



Guidance on the Use of Body-Worn Cameras (BWC) During the Administration of the Lethality Assessment Program (LAP)

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I. Preamble

This document represents the position of the Maryland Network Against Domestic Violence (MNADV) on the use of body-worn cameras (BWCs) by law enforcement during the Lethality Assessment Program—Maryland Model (LAP). In summary, the recommendation is that law enforcement not record any part of the LAP, and that law enforcement inform the victim and the hotline advocate of this policy.

This document contains a protocol and analysis for the use of BWCs during the LAP. It exclusively focuses on the intersection of LAP and BWCs. It does not address whether officers should use BWCs during the course of an intimate partner violence call for service generally. There are many good reasons to record and not to record other aspects of an intimate partner violence call for service which are not addressed in this document.¹

In considering a BWC policy and protocol in the context of the LAP, MNADV was guided by the following principles:

- The use of recording devices may not be appropriate for traumatized victims;
- Law enforcement should promote the full participation of victims in the LAP and foster trust with both victims and advocates;
- Law enforcement should make their best effort to strike a balance between gathering evidence, building trust, and promoting victim safety;
- Law enforcement and advocates should be mindful of the danger of further harm that could come if a victim's revelation of non-evidentiary information during the LAP is recorded;
- Law enforcement and advocates should collaboratively anticipate the potential unintended consequences of the use of BWCs during the LAP for victims; and
- With the use of BWCs spreading, research is still emerging; potential effects of recording victims of sensitive crime are unknown; and issues around privacy and confidentiality are largely unexplored.

MNADV considers this protocol to be in the best interest of victims who participate in the LAP. We propose this protocol as a “best practice” recommendation, not a core, required element,

¹ If you are working on developing a policy related to intimate partner violence investigations generally and would like more information and resources, please contact us and we will try to connect you with resources and assistance relevant for your state. The International Association of Chiefs of Police is currently developing considerations and guidelines for the use of BWCs with victims of sensitive crimes generally, and this document will be revised to reflect a link to that resource once it is available.

to LAP participants. We recognize that our position may evolve and necessitate adjustment as new research on the effects of the use of BWC emerges. In the meantime, we ask that everyone—law enforcement and those who partner with law enforcement—work together to prioritize and focus on the well-being and safety of victims of intimate partner violence, especially those most in danger of being killed, in the spirit of the IACP resolution entitled *Victim Considerations in the Dissemination of Audio/Video Captured by Law Enforcement*.²

We urge all law enforcement agencies that adopt these LAP/BWC protocol recommendations to make their own policies explicit and transparent. Making BWC policies explicit and transparent will assist officers in complying with the policy faithfully, and through consistent application of the policy, will assist in building trust with the community.

² Resolution of the International Association of Chiefs of Police (IACP) from its 122nd Annual Conference and Exposition in Chicago, IL, October 15-18, 2015. The resolution was submitted by the Victim Services Committee, Private Sector Liaison Committee, Crime Prevention Committee, Police Investigative Operations Committee, Community Policing Committee, and Civil Rights Committee
VSC.009.t15

<http://www.iacp.org/Resolutions>

It reads as follows:

The IACP recommends that law enforcement leaders collaborate with criminal justice stakeholders, prosecutors, and elected officials to enhance or create laws and policies designed to closely regulate the release of law enforcement captured audio and video recordings. It is also resolved that law enforcement leaders, criminal justice stakeholders, prosecutors, and elected officials work to balance transparency concerns and the public's right to know against privacy issues for victims and prioritize the rights of victims, their family, witnesses, and community members, in order to protect these individuals from further physical and psychological harm that can occur when audio and video recordings become public.

II. Executive Summary

BWC use requires further research. The lack of substantive, peer-reviewed research and limited experience with using BWCs should be considered when developing agency policy regarding victim interactions. Specifically, there have been no research studies that examine the effect of BWC use on victims of intimate partner violence (e.g., it is unknown whether victims trust law enforcement more, feel safer, or are more likely to call law enforcement again if BWCs are used). Further, none of the limited research into BWCs generally involved an examination of the intersection of BWCs and the LAP. Some of the ethical and legal concerns requiring further research and discussion include: the potential effects of BWCs on traumatized victims, on issues around privacy and safety, and on advocate confidentiality.

MNADV position on BWCs in the context of the LAP. MNADV recommends that agencies develop policies around the use of BWCs in the context of the LAP to guide and support officers, and increase victim participation in the LAP. The policy should instruct officers:

- 1) to not record any part of the LAP with the victim, and
- 2) to inform victims and advocates that they are *not* being recorded.

LAP—special circumstance. The LAP is a unique opportunity for law enforcement to better understand the victim's situation and for advocates to interact with victims more immediately. The LAP is a special circumstance that helps officers and advocates build trust with victims, which is a critical part of promoting victim safety and encouraging service utilization. Moreover, the LAP is not a part of the criminal investigation; it is a supplemental measure typically conducted at the conclusion of the investigation. MNADV emphasizes during training and technical assistance that the LAP was designed to promote victim safety, not to determine whether a crime occurred nor to gather evidence to support prosecution.

As such, law enforcement policymakers are encouraged to recognize the unique circumstances and intentions of LAP, and allow modifications to any existing BWC policy to accommodate these considerations.

III. Protocol

Guiding Principles

1. No part of the LAP should be recorded with a body-worn camera/recording device (BWC).
2. The victim and the hotline advocate should be informed that no conversations between the officer and victim, the officer and hotline advocate, nor the victim and hotline advocate will be recorded during the LAP.

Procedures

Informing victim and hotline advocate about use of BWC.

- **Before the Lethality Screen is initiated:**

- If the officer has been using a BWC to record the investigative part of the intimate partner violence call for service, prior to initiating the LAP the officer will notify the victim that, per agency policy, the BWC will:
 - Be turned off for the duration of the LAP; and
 - remain off and will not be used to record the questions, answers or conversations between the officer and victim regarding the LAP.

- **In High-Danger cases:**

- When encouraging the victim to speak with the hotline advocate, the officer will remind the victim that conversations with the hotline advocate will not be recorded in order to protect the victim's privacy and safety, and maintain confidentiality.
- After introducing themselves to the hotline advocate, the officer will inform the advocate that, in order to protect the victim's privacy and safety and maintain confidentiality, no part of the LAP was or will be recorded, including:
 - the officer's conversation with the victim, and
 - the victim's conversation with the advocate.

Gathering evidence after the LAP.

- If the victim responds "yes" to questions on the Lethality Screen that indicate a crime was committed (e.g., the victim answers yes to question 5 indicating they were "choked") and the officer wants to further investigate, per agency policy, the officer may turn the BWC back on only after the hotline conversation has concluded and the victim has been notified that the recording will begin again.

IV. Analysis

Deliberate Approach in BWC Policy-Making

BWCs - Quickly Emerging Development

Due to recent events involving law enforcement and the public, many law enforcement agencies are seeking to adopt policies, and some states have passed or are seeking to pass legislation, requiring the use of BWCs. Consequently, MNADV, as part of its technical assistance to law enforcement agencies using the LAP,³ has identified the need to provide direction to agencies that use BWCs/recording devices to safeguard the integrity of the LAP and promote victim safety.

Cautionary Approach to Policy-Making

Various articles and publications are being developed and disseminated about BWCs. The decision to use BWCs, make policies, and train officers accordingly is moving rapidly. Decisions are being made without full knowledge of how BWCs affect the interactions between law enforcement and victims of crime, or of how BWC footage will be used. In the midst of uncertainty around BWC use and its effects, there is a need for continued discussion, and for discretionary policies and decision-making by officers. Currently, the decisions that agencies across the country are making regarding the use of BWCs and the consequences of their use are not sufficiently evidence-based. As the Police Executive Research Forum (PERF) wrote, “[BWCs] raise many privacy issues that have not been considered before.”⁴ The lack of available peer-reviewed research regarding BWCs should prompt agencies to take a cautionary approach in developing policies, particularly when considering building trust and promoting safety for victims of intimate partner violence.

BWCs and the LAP: A Special Circumstance

LAP—A Special Circumstance

The LAP challenges the standard operating procedure of law enforcement. The LAP is not a part of the criminal investigation; it is a supplemental measure to promote victim safety that is taken at the conclusion of the investigation. Recording the LAP could easily “blur the lines” between the investigation and the non-investigative LAP and make it difficult for prosecutors to protect information that is revealed during the LAP from discovery, thus potentially placing the victim in danger.

³ As of April 1, 2016, the MNADV estimates that more than 600 law enforcement agencies in 36 states are implementing LAP.

⁴ Miller, Lindsay, Jessica Tolliver and Police Executive Research Forum. 2014. Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned. Washington, DC: Office of Community Oriented Policing Services. Pg. 11 (cited hereafter as “PERF”).

The LAP creates an environment and interaction that is more sensitive than the standard intimate partner violence interview. It also includes the immediate involvement of a hotline advocate from a community-based domestic violence service program. The LAP should not be recorded and victims and advocates should be so informed. We strongly advocate that law enforcement take special note of the unique intent of the LAP and treat it as a special circumstance.

Victim Needs vs. Law Enforcement Needs

The LAP is a victim-centered,⁵ trauma-informed,⁶ empowerment⁷ model that supports a victim's right to safety, self-determination, and dignity. Following its mission to protect and serve, law enforcement generally focuses on perpetrator accountability and public safety, whereas advocates concentrate on victim safety. Both disciplines aim to protect and serve victims of crime, yet often approach victim safety in different but complementary ways.

In order to achieve the key objectives of the LAP—connecting a victim immediately to an advocate and getting the victim in to services—the officer and advocate both must be positive, supportive, and encouraging. It is the belief of MNADV that the LAP objectives cannot be effectively achieved if recording devices are introduced to a traumatized victim. Sandra Tibbets Murphy for the Battered Women's Justice Project asks: "If law enforcement and prosecutors are to acknowledge the importance of being trauma-informed in their work with victims, how will a policy that requires recording of an intimate partner violence or sexual assault victim's every word help or hurt that victim?"⁸ Recording a victim's deepest concerns about living with an abusive partner and how they plan to stay safe is not victim-centered, as courts or abusers could end up using that footage to embarrass, discredit, or further harm the victim.

Reasons for Not Recording

Lack of Conformity to Reasons for Use of BWCs

Dr. Michael White, under the purview of the Office of Justice Programs, U.S. Department of Justice, identifies the following benefits of using BWCs: (1) legitimacy and transparency, (2) improved police behavior, (3) improved citizen behavior, (4) resolution of complaints and

⁵ Definition and examples of "victim-centered" can be found at: Davies, Jill, Eleanor Lyon, Diane Monti-Catania. 1998. *Safety Planning with Battered Women: Complex Lives/Difficult Choices*. Thousand Oaks, CA: SAGE Publications.

⁶ Definition and examples of "trauma-informed" can be found at: <http://www.nationalcenterdvtraumamh.org/trainingta/resources-for-advocates-trauma-informed-dv-advocacy/>

⁷ Definition and examples of "empowerment" can be found at: <http://www.nationalcenterdvtraumamh.org/> can be found at: http://www.vawnet.org/Assoc_Files_VAWnet/BestPracticesManual.pdf, page 9.

⁸ Murphy, Sandra Tibbets. 2015. *Police Body Camera in Domestic and Sexual Assault Investigations: Considerations and Unanswered Questions*. Minneapolis, MN: The Battered Women's Justice Project. Pg. 11 (cited hereafter as "Murphy").

lawsuits, (5) improved evidence, and (6) opportunities for police training.⁹ Dr. White characterizes the benefits as “perceived” because he notes they are “based on available research and conventional wisdom,” and again cites the “lack of research.”¹⁰

Most of the benefits enumerated by Dr. White do not easily correlate to the type of intervention the LAP offers. The LAP seeks to identify victims who are at risk for homicide and connect them to services that could be life-saving. The LAP is initiated at the end of a call for service—when the scene is secure, when the victim agrees to participate, and when there is enough privacy to complete the LAP safely. An argument can be made that the entire call for service should be recorded in order to ensure officer accountability or gather evidence. There should not be any use of force or question of detainment during the LAP. Additionally, officers are instructed not to initiate the LAP if there are any safety concerns on the scene, such as the continuing presence of a perpetrator. Further, the LAP is not designed to be an investigative or evidentiary practice. While there could be some benefit to recording the LAP for police training purposes, the potential risks of recording outweigh the possible benefits. Since the benefits and need to use BWCs do not fit into the type of practice and interaction that the LAP presents, a requirement for law enforcement officers to record communications during the LAP is not necessary and could be harmful. Dr. White further asserts this position when he says that “users must consider the right to private and family life...and must not record beyond what is necessary for the evidential requirements of the case.”¹¹

Victim Safety

The victim’s own words and demeanor, on video or audio, could present dangers to them that a written summary in a police report may not. While, there is no evidence to support a claim that victims will be harmed by their abusers because of recordings, there is also no evidence to support a position that recording would not do harm. When MNADV created the LAP between 2003-2005, there was a concern that victims may be harmed as a result of the discovery of the Lethality Screen, but there has been no empirical basis for our concerns.¹² However, a recording of a victim’s responses to the questions on the Lethality Screen reveal much more information than the mere form itself. Victims’ extemporaneous explanations of a “yes” or “no” answer, or their expressions, body language, emotions may lead to negative consequences not yet seen. These effects may never come to light, but the risk is high and

⁹ White, Michael D. 2014. *Police Officer Body-Worn Cameras: Assessing the Evidence*. Washington, DC: Office of Community Oriented Policing Services.

¹⁰ White, pg. 6.

¹¹ White, pg. 52.

¹² The specific fear of victims facing harm from abusers after abusers have access to the Screen led to the LAP development committee specifically excluding space for narrative answers to the question. LAP training emphasizes that victims may answer more than a “yes” or “no” to a question, but those additional details should not be captured on the Screen. The fear of discovery of the Screen also contributed to decisions regarding how the development committee phrased certain questions.

the potential consequences severe if the courts, media, general public, or the abuser have access to the victim's conversations with the officer or advocate during the LAP. It is important to allow time and experience to monitor practices and determine the need for change. At this moment, however, we should err on the side of caution. It would be more prudent to adopt the policy of not recording the LAP now, and change policies to allow recording in the future after further research, experience, and evidence is available to guide policymaking, than to record now and hope that no harm comes of it. The harm that may come of it cannot be contained, but a policy to allow more recording can always be changed.

The Chilling Effect

The chilling effect BWCs could have on police-citizen interactions is discussed in a number of publications that generally suggest there is not sufficient information available to make a reasonable determination as to the impact of BWCs. The Rialto Police Department (CA) study¹³ showed that BWC use produces favorable effects in terms of police conduct and a decrease of citizen complaints. However, Dr. White notes it is not clear that citizens' behavior changed in a way that would "dissuade citizens from filing complaints." He suggests that "(u)nder this explanation, the reductions are not caused by a civilizing effect; rather, they are driven by changes in citizen complaint patterns."¹⁴

The use of BWCs during interactions with intimate partner violence victims may, in the eyes of the victim, decrease the credibility and apparent sincerity of the responding officer and negatively affect the conduct of the LAP. The LAP seeks to build rapport and trust with victims, and this cannot be done without open, voluntary disclosure of information. "Police executives cite the potential negative impact on community relationships as a reason for not requiring officers to record all encounters with the public... [One chief of police asserts] 'If people think they are going to be recorded every time they talk to an officer, regardless of the context, it is going to damage openness and create barriers to important relationships.'"¹⁵

Privacy

Privacy is especially important to victims of intimate partner violence, particularly in the context of the LAP. The National Domestic Violence Hotline recently completed a study surveying both women who called the police for assistance with intimate partner violence and women who chose not to call the police. Of the women who did not call the police, 60%

¹³ Farrar, Tony. 2013. Self-awareness to being watched and socially-desirable behavior: a field experiment on the effect of body-worn cameras on police use. Police Foundation.

¹⁴ White, pg. 36.

¹⁵ PERF, pg. 13. The quote is attributed to Chief Ken Miller of Greensboro, North Carolina.

reported that they did not want police assistance due to a desire for privacy.¹⁶ During the LAP, victims answer personal and graphic questions, may be told by an officer that they are in danger of being killed, and may speak with an advocate to develop a safety plan, all in a span of a few minutes. The LAP may involve an intense revelation that could evoke a range of emotions and anxieties.

As part of LAP training, officers are encouraged to give victims a practical degree of privacy in order to allow them to speak openly with the hotline advocate. Officers are directed to provide victims space, and to place themselves “out of earshot but within eyesight” to increase privacy, safety, and scene security. Depending on the camera technology, moving 10-15 feet away from a victim may still allow conversations to be recorded, even if the officer cannot hear the conversation with their own ears.

In Police Executive Research Forum’s standard-setting guidance and recommendations report published in 2014, they state:

PERF believes that requiring officers to record every encounter with the public would sometimes undermine community members’ privacy rights and damage important police-community relationships. There are certain situations, such as interviews with crime victims and witnesses and informal, non-law enforcement interactions with members of the community, that call for affording officers some measure of discretion in determining whether to activate their cameras. There are situations in which not recording is a reasonable decision. An agency’s body-worn camera policy should expressly describe these situations and provide solid guidance for officers when they exercise discretion not to record. For example, officer discretion is needed in sensitive situations, such as encounters with crime victims or witnesses who are concerned about retaliation if they are seen as cooperating with the police.¹⁷

Because the LAP is typically administered in the home, law enforcement agencies should be aware of privacy rights and prohibitions about recording in the home that may apply in their jurisdictions.¹⁸

¹⁶ National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*. Washington, DC (2015), pg 3. Available at: <http://www.thehotline.org/resources/law-enforcement-responses>

¹⁷ PERF, pg. 12.

¹⁸ Murphy, pg. 2; PERF, pg 15.

A number of publications have addressed some considerations for the intersection of BWCs and citizen privacy.¹⁹ While most of these publications do not address the importance of privacy for victims of intimate partner or violent crime specifically, they are worth noting.

Confidentiality

Having a confidential hotline advocate communicate with both an officer and victim is fairly unique to jurisdictions that implement the LAP.²⁰ The conversation and information shared between the victim and the hotline advocate is a critical element of the LAP. Professional respect for conversations that do not affect police practice should be expected and honored. Moreover, conversations with community-based advocates are protected as confidential communications by federal law in all jurisdictions and by state/local law in some jurisdictions. Recording those conversations may compromise the legal privilege that certain legislatures have granted to advocates. In many jurisdictions, officers do not overhear the conversation between the hotline advocate and the victim, however, BWC technology is often more sensitive than the human ear. This could impact the ability of the advocate to protect these confidential communications.

Reasons for Informing

Building Trust and Partnership

Prior to participating in the LAP, the victim may not have observed, assumed, or remembered (if told) that an officer is using a BWC to record. Officers should inform victims even when they are not being recorded. Officers should also inform hotline advocates that they are not being recorded. If officers are proactively providing information about the operation of their recording devices, it assures both the victim and the advocate that their privacy and confidentiality are being considered and protected. Clear communication may also serve to build the victim's trust with the officer, thus furthering the aims of the LAP. Transparency about the use of recording devices may also strengthen the partnership between the officer and the advocate and enhance the overall quality of LAP implementation.

¹⁹ See: Murphy, pg. 2.; White, pgs. 27-28; Fraternal Order of Police. 2014. Body-Worn Camera Recommended Best Practices. Pg. 6; Stanley Jay. Police Body-Mounted Cameras: With Right Policies in Place, A Win for All." October 2013. ACLU. Pgs. 1-2; GOCCP, Maryland, pg. 10.

²⁰ Often, outside of LAP, officers are not used to working directly with victim advocates at the same time they are working with victims. When officers do work with victim advocates, they usually are working with systems-based advocates housed in either the law enforcement agency or the prosecutor's office. The systems-based advocates do not have the same level of confidentiality requirements ethically or legal protections against disclosure of information as community-based advocates enjoy.

Evidence Gathering after Administration of LAP

Where law enforcement agencies have carefully considered the principles enumerated on page 3, including the thoughtful participation of local victim services groups, consideration of barriers to safety in their local jurisdiction, and likely unintended effects of recording, agencies may decide to record portions of the call for service for intimate partner violence. Should the victim reveal information during the LAP that gives evidence that the perpetrator committed a crime, the officer may pursue further investigation only after the hotline conversation is completed. Per agency policy and/or local law, officers may be permitted or encouraged to record any further investigation or questioning after the LAP, but only after informing the victim the recording will begin (or resume).

Conclusion

Due to the sensitive information exchanged during the LAP, no part of the LAP should be recorded by a BWC, and LAP victims and hotline advocates should be so informed. The reasons for this position are that BWC research is still emerging, the intent and circumstances of the LAP do not necessarily conform to the perceived benefits of BWC use, and the unintended consequences of BWC use on privacy, confidentiality, victim safety and trust are of concern.

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