

# Fort Lee Police Department

Body Worn Camera (BWC)



**The Fort Lee Police Department utilizes Body Worn Cameras. Below are examples of how the public may see a Fort Lee Police Officer wearing a Body Worn Camera.**



# BODY WORN CAMERA POLICY

Office of the Attorney General | State of New Jersey

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# 1 Governing Principles

- 1.1** The policies and standards established in this Policy are designed to help police departments achieve an optimal balance between potentially competing interests. For example, it is necessary to balance the need to promote police accountability and transparency on the one hand, against the need to respect the privacy interests of persons whose images and home interiors will be captured in a BWC recording on the other. So too, it is necessary to balance the benefits achieved by electronically recording evidence that might help to solve a crime and successfully prosecute an offender against the costs incurred if a BWC were to chill a victim or witness from providing a BWC-equipped officer with information necessary to solve a crime and convict the offender.
- 1.2** New Jersey now requires police departments and agencies to employ BWCs in their daily law enforcement functions. And while P.L. 2020, c. 128 & 129 provide the basic framework for BWC use, this Policy seeks to provide additional guidance for the requirements that all departments must now satisfy. Law enforcement agencies are nonetheless expressly authorized to impose additional requirements beyond—but not inconsistent with—those established in this Policy. In this way, police agencies are afforded an opportunity to tailor their BWC policies and procedures to address local concerns and needs.
- 1.3** Although police executives are afforded some flexibility in developing departmental policies and practices that address local needs and community concerns, this Policy makes clear that all policies must limit the discretion of individual officers in the field. The decision to activate a BWC must be based on objective criteria (*e.g.*, the initiation of a specified type of police action, such as a consensual field inquiry, or the start of an officer’s duty shift). Furthermore, in any circumstance where an officer is afforded discretion in deciding whether to de-activate a BWC, the reasons for exercising that discretion must be documented to permit supervisory review.

## 2 Definitions

**Activate.** To actuate the recording mode/function of a body worn camera.<sup>1</sup>

**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 (*i.e.*, 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 station house custodial interrogations).

**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 an 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 un-holstered 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.

**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.

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<sup>1</sup> 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.

**Mobile video recording system.** 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.

**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.

### 3 Police Department Policies Governing Deployment and Use of BWCs and Recordings

**3.1 Promulgation of Police Department Policies and Procedures.** To ensure an efficient and orderly transition to universal BWC implementation, every law enforcement agency shall promulgate and enforce a policy, standing operating procedure, directive, or order, in a form as may be appropriate given the customs and practices of the agency, which shall comply with the policies, standards, and requirements of this Policy. Any policy, standing operating procedure, directive, or order promulgated by an agency pursuant to this Policy shall provide that:

- (a) a law enforcement officer employed by the agency may only use a BWC system that has been issued and approved by the agency;
- (b) an officer equipped with a BWC must comply at all times with the requirements established in this Policy and in the agency's policy, standing operating procedure, directive, or order issued pursuant to this Policy or by law;
- (c) a BWC shall be used only in performance of official police duties and not for personal purposes;
- (d) no BWC recording shall be accessed, viewed, copied, disseminated, or otherwise used by a sworn officer or civilian employee of the agency except for an official purpose specified in this Policy or by law; and
- (e) any sworn officer or civilian employee of the agency who knowingly violates the requirements of this Policy or the agency's policy, standing operating procedure, directive, or order, or applicable laws, shall be subject to discipline.

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

- (a) 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.
- (b) All officers assigned to tactical teams as defined in this Policy. 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.
- (c) All officers assigned to proactive enforcement teams as defined in this Policy.

- (d) All officers assigned to canine units.
- (e) 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.
- (f) All officers assigned to “front desk” duty in law enforcement agencies, whose duties include interaction with members of the public who enter police stations to report incidents or request assistance or information.
- (g) All officers assigned to a pre-planned search warrant execution or a pre-planned arrest.
- (h) All uniformed officers assigned to duties at demonstrations or potential civil disturbances.

**3.3 Officers Not Required to Wear BWCs.** Notwithstanding the provisions of 3.2, the following officers are not required by this Policy to be equipped with BWCs:

- (a) Officers engaged in undercover assignments.
- (b) Officers acting as hostage negotiators or crisis negotiators working in conjunction with tactical teams.
- (c) Officers assigned to administrative positions within the law enforcement agency. This provision shall not exclude officers assigned to “front desk” duty, as defined in Section 3.2(f), from the requirement to be equipped with BWCs.
- (d) Officers meeting with confidential sources or recruiting potential confidential sources.
- (e) Officers engaged in union representation of a member of the collective bargaining unit.
- (f) Officers assigned to duties within schools or youth facilities 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 or youth facilities working security or crowd-control functions at special events such as athletic competitions, graduations or similar public events shall be equipped with BWCs.
- (g) Non-uniformed officers assigned to investigative, non-enforcement duties, when authorized by the agency’s law enforcement executive.



- (h) Officers assigned to “extra duty” or “off duty” assignments that involve strictly traffic direction.
- (i) Officers engaged in crime-scene processing duties.

**3.4 Special Circumstances.** Exemptions from the requirements in Section 3.2 are permitted only when approved by the Director of Division of Criminal Justice or the 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.

**3.5 Placement of BWC.** A BWC used by a law enforcement officer shall be placed so that it maximizes the camera’s ability to capture video footage of the officer’s activities. This may include placement on helmets, vests or other such location so long as the device is secured properly and will maximize the device’s recordation function.

**3.6 Duty to Inspect and Report Malfunction.** 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. 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.

**3.7 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.

**3.8 Training.** Every agency shall designate one or more training officers and shall establish a training program to ensure that officers equipped with BWCs and officers and civilian employees who access or handle BWC recordings are familiar with the provisions of this Policy, and the policy, standing operating procedure, directive, or order promulgated by the agency pursuant to section 3.1, and all applicable laws of the State.

## 4 Notice that BWCs are Deployed and Activated

- 4.1 Public Notice.** Every department or agency shall take reasonable steps to inform the citizenry of the agency's use of this technology. The department shall publish a statement that it deploys BWCs on its internet website or, if the department does not have its own website, then on the municipality's website when feasible. The County Prosecutor may assist departments in providing general public notice of their deployment of BWCs pursuant to this section. The website posting shall include a picture showing what the device looks like, and how it is to be worn by uniformed officers or plainclothes detectives so that citizens will be able to determine whether an officer is equipped with the device. Notwithstanding the above general public notice requirement, officers wearing BWCs must 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 4.2, *infra*.
- 4.2 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. *See* AG Directive 2021-5, Section II.A (non-enforceability by third parties).
- 4.3 Truthful Response to Specific Inquiries.** 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 3.3 (Policy does not apply to officers while operating in an undercover capacity, or while conducting/participating in a station house 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. *See* AG Directive 2021-5, Section II.A (non-enforceability by third parties).
- 4.4 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 use of the recording system.

- 4.5 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 he or she is 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 use of the recording system.
- 4.6 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 use of the recording system.

## 5 Standards Governing the Activation of BWCs

- 5.1 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 Policy, or specified in a department's policy, standing operating procedure, directive, or order promulgated pursuant to this Policy. A BWC shall not be activated while the officer is on break or otherwise is not actively performing law enforcement functions (*e.g.*, while eating meals, while in a restroom, etc.). A BWC shall not be activated or used by an officer for personal purposes, or when engaged in police union business. Nor shall a BWC be used to record conversations involving counseling, guidance sessions, personnel evaluations, or any similar supervisory interaction. Any recordings from a BWC recorded in contravention of this Policy 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.
- 5.2 Circumstances When BWC Activation is Generally Required.** Except as otherwise expressly provided in Section 7 or any other provision in this Policy, 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,<sup>2</sup> 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:
- (a) 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);
  - (b) the officer is responding to a call for service and is at or near the location to which the officer has been dispatched;

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<sup>2</sup> 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 (*i.e.*, 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 5.3, 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 (*i.e.*, 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.

- (c) the officer is conducting a motorist aid or community caretaking check;
- (d) the officer is interviewing a witness in the course of investigating a criminal offense;
- (e) 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 station house interrogations);
- (f) the officer is making an arrest;
- (g) the officer is conducting a protective frisk for weapons;
- (h) the officer is conducting any kind of search (consensual or otherwise);
- (i) 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;
- (j) 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 incident report;<sup>3</sup>
- (k) 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; or
- (l) the officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.

**5.3 Continuous Recording Pending Completion of Encounter.** To ensure that the entire encounter/event/episode is recorded, in accordance with this Policy 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 5.2. *See also* note 1. However, the officer need not begin recording at the moment he or she receives instructions from a dispatcher

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<sup>3</sup> 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 Policy 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).

to respond to a call for service. Rather, the officer may delay activation until they are near the destination.

- 5.3.1 Except as otherwise expressly provided in Section 6 or any other provision of this Policy, when a BWC is required to be activated by an officer pursuant to this Policy, the device must remain activated throughout the entire encounter/event/episode and shall not be deactivated until it is 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” on the department’s computer-aided dispatch (“CAD”) system, etc.).
- 5.3.2 When a BWC is activated pursuant to Section 5.2(k) (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 is 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, or until the arrestee is with hospital/medical/mental health personnel and the officer is no longer in the presence of the arrestee.
- 5.4 **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.
- 5.5 **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 Policy, when an officer equipped with a BWC is dispatched to or otherwise goes to the scene of a “Law Enforcement Incident” as defined in AG Directive 2019-4, the officer shall activate the BWC before arriving at the scene when feasible. Notwithstanding any other provision of this Policy, an officer while at the scene of a “Law Enforcement Incident” shall not deactivate 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 pursuant to AG Directive 2019-4, or his or her designee. Such instruction may be given telephonically by the assistant prosecutor, assistant or deputy attorney general, or designee supervising the investigation.

## 6 Standards Governing the De-activation of BWCs upon the Request of a Civilian, When Discussing Investigation Strategy or Planning, or on Instruction of a Prosecutor

### 6.1 De-Activation at the Request of a Civilian Providing Information/Cooperation.

Notwithstanding Section 5.3, 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.<sup>4</sup> The officer shall not suggest to the person that the BWC should be de-activated; nor shall the officer ask the person whether he or she would prefer that the BWC be de-activated. Rather, the request for de-activation must be self-initiated by the civilian. The officer may explain the consequences of de-activation (*e.g.*, evidence relevant to a criminal investigation will not be recorded). 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.

### 6.2 De-Activation at the Request of a Person Seeking Emergency Medical Assistance.

Notwithstanding Section 5.3, an officer may de-activate a BWC when a person, other than an arrestee, is seeking emergency medical services for him or herself or another and requests that the BWC be de-activated. 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.

**6.3 Procedures for De-Activation Upon a Civilian's Request.** When an officer de-activates a BWC pursuant to Section 6.1 or 6.2, the following procedures shall be followed: 1) the colloquy between the officer and the civilian concerning 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 his or her superior as soon as is 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 9.3 (notations (*i.e.*, "tagging") to indicate BWC recordings that raise special privacy or other issues).

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<sup>4</sup> *Cf. R. 3:17(b)(iv)* (explaining that station house 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 he/she would participate in the interrogation only if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded").

- 6.4 Decision to Decline a Civilian’s De-Activation Request.** If an officer declines a request to de-activate a BWC pursuant to Section 6.1 or 6.2, 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 documented and shall be reported to the officer’s superior as soon as it is safe and practicable to do so, unless the agency’s policy prohibits de-activation authorized by Section 6.1 or 6.2.
- 6.4.1** 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 6.1 or 6.2 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 4.5, an officer may not decline a request from an apparent crime victim to discontinue recording of the encounter via the BWC.
- 6.5 De-Activation During Criminal Investigation Strategy/Planning Discussions.** Notwithstanding Section 5.3, and subject to the requirements of Section 5.5, unless the agency adopts a policy that prohibits or restricts de-activation as may be authorized by this Section, 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 that the strategy/planning discussion is not conducted in the immediate presence of a civilian (*i.e.*, under circumstances where a civilian might overhear the strategy discussion), and further provided that the BWC-equipped officer is not actively engaged in the collection of physical evidence (*i.e.*, 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.”).
- 6.6 De-Activation on Instruction from Prosecutor.** Notwithstanding Section 5.3, 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).”).
- 6.7 Re-activation When Reason for De-Activation No Longer Exists.** In any instance where a BWC was de-activated pursuant to Sections 6.1, 6.2, 6.5, or 6.6, 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 Policy).

- 6.8** **Re-Activation When Actual Law Enforcement Force is Authorized.** Notwithstanding any other provision of this Policy, in any instance where a BWC was de-activated pursuant to Sections 6.1, 6.2, 6.5, 6.6, or any other provision of this Policy, or de-activated pursuant to any policy, standing operating procedure, directive, or order issued by a department, 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.

## 7 Circumstances When BWC Activation/Use Is Subject to Special Conditions or Restrictions

**7.1 Special Restrictions When Recording in Schools, Healthcare/Treatment Facilities, and Places of Worship.** Notwithstanding Sections 5.2 and 5.3 of this Policy, and except as otherwise required by Section 5.5, unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that he or she 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; or 3) is in a place of worship under circumstances where worshipers would be in view of the BWC. *See also* Section 9.3 (notation (*i.e.*, “tagging”) of certain events/encounters raising privacy or other special issues).

**7.1.1** 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).

**7.2 Special Restrictions When Undercover Officers or Confidential Informants May Be Recorded.** Notwithstanding the provisions of Sections 5.2 and 5.3 of this Policy, and except as otherwise required by Section 5.5, 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 his or her supervisor that the recording risks revealing the identity of an individual as an undercover officer or confidential informant. *See also* Section 9.3 (notation or “tagging” to indicate a BWC recording that raises special issues); Section 9.5 (prosecutor’s authority to seek protective order when complying with discovery obligations).

**7.2.1** 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.

7.2.2 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.

**7.3 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 9.3. 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 9.5 (prosecutor’s authority to seek protective orders when complying with discovery obligations).

**7.4 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.

**7.5 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.

**7.6 Restrictions on Using BWCs With Enhanced Audio/Visual Capabilities.** Subject to the provisions of Section 12 of this Policy, 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.

- 7.7 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 Policy.

## 8 Retention of BWC Recordings

- 8.1 Minimum 180-Day Retention Period.** A BWC recording shall be retained by the law enforcement 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 8.2, 8.3 and 8.4.
- 8.2 Automatic Three-Year Retention Period.** A BWC recording 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.
- 8.3 Three-Year Retention Period Upon Request.** Subject to any applicable retention periods established in Section 8.4 to the extent such retention period is longer, a BWC recording shall be retained for not less than three years if voluntarily requested by:
- (a) law enforcement officer whose BWC made the video recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;
  - (b) a law enforcement officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;
  - (c) 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;
  - (d) any law enforcement officer, if the BWC recording is being retained solely and exclusively for police training purposes;
  - (e) any member of the public who is a subject of the BWC recording;
  - (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.

To effectuate subparagraphs (e), (f), and (g) 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.

**8.4 Additional Retention Requirements.** Notwithstanding the provisions of Sections 8.1, 8.2, or 8.3 of this Policy, 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;
- (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.

## 9 Standards to Ensure Secure Storage and Accessibility of BWC Recordings

**9.1 Procedures to Protect Integrity of BWC Recordings.** Every department 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:

- (a) ensure that all recordings are uploaded to a secure data storage system in a timely fashion;
- (b) prevent tampering with or deletion of recorded data both before and after downloading from the BWC and uploading to the storage system;
- (c) prevent unauthorized access to stored BWC recordings;
- (d) document all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted; and
- (e) permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.

**9.2 Capacity to Locate Specific BWC Recordings.** Every department 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, every department shall be required to develop and maintain a BWC control ledger or log, which may be computerized.

**9.2.1** Every department shall establish and implement a system to ensure that relevant BWC recordings are provided in discovery in a timely fashion. The system established by the agency 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.

**9.3 Provisions to Identify ("Tag") Recordings That Raise Special Privacy or Safety Issues.** To identify BWC recordings that may raise special privacy or safety issues, every department that deploys BWCs shall establish and implement a system that permits a notation (*i.e.*, "tagging") to be made when the recording:

- (a) captures the image of a victim of a criminal offense;

- (b) captures the image of a child;
- (c) 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, a substance abuse or mental health treatment facility, or a place of worship;
- (d) captures a conversation with a person whose request to de-activate the BWC was declined;
- (e) 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;
- (f) captures the image of an undercover officer or confidential informant; or
- (g) captures the screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information. *See also* Section 7.1 (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 12 of this Policy, an agency’s policy, standing operating procedure, directive, or order issued pursuant to Section 3.1 may specify additional circumstances when a BWC recording will be “tagged.”

**9.4 Approval for Access to “Tagged” BWC Recordings.** A BWC recording tagged pursuant to Section 9.3 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 law enforcement executive, and one or more superior officers or duty positions (*e.g.*, head of the detective bureau) identified by the law enforcement executive, to grant permission pursuant to this Section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to Section 9.3. *See also* Section 10.1 (specifying the purposes for which access to a BWC recording is permitted).

**9.5 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 7.3 (“tagging” of such BWC recordings).

- 9.6 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.

## 10 Restrictions on Access to and Use and Dissemination of BWC Recordings

**10.1 Specified Authorized Purposes for Accessing/Using Stored BWC Recordings.** No law enforcement officer or civilian employee of a law enforcement agency shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in this Section and the law. BWC recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose. Access to and use of a stored BWC recording is permitted only:

- (a) when relevant to and in furtherance of a criminal investigation or prosecution;
- (b) when relevant to and in furtherance of an internal affairs investigation;
- (c) 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;
- (d) when relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency;
- (e) 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;
- (f) to comply with the State's discovery obligations in prosecutions pursuant to the Rules of Court;
- (g) to comply with any other legal obligation to turn over the recording to a person or entity;<sup>5</sup>
- (h) 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;

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<sup>5</sup> 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 11 of this Policy.

- (i) for 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;
- (j) to conduct an audit to ensure compliance with this Policy and a department's policy, standing operating procedure, directive, or order promulgated pursuant to this Policy;
- (k) 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
- (l) 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.

**10.2** **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 AG Directive 2019-4, 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 Policy, 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.

**10.3** **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 8.2 or 8.4 prior to creating any required initial reports, statements, and interviews regarding the recorded event. Subject to the provisions of Section 10.2 of this Policy, 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.

**10.3.1** 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 10.2 of this Policy, 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.

**10.4 Documenting Access to Stored BWC Recordings.** Each department shall maintain a record of all access to stored BWC recordings pursuant to this Policy. The department's record keeping system shall document the following information:

- (a) the date and time of access;
- (b) the specific BWC recording(s) that was/were accessed;
- (c) the officer or civilian employee who accessed the stored BWC recording;
- (d) the person who approved access, where applicable; and
- (e) the reason(s) for access, specifying the purpose or purposes for access authorized pursuant to Section 10.1, and specifying the relevant case/investigation number, where applicable.

## 11 Public Disclosure of BWC Recordings

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 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 state clearly the deadline by which a response must be made.

## 12 Authority of County Prosecutor to Impose Additional Requirements

Nothing in this Policy shall be construed to in any way limit the authority of a County Prosecutor to issue directives or guidelines to the law enforcement agencies subject to his or her 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 this Policy. For example, a 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 7.6, which requires prosecutorial approval to use such features); and specify additional circumstances when a BWC recording will be “tagged,” etc.

## 13 Violations

If a law enforcement officer, employee, or agent fails to adhere to the recording or retention requirements contained in this Policy, intentionally interferes with a BWC’s ability to accurately capture audio or video recordings, or violates any other provision of this policy, the officer, employee, or agent shall be subject to appropriate disciplinary action, in addition to any judicial consequences outlined in the law.