

# VIDEO CAMERAS IN MPD POLICE CRUISERS



## REPORT AND RECOMMENDATIONS OF THE POLICE COMPLAINTS BOARD

TO

**MAYOR ADRIAN M. FENTY,  
THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND  
CHIEF OF POLICE CATHY L. LANIER**

**August 28, 2008**

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## I. INTRODUCTION AND OVERVIEW

In the past decade, several police departments around the country have adopted programs using Mobile Video Recorder (MVR) technology, or video cameras, mounted in their police cruisers, including the District of Columbia's Metropolitan Police Department (MPD). Although the programs initially encountered some resistance as "big brother" oversight, departments with successful programs report that the video cameras have cut down on litigation and liability costs, as well as improved the relationship between officers and citizens during encounters.<sup>1</sup> MPD's most recent experiment with MVR technology equipped 15 police cruisers with video cameras. However, in order to capitalize on the benefits offered by MVR technology, MPD seeks to install MVR systems in its entire fleet of cruisers and transport vehicles. The Police Complaints Board (PCB) supports MPD's efforts, and recommends that the Department obtain funding for and establish a pilot program to install MVRs in its vehicles. PCB also recommends that MPD develop comprehensive policies regarding, as well as a sound infrastructure supporting, the use of the video cameras and the storage, management, and use of the information obtained from the cameras. Finally, PCB recommends that MPD establish a strong auditing system to ensure officer accountability in the use of the cameras and the video they capture.<sup>2</sup>

## II. MVR TECHNOLOGY AND HOW IT WORKS

MVR technology enables an officer to generate video from a camera positioned in the police cruiser, usually attached to the dashboard or rearview mirror, and upload that video to a computer server for departmental review and safekeeping. MVR technology serves many purposes. It catches law violations on film, creates an objective record of encounters between officers and citizens, and serves as an evidentiary tool in court for both criminal and civil cases involving encounters with police officers. MVR systems consist of many components electronically linked using closed-circuit television (CCTV) technology.<sup>3</sup> At a minimum, the system usually includes a front-facing camera, a wireless microphone worn by the officer, a control panel, a monitor, and a video recorder.<sup>4</sup> The digital camera records continuously on a loop that erases after a pre-programmed amount of time, usually a minute or two, so that images

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<sup>1</sup> Amy Wallace, *Kittery Eyes Video for Cruisers*, Portsmouth Herald, May 20, 2001, available at [http://archive.seacoastonline.com/2001news/5\\_20maine.htm](http://archive.seacoastonline.com/2001news/5_20maine.htm).

<sup>2</sup> PCB is making these recommendations pursuant to D.C. Official Code § 5-1104(d), which authorizes the Board to recommend changes to the Mayor, the Council of the District of Columbia, and MPD's Chief of Police if the reforms may reduce the incidence of police misconduct. PCB is grateful for the assistance of OPC's staff in preparing this report and accompanying recommendations. OPC's executive director, Philip K. Eure, and former deputy director, Thomas E. Sharp, supervised the project. Other OPC staff members who performed research or assisted in drafting the report include the agency's special assistant, Nicole Porter, summer 2008 law clerk Emily Snider, who will be a third-year law student at the University of Florida in the fall, and spring 2008 law clerk Dana Walters, who will be a second-year law student at the University of the District of Columbia in the fall.

<sup>3</sup> IACP/COPS Technology Technical Assistance Program, *TTAP 01: In-Car Cameras*, p. 55.

<sup>4</sup> *Id.*

are only saved when an officer activates the camera to record.<sup>5</sup> An advantage to this system is “pre-event recording,” a feature that enables departments to program the cameras to save the data recorded in the time just before the device is triggered.<sup>6</sup> An officer can trigger the recorder manually at the camera or by wireless microphone, or automatically by turning on the emergency lights or reaching a certain speed in the vehicle. The department can program these features and select them individually to fit its needs.<sup>7</sup> The data, stored on a removable hard drive, can be uploaded to the department server manually or wirelessly.<sup>8</sup> The recording software can have built-in identification codes and methods of authentication so that all of the video recorded is encoded with date, time, and officer identification information, which will help resolve admissibility and chain of custody issues that may arise when seeking to use evidence in court.<sup>9</sup>

In order to conserve data space, digital recording technology offers a number of compression forms. The four main types are MPEG-1, MPEG-2, MPEG-4, and JPEG. The first three types are video-streaming techniques designed by the Motion Picture Experts Group for use in the commercial film industry.<sup>10</sup> These compression forms save storage space by storing fewer data frames and predicting the data between each frame by using one frame as a point of reference for the next.<sup>11</sup> MPEG-1, designed to store digital video on CDs, keeps frame rates locked at a recording rate of 30 frames per second, but does so at the expense of image quality when the recorded object is in motion.<sup>12</sup> MPEG-2, which was designed for high-quality digital video and high definition television, is locked into the same frame rate as MPEG-1, but delivers a clearer image and is better at capturing objects in motion.<sup>13</sup> MPEG-4 was not designed for a target application, has no fixed frame rate, and therefore can be compressed to use the least storage space.<sup>14</sup> It produces images that are clear but potentially unreliable because it uses the least amount of recorded information and relies most heavily on the ability of the technology to predict an image. JPEG, like MPEG-1, also compresses 30 images per second, but takes up more space and produces an image comparable to that of VHS technology.<sup>15</sup> MPD will want to consider such factors as image quality and storage space to select a compression form that best

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<sup>5</sup> See Hector Castro, *Police Cars Get Digital Cameras; Seattle Department First to Use New Wireless Capability*, Seattle Post-Intelligencer, Dec. 23, 2004 at B1.

<sup>6</sup> See *id.*

<sup>7</sup> See, e.g., Mobile Digital Video Recorder User’s Manual. Mobile DVR, © 2005-2007, at 3, 38. Available at <http://www.dvrsystems.net/downloads/V6N%20User's%20Manual.pdf>.

<sup>8</sup> Jim Kuboviak, *Legal Admissibility of Digital Video Recordings*, 2004 LAW and ORDER, 92, 93.

<sup>9</sup> *Id.*

<sup>10</sup> Yahan Wu, *A Look under Digital Compression’s Hood*, 2004 Asmag.com 152, available at [http://www.asmag.com/asm/common/article\\_detail.aspx?module=1&c=2&id=435](http://www.asmag.com/asm/common/article_detail.aspx?module=1&c=2&id=435).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See *id.*

fits its needs, taking into account the size of the agency's server storage space and the amount of time data are required to be stored on the server.

### III. LEGAL CONCERNS

The use of MVRs, as with all surveillance products and methods, can raise concerns about whether the use of such technology violates a person's legal rights. One of the most common questions about video surveillance is whether government use of such surveillance is an "unreasonable search" of a person under the Fourth Amendment of the U.S. Constitution. The U.S. Supreme Court has limited the Fourth Amendment's prohibition against unreasonable searches to those items or areas in which a person has a subjective expectation of privacy that society is prepared to recognize as reasonable.<sup>16</sup> For Fourth Amendment purposes, there is no reasonable expectation of privacy in what a person knowingly exposes to the public<sup>17</sup> or leaves in plain view.<sup>18</sup> Admittedly, video technology has the capacity to capture evidence from a distance where a human would have to be much closer or even physically present in order to observe it with the naked eye. For example, video cameras have the ability to zoom in to see better at a distance and video infrared technology enables a clearer view of events captured in poor lighting. However, under existing case law, if the evidence at issue is of such a character that a person *could* observe it in plain view or with the use of video technology that is in general use of the public, a reasonable expectation of privacy in that evidence cannot attach and the Fourth Amendment does not apply.<sup>19</sup>

Although it is clear that the mere use of video surveillance does not violate a person's Fourth Amendment rights *per se*, when audio surveillance is included, additional legal requirements have been imposed in order to fully safeguard citizen privacy. Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (the federal Wiretap Act) generally

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<sup>16</sup> See *U.S. v. Jacobsen*, 466 U.S. 109, 113 (1984) (a search under the Fourth Amendment occurs "when an expectation of privacy that society is prepared to consider reasonable is infringed."); see also *U.S. v. Katz*, 389 U.S. 347, 351 (1967) (stating that what an individual seeks to preserve as private may be protected under the Fourth Amendment).

<sup>17</sup> *Katz*, 389 U.S. at 351.

<sup>18</sup> See *U.S. v. Coates*, 413 F.2d 371, 373 (D.C. Cir. 1969) ("It is well established that visual detection of evidence does not constitute a 'search within the meaning of the Fourth Amendment.'"); *U.S. v. McDaniel*, 154 F.Supp. 1, 2 (D.D.C.1957) ("[I]t is not a search to observe that which is open and patent . . . where the object sought by the search is visible, open and obvious to anyone within a reasonable distance employing his eyes."); *Scott v. U.S.*, 228 A.2d 637, 638 (D.C. 1967) ("[T]he more observation of objects in plain view does not constitute an illegal search.").

<sup>19</sup> See, e.g., *Rodriguez v. U.S.*, 878 F.Supp. 20 (S.D.N.Y. 1995) (no search within the meaning of the Fourth Amendment where DEA agents engaged in covert video surveillance of defendant's activities on public street); *U.S. v. Lopez*, 585 F.Supp. 1400 (D.C. Conn. 1984) (no reasonable expectation of privacy and thus no Fourth Amendment search where federal law enforcement officers used high-powered telescope to record activities of defendant on public street); *State v. Augafa*, 992 P.2d 723, 734 (Haw. Ct. App. 1999) (no Fourth Amendment search where police video camera mounted on pole videotaped defendant engaging in drug deal on public street, finding that "observations preserved on videotape could easily have been viewed by anyone on the street"); *McCray v. State*, 581 A.2d 45 (Md. 1990) (no search within the meaning of the Fourth Amendment and where state police videotaped defendant crossing public street because defendant's activities were conducted in a public place and in full public view).

prohibits the interception of wire or oral communications unless authorized by a warrant.<sup>20</sup> However, among other exceptions, the Act allows those acting under color of law to intercept wire and oral communications without a warrant if the person is a party to the communication or has received consent from one of the parties to the communication.<sup>21</sup> District law regarding the interception of wire or oral communications is consistent with Title III, stating that such an interception by a person acting under color of law is permissible where the person “is a party to the communication or where one of the parties to the communication has given prior consent to such interception.”<sup>22</sup> Because MVR technology contains an audio component, by law, the public is entitled to notice that its communications will be recorded, either through the publishing of the use of the technology to the public or an immediate warning given by an officer.

MVR technology also implicates other constitutional issues. Advocates of civil liberties want to be assured that surveillance cameras will not suppress freedom of association guaranteed by the First Amendment.<sup>23</sup> These groups object to the continuous cataloging of innocent activity on grounds that it will discourage behavior that is perfectly innocuous, or become subject to individual abuse by those implementing the system.<sup>24</sup> Other advocates object to surveillance of political, activist, or any “speech” activity that could be captured on film because they feel that the presence of surveillance chills First Amendment freedom of speech.<sup>25</sup> According to these advocates, such surveillance of speech activity “invades the citizen's constitutionally protected right to free private discussion, and must inevitably chill public speech.”<sup>26</sup> However, as at least one U.S. Supreme Court case has intimated, it is the abuse of a surveillance system, not the mere presence of one, that encroaches upon those rights.<sup>27</sup>

Because the use of video and audio surveillance technology by law enforcement is lawful, with the caveats mentioned above, evidence obtained using MVR technology has been

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<sup>20</sup> 18 U.S.C. §§ 2510-2522 (2008). Title III, which codifies the principles set forth in *Katz, supra*, appears to only apply in situations where the person who is the subject of the interception has a reasonable expectation of privacy in the communication. See *U.S. v. Peoples*, 250 F.3d 630 (8<sup>th</sup> Cir. 2001); *U.S. v. Harrelson*, 754 F.2d 1153 (5<sup>th</sup> Cir. 1985); *U.S. v. McIntyre*, 582 F.2d 1221 (9<sup>th</sup> Cir. 1978).

<sup>21</sup> 18 U.S.C. § 2511(2)(c).

<sup>22</sup> D.C. Official Code § 23-542(B)(2) (2008).

<sup>23</sup> The American Civil Liberties Union maintains that surveillance cameras are not effective at fighting crime, waste resources, undermine individual privacy and free expression, and are subject to substantial abuse. See *MPD's Camera Surveillance System: Testimony before the Joint Public Oversight Hearing Committee on the Judiciary and the Committee on Public Works and the Environment of the Council of the District of Columbia* (June 13, 2002) (Statement by Nkechi Taifa, member, ACLU Board of Directors). Available at <http://www.dccwatch.com/issues/privacy12.htm>.

<sup>24</sup> *Id.*

<sup>25</sup> See Christopher Slobogin, *Public Privacy: Camera Surveillance of Public Places and the Right to Anonymity*, 72 *Miss. L.J.* 214 (2002); *Expectations of Privacy in Public Spaces: Hearing before the Advisory Committee on Data Privacy and Integrity of the Dep't of Homeland Sec.* (June 7, 2006) (Statement by Lillie Coney, Assoc. Dir., EPIC). Available at <http://www.epic.org/privacy/surveillance/coneytest060706.pdf>.

<sup>26</sup> *Id.*

<sup>27</sup> See generally *Laird v. Tatum*, 408 U.S. 1, 10 (1972) (A First Amendment challenge to the mere existence of a surveillance system alleged to be broader in scope than reasonably necessary is, without more, not sufficient to establish a violation of that right).

readily available for use in court. It has been used in suppression hearings to determine whether there was probable cause for the stop of a vehicle,<sup>28</sup> and during trial to determine whether use of force by law enforcement officers was justifiable.<sup>29</sup> In fact, in 2007, the Supreme Court assessed the reliability of in-car video evidence in an excessive use of force case.<sup>30</sup> The Court reversed an order denying summary judgment for the police because the testimonial evidence relied on by the courts below was clearly contradicted by the videotape, which the Court deemed to be more reliable.<sup>31</sup> Most digital compression forms have been admitted into court, though recently the Spectrum Coalition for Public Safety indicated in a statement to the Federal Communications Commission that MPEG-4 is not admissible due to the unreliability of the images it produces.<sup>32</sup> Thus, MVR data, like other video evidence, are generally admissible in court, provided that it is properly authenticated under law.<sup>33</sup>

#### IV. COSTS AND BENEFITS OF INSTALLING MVRS

The initial cost of installing MVR technology, done properly, is still fairly high, but a successful program will pay for itself in the long run. The cost of the hardware ranges from \$3,900 to \$6,300 per car for cameras that do not have wireless uploading capability,<sup>34</sup> and from \$4,500 to \$9,000 for cameras with wireless upload capability and other state-of-the-art features.<sup>35</sup> Other costs include the cost of installation (around \$80 per car), training (variable cost, depending on the depth of training and how quickly a department trains its own staff) and the cost of establishing a data storage system, which should include additional personnel to manage the data and most importantly, server space, which begins at a cost of around \$4,500.<sup>36</sup> Most camera manufacturers include a one-year product warranty with the sale of each unit; depending

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<sup>28</sup> *United States v. Muriel*, 418 F. 3d 720 (7<sup>th</sup> Cir. 2005).

<sup>29</sup> *Draper v. Reynolds*, 369 F. 3d 1270 (11<sup>th</sup> Cir. 2005).

<sup>30</sup> *Scott v. Harris*, 127 S.Ct. 1769 (2007).

<sup>31</sup> *Id.* at 1775-76.

<sup>32</sup> Yuzo Shida, *IP Centric Calls for Scalable Compression*, Security Magazine, June 5, 2006, available at <http://www.securitymagazine.com/CDA/Archives/4485bc0dfc4ab010VgnVCM100000f932a8c0>

<sup>33</sup> Rule 1001(2) of the Federal Rules of Evidence defines videotapes as a form of admissible photographic evidence and courts have construed the rule to require evaluation of seven criteria to determine admissibility: (1) that the recording device was capable of recording the activity now offered in evidence; (2) that the operator of the device was competent to operate the device; (3) that the recording is authentic and correct; (4) that changes, additions, or deletions have not been made in the recording; (5) that the recording has been preserved in a manner that is shown to the court; (6) that the persons recorded are identified; and (7) that the activity elicited was made voluntary and in good faith, without any kind of inducement. These requirements should provide precise criteria for installing the correct technology and drafting internal police policies on how to operate the cameras so that they produce admissible evidence.

<sup>34</sup> Interview by Nicole Porter, OPC Special Assistant, with Tony Driggs, Sales Representative, Safety Vision, in Washington, D.C. (May 29, 2008); E-mail from Dave Wilhoite, Inside Sales Representative, Kustom Signals to Nicole Porter, OPC Special Assistant (Apr. 21, 2008).

<sup>35</sup> Interview with Tony Driggs, *supra* n. 34; Jim Zamora, *Oakland Cops May Go to Video; City wants Cameras in Police Cars*, The San Francisco Chronicle, Feb. 3, 2004 at B1.

<sup>36</sup> Telephone Interview by Nicole Porter, OPC Special Assistant, with Tony Driggs, Sales Representative, Safety Vision (June 4, 2008).

on the supplier, additional warranty is available at a cost of around \$350 per camera to extend the warranty for two years and \$400 per camera to extend the warranty for three years.<sup>37</sup>

Departments will have to draft new policies to ensure that use of the system complies with existing legal standards and to establish a uniform manner of using the technology so that each officer conforms to the standard. As with the adoption of any new program, there will be a variable learning curve in terms of how quickly officers are able to pick up on the new technology and use it properly and efficiently.

To cover these initial costs, other departments have obtained federal grants from various funding sources. Agencies and services that offer grant funding or list grant opportunities include the Office of Community Oriented Policing Services (COPS), which is part of the U.S. Department of Justice, and advocates for effective law enforcement at the community level, and PoliceOne.com, a centralized online information resource for law enforcement. Additionally, the Grants Unit at MPD, which is responsible for developing and monitoring all MPD grants, could seek out local opportunities available through either the D.C. Office of Partnerships and Grant Services or the D.C. Justice Grants Administration, both of which offer funding for qualifying agencies, including law enforcement, on the basis of availability.<sup>38</sup> Finally, law enforcement departments have also requested funds from their state and local legislatures to finance MVR programs with tax dollars.<sup>39</sup> Because this is such a worthwhile project, MPD should consider asking the District Council for appropriations to support the costs of the program if funds from the police department's budget are not available.

Although the financial costs of installing MVRs for an entire fleet are not insubstantial, the benefits of such a system are significant. Agencies report that not only do in-car video cameras reduce departmental liability costs, they also reduce the overall cost of litigation within the jurisdiction.<sup>40</sup> Prosecutors report that they are able to reach plea bargains more often, and citizens are much less likely to contest a traffic ticket or file complaints against officers.<sup>41</sup> Although the cameras also serve as a check on poor policing, most agencies report that more often than not, the video camera exonerates officers accused of misconduct.<sup>42</sup> The mere

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<sup>37</sup> E-mail from David Hinojosa, Sales Representative, Coban Technologies, to Nicole Porter, OPC Special Assistant (July 29, 2008).

<sup>38</sup> A list of available funds can be found on the websites of each office at <http://opgd.dc.gov> and [www.jga.oca.dc.gov](http://www.jga.oca.dc.gov), respectively.

<sup>39</sup> See, e.g., *Macedon, NY Police Now Have Video Cameras in All Vehicles Thanks to Officer Efforts, Business Support*, PoliceOne.com News, 30 July 2003, available at <http://www.policeone.com/police-products/vehicle-equipment/in-car-video/articles/66176-Macedon-NY-Police-Now-Have-Video-Cameras-in-All-Vehicles-Thanks-to-Officer-Efforts-Business-Support/>; *Increased Clamor for Cameras in Cop Cars*, PoliceOne.com News, 8 December 2002, available at <http://www.policeone.com/police-products/vehicle-equipment/in-car-video/articles/56297-Increased-clamor-for-cameras-in-cop-cars/>.

<sup>40</sup> See Zamora, *supra* n. 35.

<sup>41</sup> See *Cameras go on Patrol with Chattanooga Police*, PoliceOne.com News, 29 August 2003, available at <http://www.policeone.com/police-products/vehicle-equipment/in-car-video/articles/67818-Cameras-Go-on-Patrol-with-Chattanooga-Police/>.

<sup>42</sup> See Wallace, *supra* n. 1.



presence of the cameras also positively impacts behavior by officers and citizens alike.<sup>43</sup> In a well-run program, the benefits of the video cameras should outweigh the costs.

## V. PRACTICES IN OTHER JURISDICTIONS

For a good overview of general recommendations, the International Association for Chiefs of Police (IACP), an established nonprofit organization of police executives, issued a report on the installation of MVR technology in police cruisers.<sup>44</sup> Throughout these ample recommendations, a number of important issues deal with storage and management of the video data, with a particular stress on employing and training specialized personnel to do so.<sup>45</sup> In general, the report recommended using software that automatically catalogues the data as it is entered, which allows for easy program expansion and technological upgrades.<sup>46</sup> Because adopting an in-car camera program is such a detailed undertaking, each agency must tailor its policies to fit its specific needs. However, as a guideline, IACP offers a sample agency policy with regard to uniform use of the cameras and data management.<sup>47</sup>

Establishing a pilot program is essential to installing a comprehensive program. IACP recommends that programs should rely on incremental installation to test the cameras and provide a training tool before attempting to equip an entire fleet.<sup>48</sup> For example, the Seattle Police Department<sup>49</sup> (SPD) initially funded the installation of cameras in 80 out of 300 cruisers, in addition to the infrastructure necessary to establish proper training and data management programs. It hired three civilian employees who comprised an IT staff to work out technological problems and a clerical staff to put the program to immediate use by satisfying data requests from lawyers and oversight agencies. One hurdle to implementation was the need to locate data at a certain district without having established a policy of documenting data by location. SPD amended its policy and continued working on systemic problems. Once the pilot program proved successful, the agency was able to use annual money from the city government given to replace and maintain its infrastructure to purchase camera systems for the remainder of its fleet.

An agency must also draft guidelines with respect to manual use of the system by individual officers. The American Bar Association Standards for Criminal Justice (ABA Standards) recommend that agencies develop a policy regarding video surveillance that mandates

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<sup>43</sup> Telephone interview by Emily Snider, OPC Law Intern, with Captain David Lindamann, Kansas City Police Department (May 15, 2008).

<sup>44</sup> See generally *TTAP 01: In-Car Cameras*, *supra* n. 3.

<sup>45</sup> *Id.* at 70. A form detailing how data should be labeled is available at 66-7.

<sup>46</sup> *Id.* at 60.

<sup>47</sup> *Id.* at 81-7. See also *The Impact of Video Evidence on Modern Policing: Research and Best Practices from the IACP Study on In-Car Cameras* at 39-43, available at <http://www.usatcorp.com/images/products/panasonic/IACP-%20Impact%20of%20Video%20Evidence%20on%20Modern%20Policing.pdf>.

<sup>48</sup> *TTAP 01: In-Car Cameras*, *supra* n. 3 at 61.

<sup>49</sup> Telephone Interview by Emily Snider, OPC Law Intern, with Bruce Hills, Seattle Police Department IT Staff (May 21, 2008).

officer compliance.<sup>50</sup> This policy should be designed to eliminate the potential for arbitrary enforcement of the law and to account for legal concerns that could arise from abuse of the available technology. Specific concerns to address would include notice of the use of MVR technology, compliance with the law regarding retention of the records generated on video, and an explanation of the potential liability that could result from individual abuse of the system.

The ABA Standards recommend that when deterrence is the primary objective of the surveillance, pre-surveillance notice should be given.<sup>51</sup> Post-surveillance notice is appropriate where surveillance requires probable cause.<sup>52</sup> MVR technology could be characterized as having either function. To address this issue, SPD has adopted a uniform verbal statement, “Under state law this stop is being recorded by sound recording” that each officer must give at the beginning of each citizen contact.<sup>53</sup> The video creates a record that notice is given so that the issue cannot later be challenged in court. Additionally, the installation and use of the MVR systems should be widely publicized in the media.

As to data retention, the District of Columbia code addresses the types of records MPD must keep. It is likely that MVR records that are used to establish criminal or civil liability or for the adjudication of any other legal issue will fall under the category of records that must be preserved, at least for a certain length of time.<sup>54</sup> The power to determine when such records may be destroyed falls to the Chief of Police or the Mayor.<sup>55</sup> Only upon written approval are records retained for a longer period of time.<sup>56</sup> The goals of data retention should be to store data that “contains evidence of criminal liability, captures an occurrence that may subject MPD to civil liability, or can be used for training purposes.”<sup>57</sup> IACP recommends that all data be stored initially for one day longer than the statute of limitations to file a citizen complaint against an officer.<sup>58</sup> If, during that time, the data are needed for use as evidence or any other purpose, they should be stored for the duration of the litigation. Finally, a data retention policy should

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<sup>50</sup> American Bar Association, Standards for Criminal Justice – Electronic Surveillance (3d Ed.), Section B: Technologically-Assisted Physical Surveillance (Standard 2-9.1(g)). Available at [http://www.abanet.org/crimjust/standards/taps\\_blk.html](http://www.abanet.org/crimjust/standards/taps_blk.html)

<sup>51</sup> *Id.* at Standard 2-9.1(c)(5)(A).

<sup>52</sup> *Id.* at Standard 2-9.1(c)(5)(B).

<sup>53</sup> Seattle Police Department Policies and Procedures, 17.260 Patrol Operations, In-Car Video (2007).

<sup>54</sup> *See* D.C. Official Code § 5-113.01(5) (2008), describing records MPD is required to keep and including “such other records as the Council of the District of Columbia considers necessary for the efficient operation of the Metropolitan Police force.”

<sup>55</sup> D.C. Official Code § 5-113.07 (2008).

<sup>56</sup> *Id.*

<sup>57</sup> *See* MPD General Order GO-OPS-603.07 (2002) (governing the use of MPD’s Closed Circuit Televisions (CCTV)).

<sup>58</sup> *See TTAP 01: In-Car Cameras, supra* n. 3 at 61. The filing period at OPC is 45 days from the date of the incident in question.

establish a maximum amount of time that data may be stored in the interests of economy and the protection of privacy.<sup>59</sup>

To address additional privacy concerns about potential abuse of the MVR system, MPD should adopt a policy that specifically addresses these issues and makes it clear that Departmental officers will not infringe upon privacy or First Amendment rights. The District's CCTV policy, which governs the use of the cameras and footage generated by MPD's closed circuit television system installed throughout the city, requires that "operators of the system shall not target or observe individuals arbitrarily or based on race, gender, ethnicity, sexual orientation, disability, or other classifications protected by law . . . [nor shall the system] focus on hand bills, fliers . . . or any exercise of First Amendment Rights."<sup>60</sup> Inclusion of similar language in the MVR policy will help ensure that officers respect individual rights of citizens, as well as insulate the use of MVR technology from challenges by privacy advocates. In addition, IACP recommends that an agency conduct periodic reviews or audits of the video data to ensure that individual officers are accountable and that they are complying with agency policy.<sup>61</sup>

## VI. RECOMMENDATIONS

Based on its examination of the issues discussed above, PCB recommends that MPD:

1. **Establish a pilot program to install MVRs in 75 to 150 of its 750 police cruisers, or approximately 10% to 20% of the fleet.** In its pilot program, MPD should concentrate on establishing a firm infrastructure for data management and smooth technological functioning. The officers initially trained to handle the camera systems should be those who are interested, responsible, and will use the video footage regularly on the job. These officers could eventually be a part of a "train the trainer" program if the pilot phase is successful and MPD later decides to outfit more of its fleet. MPD should also establish procedures to guide data management, so that a video footage request can be directed toward the proper district and clerical staff can locate and provide it easily and at low cost. With the proper infrastructure in place, expansion of the program should run much more smoothly.
2. **Draft a comprehensive Departmental policy regarding MVR use by officers.** Despite its established acceptance in the legal field, MVR technology should still be guided by implementation of an internal policy establishing legal and procedural safeguards for its use. This policy should be designed to eliminate the potential for arbitrary enforcement of the law and to account for legal concerns that could arise, including notice to citizens, retention of data, and an explanation of the potential liability for individual abuse of the technology. MPD policy should also address concerns about individual privacy and potential abuse of the system by individual

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<sup>59</sup> Seattle Police Department has adopted a maximum storage time of three years. See Seattle Police Department Policies and Procedures, *supra* n. 53.

<sup>60</sup> See MPD General Order *supra* n. 57 at (IV)(A)(7-9).

<sup>61</sup> See *TTAP 01: In-Car Cameras*, *supra* n. 3 at 79.

officers, clarifying that the system shall only be used to observe events that occur in public where there is no reasonable expectation of privacy.

3. **Ensure that persons under surveillance with the new MVRs are given notice that they are being observed.** In order to take full advantage of the system, including deterrence from criminal activity, MPD should generally publicize its adoption of MVRs and personally notify each person subject to recording whenever practicable and at the first opportunity to do so. When formulating training materials, MPD should outline precisely how personal notification should be given, perhaps adopting a verbal statement similar to that of Seattle's police department.
4. **Develop a comprehensive program that addresses the storage, management, and use of MVR data.** Another issue that will require considerable time and attention will be the storage and management of video recordings. Addressing these concerns may require hiring or contracting with new staff or at the very least, adopting comprehensive training for clerical responsibilities to be given to the employees designated to manage the records.
5. **Develop a comprehensive retention policy for MVR data.** The police chief should issue a mandate establishing the formal guidelines for retention of MVR records, with a provision reflecting the chief's power to authorize the extension or amendment of the guidelines. The policy for record retention should reflect a balance between the need to retain evidence for possible adjudication and privacy concerns. Data should be stored for a reasonable period of time, taking into account, among other things, the deadlines for filing citizen complaints with both OPC and MPD. Data should be retained longer if they contain evidence of criminal liability, capture an occurrence that may subject MPD to civil liability, or can be used for training purposes. If the data are never earmarked for use in connection with liability or training issues, they should be destroyed pursuant to a retention policy promulgated by the Chief of Police as required by District law. MPD should also establish a maximum period for which records may be retained. OPC recommends that the maximum storage time be three years, with the option to retain the data longer pursuant to authorization. MPD may need to adjust its retention policy as the video camera program develops in order to free up server space.
6. **Establish an MVR auditing system.** MPD should establish an auditing system for officer accountability to ensure that each officer is activating the cameras, uploading information at the end of each shift or as scheduled according to the Department's policy, and behaving on camera in a matter consistent with MPD officer standards. Purchasing technology that encodes all the video footage with an officer identification code and conducting periodic review of the footage are easy ways to accomplish this goal.
7. **Apply for grant funding and seek appropriations from the District Council to establish and maintain an MVR program if MPD funds are not adequate.** There are numerous opportunities available at the local and federal levels, as well as private organizations that support law enforcement. The MPD Grants Unit should be

consulted in order to pursue these grant opportunities. Additionally, if MPD does not have an adequate budget or enough grant funding to cover the costs of an MVR program, the District Council should appropriate the necessary funds.