


MENDHAM BOROUGH POLICE DEPARTMENT STANDARD OPERATING PROCEDURES			
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SUBJECT: BODY-WORN CAMERAS			
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BY THE ORDER OF: Chief John Camoia			
SUPERSEDES ORDER #:			

PURPOSE: To establish and maintain guidelines for the use, management, storage, and release of audio-visual media recorded by body-worn video/audio camera recorders (BWC). BWCs are intended to enhance officer safety, produce effective materials for training, and to produce an additional method of collecting evidence to prosecute those who violate the law. A further purpose is to define the media storage and retention system for the events recorded by these devices.

POLICY: It is the policy of the Mendham Borough Police Department to utilize body-worn video/audio recorders (BWC) to assist agency personnel in the performance of their duties by providing an accurate and unbiased recorded account of an incident. All personnel shall use this equipment consistent with manufacturer's guidelines, this Standard Operating Procedure (S.O.P.), and those policies or guidelines issued by the New Jersey Attorney General and the Morris County Prosecutor's Office. Failure to comply with this S.O.P. and those policies or guidelines issued by the New Jersey Attorney General and the Morris County Prosecutor's Office can result in discipline.

PROCEDURE:

I. DEFINITIONS

Activate. To actuate the recording mode/function of a body-worn camera.¹

Body-worn camera (“BWC”). A device worn by a law enforcement officer that makes an electronic audio and video recording of activities that take place during any law enforcement action. The term does not include a mobile video recording device when mounted inside a police vehicle (e.g., a dash cam). The term also does not include any form of electronic recording device worn by a law enforcement officer while acting in an undercover capacity. Nor does the term include an electronic recording device when used to comply with the requirements of Rule 3:17 (electronic recording of stationhouse custodial interrogations). All references to BWCs include the body-worn devices and where appropriate, the wireless transmitter, microphone, removable media (if any) recordings, metadata server, and other accessories necessary to operate this system.

Constructive authority. Shall have the same meaning as defined in the Attorney General’s Use of Force Policy, except that the term shall apply only to constructive authority directed against a person who is subject to investigative detention or arrest (e.g., “show me your hands,” “get out of the vehicle,” etc.), or directed against a person if the officer has unholstered a firearm or a conducted energy device (e.g., “move out of the way,” “get down,” etc.).

Force. Shall have the same meaning as defined in the Attorney General’s Use of Force Policy. The term “force” shall include physical, mechanical, enhanced mechanical, and deadly force.

Investigation of a criminal offense. Any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, including but not limited to responding to a report of a possible criminal offense; an investigative detention based on or leading to reasonable and articulable suspicion to believe that a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness to a criminal offense; or canvassing an area, neighborhood, or premises for potential witnesses to a criminal offense.

Law enforcement agency, agency, or department. A law enforcement agency operating under the authority of the laws of the State of New Jersey.

¹ Some BWC models may be turned on and remain in a standby or buffering mode, during which the device does not make a permanent record of images/sounds unless the officer activates the recording mode/function. With respect to these models, when the officer activates the recording mode/function, the device automatically preserves an electronic recording of the events that transpired a fixed period of time (e.g., 30 seconds) before the recording mode/function was activated. This time-delay or “buffering” feature allows the device to capture data concerning the event/circumstances that prompted the officer to activate the BWC. When an officer does not activate the recording mode/function, data captured while the device is in standby/buffering mode is overwritten automatically.

Law enforcement officer. A person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.

Mobile video recording system (MVR). A device or system installed or used in a police vehicle or worn or otherwise used by an officer that electronically records visual images depicting activities that take place during a motor vehicle stop or other law enforcement action.

Proactive enforcement team. Includes officers who are typically assigned to target vice, drugs, organized street crime, violent crime, and/or any other targeted enforcement. Unlike officers who are responsible for responding to traditional calls for service, these officers are typically assigned the singular responsibility of addressing the aforementioned activities, and they are sometimes referred to as crime suppression units. The nature of their work is varied and may include being dressed in traditional uniform, modified uniform, or plain clothes. These officers may work alongside undercover officers, conduct surreptitious surveillance, engage in high-intensity enforcement via motor vehicle/pedestrian stops, and/or interact with confidential informants or witnesses who wish to remain anonymous.

School. A public or nonpublic elementary or secondary school within this State offering education in grades kindergarten through 12, or any combination of grades, at which a child may legally fulfill compulsory school attendance requirements.

Stealth Mode. A setting on the BWC that allows it to remain inconspicuous without any display, lights, or other external indicators.

Subject of the video footage. Any law enforcement officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the BWC recording and shall not include a person who only incidentally appears on the recording.

Tactical team. A group of officers who are specially selected, trained, and equipped to handle high-risk incidents, including, but not limited to, those involving snipers, barricaded persons, warrant services, apprehensions, acts of terrorism, and other situations or activities as deemed necessary by command leadership.

Youth facility. A facility where children assemble under adult supervision for educational or recreational purposes, such as group homes, residential facilities, day-care centers, day treatment centers, etc.

II. GOVERNING PRINCIPLES

- A. BWC recordings are invaluable to law enforcement for evidential purposes. BWCs have consistently demonstrated their value in the prosecution of criminal, traffic, and other related offenses and to protect personnel from false claims of misconduct. Additionally, this equipment provides valuable instructional material that can be utilized for in-service training programs.
- B. While visual and audio evidence may be captured on the recordings, the use of BWCs is not intended to document all evidentiary material relevant to court or

administrative proceedings but can serve to supplement an officer's senses and eyewitness account.

- C. Adequate safeguards are necessary to ensure that this technology is used in a non-discriminatory way and to properly preserve evidence.
- D. When properly used, this equipment will have the following capabilities:
 - 1. Creation of accurate documentation of motorist contacts and other patrol-related activities.
 - 2. Preservation of an audio and video record of events, actions, and conditions during arrests, critical incidents, and prisoner transports.
- E. These recordings will serve the following purposes:
 - 1. Recordings serve as protection for police officers when there are complaints about their conduct or professionalism during encounters with the public.
 - 2. The recordings can be introduced into evidence in criminal and motor vehicle prosecutions as well as in civil litigation.
 - 3. The recordings can resolve disputes concerning what occurred during particular incidents, thereby protecting both the public and the officers involved.
 - 4. When complete recall is not possible, such as when multiple events are happening simultaneously or out of an officer's line of sight, an audio/visual recording can provide an accurate record of events.
 - 5. Supervisors will be able to view the recordings and select portions to use to train officers in safety, field training, interpersonal skills, proper police procedures, and legal doctrines.
 - 6. Recordings can permit supervisors to undertake more meaningful performance evaluations.
 - 7. Recordings augment management's ability to evaluate its basic police practices and interactions between its personnel and the general public.
 - 8. Recordings enhance management's ability to train personnel in proper police procedures.
- F. Only officers who have received training in the use of BWCs are permitted to use this system and must demonstrate a satisfactory degree of familiarity and efficiency in the use of this system. Proper use of a BWC is considered an essential job requirement.

1. Officers will use only those BWCs approved and issued by the Chief of Police. Wearing any personally owned video/audio recorder is not authorized without the expressed written permission of the Chief of Police, the Morris County Prosecutor's Office, or the New Jersey Division of Criminal Justice. Violations will be subject to disciplinary action.
- G. BWCs are intended for official police department use only and are not to be used for frivolous or personal activities. Violations will be subject to disciplinary action.
 - H. All recording media, images, and audio are intellectual property of the Mendham Borough Police Department and will not be copied, released, or disseminated in any form or manner outside the parameters of this S.O.P. without the expressed written consent of the Chief of Police or the Morris County Prosecutor. Violations will be subject to disciplinary action.
 - I. Under no circumstances will any member of the Mendham Borough Police Department make a personal copy of any recorded event. Officers and employees shall not reproduce or store any recordings to any device or storage medium. This shall include, but not limited to, cell phones, electronic notebooks, etc. Violations will be subject to disciplinary action.
 - J. Personnel shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. Any such tampering is a violation of N.J.S.A. 2C:28-7 and is a 4th degree crime.
 - K. Pursuant to the Morris County Prosecutor's Directive (*Volume 2, Chapter 22: Body Worn Cameras (BWC) and Body Worn Camera Recordings*), the use of body-worn recorders with electronically enhanced audio/visual capabilities, such as infrared vision features, is not authorized. Violations will be subject to disciplinary action.
 - L. Recorded video of unusual or significant incidents, deemed to be beneficial for departmental training, may be utilized for departmental in-service training purposes only with the approval of the Chief of Police. Officers are encouraged to notify their supervisors of recordings which may be beneficial for training purposes.
 - M. There is no intent to utilize the BWC as a management tool to punish officers for minor departmental rule infractions.
 1. Personnel shall not be subject to criticism for the proper exercise of lawful discretion in enforcement matters.
 2. BWCs shall only be utilized for legitimate law enforcement purposes.

III. POLICE DEPARTMENT POLICIES GOVERNING DEPLOYMENT AND USE OF BWCs & RECORDINGS

- A. **Promulgation of Police Department Policies and Procedures.** In accordance with New Jersey Attorney General Directive 2021-5 (*Use of Body Worn Cameras*), this S.O.P. shall provide that:

1. a law enforcement officer employed by this agency may only use a BWC system that has been issued and approved by this agency;
2. an officer equipped with a BWC must comply at all times with the requirements established in this S.O.P.;
3. a BWC shall only be used in the performance of official police duties and not for personal purposes;
4. no BWC recording shall be accessed, viewed, copied, disseminated, or otherwise used by a sworn officer or civilian employee of this agency except for an official purpose specified in this S.O.P. or by law; and
5. any sworn officer or civilian employee of this agency who knowingly violates the requirements of this S.O.P. shall be subject to discipline.

B. **Officers Required to Wear BWCs.** The following officers shall be required to be equipped with BWCs and adhere to the provisions of this S.O.P. when performing their duties:

1. All uniformed patrol officers while acting in the performance of official duties, as required by N.J.S.A. 40A:14-118.3 (P.L. 2020, c. 128). This shall include uniformed officers assigned to traffic law enforcement, as well as Class II Special Law Enforcement Officers (SLEO IIs) assigned to patrol or traffic law enforcement duties.
2. All officers assigned to duties within schools as part of the normal daily educational environment, **such as School Resource Officers (SROs) and Class III Special Law Enforcement Officers (SLEO IIIs).**
 - ❖ Officers assigned to duties at schools working security details or crowd-control functions at special events such as athletic competitions, graduations, or similar public events shall be equipped with BWCs.
3. All officers assigned to proactive enforcement teams as defined in this S.O.P.
4. All officers assigned to tactical teams as defined in this S.O.P. Tactical teams shall include S.W.A.T. (Special Weapons and Tactics), S.R.T. (Special Response Team), T.E.A.M.S. (Technical Emergency and Mission Specialists), Entry Teams, Rapid Deployment, Fugitive, or similar units.
5. All officers whose assigned duties include regular interaction with members of the public, which reasonably may give rise to an arrest situation or use of force.
6. All officers assigned to “front desk” duty, whose duties include interaction with members of the public who enter police stations to report incidents or request assistance or information.

7. All officers assigned to a pre-planned search warrant execution or a pre-planned arrest.
8. All uniformed officers assigned to duties at demonstrations or potential civil disturbances.
9. Officers assigned to security details or crowd-control functions at special events such as fairs, carnivals, or similar public events.
10. Officers assigned to “extra duty” or “off duty” assignments that strictly involve traffic direction (e.g., road construction, utility repairs, etc.).

C. **Officers Not Required to Wear BWCs.** Notwithstanding the provisions of Section III.B, the following officers are not required by this S.O.P. to be equipped with BWCs:

1. Officers engaged in undercover assignments.
2. Officers acting as hostage negotiators or crisis negotiators working in conjunction with tactical teams.
3. Officers assigned to administrative positions within the law enforcement agency. This shall include the Chief of Police, Lieutenant, Detective, officers assigned to Light Duty, and civilian employees, provided they are not wearing the agency uniform and interacting with members of the public which reasonably may give rise to an arrest situation or use of force. This provision shall not exclude officers assigned to “front desk” duty, as defined in Section III.B(6), from the requirement to be equipped with BWCs.
4. Officers meeting with confidential sources or recruiting potential confidential sources.
5. Officers engaged in union representation of a member of the collective bargaining unit.
6. Non-uniformed officers assigned to investigative, non-enforcement duties when authorized by the Chief of Police or designee.
7. Officers engaged in crime-scene processing duties.

D. **Special Circumstances.** Exemptions from the requirements in Section III.B are permitted only when approved by the Director of the Division of Criminal Justice or the Morris County Prosecutor, and only under such special circumstances that warrant an exemption. The reasons for the exemption must be documented and demonstrate a special need. Such requests for exemption shall be made in advance and approved in writing.

E. **Placement of BWCs.** BWCs shall be worn on the outer-most garment, positioned in one of the following acceptable areas:

1. Center-chest (badge level); or
2. Offset – within six (6) inches of the gig-line and opposite side of holster so as to maximize the camera’s ability to capture video footage in a bladed position.
3. BWCs shall not be worn on the duty belt (uniformed) or belt line (plain clothes).
4. BWCs shall face the officer’s point of view, using the mount/clip supplied by the manufacturer.
5. Officers are responsible to ensure that the BWC remains in a secured position that maximizes the device’s recordation function.

F. **Duty to Inspect and Report Malfunctions.** An officer equipped with a BWC shall be responsible for determining that the device is fully functional and that its battery is adequately charged at the start of the officer’s duty shift and before going into the field. This shall be memorialized in the officer’s vehicle checklist submission.

If a malfunction is detected, the officer shall report the malfunction to a supervisor before going into the field. If the BWC malfunctions while out in the field, the malfunction upon its discovery shall be reported to the officer’s supervisor as soon as it is safe and practicable to do so.

1. If at any time a BWC malfunctions and needs to be placed out of service, the officer shall:
 - i. immediately notify their supervisor;
 - ii. replace with any other working BWC – preferably a device from an officer working an opposite shift;
 - iii. document the failure/malfunction in an Operations Report utilizing CFS code “Other Maintenance / 9012”; and
 - iv. submit a repair request via the vehicle checklist submission
2. Repairs to any BWC equipment shall only be performed by the manufacturer or under the direction of the designated BWC Coordinator(s) and/or their designee.

G. **Applicability of and Compliance with Attorney General Directive No. 2005-1.** The decision to activate or de-activate a BWC is a police action subject to the rule established in Attorney General Law Enforcement Directive (“AG Directive”) No. 2005-1, which strictly prohibits any form of racially influenced policing.

H. **Training.** The Chief of Police shall establish a training program on the lawful and proper use of BWC equipment. The Chief of Police shall designate one or more persons to serve as BWC Coordinators, who shall be responsible for:

1. Providing initial training to all newly hired officers or to officers who were not previously trained;
2. Providing periodic refresher training, as required, to ensure the continued effective use and operation of the equipment;
3. Providing initial and refresher training to non-sworn personnel whose responsibilities include accessing, copying, or distributing BWC records;
4. Ensuring proper calibration and performance of the BWC equipment;
5. Incorporating changes, updates, or other revisions in policy and equipment;
6. Providing supplemental training as part of this agency's progressive disciplinary processes;
7. Ensuring that all recordings are uploaded to a secure data storage system in a timely fashion;
8. Prevention of tampering with, or deletion of, recorded data, both before and after downloading from the BWC and uploading to the storage system;
9. Prevention of unauthorized access to stored BWC recordings;
10. Documentation of all instances when BWC recordings are accessed, viewed, copied, disseminated, or deleted;
11. Permit auditing of all instances when BWC recordings are accessed, viewed, copied, or deleted; and
12. Authorize access to downloaded BWC files.

IV. NOTICE THAT BWCs ARE DEPLOYED AND ACTIVATED

- A. **Public Notice.** Pursuant to AG Directive 2021-5 (*Body Worn Cameras*), the Mendham Borough Police Department website/webpage shall contain a clear statement that this agency utilizes body-worn video/audio recorders. The website posting shall include an image showing what the device looks like and how it is to be worn by uniformed officers so that citizens will be able to determine whether an officer is equipped with the device. In addition, officers of this agency wearing BWCs shall comply with all relevant laws regarding notice to any subject of a BWC recording, pursuant to P.L. 2020, c. 129, section 1d-e, discussed in Section IV.B.
- B. **Specific Notice to Certain Individuals During an Encounter.** A law enforcement officer who is wearing a BWC shall notify the subject of the recording that the subject is being recorded by the BWC unless it is unsafe or infeasible to provide such notification. Such notification shall be made as close to the inception of the encounter as is reasonably possible. If the officer does not provide the required notification because it is unsafe or infeasible to do so, the officer shall

document the reasons for that decision in a report or by narrating the reasons on the BWC recording, or both. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.

- C. **Truthful Response to Specific Inquires.** If a civilian inquires of an officer whether the officer is equipped with a BWC, or inquires whether the device is activated, the officer shall answer truthfully unless the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, has expressly authorized the officer to make a covert electronic recording. *Cf.* Section III.C (Policy does not apply to officers while operating in an undercover capacity, or while conducting/participating in a stationhouse custodial interrogation electronically recorded in accordance with Rule 3:17). Nothing in this Section shall be construed to establish a basis for suppressing a statement or other evidence.
- D. **Notice When Using BWCs Inside a Private Residence.** Prior to entering a private residence, a law enforcement officer shall notify the occupant that the occupant is being recorded by the BWC and, if the occupant requests the officer to discontinue use of the officer's BWC, the officer shall immediately discontinue use of the BWC unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that the officer will be required to use constructive authority or force. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this Section and the response to the request shall be recorded by the recording system prior to discontinuing the use of the recording system.
- E. **Notice When Using BWCs with an Apparent Crime Victim.** When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, notify the apparent crime victim that they are being recorded by the BWC and, if the apparent crime victim requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this Section and the response to the request shall be recorded by the recording system prior to discontinuing the use of the recording system.
- F. **Notice When Using BWCs with a Person Seeking to Remain Anonymous.** When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall notify the person that they are wearing a BWC and, if the person requests that the officer discontinue use of the BWC, the officer shall evaluate the circumstances and, if appropriate, discontinue use of the BWC. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this Section and the response to the request shall be recorded by the recording system prior to discontinuing the use of the recording system.

V. **STANDARDS GOVERNING THE ACTIVATION OF BWCs**

- A. **BWCs Used Only in Performance of Official Duties.** A BWC shall be activated only while in performance of official police duties and for the purpose of recording incidents, investigations, and police-civilian encounters involving those law enforcement activities specified in this S.O.P. A BWC shall not be used to record:

1. Encounters with undercover officers or confidential informants;
 2. Communications with other police personnel without the advanced permission of the Chief of Police, the Morris County Prosecutor's Office, or the New Jersey Division of Criminal Justice;
 3. When the officer is on break or otherwise engaged in personal activities;
 4. In any location where individuals have a reasonable expectation of privacy, such as a restroom, break room, at an establishment during a meal break, PBA meetings or locker room;
 5. When the officer is engaged in police union business;
 6. When the officer is involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisor-subordinate interactions;
 7. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording; or
 8. While discussing criminal investigation strategies.
- ❖ Any recordings from a BWC recorded in violation of this S.O.P. or any other applicable law shall be immediately brought to the attention of agency command staff and immediately destroyed by command staff following consultation and approval by the County Prosecutor or Director of the Office of Public Integrity and Accountability. Such footage shall not be admissible as evidence in any criminal, civil, or administrative proceeding.

B. Circumstances When BWC Activation is Generally Required. Except as otherwise expressly provided in Section VII or any other provision in this S.O.P., or by law, an officer equipped with a BWC shall be required to activate the device whenever the officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public, to include any of the following circumstances,² unless there exists an immediate threat to the officer's life or safety that makes such activation impossible or dangerous. In such situations, the officer must activate the camera at the first reasonable opportunity to do so and it shall remain activated until the encounter has fully concluded and the officer leaves the scene:

² Two or more of the below-listed activities are likely to occur during a single encounter or event. For example, a frisk ordinarily occurs after an officer already has initiated an investigative detention (e.g., a "stop"), and a custodial interrogation typically occurs after the officer has arrested the person being interrogated. Although these specified activities often will co-occur and overlap, they are presented in this Section to ensure complete coverage of the circumstances when a BWC must be activated. The specified activity that occurs first during an unfolding encounter will trigger the obligation to activate a BWC. As explained in Section V.C, once activated based upon the initiation of any of the listed police activities, the BWC generally must remain in operation until the police-civilian encounter is concluded (e.g., until the officer is no longer interacting with or in the presence of the civilian), and not just while the officer is engaged in the specified activity that required activation.

1. the officer initiates an investigative detention (e.g., a *Delaware v. Prouse* traffic stop, a *Terry v. Ohio* criminal suspicion stop, or a checkpoint or roadblock stop);
2. the officer is responding to a call for service and is at or near the location to which the officer has been dispatched;
3. the officer is conducting a motorist aid or community caretaking check;
4. the officer is interviewing a witness in the course of investigating a criminal offense;
5. the officer is conducting a custodial interrogation of a suspect unless the interrogation is otherwise being recorded in accordance with Rule 3:17 (electronic recordation of stationhouse interrogations);
6. the officer is making an arrest;
7. the officer is conducting a protective frisk for weapons;
8. the officer is conducting any kind of search (consensual or otherwise);
9. the officer is engaged in a police response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians and the officer or any other officer on the scene may be required to employ constructive authority or force;
10. the officer uses constructive authority or force, or reasonably believes that constructive authority or force may be used in any encounter or situation not otherwise listed in this subsection based on specific and articulable facts warranting heightened caution that are documented by narration on the recording and/or in any investigation or operations report;³
11. the officer is transporting an arrestee to a police station, county jail, or other place of confinement, or a hospital or other medical care or mental health facility;
12. the officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities;
13. All traffic stops from the initiation of the stop until the stop is concluded, including sobriety testing;

³ When circumstances necessitating the use of constructive authority or force arise suddenly during the course of swiftly developing events, it may not be safe and practicable for an officer to activate a BWC before employing constructive authority or force. Nothing in this S.O.P. should be construed or applied in a manner that jeopardizes officer safety by distracting the officer's attention from the immediate need to use such constructive authority or force. It should be noted that in many circumstances where the need to use constructive authority or force arises, the officer already would have initiated a police activity, such as a motor vehicle stop, *Terry* stop, or response to a call for service, that would have triggered the requirement to activate the BWC; see note 2 (recognizing that two or more police activities enumerated in this section often will co-occur during the course of a single police-citizen encounter).

14. Stationary police details such as DWI checkpoints, seatbelt use checkpoints, etc.;
15. Crash scenes, including interviews on the scene;
16. Crime scenes (not to include officers engaged in crime scene processing duties – Section III.C(8));
17. Motor vehicle and/or foot pursuits;
18. Investigations of criminal violations (not to include undercover investigations or related surveillance activities – Section III.C(1));
19. Special events or projects, including but not limited to crowd control, unruly crowds, or incidents requiring activation of the all-hazards or emergency operations plan;
20. Domestic violence investigations;
21. Strikes, picket lines, demonstrations;
22. Any investigation of underage 2C:33-15.

❖ **STEALTH MODE:** In tactically appropriate situations where officer safety may be compromised due to the BWC's lights and sounds, STEALTH MODE may be utilized (e.g., dwelling search after an activated burglar alarm with an open door). When an officer switches to STEALTH MODE, the following procedures shall be followed:

- The switch to STEALTH MODE shall be electronically recorded;
- Before switching to STEALTH MODE, the officer shall narrate the circumstances of the switch (e.g., "I am now switching my BWC to STEALTH MODE because..."); and
- The officer shall document the circumstances of the switch in any investigation or operations report concerning the incident under investigation.
- The officer shall switch back to regular mode immediately after the officer safety issue(s) have been resolved (e.g., dwelling was swept and deemed secure).

C. Continuous Recording Pending Completion of Encounter. To ensure that the entire encounter/event/episode is recorded, in accordance with this S.O.P. and the law, a BWC should be activated before a uniformed officer arrives at the scene of a dispatched call for service or other police activity listed in Section V.B. However, the officer need not begin recording at the moment they receive instructions from a dispatcher to respond to a call for service. Rather, the officer may delay activation until they are near the destination.

- ❖ Except as otherwise expressly provided in Section VI or any other provision of this S.O.P., when a BWC is required to be activated by an officer pursuant to this S.O.P., the device must remain activated throughout the entire encounter/event/episode and shall not be de-activated until it has concluded (e.g., the BWC-equipped officer has left the scene; all civilians involved in the encounter have left the scene; the officer has informed the dispatcher or a supervisor that the event has concluded; the event is “closed” in RMS; etc.).

- ❖ When a BWC is activated pursuant to Section V.B(11) (transport of arrestee), whether by an officer in uniform or in plain clothes, it shall remain activated at all times while the BWC-equipped officer(s) are in the presence of the arrestee and until the arrestee is secured in the holding cell or processing room, or until custody of the arrestee has been transferred to county jail personnel (see subsection 1 below for procedure), or until the arrestee is with hospital/medical/mental health personnel (see subsection 2 below for procedure).

1. Upon arrival at a correctional facility, officer(s) shall deactivate their BWCs and secure them with their weapons in designated weapons lockers at the correctional facility. If the officer(s) need to transport the arrestee from the facility, they shall reactivate their BWCs for the duration of transport.
2. Upon arrival at a medical facility, officer(s) shall deactivate their BWCs prior to entering the facility. However, if police intervention is required while within the facility, officer(s) shall reactivate their BWCs until the issue is resolved.

D. **Special Provisions Governing the Use of BWCs when Investigating Underage Alcohol and Marijuana Use.** Consistent with the provisions of N.J.S.A. 2C:33-15a(4), the video and audio recording functions of an officer’s BWC shall be activated whenever the officer is responding to a call for service related to an underage person who is suspected of violating the law with respect to possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item, or at the initiation of any other law enforcement or investigative encounter between an officer and a person related to a violation or suspected violation of that provision. The BWC shall remain activated until the encounter has fully concluded, and the officer leaves the scene and shall not be deactivated based on a request by a person who is the subject of the call for service related to a violation of N.J.S.A. 2C:33-15, or for any other reason.

E. **Special Activation Rules Governing Certain Use of Force Incidents, In-Custody Deaths, and Other Exigent Circumstances Where Officers are in Danger.** Notwithstanding any other provision of this S.O.P., when an officer equipped with a BWC is dispatched to or otherwise goes to the scene of a “Law Enforcement Incident” as defined in New Jersey Attorney General Directive 2019-4 (*Directive Ensuring the Independent Investigation of Criminal Cases Involving Police Use-of-Force or In-Custody Deaths*), the officer shall activate the BWC before arriving at the scene when feasible. Notwithstanding any other provision of

this S.O.P., an officer while at the scene of a “Law Enforcement Incident” shall not de-activate the BWC unless instructed to do so by the assistant prosecutor or assistant or deputy attorney general supervising the investigation of the deadly-force incident. Such instruction may be given telephonically by the assistant prosecutor, assistant or deputy attorney general, or designee supervising the investigation.

F. As set forth with AG Directive 2019-4, “Law Enforcement Incidents” shall be:

1. Any use of force by a law enforcement officer resulting death;
2. Any use of force by a law enforcement officer resulting in serious bodily injury;
3. Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury;
4. The death of any civilian during an encounter with a law enforcement officer; and
5. The death of any civilian while in custody of law enforcement.

VI. **STANDARDS GOVERNING THE DE-ACTIVATION OF BWCS UPON THE REQUEST OF A CITIZEN, WHEN DISCUSSING INVESTIGATION STRATEGY OR PLANNING, OR ON INSTRUCTION OF A PROSECUTOR**

A. **De-Activation at the Request of a Civilian Providing Information/Cooperation.** Notwithstanding Section V.C, an officer may de-activate a BWC when a civilian conversing with the officer requests that the device be turned off under circumstances where it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected.⁴

1. The officer shall not suggest to the person that the BWC should be de-activated; nor shall the officer ask the person whether they would prefer that the BWC be de-activated. Rather, the request for de-activation must be self-initiated by the civilian.
2. The officer may explain the consequences of de-activation (e.g., evidence relevant to a criminal investigation will not be recorded).
3. In deciding whether to de-activate the BWC, the officer shall consider the privacy and safety interests of the person requesting de-activation, whether the encounter is occurring in the person’s residence and the need for the information or assistance that the person will provide only if the de-activation request is honored.

⁴ Cf. R. 3:17(b)(iv) (explaining that stationhouse custodial interrogations must be electronically recorded unless “a statement is made during a custodial interrogation by a suspect who indicated, prior to making the statement, that they would participate in the interrogation only if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded”).

B. De-Activation at the Request of a Person Seeking Emergency Medical Assistance. Notwithstanding Section V.C, an officer may de-activate a BWC when a person, other than an arrestee, is seeking emergency medical services for themselves or another and requests that the BWC be de-activated.

1. In deciding whether to de-activate the BWC, the officer shall consider the privacy interests of the person requesting de-activation and the person in need of medical assistance.

C. Procedures for De-Activation Upon a Civilian's Request. When an officer de-activates a BWC pursuant to Section VI.A or VI.B, the following procedures shall be followed:

1. The request for de-activation shall be electronically recorded;
 2. The officer before de-activating the BWC shall narrate the circumstances of the de-activation (e.g., "I am now turning off my BWC as per the victim's request.");
 3. The officer shall report the circumstances concerning the de-activation to their superior as soon as practicable; and
 4. The officer shall document the circumstances of the de-activation in any investigation or incident report concerning the incident under investigation.
- ❖ See also Section IX.C (notations (e.g., "tagging") to indicate BWC recordings that raise special privacy or other issues).

D. Decision to Decline a Civilian's De-Activation Request. If an officer declines a request to de-activate a BWC pursuant to Section VI.A or VI.B, the reason(s) for declining the request (e.g., the officer believes that there is a reasonable possibility that it may be necessary to use constructive authority or force during the encounter) must be documented and shall be reported to the officer's superior as soon as it is safe and practicable to do so.

- ❖ In the event that the officer declines a de-activation request, the officer immediately shall inform the person making the request of that decision. An officer shall be prohibited from misleading the person making the de-activation request pursuant to Section VI.A or VI.B into believing that the BWC has been turned off when in fact it is operating unless the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee expressly has authorized covert recording. Note that pursuant to Section IV.E, an officer may not decline a request from an apparent crime victim to discontinue recording of the encounter via the BWC.

E. De-Activation During Criminal Investigation Strategy/Planning Discussions. Notwithstanding Section V.C, and subject to the requirements of Section V.E, a BWC-equipped officer may de-activate a BWC while participating in a discussion pertaining to criminal investigation strategy and planning (e.g., to consider what

investigative techniques to pursue, such as what questions to pose to a suspect or witness, whether to summon a drug/explosives detection canine, whether to apply for a search warrant, whether to request permission to conduct a consent search, or to conduct another type of warrantless search, etc.), provided:

1. that the strategy/planning discussion is not conducted in the immediate presence of a civilian (e.g., under circumstances where a civilian might overhear the strategy discussion),
 2. and further provided that the BWC-equipped officer is not actively engaged in the collection of physical evidence (e.g., conducting a search).
- ❖ When an officer de-activates a BWC pursuant to this Section, the officer shall narrate the circumstances of the de-activation (e.g., “I am now turning off my BWC to discuss investigative strategy with my supervisor.”).
- F. **De-Activation on Instruction from Prosecutor.** Notwithstanding Section V.C, an officer may de-activate a BWC when specifically authorized to do so by an assistant prosecutor or assistant or deputy attorney general for good and sufficient cause as determined by the assistant prosecutor or assistant or deputy attorney general. When an officer de-activates a BWC pursuant to this Section, the officer shall narrate the circumstances of the de-activation indicating the assistant prosecutor or assistant or deputy attorney general who authorized the de-activation (e.g., “I am now turning off my BWC as per the instruction of assistant prosecutor (insert name).”).
- G. **Re-activation When Reason for De-Activation No Longer Exists.** In any instance where a BWC was de-activated pursuant to Sections VI.A, VI.B, VI.E, or VI.F, the device shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances justifying de-activation no longer exist (e.g., the interview of the person requesting de-activation is completed), and the officer would otherwise be required to activate the BWC (e.g., where the officer proceeds to other investigative activities that are required to be recorded pursuant to this S.O.P.).
- H. **Re-Activation When Actual Law Enforcement Force is Authorized.** Notwithstanding any other provision of this S.O.P., in any instance where a BWC was de-activated pursuant to Sections VI.A, VI.B, VI.E, or VI.F, or any other provision of this S.O.P., if the circumstances develop so that an officer is authorized to use force, the BWC shall be re-activated as soon as it is safe and practicable to do so.
- I. **Documentation of De-activations.** Prior to de-activating a BWC, the officer shall narrate the circumstances of the de-activation (e.g., “I am now turning off my BWC as per the victim's request.”);
1. The officer shall report the circumstances concerning the deactivation to their supervisor as soon as is practicable; and

2. The officer shall document the circumstances of the deactivation in any incident report concerning the incident under investigation.

- ❖ In any instance where a BWC was deactivated pursuant to this Section, the device shall be reactivated as soon as it is safe and practicable to do so when the circumstances justifying deactivation no longer exist and the officer would otherwise be required to activate the BWC.

VII. CIRCUMSTANCES WHEN BWC ACTIVATION/USE IS SUBJECT TO SPECIAL CONDITIONS OR RESTRICTIONS

A. **Special Restrictions When Recording in Schools, Healthcare/Treatment Facilities, and Places of Worship.** Notwithstanding Sections V.B and V.C of this S.O.P., and except as otherwise required by Section V.E, unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that they will be required to use constructive authority or force, the officer shall not activate a BWC, or shall de-activate a BWC that has been activated, while the officer:

1. is in a school or youth facility or on school or youth facility property under circumstances where minor children would be in view of the BWC;
2. is in a patient care area of a healthcare facility, medical office, or substance abuse treatment facility under circumstances where patients would be in view of the BWC;
3. is in a place of worship under circumstances where worshipers would be in view of the BWC.

- ❖ See also Section IX.C (notation (e.g., “tagging”) of certain events/encounters raising privacy or other special issues).
- ❖ If an officer is required to de-activate the BWC in accordance with the provisions of this Section, the officer shall narrate the reason for de-activation (e.g., “I am entering a school building where children are present.”). The BWC shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances requiring de-activation no longer exist (e.g., the officer is conversing with an adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWC).

B. **Special Restrictions When Undercover Officers or Confidential Informants May Be Recorded.** Notwithstanding the provisions of Sections V.B and V.C of this S.O.P., and except as otherwise required by Section V.E, an officer shall not activate a BWC, or shall de-activate a BWC that has been activated, if the officer knows or reasonably believes that the BWC would risk revealing the identity of an undercover officer or confidential informant or otherwise would pose a risk to the safety of an undercover officer or confidential informant unless such activation is expressly authorized by a supervisor, or unless the exigency of the situation and danger posed to an officer (e.g., active shooter, actual use of police force, officer in distress, etc.) require that the encounter/incident be recorded, in which event

the officer shall inform their supervisor that the recording risks revealing the identity of an individual as an undercover officer or confidential informant. See also Section IX.C (notation or “tagging” to indicate a BWC recording that raises special issues); Section IX.E (prosecutor’s authority to seek protective order when complying with discovery obligations).

- ❖ Notwithstanding the foregoing general rule prohibiting the recording of an undercover officer or confidential informant, in the event of a planned arrest/search warrant execution where it is expected that an undercover officer or confidential informant would be present (e.g., a raid where the undercover operative will be arrested to preserve his or her cover), the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, may provide specific instruction to any BWC-equipped officers participating in the operation on whether to activate their devices.
- ❖ The BWC shall be activated/re-activated as soon as it is safe and practicable to do so if and when the risk of capturing the image of an undercover officer or confidential informant no longer exists.

C. Special Precautions When a BWC Recording May Reveal Tactical Operations

Information. In the event that a BWC worn during the execution of tactical operations (e.g., “Special Operations” or “SWAT” operations, execution of arrest and/or search warrant, etc.) records confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms, techniques to convince persons to open doors, etc.), the recording shall be “tagged” in accordance with Section IX.C. See N.J.S.A. 47:1A-1.1 (exempting from disclosure under the Open Public Records Act “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons”); N.J.A.C. 13:1E-3.2 (2) (exempting records that may reveal “surveillance, security, tactical, investigative, or operational techniques”); See also Section IX.E (prosecutor’s authority to seek protective orders when complying with discovery obligations).

D. Special Restrictions on Recording in Courtrooms. An officer shall not activate a BWC while in a courtroom during court proceedings unless the officer is responding to a call for service or is authorized to use constructive force or authority.

E. De-Activation/Removal of BWC From Alcohol Breath Testing Area. In order to eliminate any argument that radio frequency interference from a BWC affected an electronic alcohol breath test, BWCs shall be deactivated, turned off, and removed from the area of the breath test instrument before an electronic breath test is conducted. Nothing herein shall be construed to preclude the use of a BWC to record the behavior of a person arrested for driving while intoxicated other than while the person is in the breath testing area while the electronic breath testing device is being operated. If this provision requires de-activation of a BWC, the officer shall narrate the reasons for de-activation (e.g., “I am de-activating the BWC because the suspect is about to take a breath test.”), and the BWC shall be

re-activated when safe and practicable to do so following the completion of the breath testing operation.

F. Restrictions on Using BWCs With Enhanced Audio/Visual Capabilities.

Subject to the provisions of Section XII of this S.O.P., if a department acquires a BWC with enhanced audio/video capabilities that allow it to record an image or conversation that could not be seen or heard by the officer wearing the device (e.g., infrared night vision or thermal imaging, sound amplification that would record conversations occurring at a remote distance), that feature/capability shall not be used without the express approval of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, in accordance with any applicable legal requirements.

1. Pursuant to Morris County Prosecutor's Directive (*Volume 2, Chapter 22: Body Worn Cameras (BWC) and Body Worn Camera Recordings*), the use of body-worn recorders with electronically enhanced audio/visual capabilities, such as infrared vision features, is not authorized and violations will be subject to disciplinary action.

G. Restrictions on Using BWCs Surreptitiously or to Gather Intelligence Information on First Amendment Protected Activity.

A BWC shall not be used surreptitiously. Additionally, a BWC shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public, provided that nothing in this subsection shall be construed to prohibit activation of video and audio recording functions of a BWC as authorized under the law or this S.O.P.

VIII. RECORDS RETENTION AND REVIEW

A. Minimum 180-Day Retention Period. A BWC recording shall be retained by this agency that employs the officer for a retention period consistent with the provisions of this Section, after which time the recording shall be permanently deleted. A BWC recording shall be retained for not less than 180 days from the date it was recorded but shall be subject to additional retention periods as required in Sections VIII.B, VIII.C, and VIII.D.

1. Recordings being stored for criminal, civil, or administrative purposes must be maintained until the conclusion of the case, plus the required retention period. Recordings maintained for these purposes can only be erased or destroyed in accordance with the New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules.

B. Automatic Three-Year Retention Period. A BWC recording shall automatically be retained for not less than three (3) years if it captures images involving an encounter about which a complaint has been registered by a subject of the BWC recording.

C. Three-Year Retention Period Upon Request. Subject to any applicable retention periods established in Section VIII.D to the extent such retention period is longer, a BWC recording shall be retained for not less than three (3) years if voluntarily requested by:

1. Law enforcement officer whose BWC made the video recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;
2. A law enforcement officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;
3. Any immediate supervisor of a law enforcement officer whose BWC made the recording or who is a subject of the BWC recording, if that immediate supervisor reasonably asserts the recording has evidentiary or exculpatory value;
4. Any law enforcement officer, if the BWC recording is being retained solely and exclusively for police training purposes;
5. Any member of the public who is a subject of the BWC recording;
6. Any parent or legal guardian of a minor who is a subject of the BWC recording; or
7. A deceased subject's next of kin or legally authorized designee.
 - ❖ To effectuate subparagraphs (5), (6), and (7) of this Section, the member of the public, parent, or legal guardian, or next of kin or designee shall be permitted to review the BWC recording to determine whether to request a three-year retention period, in accordance with the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., to determine whether to request a three-year retention period.

D. Additional Retention Requirements. Notwithstanding the provisions of Sections VIII.A, VIII.B, or VIII.C of this S.O.P., a BWC recording shall be subject to the following additional retention requirements:

1. When a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution;
2. When a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer or the employing law enforcement agency;

3. When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.

E. Recordings Subject to Permanent Retention. Certain recordings that are being stored for criminal, civil, or administrative purposes are to be tagged in the *Evidence.com* with a permanent retention period and may be transferred to a DVD/CD or the department drive and preserved as evidence. Transfer of BWC recordings to other media sources for these purposes shall be conducted by the BWC Coordinator(s) and/or Internal Affairs personnel. The requesting entity is responsible for documenting the transfer in an appropriate incident report as well as a Property Report and will be responsible for storing the recording into property and evidence in accordance with normal agency protocol. Examples of retention periods for such recordings include but are not limited to:

1. Any death investigation (at least 7 years);
2. Criminal arrest - 1st, 2nd, 3rd, 4th degree crime (at least 5 years following adjudication of the case);
3. Non-criminal arrest, excluding DWI (at least 2 years following adjudication of the case);
4. Any investigative unit investigation not listed above (at least 5 years);
5. DWI arrest (at least 10 years following adjudication of the case);
6. Use of force incidents (at least 2 years);
7. Internal affairs investigations (6) years after separation from employment or following any discipline or appeal, whichever is later; or
8. Normally, recordings of warrant arrests or violation of TRO arrests without any other criminal charges need not be preserved as evidence, except when law enforcement force is used.

F. Deletion of Records. Only the Internal Affairs Unit can delete BWC recordings with the expressed consent of the Chief of Police or the Morris County Prosecutor's Office. Recordings being stored for criminal, civil, or administrative purposes are considered routine business records of this agency and shall be maintained on a secure server and disposed of in accordance with the New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules. BWC footage from cases involving an arrest shall not be deleted without the expressed authorization of the Morris County Prosecutor's Office.

- ❖ If an officer has inadvertently recorded data that is private or inappropriate, a request to delete the recording should be made to their immediate supervisor as soon as possible.

1. The recording shall not be viewed, but the officer shall tag the recording as “Special Privacy” and submit a memorandum to their immediate supervisor, the BWC coordinator(s), and the Internal Affairs Unit supervisor. The actual BWC shall be taken out of service and turned over to the internal affairs unit for downloading.
2. If necessary, the Internal Affairs Unit supervisor shall assign an investigator to the incident.
3. Internal Affairs shall conduct an investigation, respecting all rights to personal privacy, having the BWC recording viewed only by an officer of the same sex, if necessary.
4. Upon completion of the investigation, the Internal Affairs supervisor shall notify the Chief of Police and request permission to delete the recording if warranted.

G. **Media Storage.** The property/evidence custodian shall ensure that any media used for duplication of recordings is properly stored away from magnetic fields (speaker, etc.) or other areas that may facilitate corruption in the property room.

IX. **STANDARDS TO ENSURE SECURE STORAGE AND ACCESSIBILITY**

A. **Procedures to Protect Integrity of BWC Recordings.** This agency shall establish and maintain a system and procedures to ensure the integrity and proper handling and storage of all BWC recordings. This system shall include provisions to:

1. ensure that all recordings are uploaded to a secure data storage system in a timely fashion;
2. prevent tampering with or deletion of recorded data both before and after downloading from the BWC and uploading to the storage system;
3. prevent unauthorized access to stored BWC recordings;
4. document all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted; and
5. permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.

B. **Capacity to Locate Specific BWC Recordings.** This agency shall establish and implement a system that permits the agency to locate and retrieve all recordings associated with a specific incident/event, investigation, case, or criminal charge. Accordingly, this agency shall be required to develop and maintain a BWC control ledger or log, which may be computerized.

- ❖ This agency shall establish and implement a system to ensure that relevant BWC recordings are provided in discovery in a timely fashion. The system

established should include a provision to ensure that police arrest/incident/continuation reports indicate whether the incident or investigative activity described in the report was electronically recorded by a BWC. Police reports should, when feasible, indicate the corresponding BWC control ledger/log number, and the BWC control ledger/log should cross-reference the incident case number. Copies of BWC recordings made for the purpose of complying with the State's discovery obligations shall be provided to the prosecutor in a readily available media format.

C. Provisions to Identify (“Tag”) Recordings That Raise Special Privacy or Safety Issues. To identify BWC recordings that may raise special privacy or safety issues, this agency shall establish and implement a system that permits a notation (e.g., “tagging”) to be made when the recording:

1. captures the image of a victim of a criminal offense;
 2. captures the image of a child;
 3. was made in a residential premises (e.g., a home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, a healthcare facility or medical office, substance abuse or mental health treatment facility, or a place of worship;
 4. captures a conversation with a person whose request to de-activate the BWC was declined;
 5. captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information (e.g., verbal codes and hand signals used to give direction to officers, techniques for interior movements and clearing rooms during execution of a warrant, techniques for convincing persons to open doors during warrant execution, etc.) may have been recorded;
 6. captures the image of an undercover officer or confidential informant; or
 7. captures the screen of a law enforcement computer monitor (e.g., desktop, MDT, etc.) that is displaying confidential personal or law enforcement sensitive information (e.g., NCIC, DMV, RMS, etc.). See also Section VII.A (requiring notice to the prosecutor when a BWC captures the image of a patient at a substance abuse treatment facility).
- ❖ Subject to the provisions of Section XII of this S.O.P., an agency's policy, standing operating procedure, directive, or order issued pursuant to Section III.A may specify additional circumstances when a BWC recording will be “tagged.”

D. Approval for Access to “Tagged” BWC Recordings. A BWC recording tagged pursuant to Section IX.C shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee. The

County Prosecutor or Director may authorize the Chief of Police, and one or more superior officers or duty positions (e.g., head of the Detective Bureau) identified by the Chief of Police, to grant permission pursuant to this Section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to Section IX.C. See also Section X.A (specifying the purposes for which access to a BWC recording is permitted).

1. Pursuant to Section XII, Morris County Prosecutor's Directive Volume 2, Chapter 22 (*Body Worn Cameras (BWC) and Body Worn Camera Recordings*), which grants the chief law enforcement executive of an agency the authority to determine who, in their agency, is authorized to grant permission to access, view, copy, disseminate, or otherwise use BWC recordings tagged "Special Privacy", the Chief of Police has granted the aforementioned privileges to the following officers of this Department:

i. Lieutenant;

ii. Sergeants;

iii. Detective, or

iv. Any member assigned to the Internal Affairs Unit.

E. Compliance with Discovery Obligations Relating to BWC Recordings That Might Expose Officers or Other Persons to Danger. If disclosure of a BWC recording as part of the State's discovery obligations in a prosecution might present a danger to any officer or civilian (e.g., reveal an undercover officer, confidential informant, surveillance site, etc.), or might reveal confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms during execution of warrant, techniques for convincing persons to open doors during warrant execution, etc.), the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee in cases prosecuted by the Division, shall, in the exercise of sound prosecutorial discretion, take such steps as are appropriate and authorized by law and/or Court Rule to protect the information from disclosure, such as by seeking a protective order from the court. See Section VII.C ("tagging" of such BWC recordings).

F. Third-Party Storage and Maintenance. If a law enforcement agency authorizes a third-party to act as its agent in maintaining recordings from a BWC, the agent shall be prohibited from independently accessing, viewing, or altering any recordings, except to delete recordings as required by law or agency retention policies.

X. RESTRICTIONS ON ACCESS TO AND USE AND DISSEMINATION OF BWC RECORDINGS

A. Specified Authorized Purposes for Accessing/Using Stored BWC Recordings. No member of this agency shall access, view, copy, disseminate, or

otherwise use a BWC recording except for an official purpose. BWC recordings shall not be divulged or used for any commercial or other non-law enforcement purpose. Access to and use of a stored BWC recording is permitted only:

1. when relevant to and in furtherance of a criminal investigation or prosecution;
2. when relevant to and in furtherance of an internal affairs investigation;
3. when relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern or practice of possible misconduct;
4. when relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency;
5. to show to a civilian who intends to file a complaint against an officer to demonstrate what actually occurred during the encounter so that the person can make an informed decision whether to file the complaint;
6. to comply with the State's discovery obligations in prosecutions pursuant to the Rules of Court;
 - i. Such requests must be specific and on the proper instrument, e.g., subpoena, discovery request, etc.
 - ii. Only those portions of the recording pertinent to the request shall be forwarded.
 - iii. The Mendham Borough Police Department reserves the right to redact recordings as applicable by law.
 - iv. All requests for copies or review of BWC recordings are subject to the fee requirements of the prevailing municipal ordinance.
7. to comply with any other legal obligation to turn over the recording to a person or entity;⁵
8. to show or disseminate the recording to a civilian or a non-law enforcement entity, or to disseminate it to the public, where the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, determines that disclosure to that particular person/entity or the public is warranted because the person's/entity's/public's need for access outweighs the law enforcement interest in maintaining confidentiality;
9. for training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording cannot be determined by

⁵ When responding to a subpoena or court order, or a request pursuant to the Open Public Records Act or common law right to know, disclosure of a BWC recording under this paragraph is permitted only after providing notice to the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, pursuant to Section XI of this S.O.P.

persons viewing the training video unless the depicted individuals have consented to the recording being used for training purposes;

10. to conduct an audit to ensure compliance with this S.O.P.;

11. to enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution (e.g., by providing information about the layout of a premises to be searched), when such use is approved by the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee; or

12. any other specified official purpose where the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.

- ❖ In the event that a recording is required for use in court or by another law enforcement agency, that recording shall not be released without the prior approval of the Chief of Police or designee. Duplicate copies shall be maintained as evidence in accordance with this agency's property and evidence guidelines.

B. Restriction on Access to BWC Recordings Related to Investigations Conducted Pursuant to AG Directive 2019-4. To ensure the integrity of the investigation of "Law Enforcement Incidents" conducted pursuant to New Jersey Attorney General Directive 2019-4 (*Directive Ensuring the Independent Investigation of Criminal Cases Involving Police Use-of-Force or In-Custody Deaths*), and to avoid possible contamination of a witness' personal recollection of events that could undermine their credibility as a witness, notwithstanding any other provision of this S.O.P., no civilian or law enforcement witness, including the principals of the investigation, shall be given access to or view a BWC recording of the incident, or a BWC recording of the response or on-scene investigation of the incident, without the express prior approval of the "Independent Investigator," as that term is defined in AG Directive 2019-4.

C. Restriction on Access to BWC Recordings Prior to Creating Reports, Statements, Interviews. A law enforcement officer shall not review or receive an accounting of a BWC recording that is subject to a minimum three-year retention period pursuant to Sections VIII.B or VIII.D prior to creating any required initial reports, statements, and interviews regarding the recorded event⁶. Subject to the

⁶ **VIII.B Automatic Three-Year Retention Period.** A BWC recording shall automatically be retained for not less than (3) three years if it captures images involving an encounter about which a complaint has been registered by a subject of the BWC recording.

VIII.D Additional Retention Requirements. Notwithstanding the provisions of Sections VII.A, B, or C of this S.O.P., a BWC recording shall be subject to the following additional retention requirements:

- (a) When a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution;
- (b) When a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer or the employing law enforcement agency;

provisions of Section X.B of this S.O.P., nothing in this paragraph is intended to prevent the officer from considering, reviewing, or receiving an accounting of such a BWC recording subsequent to the creation of any required initial reports, statements, and interviews regarding the recorded event.

- ❖ While information culled from the BWC recording may not be considered in creating an initial required report, statement or interview, after the creation of such initial report, statement or interview, in a case not subject to the provisions of Section X.B of this S.O.P., the officer may review the BWC recording and, if appropriate, create additional reports or make additional statements or documentation that revise or supplement the initial report, statement or interview that incorporate or reflect any information adduced from a review or accounting of the BWC recording.
- ❖ When video/audio footage is captured, it shall be noted in the coinciding report (e.g., incident, NJTR1, etc.), by typing/writing the capital letters BWC at the end of the report to signify that video/audio is available for the case. BWC recordings are not a replacement for written reports. Under no circumstances shall officers simply refer to a BWC recording on an investigation report instead of detailing the facts and circumstances of their investigation/observations.

D. **Documenting Access to Stored BWC Recordings.** *Evidence.com* maintains a record of all BWC recordings that are accessed, viewed, copied, disseminated, or deleted. The Chief of Police or their designee shall maintain a record of all BWC recordings that are accessed, viewed, copied, disseminated, or deleted. The Chief of Police shall cause a periodic audit of these records to ensure compliance with this general order. Minimally, the record-keeping system shall document the following information:

1. the date and time of access;
2. the specific BWC recording(s) that was/were accessed;
3. the officer or civilian employee who accessed the stored BWC recording;
4. the person who approved access, where applicable; and
5. the reason(s) for access, specifying the purpose or purposes for access authorized pursuant to Section X.A and specifying the relevant case/investigation number, where applicable.

E. **Viewing of BWC Recordings.** The viewing of recordings stored and maintained by this agency are strictly limited to its members. Viewing by any other person is prohibited unless authorized by the Chief of Police, their designee, or consistent with the provisions of this S.O.P.

(c) When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.

XI. PUBLIC DISCLOSURE OF BWC RECORDINGS

A. Pursuant to New Jersey Attorney General Directive 2021-5 (*Use of Body Worn Cameras*), any agency receiving a subpoena, court order, or request pursuant to the Open Public Records Act, or the common law right to know, for a BWC recording shall, within one (1) business day of receipt of such subpoena, court order, or request, and before complying with it, provide notice to the County Prosecutor, or to the Division of Criminal Justice where the recording was made by a state-level law enforcement agency. Such notice shall clearly state the deadline by which a response must be made.

1. Pursuant to the Morris County Prosecutor's Directive (*Body Worn Cameras (BWC) and Body Worn Camera Recordings*), the Chief of Police or their designee shall notify the Morris County Prosecutor's Office within (1) one business day upon receiving any subpoena, court order or OPRA request for a BWC recording before complying with the request. Such notice shall clearly state the deadline by which a response must be made.

XII. AUTHORITY OF COUNTY PROSECUTOR TO IMPOSE ADDITIONAL REQUIREMENTS

A. Pursuant to New Jersey Attorney General Directive 2021-5 (*Use of Body Worn Cameras*), the Morris County Prosecutor reserves the authority to issue directives or guidelines to the law enforcement agencies subject to their supervisory authority, setting forth additional procedural or substantive requirements or restrictions concerning BWCs and BWC recordings, provided that such directives or guidelines do not conflict with any explicit provision of New Jersey Attorney General Directive 2021-5 (*Use of Body Worn Cameras*). For example, The Morris County Prosecutor may: specify additional circumstances when a municipal police department BWC must be activated; impose limits on the authority of a municipal police department to specify additional circumstances when a BWC must be activated; categorically prohibit the use of BWCs with enhanced audio/visual capabilities such as infrared night vision (*cf.* Section VII.F, which requires prosecutorial approval to use such features); and specify additional circumstances when a BWC recording will be "tagged," etc.

XIII. VIOLATIONS

A. Pursuant to New Jersey Attorney General Directive 2021-5 (*Use of Body Worn Cameras*), if a law enforcement officer, employee, or agent fails to adhere to the recording or retention requirements contained in this S.O.P., intentionally interferes with a BWC's ability to accurately capture audio or video recordings, or violates any other provision of this S.O.P., the officer, employee, or agent shall be subject to appropriate disciplinary action, in addition to any judicial consequences outlined in the law.

XIV. OFFICER AND SUPERVISORY RESPONSIBILITIES

A. Officers required to wear a BWC during their shifts:

1. Shall do so in accordance with this S.O.P., both while performing their duties, both in and out of the jurisdiction of this agency.
2. Shall be responsible for its use and care, that it's fully charged and functional at the start of the officer's duty shift.
3. Shall ensure their BWC's readiness by conducting an operational inspection prior to the start of their shift.
 - i. The officer shall activate the BWC during the daily patrol vehicle check and verbally state their name and rank, date, time, shift, and assigned vehicle number.
 - ii. The officer shall keep the BWC activated during the vehicle check and inspection of the rear prisoner compartment and shall verbally state that the prisoner compartment has been checked and is clear of weapons and/or contraband.
 - iii. See Section III.F (Duty to Inspect and Report Malfunctions) for replacement procedure(s).
4. At the conclusion of each shift, an officer shall return their BWC to the charging dock, which automatically downloads any stored recordings.
5. Shall only activate their BWC within police headquarters when they are engaged with a member of the public. In these instances, the officer shall notify anyone they come in contact with within the building that their BWC is actively recording.
6. May leave their BWC affixed to their outermost garment in their patrol vehicle (secured), while inside police headquarters, or while engaged in personal activities, such as bathroom and meal breaks at locations not accessible to the general public (e.g., Fire/EMS building, etc.). If an officer uses the restroom or takes a meal break anywhere that is accessible to the general public (e.g., restaurant, coffee shop, etc.), they shall be in possession of their assigned BWC.
7. Officers shall tag any recordings that correspond to their name and may do so immediately following completion of a call and deactivation of their BWC.
 - i. Tagging shall include the case number and/or any other identifying markers to link it to a specific case.
 - ii. Officers shall assign recordings to all applicable categories in the manufacturer's software, that are evidentiary in nature and/or they feel are pertinent to any investigation(s).
 - iii. All of the recordings from the officer(s) associated with an incident and/or investigation, requiring retention beyond the 90-day default retention period, shall be assigned a category (listed below).

- iv. Tagging such recordings shall not be used as a means to generate overtime.
- v. Recordings that have not been downloaded prior to the end of a shift shall be tagged upon the officer's return to work.
- vi. The manufacturer's software categories for tagging and retention purposes:
 1. Test Recording;
 2. Traffic Warning;
 3. Emergency Response;
 4. Traffic Citation;
 5. Investigation;
 6. Traffic Crash;
 7. MV Search;
 8. Arrest;
 9. Assist Officer;
 10. Special Interest;
 11. D.U.I., or
 12. Other categories as deemed necessary by the BWC coordinator.

B. Patrol supervisors shall:

1. Be responsible for ensuring that officers under their command and required to utilize BWC are equipped with functioning BWCs at the beginning of each shift;
2. Ensure that officers assigned BWCs follow this S.O.P. and the provisions set forth by New Jersey Attorney General Law Enforcement Directive No. 2005-5 (*Use of Body Worn Cameras*). Any willful violations shall be reported to the supervisor's commanding officer;
3. Be able to view the recordings and select portions to use to train officers in safety, field training, interpersonal skills, proper police procedures, and legal doctrines. Recordings can permit supervisors to undertake more meaningful performance evaluations;

4. Conduct monthly reviews of at least three (3) selected recordings per officer assigned to them to assess officer performance, as well as, to flag any video/audio that may be appropriate for training purposes.
5. A review of an additional three (3) recordings will be completed for any probationary officer by their assigned supervisor.
6. Review all instances when a BWC is deactivated prior to the conclusion of an incident.
7. Document all reviews in RMS using CFS Code "Administrative Duties / 9002". The case numbers for the videos reviewed shall be noted in the *Notes* Section of the Disposition menu and the Disposition page will be closed using the Tracking Code of "BWC Review."