

CUNY Law Review Footnote Forum

May 12, 2017

Recommended citation:

Lelia James, *#Black Lives Matter: Are Police Body-Worn Cameras the Solution?* 20 CUNY L. REV. F. 146 (2017), <http://www.cunylawreview.org/lelia-james/> [<https://perma.cc/53M9-Y8FV>].

#BLACK LIVES MATTER: ARE POLICE BODY-WORN CAMERAS THE SOLUTION?

Lelia A. James*

INTRODUCTION

There is a need for police reform here in the United States. The violent policing of Black men, women, queer, trans, disabled, undocumented, etc. is an example of how Black lives are continuously devalued. The hashtag #BlackLivesMatter gained mass public awareness after the police killed the unarmed Black men, Michael Brown in Ferguson, MI,¹ Freddie Gray in Baltimore, MD,² and Eric Garner in Staten Island, NY.³ Black Americans are more than twice as likely as white Americans to be killed by police officers.⁴ The #BlackLivesMatter chapter-based organization is creating a

* Lelia A. James, J.D. Candidate 2017, CUNY School of Law, grew up in Dyckman Houses in Northern Manhattan. She currently resides in Brooklyn, NY.

1 Josh Hafner, *How Michael Brown's Death, Two Years Ago, Pushed #BlackLivesMatter Into a Movement*, USA TODAY (Aug. 8, 2016, 7:50 PM), <http://www.usatoday.com/story/news/nation-now/2016/08/08/how-michael-browns-death-two-years-ago-pushed-blacklivesmatter-into-movement/88424366/> [<https://perma.cc/K9RA-5CHY>].

2 Sally Sara, *#BlackLivesMatter: The Hashtag that Spawned a Mass Movement.*, ABC NEWS (DEC. 7, 2015), <http://www.abc.net.au/news/2015-12-07/black-lives-matter/6987766> [<https://perma.cc/T2RZ-S939>].

3 *Id.* More recently, Terence Crutcher on September 22, 2016, Philando Castile on July 6, 2016, and Alton Sterling on July 5, 2016 were murdered by police officers. See Sonam Sheth, *Here Are All the Police Killings Since Just the Beginning of September*, BUS. INSIDER (Sept. 28, 2016, 2:08 PM), <http://www.businessinsider.com/every-police-killing-in-september-2016-9/#september-1-to-september-7-26-people-killed-1> [<https://perma.cc/HV2G-WLR4>].

4 Wesley Lowery, *Aren't More White People Than Black People Killed by Police? Yes, But No.*, WASH. POST (July 11, 2016), <https://www.washingtonpost.com/news/post-nation/wp/2016/07/11/arent-more-white-people-than-black-people-killed-by-police-yes->

movement that aims to put an end to devaluing Black lives. They have a ten-point plan called “Campaign Zero.”⁵ Campaign Zero is a police reform campaign that recommends policies and proposals different state legislatures should consider and enact.⁶ One of the tools listed to help end violent policing is the use of body cameras on police officers while they are on duty.⁷

Body-worn cameras are pager-sized cameras that are worn by police officers.⁸ These cameras record police encounters with the public.⁹ The growing support for body cameras¹⁰ stems from the frequency with which the police use violent conduct against people of color.¹¹ Analysis of worldwide statistics reveals that the United States has a major issue with violent policing. A 2011 report shows that “police killed six people in Australia, two in England, six in Germany” and 404 in the United States.¹² The 404 number listed only the justifiable homicides, and included only data that was given voluntarily from 750 of the 17,000 law enforcement agencies that exist in the United States.¹³ Of these killings, 25% “involved a white officer killing a Black person.”¹⁴

First, this article probes the arguments in support of having police wear body cameras in New York. Then the article will explore some critiques of body cameras. Finally, the article will address what can be added to body camera legislation and done to fix the actual issue of violent policing of

but-no/ [https://perma.cc/7PG9-4FGE].

⁵ Mathew Speiser, *Black Lives Matter Has a Plan to Radically Change America's Police*, BUS. INSIDER (Aug. 24, 2015, 9:34 PM), <http://www.businessinsider.com/black-lives-matter-has-a-policy-platform-2015-8> [https://perma.cc/NS83-VJ9V].

⁶ See CAMPAIGN ZERO, <http://www.joincampaignzero.org> [https://perma.cc/GK98-Q8CD].

⁷ *Id.*; Speiser, *supra* note 5.

⁸ JAY STANLEY, AM. CIVIL LIBERTIES UNION, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL 1 (2d ed. 2015), https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf [https://perma.cc/J3UU-Y9D4].

⁹ *Id.*

¹⁰ Ariel Edwards-Levy, *Police Body Cameras Receive Near-Universal Support in Poll*, HUFFINGTON POST (Apr. 16, 2015, 1:20 PM), http://www.huffingtonpost.com/2015/04/16/body-cameras-poll_n_7079184.html [https://perma.cc/JLP9-E8RD].

¹¹ See, e.g., *Developments in the Law—Policing*, 128 HARV. L. REV. 1794, 1799 (2015) (“[B]ody cameras may appear to be a panacea for police departments struggling to provide transparency to their communities and resolve civilian complaints efficiently.”).

¹² Frida Ghitis, Opinion, *Police Shootings in U.S. Out of Hand*, CNN (Dec. 1, 2014, 3:53 PM), <http://www.cnn.com/2014/12/01/opinion/ghitis-police-shootings/index.html> [https://perma.cc/ULS4-LMZZ].

¹³ STANLEY, *supra* note 8, at 2.

¹⁴ *Id.*

people of color.

I. BRIEF OVERVIEW OF BODY-WORN CAMERA LEGISLATION

Illinois was one of the first few states to enact body camera legislation.¹⁵ Supporters of police body-worn camera believe that Illinois's comprehensive scheme can be a model for other states as they make strides to better policing practices.¹⁶ Further, Connecticut's General Assembly created An Act Concerning Excessive Use of Force in response to local concerns about violent policing of people of color.¹⁷ Opponents have concerns surrounding the use of police body-worn cameras, but the language in Illinois legislation is evidence that the Illinois legislature took these concerns into consideration. For these reasons, this article will use both the Illinois and Connecticut body camera legislation and the ACLU's body camera recommendations as a model for New York to follow.¹⁸

II. THE BENEFITS OF POLICE BODY-WORN CAMERAS

A. ADVANTAGE 1: BODY CAMERAS WILL INCREASE POLICE ACCOUNTABILITY

Many supporters believe that these cameras will help bolster police accountability within different communities.¹⁹ This has been proven true in the Florida town of Windermere, where the police suffered the reputation of being corrupt after a former chief was arrested for giving false testimony during a sexual battery trial.²⁰ Windermere decided to get the community's trust back by wearing cameras, and it is proving to be effective.²¹ The Illinois legislation also speaks to accountability by requiring the body-worn

¹⁵ Sophia Tareen, *Illinois Governor Signs Police Guidelines for Body Cameras*, BUS. INSIDER (Aug. 12, 2015, 3:55 PM), <http://www.businessinsider.com/ap-illinois-governor-signs-police-guidelines-for-body-cameras-2015-8> [<https://perma.cc/VC62-G4LF>].

¹⁶ *Id.*

¹⁷ An Act Concerning Excessive Use of Force, 2015 Conn. Acts 15-4 (Spec. Sess.) (codified in scattered sections of CONN. GEN. STAT.).

¹⁸ *Police Body-Worn Camera Legislation Tracker*, URBAN INST., <http://apps-staging.urban.org/features/body-camera-update/> [<https://perma.cc/2A7N-LKC7>] (listing other states that have current legislation in place, including South Carolina, Massachusetts, Delaware, New Hampshire and Maine).

¹⁹ STANLEY, *supra* note 8, at 7.

²⁰ Kevin Davis, *After Ferguson and North Charleston, More Police Are Wearing Body Cams*, A.B.A. J. (June 1, 2015, 03:50 AM), http://www.abajournal.com/magazine/article/after_ferguson_and_north_charleston_more_police_are_wearing_body_cams [<https://perma.cc/BAD6-WY2J>].

²¹ *Id.*

cameras to be recorded during the entirety of officers' work shift unless they are in a vehicle that has a camera.²² In an ACLU report, the organization concluded that the continuous recording during an officer's shift helps with accountability of the police and prevents evasion of misconduct while an officer is on duty.²³ Further, the ACLU believes that the continuous recordings could help the public's view of the police because the recording will show the human side of police officers.²⁴ The organization believes that there will be more sympathy towards the police because the public would be viewing officers' interactions with each other and will be exposed to precinct politics,²⁵ thus, restoring police accountability.

B. ADVANTAGE 2: BOTH OFFICERS AND CIVILIANS WILL BE PROTECTED

Supporters of the legislation requiring officer-worn body cameras believe that, as time goes on, complaints of violent policing will decrease because these interactions will be captured.²⁶ A 2015 Arizona State University study found that officers who were not wearing cameras conducted more "stop-and-frisks" and made more arrests than officers who were wearing cameras.²⁷ The researchers concluded that this study supports the claim that "police officers are more risk averse and cautious about their actions when wearing on-officer video technology."²⁸ Additionally, these cameras can help protect officers from false accusations, misconduct, and abuse against officers.²⁹

Moreover, this can help decrease the amount of confrontational situations officers have with community members.³⁰ The findings of a 2013 research study suggest that when officers wore body cameras, the use of

²² 50 ILL. COMP. STAT. 706/10-20(a)(2)(B) (2016).

²³ STANLEY, *supra* note 8, at 3.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See, e.g., Rory Carroll, *California Police Use of Body Cameras Cuts Violence and Complaints*, GUARDIAN (Nov. 4, 2013, 12:00 PM), <https://www.theguardian.com/world/2013/nov/04/california-police-body-cameras-cuts-violence-complaints-rialto> [<https://perma.cc/6BQT-H5Y2>].

²⁷ Justin T. Ready & Jacob T.N. Young, *The Impact of On-Officer Video Cameras on Police-Citizen Contacts: Findings from a Controlled Experiment in Mesa, AZ*, 11 J. EXPERIMENTAL CRIMINOLOGY 445, 454 (2015).

²⁸ *Id.*

²⁹ STANLEY, *supra* note 8, at 2; Nick Wing, *Study Shows Less Violence, Fewer Complaints When Cops Wear Body Cameras*, HUFFINGTON POST (Oct. 13, 2015, 3:14 PM), http://www.huffingtonpost.com/entry/police-body-camera-study_us_561d2ea1e4b028dd7ea53a56 [<https://perma.cc/4KPX-PCWN>].

³⁰ Wing, *supra* note 29.

force used by both police and respondents decreased by more than fifty percent.³¹ Supporters also argue that the footage can serve as “hard video evidence” of officers’ conduct during high-intensity situations.³² Thus, the footage will similarly provide valuable evidence in obtaining accurate witness and victim statements. Lastly, in allegations of police misconduct, these body-worn cameras can help weed out “he said, she said,” accounts and provide evidence of what actually took place.³³ The cameras can help protect both officers and the general public from unnecessary force and harm.

III. CRITIQUES OF BODY-WORN CAMERAS

A. CRITIQUE 1: BODY CAMERAS VIOLATE WITNESS PRIVACY

Non-supporters of body cameras believe that the devices will violate privacy and prevent the help of credible witnesses to assist in investigations because they may fear retaliation or public exposure.³⁴ A person could be calling the police because they witnessed a crime, or have been a victim of sexual assault; when said officer arrives, if she is wearing a body camera, the person, his home, family, etc. could all be recorded by the camera.³⁵ Further, he may not even know how the recording will be used, and whether it will be accessible to the public.³⁶ The Illinois statute states cameras must be turned off when a victim of a crime, witness of a crime, community member, or a confidential informant used by the law enforcement agency requests that the camera be turned off.³⁷ Further, the statute states, if it is

³¹ TONY FARRAR, POLICE FOUND., SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE-OF-FORCE 8-9 (2013), <https://www.policefoundation.org/wp-content/uploads/2015/06/The-Effect-of-Body-Worn-Cameras-on-Police-Use-of-Force.pdf> [<https://perma.cc/EK6Y-3B3B>].

³² *Essex County Sheriff Implements Body Cameras*, NORTHJERSEY.COM (Aug. 19, 2015, 9:44 AM), <http://archive.northjersey.com/news/sheriff-s-department-implements-body-cameras-1.1394508> [<https://perma.cc/QJ47-DQ8X>].

³³ Davis, *supra* note 20.

³⁴ See, e.g., STANLEY, *supra* note 8, at 3; *Cops’ Body Cameras Raise Privacy Concerns*, N.Y. DAILY NEWS (Mar. 15, 2014, 6:24 PM), <http://www.nydailynews.com/news/national/cops-body-cameras-raise-privacy-concerns-article-1.1722969> [<https://perma.cc/EZE9-XSNK>]; Matt Pearce, *Growing Use of Police Body Cameras Raises Privacy Concerns*, L.A. TIMES (Sept. 27, 2014, 6:00 AM), <http://www.latimes.com/nation/la-na-body-cameras-20140927-story.html> [<https://perma.cc/T5GV-PF4W>].

³⁵ See Kelly Freund, Note, *When Cameras Are Rolling: Privacy Implications of Body-Mounted Cameras on Police*, 49 COLUM. J.L. & SOC. PROBS. 91, 92 (2015).

³⁶ *Id.* at 92, 100-01.

³⁷ 50 ILL. COMP. STAT. 706/10-20(a)(4)(A)-(B) (2016).

impractical for the camera to stop recording, the request must be made on camera.³⁸ An officer, however, may still continue recording despite the request if “exigent circumstances exist”³⁹ or the officer has “reasonable articulable suspicion”⁴⁰ that the victim, witness, or confidential informant has or is in the process of committing a crime.⁴¹ The circumstances or suspicion must be stated on camera, unless “impracticable or impossible.”⁴² This is important because it only allows officers minor circumstances in which they can continue a recording. The language from the Illinois statute shows that the legislature wanted to ensure reports from witnesses, victims, and confidential informants would not be hindered because of the use of the cameras. Moreover, even if the officer continues to record, the witness can state on camera that they do not want to be recorded. Additionally, the officer must state her reasons for continuing the recording – likely because the witness is a suspect – which gives the witness the chance to choose if he wants to continue his report.

Nonetheless, if people fear for their privacy they are less likely to come to the police to make any type of report.⁴³ Generally, people do not want anyone to know what they are reporting to the police, thus, making it less likely a person will make reports if there is a lack of privacy.⁴⁴ But under the Illinois statute, if people want their reports to remain private they have the right to state that clearly.⁴⁵ Also, under the Illinois statute there will be a redaction of footage if “any person that appears on the recording is not the officer, a subject of the encounter, or directly involved in the encounter.”⁴⁶ In the ACLU’s recommendations for police body-worn cameras, the ACLU stated that, “[they] agree, and support body camera policies designed to offer special privacy protections for” individuals who may have good reason to not want to be on a police recording.⁴⁷ The recommendation refers to crime victims and witnesses who fear retaliation for cooperating with law enforcement agencies,⁴⁸ which is the same class of people that the Illinois body camera legislation protects.⁴⁹ Therefore, if New York uses the Illinois legislation as a model, the legislation will contain provisions to protect

³⁸ *Id.*

³⁹ *Id.* § 10-20(a)(4).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See, e.g.,* STANLEY, *supra* note 8, at 3; Pearce, *supra* note 34.

⁴⁴ *See* Pearce, *supra* note 34.

⁴⁵ *See* 50 ILL. COMP. STAT. 706/10-20(a)(4)(A) (2016).

⁴⁶ *Id.* § 10-20(b)(3).

⁴⁷ STANLEY, *supra* note 8, at 3.

⁴⁸ *Id.*

⁴⁹ 50 ILL. COMP. STAT. 706/10-20 (a)(4).

privacy and cooperating witnesses.

B. CRITIQUE 2: BODY CAMERAS ARE SUBJECT TO HUMAN ERROR AND
POLICE DISCRETION

Officer discretion is a major concern for police body camera legislation. Because officers will have discretion over when to activate the camera, storage of the footage, and public access to the footage, there is potential for abuse of discretion.⁵⁰ This argument is partially valid because, under the Illinois statute for example, officers have the obligation to turn off the camera when a witness or victim says that they do not want the camera to continue recording.⁵¹ Furthermore, under the Illinois statute, all recordings must be retained for a “90-day storage period.”⁵² After this 90-day storage period the footage can then be deleted unless a complaint has been filed; firearm or force was used by an officer; death or great bodily harm occurred to any person; the encounter resulted in detention or arrest; the officer is subject to internal investigation or is subjected to a misconduct investigation; the footage has evidentiary value; or the footage was flagged for official purposes.⁵³ Thus, under this law, an officer cannot just erase the footage when she wants to because of both the storage period—the officer *must* retain the footage—and the reasoning behind keeping the footage beyond the storage period. If an officer does not abide by these rules, she will be subjected to criminal and/or departmental penalties.⁵⁴

Further, under the Illinois law, it is not up to the officer’s discretion on when the public has access to the footage. In Illinois, the statute sets forth special circumstances of when the public has access to the footage under its Freedom of Information Act (“FOIA”).⁵⁵ The Illinois statute provides that recordings made with the use of an officer-worn body camera are not subject to disclosure under the FOIA unless the recording is “flagged, due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm . . .”⁵⁶ Additionally, the subject of the encounter captured on the recording must be a victim or witness and the law enforcement agency must obtain written permission of the subject

⁵⁰ See, e.g., STANLEY, *supra* note 8, at 8 (“A recent case in Maryland illustrates the problem: surveillance video of an incident in which officers were accused of beating a student disappeared (the incident was also filmed by a bystander).”).

⁵¹ 50 ILL. COMP. STAT. 706/10-20(a)(4).

⁵² *Id.* § 10-20(a)(7)(A).

⁵³ *Id.* § 10-20(a)(7)(B).

⁵⁴ *Id.* § 10-20(a)(11).

⁵⁵ See *id.* § 10-20(b).

⁵⁶ *Id.* § 706/10-20(b)(1).

or the subject's legal representative.⁵⁷ Therefore, the likelihood of an officer disclosing a recording at her own discretion is low.

C. CRITIQUE 3: BODY CAMERAS ARE PRONE TO TECHNOLOGICAL GLITCHES

Another argument against police body-worn camera legislation is that there will be technological issues that can prevent the cameras from functioning properly, which can result in the loss of necessary witness statements or footage of police or citizen misconduct. The risk of technological issues may be a disadvantage, but this is a weak argument because it does not raise any new harm posed by the cameras. At worst, technological issues bring us back to the pre-camera landscape.

The advantages of the footage outweigh the risk that the footage will be lost due to a technological glitch. Some advantages are that the cameras will: (1) provide evidence in domestic violence cases; (2) improve evidence collection at accident scenes; (3) help departments exit consent decrees by proving constitutional police conduct; (4) assist in recognizing officer behavior; and (5) decrease the number of complaints.⁵⁸ Further, the Illinois statute provides that law enforcement agencies are required to make sure the cameras are well taken care of. Moreover, officers are required to notify their supervisors when there are "any technical difficulties, failures, or problems with the officer-worn body camera or associated equipment."⁵⁹ Once notified, the supervisor "shall make every reasonable effort to correct and repair any of the officer-worn body camera equipment."⁶⁰ Although there is a possibility footage will be lost, it does not outweigh the potential gain of valuable or necessary footage the camera will obtain while functioning properly. In Elkhart, Illinois,⁶¹ Cleveland, Ohio,⁶² and Calgary,

⁵⁷ 50 ILL. COMP. STAT. 706/10-20(b)(1)(A)-(B).

⁵⁸ *5 Unique Benefits of Body Cameras*, BODY WORN VIDEO STEERING GRP. (June 26, 2015), <http://www.bwvsg.com/news/5-unique-benefits-of-body-cameras/> [<https://perma.cc/9W9X-4BLV>].

⁵⁹ 50 ILL. COMP. STAT. 706/10-20(a)(10).

⁶⁰ *Id.*

⁶¹ *Elkhart Police to Renew Use of Body Cameras After Glitches*, WASH. TIMES, (Feb. 8, 2017), <http://www.washingtontimes.com/news/2017/feb/8/elkhart-police-to-renew-use-of-body-cameras-after/> [<https://perma.cc/92R2-BUBH>]; see also Molly Jirasek, *Elkhart Police Using New Body Cameras After January Suspension*, WSBT 22 (Mar. 21, 2017), <http://wsbt.com/news/local/elkhart-police-now-using-new-batch-of-body-cameras-after-january-suspension> [<https://perma.cc/FLL2-5SMR>].

⁶² *Police Union to I-Team: Body Camera 'Technical Problems' Could Lead to Some Delays*, FOX 8 (Mar. 9, 2015, 7:14 PM), <http://fox8.com/2015/03/09/police-union-to-i-team-technical-problems-with-body-cameras-could-lead-to-delays/> [<https://perma.cc/UW98-ESZY>].

Canada,⁶³ there have been issues of technological glitches with body-worn cameras. However, each of these cities has decided to fix the glitch issues instead of foregoing the cameras entirely because law enforcement leaders recognize the advantages of the body cameras for both the police and the public.⁶⁴ Therefore, despite the chance of technological issues with body cameras, body-worn cameras should be implemented and retained for their benefits.

D. CRITIQUE 4: BODY CAMERAS ARE NOT IMMUNE FROM FOOTAGE TAMPERING OR POLICE ABUSE OF DISCRETION

Lastly, some argue that there will be issues of selective recording and claims of footage tampering.⁶⁵ Additionally, except under some circumstances, recordings made with the use of an officer-worn body camera are not subject to disclosure under the Freedom of Information Act, leaving officers with wide discretion.⁶⁶ The Illinois statute states that “[i]f a court or other finder of fact finds by a preponderance of the evidence that a recording was intentionally not captured, destroyed, altered, or intermittently captured in violation of this Act,” the court or finder of fact must consider the violation while weighing the evidence, unless there is a “reasonable justification.”⁶⁷ Currently, however, even when departments discipline officers engaged in police misconduct, the discipline rarely results in officer termination.⁶⁸

Furthermore, following the murders of Michael Brown and Eric Garner, both officers responsible for their deaths failed to be indicted or terminated.⁶⁹ Instead, these officers were given the punishment of doing

⁶³ Lucie Edwardson, *Hardware Glitches Delay CPS Body-Worn Camera Program into Next Year*, METRO NEWS CALGARY (Aug. 25, 2016), <http://www.metronews.ca/news/calgary/2016/08/25/glitches-delay-cps-bodyworn-camera-program-into-next-year.html> [<https://perma.cc/RK4M-33GD>].

⁶⁴ See, e.g., *id.*; *Elkhart Police to Renew Use of Body Cameras After Glitches*, *supra* note 61; *Police Union to I-Team: Body Camera ‘Technical Problems’ Could Lead to Some Delays*, *supra* note 62.

⁶⁵ Davis, *supra* note 20.

⁶⁶ 50 ILL. COMP. STAT. 706/10-20(a)(11)(b).

⁶⁷ *Id.* § 10-30.

⁶⁸ Chase Madar, *Why It’s Impossible To Indict A Cop: It’s Not Just Ferguson—Here’s How The System Protects Police*, NATION (Nov. 25, 2014), <http://www.thenation.com/article/why-its-impossible-indict-cop/> [<https://perma.cc/M9JE-3VEQ>].

⁶⁹ Jennifer De Pinto et al., *Michael Brown and Eric Garner: The Police, Use of Force and Race*, CBS NEWS (Dec. 10, 2014, 6:31 PM), <http://www.cbsnews.com/news/michael-brown-and-eric-garner-the-police-use-of-force-and-race/> [<https://perma.cc/433V-R9WA>].

administrative duties, while still being paid.⁷⁰ The Illinois statute states that “no officer may hinder or prohibit any person . . . from recording a law enforcement officer in the performance of his or her duties in a public place or when the officer has no reasonable expectation of privacy.”⁷¹ In addition, “[t]he law enforcement agency’s written policy shall indicate the potential criminal penalties, as well as any departmental discipline, which may result from unlawful confiscation or destruction of the recording medium of a person who is not a law enforcement officer.”⁷² Possibly, the Illinois Statute will put more pressure on officers to do their job correctly and support more stringent punishments for police misconduct. Yet it is still unknown how the courts will decipher the Illinois legislature’s intent behind the law. It is up to the courts and the legislature to define the criminal penalties and the departmental punishment an officer will be subjected to if she hinders or tampers with footage. It is also up to the courts and legislature to define what is a reasonable justification for an officer to tamper or hinder footage.

Considering that supporters believe that the Illinois body-worn camera legislation is a model,⁷³ the courts should lead by example by interpreting the law to require stringent criminal penalties and harsher departmental punishments. This will help prevent officers from tampering with or hindering the recording of footage because of the consequences that will be likely to occur. Courts and state legislatures should give clear language describing what is a reasonable justification the State can give for intentionally not capturing or tampering with body-worn camera footage. Therefore, there is still a risk that officers will tamper with the recordings made on body cameras.

IV. FLAWS OF THE BODY CAMERAS AND THE STEPS NECESSARY TO END BAD POLICING

Oscar Grant.⁷⁴ Eric Garner.⁷⁵ Sandra Bland.⁷⁶ Alton Sterling.⁷⁷ Philando

⁷⁰ See, e.g., Josh Margolin et al., *NYPD Cop’s Chokehold May Not Have Caused Serious Injury to Man’s Throat*, ABC NEWS (July 20, 2014, 2:08 PM), <http://abcnews.go.com/US/nypd-cops-chokehold-caused-injury-mans-throat/story?id=24640347> [<https://perma.cc/PK5G-82LU>]; Taylor Wofford, *Darren Wilson Remains on Paid Leave: Ferguson Mayor*, NEWSWEEK (Nov. 25, 2014, 4:19 PM), <http://www.newsweek.com/darren-wilson-remains-paid-leave-ferguson-mayor-287128> [<https://perma.cc/7NS6-A3K3>].

⁷¹ 50 ILL. COMP STAT. 706/10-20(a)(11).

⁷² *Id.*

⁷³ See Tareen, *supra* note 15.

⁷⁴ Elliott C. McLaughlin et al., *Video of California Police Shooting Spurs Investigation*, CNN (Jan. 7, 2009, 7:32 AM), <http://www.cnn.com/2009/CRIME/01/06/BART.shooting/>

Castile.⁷⁸ These five Black individuals were recorded (on cell phones or police vehicle cameras) being treated violently by the police. Despite these recordings, Grant's murderer served only eleven months in a private cell in protective custody,⁷⁹ and Garner's murderer was not even indicted.⁸⁰ Instead, Garner's murderer was given administrative duty for using the chokehold on Eric Garner;⁸¹ similarly, the officer who violently handled Bland during a traffic stop was also given administrative duty as punishment for not using normal traffic stop procedures.⁸² Thus, having a recording of police misconduct may not be the solution to deterring violent policing.

The threat of punishment does not deter violent policing especially if violent policing is routine. The above cases of violent policing recorded on camera and greeted with police impunity cause people to wonder what will change once body-worn cameras record footage of violent police misconduct. For the cameras to be effective, there must be punishments in place to dissuade officers from using violent policing methods. Clearly, the

[<https://perma.cc/U3P2-LUWF>].

⁷⁵ Josh Sanburn, *Behind the Video of Eric Garner's Deadly Confrontation with New York Police*, TIME (July 22, 2014), <http://time.com/3016326/eric-garner-video-police-chokehold-death/> [<https://perma.cc/B7MC-Y58S>].

⁷⁶ Josh Sanburn, *Everything We Know About the Sandra Bland Case*, TIME (July 23, 2015, 6:07 PM), <http://time.com/3966220/sandra-bland-video> [<https://perma.cc/4BGT-92DC>].

⁷⁷ Zack Kopplin & Justin Miller, *New Video Emerges of Alton Sterling Being Killed by Baton Rouge Police*, DAILY BEAST (July 7, 2016, 10:00 AM), <http://www.thedailybeast.com/articles/2016/07/06/new-video-shows-alton-sterling-was-not-holding-a-gun-when-baton-rouge-police-killed-him.html> [<https://perma.cc/7NEJ-LP7T>].

⁷⁸ German Lopez, *Philando Castile Minnesota Police Shooting: Officer Charged with Manslaughter*, VOX (Nov. 16, 2016, 12:10 PM), <http://www.vox.com/2016/7/7/12116288/minnesota-police-shooting-philando-castile-falcon-heights-video> [<https://perma.cc/X4AH-A7VR>].

⁷⁹ Laura Anthony, *Johannes Mehserle Released from LA County Jail*, ABC 7 (June 14, 2011, 1:14 AM), <http://abc7.com/archive/8186895/> [<https://perma.cc/23ZB-PYQ2>].

⁸⁰ Andrew Siff et al., *Grand Jury Declines to Indict NYPD Officer in Eric Garner Chokehold Death*, 4 N.Y. (Dec. 4, 2014, 1:59 PM), <http://www.nbcnewyork.com/news/local/Grand-Jury-Decision-Eric-Garner-Staten-Island-Chokehold-Death-NYPD-284595921.html> [<https://perma.cc/5AUJ-MXRZ>].

⁸¹ *Cop in Fatal NYC Arrest Stripped of Gun, Badge*, CBS (July 20, 2014, 12:19 AM), <http://www.cbsnews.com/news/eric-garner-probe-new-york-cop-daniel-pantaleo-stripped-of-gun-badge/> [<https://perma.cc/4JSN-J5V9>].

⁸² Abby Ohlheiser & Abby Phillip, *'I Will Light You Up!': Texas Officer Threatened Sandra Bland with Taser During Traffic Stop*, WASH. POST: MORNING MIX (July 22, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/07/21/much-too-early-to-call-jail-cell-hanging-death-of-sandra-bland-suicide-da-says/> [<https://perma.cc/CW65-FMGA>].

penalties that are currently in place are not enough to dissuade officers from violent policing, even after there has been evidence of violent policing via cell phone and police vehicle cameras. Body-worn cameras have limited added value without a change in the law enforcement agency itself—a change that calls for penalties that *actually deter* violent policing. Therefore, stringent penalties must be in place.

In regards to privacy, some necessary steps must be taken in order to prevent invasions of privacy. The ACLU notes that one way this can be done is through notice to citizens while the recording is taking place.⁸³ The Illinois law takes this into account because it states that an “officer must provide notice of recording to any person if the person has a reasonable expectation of privacy and proof of notice must be evident in the recording.”⁸⁴ Further, “[i]f exigent circumstances exist which prevent the officer from providing notice, notice must be provided as soon as practicable.”⁸⁵ However, the ACLU argues that the cameras should not be used as surveillance or used as a tool to obtain intelligence information because then the cameras would be violating citizens’ First Amendment rights.⁸⁶ Further, footage should not be retained for longer than necessary,⁸⁷ which Illinois also takes into account with a 90-day storage period.⁸⁸

The ACLU has offered three caveats to body-worn camera legislation. First, the subject of the video should have access to the video and should be able to make copies of recordings as long as the government stores the footage.⁸⁹ Second, third parties should only be allowed access to the recording when the subject of the video gives consent to this disclosure.⁹⁰ If the subject does not consent, there should be redaction, blurring, or blacking-out of the subject before the footage is disclosed to the public. The Illinois statute embodies this caveat by requiring that when a witness or a victim is the subject of the recording, the footage is only accessible when the subject gives written consent.⁹¹ In addition to this caveat, the Illinois statute states that there will be a redaction of footage of “any person that appears on the recording and is not the officer, a subject of the encounter, or directly involved in the encounter.”⁹² Thus, there should also be redaction of footage both when a subject does not consent and when someone who is

⁸³ See STANLEY, *supra* note 8, at 5-6.

⁸⁴ 50 ILL. COMP. STAT. 706/10-20(a)(5).

⁸⁵ *Id.*

⁸⁶ STANLEY, *supra* note 8, at 6.

⁸⁷ *Id.*

⁸⁸ 50 ILL. COMP STAT. 706/10-20(a)(7).

⁸⁹ STANLEY, *supra* note 8, at 7.

⁹⁰ *Id.*

⁹¹ 50 ILL. COMP STAT. 706/10-20(b)(1)(A)-(B).

⁹² *Id.* § 10-20(b)(3).

not the subject of the footage has been recorded. The ACLU's final caveat is that unredacted flagged footage should be disclosed when the public's need for oversight outweighs the privacy interests at stake.⁹³ Analyzing the language of the Illinois statute, and seeing how the legislation matches up with the ACLU's suggestions, these recommendations are feasible. Therefore, it is likely that privacy interests of citizens can be protected under the Illinois model legislation.

Sadly, body-worn cameras do not fix the systemic issues of racism, despite the hope that this technology will benefit communities of color. Leonard J. Dietzen, a Tallahassee attorney who counsels law enforcement agencies in Florida on the use of body-worn cameras,⁹⁴ reminds supporters that despite being a "useful tool," the cameras are "not a magic bullet[.]"⁹⁵ Deeper systemic public policy work is needed to address over-policing in communities of color.⁹⁶

Unlike Illinois, Connecticut took race and issues of racism into account when constructing their police reform legislation. An Act Concerning Excessive Use of Force, Section 2 expresses that Connecticut law enforcement agencies are required to "develop and implement guidelines for the recruitment, retention and promotion of minority police officers" ⁹⁷ Further, the Connecticut legislature requires that the "guidelines shall promote achieving the goal of racial, gender and ethnic diversity within the law enforcement unit."⁹⁸ Connecticut is making clear strides to try to change the institutionalized racism present in law enforcement agencies. This will help aid police accountability in communities of color, but will not fix the structural issue of racism within policing.

As long as we have poverty and racism, we will continue to have violent policing.⁹⁹ This is evident in the fact that the United States has been dealing with violent policing against people of color (predominantly poor people of color) since the migration of Black Americans from the South to Northern States (also known as the Great Migration).¹⁰⁰ The Watts Riots of August

⁹³ STANLEY, *supra* note 8, at 8.

⁹⁴ Davis, *supra* note 20.

⁹⁵ *Id.*

⁹⁶ See *Reforming Police Practices*, AM. C.L. UNION, <https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices> [<https://perma.cc/8FKA-S2Y5>].

⁹⁷ An Act Concerning Excessive Use of Force, 2015 Conn. Acts 15-4 (Spec. Sess.) (codified in scattered sections of CONN. GEN. STAT.).

⁹⁸ CONN. GEN. STAT. § 7-291b (2015).

⁹⁹ Heather Ann Thompson, *Inner-City Violence in the Age of Mass Incarceration*, ATLANTIC (Oct. 30, 2014), <https://www.theatlantic.com/national/archive/2014/10/inner-city-violence-in-the-age-of-mass-incarceration/382154/> [<https://perma.cc/6KFR-RDCA>].

¹⁰⁰ *The Great Migration and Beyond*, in THE SOCIAL HISTORY OF CRIME AND PUNISHMENT IN AMERICA: AN ENCYCLOPEDIA 459 (WILBUR R. MILLER, ED. 2012).

1965 surrounded the violent policing of Black Americans and other racial injustices experienced by the community members of Watts, Los Angeles.¹⁰¹ These riots took place over 50 years ago, but clearly we still face the same issues. Violent policing of Black people was also one of the main issues that motivated the Black Panther Movement. It is apparent that we need a deeper change within the institution of policing; a change that exceeds body-worn cameras. Until then, there will be an ongoing cycle of movements that will continue to fight this continuous battle. Currently, the #BlackLivesMatter movement is trying to make radical change in the institution of policing, beyond body-worn cameras, because they recognize that body-worn cameras are not the only solution.

V. CONCLUSION

Police body-worn cameras can have a major impact on policing here in New York State. Analysis of the advantages and critiques of body cameras shows that they may be a tool in ending violent policing, but they are not the sole solution. Despite the advantages, issues of racism, poverty, and inequality will still exist until there is systemic change in the culture of law enforcement agencies and in America as a whole. Until then, however, New York State needs body cameras on all of its officers. There needs to be an end to the violent policing of people of color. This country cannot afford to lose another Black life. #BlackLivesMatter.

* * *

¹⁰¹ *Watts Rebellion (August 1965)*, BLACKPAST, <http://www.blackpast.org/aaw/watts-rebellion-august-1965> [<https://perma.cc/LF7J-2JGR>].