


<b>BEACH HAVEN POLICE DEPARTMENT</b>				
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<b>SUBJECT: Body Worn Cameras (BWC)</b>				
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<b>BY THE ORDER OF:</b> Chief James Markoski				
<b>SUPERSEDES ORDER #:</b>				

**PURPOSE** The purpose of this directive is to maintain guideline for the use, management, storage, and release of audio-visual media recorded by body worn cameras (BWS). 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.

**POLICY** It is the policy of the Beach Haven Police Department to utilize BWCs 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 (including accessing recordings) consistent with manufacturer's guidelines, this directive, and those policies or guidelines issued by the New Jersey Attorney General and Ocean County Prosecutor's Office. Failure to do so can result in discipline. This directive will be reviewed periodically to ensure compliance with the guidelines issued by the New Jersey Attorney General and Ocean County Prosecutor's Office.

The Beach Haven Police Department website/webpage shall contain a clear statement that this department utilizes BWCs. The website notice 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.

Any willful or repetitive violations of this directive shall be reported to the internal affairs supervisor who shall report such directly to the Chief of Police, and the Ocean County Prosecutor's Office. The Chief of Police and the Ocean County Prosecutor's Office is authorized to take such actions as are reasonable and necessary to ensure compliance with this directive and to prevent future violations.

## PROCEDURES

### I. DEFINITIONS

A. For purposes of this directive, the following terms are defined:

1. Activate – means to actuate (put into operation) the recording mode/function of a BWC.
2. Advisement – a statement made by an officer at the outset of using a BWC camera to record a communication, conversation or interaction with a citizen for the specific purpose of informing the citizen that the communication or conversation is being recorded.
3. Body worn audio/video camera (BWC) – is an officer worn device that makes an electronic audio/video recording of activities that take place during any law enforcement action. The term 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 Court Rule R. 3:17 (electronic recording of station house custodial interrogations).
4. Consent – Consent to record shall be considered obtained when the recording party (officer) has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that the communication or conversation is being recorded. This announcement itself to the other parties must also be recorded.
5. Constructive authority – involves the use of an officer's authority to exert control over a subject (see policy on *Use of Force*), except that the term shall apply only to constructive authority directed against a person who is subject to an investigative detention or arrest (e.g., "...show me your hands," "...get out of the vehicle", etc.), or directed against any person if the officer has unholstered a firearm or CED (e.g., "...move out of the way", "...get down", etc.).
6. Digital evidence – includes photographs, audio and video recordings that are stored electronically.
7. Force – has the same meanings as defined in this department's directive on *Use of Force* and the Attorney General's use of force policy.
8. Investigation of a criminal offense – means 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.
9. Metadata – A created digital image may include metadata that describes how large the picture is, the color depth, the image resolution, when the image was created, and other data.

10. Mute: a feature/mode of the BWC when the officer deactivates the audio portion of the recording. Video is still being recorded while mute mode is activated.
  11. 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 these activities (e.g., Cops in Shops, Quality of Life patrols, street crime unit, crime suppression unit, etc.). The nature of their work 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. **This does not include DWI patrol.**
  12. School – means 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.
  13. Subject of the video footage – means any law enforcement officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body worn camera recording and shall not include a person who only incidentally appears on the recording.
  14. Tactical team – is 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.
  15. Tagging – is the electronic labeling of a video/audio file captured by a BWC.
  16. Undercover officer – is a law enforcement officer operating with an assumed identity and/or disguise for the purposes of gaining the trust of an individual or organization to learn or confirm confidential information or to gain the trust of targeted individuals to gather information or evidence. Plain-clothed officers and detectives are not considered undercover officers unless working with an assumed identity and/or disguise.
  17. Youth facility – means a facility where children (under 18) assemble under adult supervision for educational or recreational purposes, such as day-care centers, group homes, residential facilities, youth camps, pre-schools, tutoring locations, vocational schools etc.
- B. All references to BWCs include the body worn devices and, where appropriate, the wireless transmitter, microphone, removable media, server, and other accessories necessary to operate these systems.

## II. GENERAL

- A. BWC recordings are invaluable to law enforcement for evidential purposes. BWCs have 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 will provide 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 a BWC is not intended to document all evidentiary material relevant to court or administrative proceedings, but it can serve to supplement an officer's senses and eyewitness account. There is no intent to utilize the BWC as a management tool to punish officers for minor isolated/non-repetitive 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.
- C. 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 and may resolve disputes concerning what occurred, thereby protecting both the public and the officers involved.
  - 2. The recordings may be introduced into evidence in criminal and motor vehicle prosecutions as well as in civil litigation.
  - 3. When complete recall is not possible, such as when multiple events are happening simultaneously or out of an officer's line of sight, BWCs may provide an accurate record of events.
  - 4. Subject to the restrictions in this directive, 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.
  - 5. Recordings can permit supervisors to undertake more meaningful performance evaluations.
  - 6. Recordings augment management's ability to evaluate its basic police practices and interactions between its personnel and the public.
  - 7. Recordings enhance management's ability to train personnel in proper police procedures.
- D. The Chief of Police or his/her designee shall maintain a training program on the lawful and proper use of BWC equipment. Only officers who have received training in the use of BWCs are permitted to use them after demonstrating a satisfactory degree of efficiency and familiarity. The proper use of a BWC is considered an essential job requirement.

- E. The Chief of Police shall appoint a BWC training coordinator. The designated BWC training coordinator is responsible for the following:
  - 1. Providing initial training to all newly hired officers or 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 department's progressive disciplinary processes.
- F. The Chief of Police or his/her designee shall manage the BWC equipment, including maintaining the system and establishing procedures to ensure the integrity and proper handling and storage of all BWC recordings.
- G. Repairs to any BWC equipment shall only be performed by the manufacturer or under the direction of the Chief of Police or his/her designee. The Chief of Police or his/her designee's responsibilities include the following:
  - 1. Ensuring that all recordings are uploaded to a secure data storage system in a timely fashion.
  - 2. Preventing tampering with or deletion of recorded data both before and after downloading from the BWC and uploading to the storage system.
  - 3. Preventing unauthorized access to stored BWC recordings.
  - 4. Documenting all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted; permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.
  - 5. Authorizing access to downloaded BWC files.
- H. BWCs are intended for official police department use only and are not to be used for frivolous or personal activities. Intentional misuse or abuse of the units will result in disciplinary action.
- I. All recording media, images, and audio are the sole intellectual property of the Beach Haven Police Department and will not be copied, released, or disseminated in any form or manner outside the parameters of this directive without the expressed written consent of the Chief of Police or his/her designee.

- J. Under no circumstances will any employee of the Beach Haven Police Department make a personal copy of any recorded event without the permission of the Chief of Police or his/her designee. Release of recorded events will not be permitted without authorization of the Ocean County Prosecutor's Office or the Division of Criminal Justice.
- K. Officers will use only those BWCs approved and issued by the Chief of Police. Such BWCs are not able to record images or conversations that cannot be seen or heard by the officer assigned the device without the expressed approval of the Ocean County Prosecutor's Office or the Division of Criminal Justice. Violations will be subject to disciplinary action, up to and including termination.
- L. BWCs shall be used only in conjunction with official law enforcement duties.
  - 1. Officers engaged in undercover operations or surveillance activities are not required to utilize BWC.
  - 2. The BWC shall not be used to record:
    - a. Encounters with undercover officers or known confidential informants.
    - b. Hostage negotiations by hostage negotiators.
    - c. Crime scene processing by crime scene technicians, detectives, or officers trained in crime scene processing.
    - d. Strip and body cavity searches.
    - e. When on break or otherwise engaged in personal activities.
    - f. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room unless directly related to an incident that warrants recording.
    - g. When engaged in police union business.
    - h. When involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other similar supervisor-subordinate interaction.
    - i. While inside the communications center or where any confidential CJIS information is displayed, whether on a computer terminal or in hardcopy form, and is in view of the camera.
    - j. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording, see section III.B of this directive.
    - k. While discussing criminal investigation strategies.
  - 3. A body worn camera shall not be used surreptitiously.

4. A body worn camera shall not be used to gather intelligence information based on 1<sup>st</sup> 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, except in accordance with any applicable guidelines or directives promulgated by the New Jersey Attorney General.
5. This department will not tolerate the reliance by any officer on race, ethnicity, gender, gender identify, gender expression, transgender status, sexual orientation, religion, economic status, age, culture, or any other immutable characteristic of a group or class of persons, in determining whether to activate or deactivate a BWC.

### **III. INCIDENTS TO RECORD**

- A. When assigned to an officer for duty, the BWC will remain in standby mode ready to be activated at any time. When an officer activates the recording mode / function, the device will have recorded 10 seconds prior to the moment the record start / stop button is pressed. Activation should occur before arriving at the scene, when feasible.
- B. Except when otherwise restricted in this directive, officers shall video and audio record all law enforcement activity including any interaction with a civilian. However, if an immediate threat to the officer's life or safety makes activating the BWC impossible or dangerous, the officer shall activate the body worn camera at the first reasonable opportunity to do so. Examples of such required recordings include, but are not limited to:
  1. All traffic stops from the initiation of the stop until the stop is concluded, including sobriety testing.
  2. An officer is responding to a call for service and is at or near the location to which the officer has been dispatched.
  3. Any call for service related to a violation or suspected violation of possessing or consuming marijuana, hashish, or cannabis item.
  4. Stationary police details, such as DWI checkpoints, car/truck inspections, seatbelt use checkpoints, etc.
  5. Motorist aid or community caretaking checks.
  6. Crime scenes to the extent possible except for evidence collection.
  7. Motor vehicle and foot pursuits.
  8. Officer interviews in the field of witnesses when conducting investigations of criminal violations (not to include undercover investigations, related surveillance activities, or stationhouse recordings of custodial interrogations/interviews).
  9. Custodial interrogation of a subject unless the interrogation is otherwise being recorded in accordance with Court Rule R. 3:17.

10. Investigative detentions/field interviews.
  11. Out-of-court identifications (i.e., show ups, lineups).
  12. Warrantless searches (all types, including protective frisks, except for strip and body cavity searches).
  13. Arrests.
  14. Arrestee, prisoner, detainee, emotionally disturbed person, and civilian transportation.
  15. Drug recognition expert evaluations.
  16. Overdose and suspected overdose investigations.
  17. When an 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 (must be documented by narration on the recording and/or in any applicable report).
  18. Special events or projects, including, but not limited to crowd control, unruly crowds, or any incident requiring activation of the all-hazards or emergency operations plan.
  19. Domestic violence investigations.
  20. Strikes, picket lines, demonstrations, civil disorders.
  21. Any public contact that becomes adversarial.
  22. For events such as Chowderfest, officers are not required to have their BWC recording the entire time, however it must be activated if any of the incidents requiring activation occur.
- C. Notwithstanding any other provision of this directive, an officer equipped with a BWC shall activate his/her BWC:
1. Immediately upon being dispatched to any call for service.
  2. Prior to initiating a motor vehicle stop or pedestrian/public contact.
- D. Notwithstanding any other provision of this directive, when an officer equipped with a BWC is dispatched to, or otherwise goes to the scene of an incident knowing or reasonably believing that police deadly force has been or is being employed, or to a scene where an officer has requested emergency assistance (e.g., an officer in distress, shots fired, etc.), the officer shall activate his/her BWC before arriving at the scene when feasible.
- E. Notwithstanding any other provision of this directive, an officer while at the scene of a police deadly-force event, pursuit resulting in death or serious bodily injury, in-custody death incident, or the on-scene investigation of such events shall not deactivate his/her BWC unless instructed to do so by the assistant prosecutor or



deputy attorney general supervising the investigation of the deadly force incident pursuant to *Attorney General Law Enforcement Directive 2019-4*. The assistant prosecutor/deputy attorney general or his/her designee supervising the investigation may provide such instruction telephonically.

- F. BWCs shall remain activated for the entire duration of the contact unless a deactivation exception occurs or when the officer has notified communications that the event is closed.
- G. When a BWC is activated to transport an arrestee/prisoner/civilian, it shall always remain activated while the officer is in the presence of the arrestee and until the arrestee is secured in the processing room, or until custody of the arrestee has been transferred to county jail personnel, or until the arrestee is with hospital/medical/mental health personnel AND the officer is no longer in the presence of the arrestee.
- H. When wearing a BWC, officers shall notify the subject of the recording that they are being recorded unless it is unsafe or unfeasible to provide such notification. Such notification shall be made as close to the inception of the encounter as is reasonably possible. Situations requiring notification include;
  - 1. Prior to entering a private residence or place of abode (e.g., hotel/motel rooms, boarding houses, etc.), officers shall notify the occupant that the occupant is being recorded and, if the occupant requests the officer to discontinue use of the 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
  - 2. When interacting with an apparent crime victim, officers shall, as soon as practicable, notify the apparent crime victim that he or she is being recorded and, if the apparent crime victim requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC.
  - 3. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, if the person requests that the officer discontinue use of the body worn camera, officers shall evaluate the circumstances and, if appropriate, discontinue use of the BWC.
  - 4. If the officer decides not to provide notification of BWC activation because it is unsafe or unfeasible to do so, the officer shall document the reasons for that decision in the report of the incident.
  - 5. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
- I. 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 Ocean County Prosecutor's Office or the Division of Criminal Justice, has expressly authorized the officer to make a covert electronic recording.
  - 1. Officers may deactivate/mute a BWC when a civilian other than a suspect or arrestee conversing with the officers 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 officers unless that request is respected.

- a. Officers **SHALL NOT** suggest to the person that the BWC should be deactivated, nor shall the officer ask the person whether they would prefer that the BWC be deactivated. Rather, the request for deactivation **MUST** be self-initiated by the civilian. The officer may explain the consequences of deactivation (e.g., evidence relevant to a criminal investigation will not be recorded).
  - b. In deciding whether to deactivate the BWC, the officer shall consider the privacy and safety interests of the person requesting deactivation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide is important to the investigation yet is not critical to require recording.
2. Officers may deactivate a BWC when a person, other than an arrestee or suspect, is seeking emergency medical services for themselves or another and requests that the BWC be deactivated. In deciding whether to deactivate the BWC, the officer shall consider the privacy interests of the person requesting deactivation and the person in need of medical assistance (e.g., a victim of an assault during a fight does not want to be recorded, etc.)
3. When officers deactivate their BWC:
  - a. The conversation between the officer and the civilian concerning the request for deactivation shall be electronically recorded.
  - b. The officer shall narrate the circumstances of the deactivation (e.g., "*...I am now turning off my BWC as per the victim request...*") prior to deactivating.
  - c. The officer shall report the circumstances concerning the deactivation to a supervisor as soon as is practicable.
4. If officers decline a request to deactivate their BWC, the reasons 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 memorialized on the recording and shall be reported to a supervisor as soon as it is safe and practicable to do so.
  - a. If the officer declines a deactivation request, the officer shall immediately inform the person making the request of that decision.
  - b. Officers are prohibited from misleading the person making the deactivation request into believing that the BWC has been turned off when in fact it is operating unless the Ocean County Prosecutor's Office, or the Division of Criminal Justice expressly has authorized covert recording.
5. Officers must deactivate a BWC when specifically authorized to do so by an

assistant prosecutor for good and sufficient cause as determined by the assistant prosecutor. When an officer deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation indicating the name of the assistant prosecutor who authorized the deactivation (e.g., "...I am now turning off my BWC as per the instruction of assistant prosecutor <insert name>.").

6. Officers may deactivate 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 apply for a search warrant, whether to request permission to conduct a consent search, or to conduct another type of warrantless search, etc.), provided that the strategy/planning discussion is not conducted in the immediate presence of a civilian and further provided that the officer is not actively engaged in the collection of physical evidence (i.e., conducting a search). When an officer deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation (e.g., "...I am now turning off my BWC to discuss investigative strategy with my supervisor.").
7. If an officer is required to deactivate the BWC when entering a school, house of worship, health care facility, substance abuse treatment center, etc., the officer shall narrate the reason for deactivation (e.g., "...I am entering a school building where children are present."). The BWC shall be reactivated as soon as it is safe and practicable to do so when the circumstances requiring deactivation 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).
8. If a BWC captures the image of a patient in a substance abuse treatment facility, the Chief of Police or his/her designee shall notify the Ocean County Prosecutor or his/her designee to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information (42 USC § 290dd-2, 42 CFR §23.1 to 23.41). The recording shall not be accessed without the permission of the Ocean County Prosecutor or his/her designee. (Note that destruction of the recording would be inappropriate until it has been determined that it had not captured exculpatory information that must be provided to a defendant in discovery.) The recording shall always be tagged 'S.A.T.F.' at these locations.
9. In any instance when 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 (e.g., the interview of the person requesting deactivation is completed, etc.) and the officer would otherwise be required to activate the BWC.
10. In any instance when a BWC was deactivated or the officer denied deactivation pursuant to this section, the circumstances shall be documented on the *officer's Enforsys log under the "new entry" tab* and in the narrative of the report if the officer is required to complete one for the incident.

- J. Officers shall not activate a BWC, and shall deactivate a BWC that has been activated, if the officer knows or reasonably believes that the BWC would capture the image of an undercover officer or known confidential informant or otherwise would pose a risk to the safety of an undercover officer or known 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 the shift supervisor that the image of an undercover officer or confidential informant was recorded. The BWC shall be activated/reactivated 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.
- K. In the event that a BWC worn during the execution of tactical operations (e.g., SWAT/ERT/ESU 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, etc.), the recording shall be tagged accordingly to prevent its unauthorized release. Officers responding to assist after the operation shall leave BWC activated and tag the recording.
- L. Officers 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 authority, or unless the judge presiding expressly authorizes such activation.
- M. BWCs shall be deactivated and removed while in the ALCOTEST area when the ALCOTEST device is being used. 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 ALCOTEST area while the ALCOTEST device is being operated. Officers shall record the 20-minute observational period including the reading of Miranda warnings and the N.J. Attorney General's *Standard Statement for Motor Vehicle Operators*. If this provision requires deactivation of a BWC, the officer shall narrate the reasons for deactivation (e.g., "...I am deactivating the BWC because the suspect is about to take a breath test."), and the BWC shall be reactivated when safe and practicable to do so following the completion of the breath testing operation.
- N. When a BWC is activated, officers are encouraged to provide narration where practical and appropriate to augment the value of the recording and to provide clarity for the viewer.
- O. Officer complaints shall be handled in accordance with the policies set forth in this department's directive on *Internal Affairs*. All other requests to view and/or obtain footage by the public shall be handled in accordance with section V of this directive.

#### **IV. OFFICER AND SUPERVISORY RESPONSIBILITIES**

- A. Officers shall use BWCs daily consistent with the requirements and restrictions of this directive.
  - 1. Officers are not required to activate their BWCs in police headquarters

unless they are investigating a walk-in complaint, processing an arrestee, conducting their pre-shift test, or other similar related functions.

2. Detectives and staff officers shall wear BWCs when conducting arrests and while engaged in field duties (e.g., road coverage, search warrant executions, raids, etc.) consistent with the requirements and restrictions in this policy.
  3. BWCs shall be worn and used on extra duty assignments except for, Cops in Shops, Quality of Life patrols (i.e. plain clothes), and roadwork detail.
  4. Officers shall also wear and use a BWC consistent with this directive when:
    - a. On aggressive driving, DWI interdiction assignments, or other proactive enforcement team.
    - b. When assigned to front desk assignments and interacting with the public on a law enforcement matter.
    - c. When assigned to or assisting any tactical team in the field.
  5. Officers/detectives on loan to any outside agency, tactical team, proactive enforcement team, or task force shall use the agency issued BWC consistent with this directive, including restrictions, and any guidelines issued by the outside agency or task force. Such officers/detectives shall report any potential conflicts between this policy and the outside agency/task force's directives to the Chief of Police or his/her designee as soon as practicable.
- B. When not in use, BWCs shall be stored in the designated docking stations. The docking stations permit recharging of the BWC units and downloading of data to the BWC server.
- C. All officers are responsible for the use and maintenance of the BWCs, including ensuring sufficient battery life and sufficient data storage, during their daily assignment.
- D. When BWCs are inoperable, officers should notify the shift commander and place the inoperable BWC in the Captain's mailbox with a brief description of the problem. The officer shall then grab a replacement BWC and be sure to note the change in the officer's log in Enforsys under the "new entry" tab.
- E. Pre-inspection test/procedures:
1. Pre-inspections shall be conducted in accordance with the attached memorandum.
  2. Any malfunctions or deficiencies shall be noted following the procedure outline in section D above.
- F. BWCs shall be worn on the outer-most garment. It will be secured to the garment using the mount/clip supplied by the manufacturer that is part of the BWC equipment. The BWC will be positioned high on the center of the chest at badge

level, facing the officer's point of view. Officers (and detectives temporarily assigned to patrol) are responsible to ensure the BWC remains in a position to allow the recording of an encounter or incident to the extent possible.

1. To minimize audio and/or video interference with the unit, do not affix the portable radio microphone near the BWC on any exterior garment.
  2. Officers can only power off their BWCs when investigating bomb threats or suspicious packages under the same circumstances when utilization of a portable radio is prohibited due to concerns that radio transmissions could potentially cause a detonation but, must immediately power on when safe to do so.
  3. Officers will dock their BWC for download to a docking station upon completion of their shift.
- G. 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. Officers shall appropriately tag the recording and document that a BWC was used in the narrative of their report if they're required to complete one for the incident.
- H. Officers shall tag their BWC recordings following completion of an event by the end of their respective shifts in headquarters.
1. To identify BWC recordings that may raise special privacy or safety issues, officers shall appropriately tag recordings as special privacy that:
    - a. Captures a law enforcement incident, as defined by *New Jersey Attorney General Directive 2019-4*:
      - 1) Any use of force by a law enforcement officer resulting in death or serious bodily injury.
      - 2) Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury.
      - 3) The death of any civilian during an encounter with a law enforcement officer; and
      - 4) The death of any civilian while in the custody of law enforcement.
    - b. Captures the image of a victim of a criminal offense.
    - c. Captures the image of a juvenile.
    - d. Were made in a residential premise (e.g., a home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, a healthcare facility or medical office, a substance abuse or mental health treatment facility, or a place of worship.

- e. Captures a domestic violence investigation including any activity conducted at a place other than the scene of the incident (e.g., hospital, headquarters, shelter, etc.).
  - f. Captures a conversation with a person whose request to deactivate the BWC was declined.
  - g. Captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded.
  - h. Captures the image of an undercover officer or confidential informant.
  - i. Captures the screen of a law enforcement computer monitor that is displaying confidential personal or law enforcement sensitive information.
- I. Supervisors are responsible for ensuring that on-duty officers are equipped with functioning BWCs at the beginning of each shift and shall ensure that all officers follow established procedures for the use and maintenance of the BWC equipment and completion of all BWC required documentation. Supervisors shall also:
- 1. Conduct monthly quality control reviews of their assigned officers' BWC recordings to assess officer performance, determine whether BWC equipment is being fully and properly used, and to identify material that may be of value for training purposes.
    - a. Such reviews will be documented on a *Supervisory Review of Digital Video/Audio Recordings Form* located on the "I" drive and in the officer's performance evaluation and/or addressed in a commendation or performance notice.
    - b. Any issues discovered during the review will be documented and attached to the *Supervisory Review of Digital Video/Audio Recordings Form* and forwarded to the Chief of Police or his/her designee in compliance with departmental directives.
  - 2. Ensure documentation of damaged or nonfunctional BWC equipment is completed and forwarded to the Chief of Police or his/her designee.
  - 3. Supervisors must understand that minor isolated/non-repetitive infractions (not criminal in nature) discovered while reviewing the recorded material should be viewed as training opportunities and not as routine disciplinary actions. Should the behavior or action become habitual after being informally addressed the appropriate disciplinary or corrective action shall be taken. If the failure to properly utilize the BWC equipment is confirmed during an IA investigation such incident shall be viewed as a new allegation.
  - 4. Supervisors may review the BWC file containing a recording of any specific incident involving a subordinate under his/her command. Supervisors may also review other BWC files to determine the past performance of any officer under his/her command.

- J. If a supervisor determines that the conduct recorded reasonably indicates misconduct like the types set forth below, then the authorized supervisor or his/her designee will record the conduct on the *Supervisory Review of Digital Video/Audio Recordings Form* and immediately contact the internal affairs officer. Forward the *Supervisory Review of Digital Video/Audio Recordings Form* to the internal affairs officer. The internal affairs officer will cause the BWC file to be tagged, thereby precluding access to the file from those who are not authorized under the internal affairs function. Actions of misconduct consist of any the following:
1. Prohibited discrimination; or
  2. An unreasonable use of force or a threat of force; or
  3. A Constitutional violation; or
  4. A criminal act; or
  5. An intentional provision of false information in a misconduct investigation or in any report, log, or transmittal of information to communications; or
  6. Failure of any officer to report observed misconduct, as set forth above, on the part of another officer.

## V. RECORDS RETENTION AND REVIEW

- A. Viewing of BWC events is strictly limited to sworn officers of this department. Viewing by any other person is prohibited unless authorized by the Chief of Police or his/her designee, a designee, or consistent with the provisions of this directive.
- B. BWC recordings shall not be divulged or used for any commercial or other non-law enforcement purpose.
- C. No officer of this department shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official 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 police misconduct or to determine the existence of a pattern or practice of possible misconduct.
  4. To assist the officer whose BWC made the recording in preparing his/her own police report, except:
    - a. In officer involved use of force incidents; or
    - b. In motor vehicle pursuits resulting in death or serious bodily injury; or



- c. In any in-custody death investigations; or
  - d. When it captures images involving an encounter about which a complaint has been registered by the subject of the recording; or
  - e. When it pertains to a criminal investigation or otherwise records information that may have evidentiary or exculpatory value subject to discovery in a prosecution; or
  - f. When it records an arrest that did not result in an ongoing prosecution; or
  - g. When it records an incident that is the subject of an internal affairs complaint.
  - h. Officers should not rely solely on the BWC recordings when writing reports and should avoid using the BWC for this purpose unless it is being used to recount specific statements made by a subject or to detail specific events occurring in chronological order. (ex. DWI reports, domestic violence incidents)
  - i. If the BWC is used to record statements or specific events in an initial report, officers should state they reviewed the video in their report.
  - j. NOTE: nothing in this subsection is intended to prevent officers from considering, reviewing, or receiving an accounting of such BWC recording after the creation of any required initial reports, statements, and interviews regarding the recorded event. The events noted above in subsections V.C.4(b)(c) cannot be accessed or viewed without the expressed permission of the assistant prosecutor or deputy attorney general supervising the investigation. Force incidents that are under investigation in accordance with *Attorney General Law Enforcement Directive 2019-4* require permission from the assistant prosecutor or deputy attorney general supervising the investigation.
- 5. When relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency.
  - 6. To show to a civilian who intends to file a complaint against an officer to demonstrate what occurred during the encounter so that the person can make an informed decision whether to file the complaint. Only the internal affairs supervisor or his/her designee can show such a recording to a civilian.
  - 7. To comply with the state's discovery obligations in prosecutions pursuant to the Rules of Court:
    - a. Such request must be specific and on the proper instrument, i.e., subpoena, discovery request, etc.
    - b. Only those portions of the recording pertinent to the request shall be forwarded.

- c. The Beach Haven Police Department reserves the right to redact video and audio as applicable by law.
      - 1) NOTE: when providing discovery in a domestic violence matter, ensure that the recording is reviewed prior to release to verify that there is no confidential information that should be redacted.
      - 2) This confidential information includes, but is not limited to, the location where the victim is being sheltered or contact phone numbers for those assisting the victim, etc.
    - d. All requests for copies or review of BWC recordings are subject to the fee requirements of the prevailing ordinance.
  - 8. To comply with any other legal obligation to turn over the recording to a person or entity.
  - 9. Solely and exclusively for internal training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording cannot be determined by persons viewing the training video unless the depicted individuals have consented to the recording being used for training purposes.
    - a. Note: consent is not required from Beach Haven police officers appearing in the recording.
    - b. BWC recordings retained beyond 180 days solely and exclusively for training purposes shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.
  - 10. 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 Ocean County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee.
  - 11. To show or disseminate the recording to a civilian or a non-law enforcement entity or to disseminate it to the public, when the Ocean County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, determines that disclosure to that 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.
  - 12. To conduct an audit to ensure compliance with this directive.
  - 13. Any other specified official purpose where the Ocean County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.
- D. Officers shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. Officers shall not instruct

another to alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. If an officer, employee, or agent fails to adhere to the recording or retention requirements contained in this general order or N.J.S.A. 40A:14-118.5 et seq., or intentionally interferes with a body worn camera's ability to accurately capture audio or video recordings:

1. The officer, employee, or agent shall be subject to appropriate disciplinary action; and
  2. There shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured; and
  3. There shall be a rebuttable presumption that evidence supporting a plaintiff's claim was destroyed or not captured in favor of a civil plaintiff suing the government, a law enforcement agency, or a law enforcement officer for damages based on police misconduct if the plaintiff reasonably asserts that evidence supporting the plaintiff's claim was destroyed or not captured.
  4. Any recordings from a BWC recorded in contravention of N.J.S.A. 40A:14-118.5 et seq. or any other applicable law shall be immediately destroyed and shall not be admissible as evidence in any criminal, civil, or administrative proceeding.
- E. Recordings are considered investigatory records of this police department and shall be maintained and disposed of in accordance with New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules.
1. Contents downloaded from BWCs will be stored on a secure server or other designated storage media. Such storage media shall be maintained as evidence or with the appropriate case file. If maintained as evidence, all directives regarding evidence handling and retention shall be followed.
  2. Except for recordings being stored for criminal, civil administrative proceedings, or evidentiary purposes, recordings shall be retained for a period of at least 180 days.
  3. Recordings being stored for criminal, civil, or administrative purposes must be retained until the conclusion of the case plus any retention period.
  4. Recordings of an arrest that did not result in an ongoing prosecution, or records the use of police force, 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.
  5. BWC recordings shall automatically be retained for not less than three years if it captures images involving an encounter about which a complaint has been registered by a subject of the BWC recording.
  6. BWC recordings shall be retained for not less than three years if requested by:

- a. The officer whose BWC made the recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
  - b. The officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
  - c. Any immediate supervisor of an 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; or
  - d. Any officer, if the BWC recording is being retained solely and exclusively for police training purposes; or
  - e. Any member of the public who is a subject of the BWC recording; or
  - f. Any parent or legal guardian of a minor who is a subject of the BWC recording; or
  - g. A deceased subject's next of kin or legally authorized designee.
  - h. NOTE: the member of the public, parent, or legal guardian, or next of kin or their designee (subsections V.E.6 (e)(f)(g)) shall be permitted to review the body worn camera recording in accordance with N.J.S.A. 47:1A-1 et seq. to determine whether to request a three-year retention period
7. When a BWC records an incident that is the subject of an administrative internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation, any resulting administrative action and required retention.
- F. Open public record requests. Only the following body worn camera recordings shall be exempt from public inspection:
- 1. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection V.E.5 of this directive if the subject of the BWC recording making the complaint requests the body worn camera recording not be made available to the public.
  - 2. BWC recordings not subject to a minimum three-year retention period or additional retention requirements pursuant to subsection V.E.6 of this directive.
  - 3. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection V.E of this directive.
  - 4. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection V.E.6 if an officer, parent, or legal guardian, or next of kin or designee requests the body worn camera recording not be made available to the public.

- G. The Chief of Police or his/her designee shall notify the Ocean County Prosecutor's Office within one business day upon receiving any subpoena, court order or OPRA request for a BWC recording before complying with it. Such notice shall clearly indicate the deadline by which a response must be made.
1. The notification must contain the date the request was received, the deadline by which a response must be made, whether the agency intends to release or deny the request, and the justification for that decision.
  2. Provide the type of police action or activity depicted in the recording, including, but not limited to, whether the officer was involved in an investigative detention, an arrest, an interrogation of a suspect, a witness interview, a search, a protective frisk for weapons, or was using constructive or actual force.
  3. Indicate whether the recording is part of an ongoing criminal or internal affairs investigation or whether release of the recording potentially infringes upon a victim and/or juvenile privacy rights.
  4. The Chief of Police or his/her designee will receive an acknowledgement. If no further communication is received within 72 hours, the Chief of Police or his/her designee should respond to the request as deemed appropriate.
  5. Pursuant to the *Open Public Records Act* (N.J.S.A. 47:1A-5c and N.J.S.A. 47:1A-5d), the department will apply service fees for any extraordinary expenditure of time and effort to accommodate a request. The service fees will be based upon the actual direct cost of providing the service or extraordinary time. If the requester objects to the fee, the request is closed and access to the records is not granted.
  6. BWC footage requests, requiring a substantial amount of manipulation or programming of information technology, will be assessed a special service fee that shall be reasonable and shall be based on the cost for the labor cost of personnel providing the service, that is actually incurred for the programming, clerical, and supervisory assistance required, or both, if a request is for a copy of a record.
  7. The fee will be based at the lowest hourly rate of the personnel authorized to review/redact/approve the request.
  8. The Chief of Police or his/her designee will provide the requestor an estimate before any copies are made.
- H. A BWC recording of an event or encounter that involves an investigation of a criminal offense shall not be shared with or provided or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the Rules of Court governing discovery in prosecutions, or by a court order, or unless the Chief of Police or his/her designee, in consultation with the Ocean County Prosecutor or his/her designee, determines that the person's/entity's/non-law enforcement agency's/public's need for access outweighs the law enforcement interest in

maintaining confidentiality.

1. 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, the Ocean County Prosecutor or his/her designee 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.
  2. A BWC recording tagged pursuant to IV.H.1 of this directive shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Ocean County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee. The Ocean County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee may authorize the Chief of Police and one or more supervisory officers to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to section IV.H.1.
  3. The assistant prosecutor, deputy attorney general or their designees overseeing an investigation pursuant to *Attorney General Law Enforcement Directive 2019-4* may, in the exercise of sound discretion, authorize a civilian or law enforcement witness to be given access to or view a BWC recording of the incident under investigation. To ensure the integrity of investigations of police-involved shootings, other use of force incidents, pursuits, and in-custody death investigations and to avoid possible contamination of a witness's personal recollection of events that could undermine his or her credibility as a witness, notwithstanding any other provision of this directive, 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 expressed prior approval of the assistant prosecutor, assistant or deputy attorney general, or their designees.
- I. The BWC system shall maintain a record of all BWC recordings that are accessed, viewed, copied, disseminated, or deleted. The Chief of Police or his/her designee shall cause a periodic audit of these records to ensure compliance with this directive. Minimally, the record keeping system shall document the following information:
1. The date and time of access; and
  2. The specific recording(s) that was/were accessed; and
  3. The officer or civilian employee who accessed the stored recording; and
  4. The person who approved access, where applicable; and
  5. The reason(s) for access, specifying the purpose or purposes for access and specifying the relevant case/investigation number, where applicable.

- J. If an original recording is required for use in court or by another law enforcement agency, that recording shall not be released outside the restrictions established in this directive without the prior approval of the Chief of Police or his/her designee and only if the original or a duplicate copy is retained by the department.
  - 1. Duplicate copies shall remain tagged for permanent retention on the BWC server or maintained as evidence in accordance with this department's property and evidence guidelines.
  - 2. The property/evidence custodian shall ensure that any media used for duplicate recordings is properly stored to avoid corruption in the property room.
- K. Officers 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.
- 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 or his/her designee.

# Internal Memorandum

TO: All Employees

FROM: Capt. Medel

DATE: July 28, 2021

RE: BWC's Procedures

We are required by the NJ Attorney general to have and use Body Worn Cameras. We will have to track their use and by whom. We were able to purchase 30 of them, which should just about cover an entire Thursday Night shift, and allowing day shift's cameras to charge. If we do not have enough cameras, for the entire shift for whatever the reason, cameras will go to full time officers first, then SLEO II's, and the remainder to SLEO I's (SLEO I's should have at least one BWC per zone). With that being said, there will be extra steps we will need to take with checking them in, registering users and then tagging the videos with information at the end of a shift.

Inspection test/procedures:

1. When conducting the pre-inspection test, the officer will activate the BWC verbally state their badge #, the date, what shift they're working, BWC number, and state' "pre-shift test". Place unit back in dock allow upload, then officers shall attach the provided mount and BWC onto their uniform shirt over their sternum. They will then verify the BWC proper function, by logging into SF digital evidence viewer. SLEO I will have shift commander or his/her designee check.
2. The results of the pre-inspection test, including any malfunctions or deficiencies shall be noted in a CAD record and to the shift supervisor
3. BWC numbers will be noted in the daily pass-on in the appropriate column (ie BWC1, BWC12, etc), and be inspected for proper position on uniform by the shift commander.
4. Officers will also log in to Enforsys and will create their daily officer log. Under color of day, enter the BWC that they are using. ie: BWC28.



If, during an officers' shift, their BWC malfunctions, or becomes inoperable, it shall be noted in the officers' Enforsys officer log, and reported to the shift commander immediately. The shift commander will note the malfunction on the pass on and what the new BWC number they are assigned for the shift duration. The officer will add the new BWC in their Enforsys log as well. Malfunctioning BWC will be put in Captain's mailbox with a note of the malfunction.

At the completion of your shift, each officer will:

- Hang magnetic mount on Blue tape area in I.T. room in numerical order.
- Log in to the Digital Evidence viewer, click search video tab, under officer drop down, select the BWC you used, click search, click "I" info icon, select edit on the left side under action tab, change category to appropriate one, add incident#/ summons# to video, and SAVE.
- If video contains any of the sensitive content outlined in policy click "Tag Video" under Action tab.
- If a supervisor has need to review videos for a citizen complaint, or disciplinary issue, that review will be documented on the BWC review form.

Any questions please see me.

Thank You,

Capt. Medel