

COMMUNITIES UNITED FOR POLICE REFORM

SUBMISSION OF COMMENTS To NYPD & NYU Policing Project

Re NYPD Body Worn Camera (BWC) Pilot Program II & Policies August 7, 2016

About Communities United for Police Reform (CPR)

Communities United for Police Reform (CPR) is a multi-strategy and multi-sector campaign to end discriminatory and abusive policing in New York. We aim to build a lasting movement that promotes public safety and policing practices based on respect and accountability to communities – not discriminatory targeting and harassment. The members, supporters and partners in this campaign come from all 5 boroughs, from all walks of life and include many of those most unfairly targeted by the NYPD.

CPR publicly launched in February 2012, bringing together grassroots community organizing groups, policy organizations, legal organizations, research projects and others – all united to develop and implement a unified campaign to end discriminatory and abusive NYPD practices. CPR is rooted in an historical understanding and experience that truly addressing abusive NYPD policies and practices requires the prioritization of the perspectives and leadership of those most impacted by abusive policing, as well as long-term coordination of major efforts, across and within sectors throughout NYC.

Context for comments

The systemic lack of accountability for police abuse of authority, excessive force and unjustified killings of civilians is now widely recognized as a crisis in New York City and across the nation. While some have pointed to the possibility that body worn cameras might increase police accountability, we understand this to be conditional on key aspects of a body worn camera program – specifically, whether the structure, policies and practices related to the program expressly serve the primary goal of police accountability and transparency. In fact, there has been increased scrutiny and attention to the fact that body worn camera programs of most departments across the country (including that of the NYPD’s draft policies) fail to centralize concerns related to accountability and transparency¹.

There are also serious concerns that should be discussed publicly regarding the cost of body worn cameras and related technology, and whether such costs are justified when compared to budgets for social goods, public infrastructure and social services.

¹ See Scientific American, “Police Body Camera Use: Not a Pretty Picture”, August 4, 2016

These comments are submitted regarding the NYPD's upcoming body worn camera pilot program that was mandated as part of the Floyd federal stop-and-frisk litigation² and should not be read to suggest that we support the current or any future potential expansion or extension of an NYPD body worn camera program – particularly without meaningful and structured oversight by community and police accountability organizations representing communities most impacted by discriminatory and abusive policing.

Communities most impacted by NYPD discriminatory and abusive policing such as stop-and-frisk abuses and other “broken windows” policing abuses include low-income communities of color, particularly those who are: youth; immigrants; people who are homeless; public housing residents; women; LGBT and gender non-conforming people; perceived to be Muslim; and people with cognitive or psychiatric disabilities. The perspectives of these communities must be considered in any meaningful evaluation of the pilot program, and should be centered in the development/finalization of any policies.

Comments on the NYPD Draft Policy for Body Worn Cameras (BWC)

It is impossible to meaningfully discuss policies for the upcoming court-ordered BWC policy without contextualizing and commenting on the prospect of an overall NYPD BWC program. The NYPD's Pilot Police Body-Worn Camera (BWC) program should be used to reduce discriminatory and abusive NYPD practices and the constitutional violations found by the Court in *Floyd, Davis and Ligon* – particularly since the BWC pilot program was initiated as a result of the Floyd court order.

The following relate to the overall program and draft policy, and our strong recommendations (& objections) to what is currently planned:

1. Principles that should guide the NYPD's BWC Pilot

NYPD's policies and practice related to the use of BWCs should promote implementation that will:

- Maximize NYPD transparency and accountability to the public – particularly

² Communities United for Police Reform (CPR) was named as a key stakeholder in the Floyd court ruling and maintain a significant interest in the outcome of remedies in the Floyd, Davis and Ligon cases. CPR's members and partners submitted an amicus brief as part of the Floyd litigation, and CPR members were also amongst the named plaintiffs and witnesses in Floyd. In fact, *Floyd v. NYC*, litigated by the Center for Constitutional Rights, was possible because of the work of activists/organizations who had worked with CCR to bring the *Daniels v NYC* lawsuit (the pre-cursor to Floyd). CPR members such as the Justice Committee (formerly known as the National Congress for Puerto Rican Rights' Justice Committee) and Malcolm X Grassroots Movement served as the initial plaintiffs for Daniels after the 1999 killing of Amadou Diallo in a hail of 41 bullets. MXGM members and other CPR members were amongst the named plaintiffs and witnesses in the Floyd litigation and trial.

accountability to communities and individuals who are most likely to be subject to abusive policing and therefore be potential subjects of footage.

- Eliminate potential for footage to be used to further criminalize communities or to be used for unwarranted surveillance of communities or individuals. As a result, the retention, use and release of BWC footage from the pilot program should be limited to instances that advance NYPD accountability and transparency.

Consistent with the Court’s remedial opinion and order in Floyd, the primary focus of the NYPD BWC pilot program should be to increase transparency and accountability during “stop and frisk” and other police interactions.

In order to ensure that the program achieves the goal of ensuring that police interactions comply with the mandates of the Constitution, BWC should not serve as or be perceived to be an additional tool of surveillance or evidence gathering for criminal prosecutions. While the experience of Eric Garner and countless other New Yorkers whose abuse at the hands of police was caught on videotape makes it clear that the presence of video footage or BWCs will not guarantee improved outcomes during law enforcement interactions, that should be their primary purpose.

2. Ownership, management and control of footage from police body-worn cameras

A third party government agency should be responsible for ownership, management and control of footage – not the NYPD or a corporate entity.

3. Structured and meaningful community input prior to finalizing the policies – There should be an opportunity for structured and meaningful community input after the NYU Policing Project has submitted its report to the NYPD and released it publicly, and before the NYPD finalizes policies for the pilot program. There should be public consultation, as well as consultation with law enforcement and policy advocates, on the purpose, nature, scope and policies governing BWC programs *before* BWC are deployed in the NYPD BWC Pilot II.

4. Full transparency related to the budget for the pilot BWC program – including equipment/software cost, storage, personnel to manage the footage, training, etc. These costs must be made transparent and public to enable the public to determine whether the financial costs of the BWC program are justified, when compared to critical public infrastructure, goods and services that are under-resourced.

The BWC pilot program should not divert resources away from programs meeting the needs of communities directly impacted by stop-and-frisk and other policing abuses.

5. There should be a reliable, evidence-based **evaluation** – that is independent of the

NYPD and overseen by an agency other than the NYPD - of the effectiveness of the BWC pilot program in capturing and addressing police misconduct **by members of the communities subject to surveillance, advocates**, incorporating feedback from communities directly impacted by discriminatory policing practices.³ If the evaluation does not prove the program to be effective in reducing civil rights violations it should be discontinued.

6. Full transparency re deployment, prior to deployment - The Commissioner should make a public announcement regarding which officers, precincts, or squads will be assigned BWCs and under what circumstances.⁴

Officers at precincts and central booking facilities should be amongst those who are outfitted with body worn cameras in the pilot program, in order to document and prevent abuses.

7. BWC utilized by the NYPD should have **no** infrared/x-ray capabilities, biometric capabilities or automated analytics capacities.
8. There should be a clear and public process to file complaints around mis-use of BWC. This complaint process should include whistleblower protections, and enable anonymous complaints.
9. NYPD written BWC policy should clearly state the consequences for officers who fail to comply with any part of the BWC policy, and there should be disciplinary consequences.
10. Retention of footage – Footage should not be retained indefinitely. Footage with no evidentiary value should be deleted within less than 3 months – however this should be overseen and managed by an agency that is independent of the NYPD. Footage with evidentiary value should be kept no longer than required for complaints and claims to be filed and for video to be turned over to those filing complaints and claims(including litigation, CCRB complaints, Commission on Human Rights complaints, etc.).
11. Access to footage
 - NYPD policy should prohibit officers from reviewing BWC footage on any device or recording, before a written complaint and/or arrest report has been submitted to

³ PERF. PERF suggests that statistics be maintained on the use and outcomes of BWC use in criminal prosecutions and internal affairs and periodically released to the public.

⁴ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, D.C.: Office of Community Oriented Policing Services (hereinafter “PERF”).

the district attorney's office or relevant outside office independent of the NYPD. Pre-statement review by officers of BWC footage/recordings should be prohibited in all cases – including when an officer is the subject or witness related to internal or external investigations regarding officer misconduct -- until after an official statement has been provided by the officer(s). Following an official statement, officers should be prohibited from review of footage unless the subject of the footage (or their family or counsel) are granted access to the footage.

12. Officer discretion regarding when cameras are turned on. There should not be officer discretion or ability of individual officers to turn BWC on/off while they are on duty – with the exception of if a civilian who is part of being recorded requests that it be turned off. In such cases, the civilian's request should be recorded and if the civilian changes their mind, the camera should be immediately turned on.
13. Civilians should always be informed that they are being recorded. This should happen immediately.
14. Officers should not be permitted to use privately-owned BWC.⁵

Questions related to this public comment submission can be sent to justice@changethenypd.org. Thank you in advance for consideration of this submission.

⁵ PERF.