify, based on the Evidence.com timestamps, that the reporting officer did *not* watch the footage prior to finalizing their incident report.

Additionally, in the circumstances where officers are prohibited from viewing BWC footage before writing their initial incident report, they should also be expressly prohibited from viewing the footage before being interviewed by COPA or BIA regarding that same incident.<sup>2</sup> This prohibition would help ensure that officers do not receive a preview of the evidence before being interviewed, which preserves the integrity of COPA’s and BIA’s investigations by making it harder for officers to coordinate and fabricate their interview statements. DOJ specifically recommended that CPD “[c]onsider prohibiting involved officers, witness officers, and civilians from viewing footage from . . . body cameras . . . before their interview with IPRA [now COPA].” DOJ Report 153.

## **G. Recording in Medical Facilities**

The policy presumptively bans BWC recording in “medical facilities.” The policy states: “The BWC will not be activated to record . . . inside medical facilities, except when directly relevant and necessary to a law enforcement investigation and approved by the member’s immediate supervisor.” Sec. VI.A.2. However, the state law requiring police officers to use BWC, the Law Enforcement Officer-Worn Body Camera Act (the “Body Camera Act”), 50 ILCS 706/10-10 *et seq.*, contains no such exception to its mandatory requirement that “[c]ameras must be turned on at all times when the officer is in uniform and is responding to calls for service or engaged in any law enforcement-related encounter or activity that occurs while the officer is on duty.” *Id.* § 10-20(a)(3).

CPD should consider whether the policy’s carve-out for “medical facilities” is consistent with the statutory obligation to record all “calls for service” and “law enforcement-related encounter[s].” To the extent the policy’s “medical facilities” exemption is inconsistent with that

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<sup>2</sup> The prohibition on watching BWC recordings prior to a COPA or BIA interview would also require revising draft Special Order S08-01-05 (“Conducting Log Number Investigations”). As the Coalition has previously noted, Section II of that policy currently prohibits an accused officer from reviewing evidence until the officer is notified by BIA “that he or she is permitted to [review the evidence],” but the provision does not specify *when* they may see the evidence. The bright line should be after the officer is interviewed. *See* Coalition’s May 13, 2022 Letter to the Parties and Independent Monitor re CPD’s BIA Policy Suite, at p. 5.

statutory obligation, CPD should revise the policy. At a minimum, CPD should clarify the vague and undefined policy terms “relevant and necessary to a law enforcement investigation” in order to give officers and supervisors clear guidance about the BWC requirements in a medical setting.

## **H. Minimum Required Recording Capability**

The policy fails to comply with an important equipment requirement of the Body Camera Act. Specifically, the statute requires that BWCs “must be capable of recording for a period of 10 hours or more” (unless purchased prior to 2015). 50 ILCS 706/10-20(a)(2). The Act mandates that this requirement be “include[d]” in each law enforcement agency’s “written policy.” *Id.* CPD’s policy should therefore be revised to include this requirement.

## **I. Community Engagement**

CPD did not conduct adequate community engagement in developing this policy. CPD did not consult the Coalition or any other community members, as far as the Coalition is aware. Transparency concerning officer conduct during interactions with community members and accountability for officers who violate policy or the law during these interactions—including policy and law relating to use of force, the treatment of youth and people with disabilities, and biased policing—are core Coalition priorities. As a result, this policy does not reflect the input of communities who suffer from police misconduct and are most impacted by tools, like BWCs, that are critical for holding officers accountable for wrongdoing.

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We urge the City to implement the Coalition’s recommended changes to the Body Worn Cameras Policy. We look forward to the City’s written response to this letter and a subsequent meeting to discuss.

Sincerely,

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