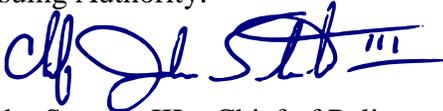


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	<h2 style="margin: 0;">Ewing Police Department General Order</h2>		Issued Date: <p style="text-align: center;"><b>04-06-2016</b></p>
			Order Number: <p style="text-align: center;"><b>P</b></p>
	Title: <p style="text-align: center;"><b>Body Worn Cameras (BWCs)</b></p>		Section: <p style="text-align: center;"><b>27</b></p>
Issuing Authority:  John Stemler III – Chief of Police		Effective Date <p style="text-align: center;"><b>04-06-2016</b></p>	
Accreditation Standard:			
References NJ Attorney General Directive No. 2015-1			
Revision Date <p style="text-align: center;"><b>11-25-2019</b></p>	Number of Pages <p style="text-align: center;"><b>19</b></p>	Distribution <p style="text-align: center;"><b>B</b></p>	Supersedes

- I. **INTRODUCTION AND PURPOSE** – This order is designed to help the department achieve an optimal balance between potentially competing interests. 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 camera-equipped officer with information necessary to solve a crime and convict the offender.
  
- II. **POLICY** - It is the policy of the Ewing Police Department that all members comply with the following procedures for the use and maintenance of the BWCs. This policy will cover any recordings of video and audio as a result of the use of the BWC.
  
- III. **DEFINITIONS**
  - A. "Activate" means to actuate the recording mode/function of a body worn camera.
  
  - B. "Body worn camera" ("BWC") means a device worn by a law enforcement officer that makes an electronic audio/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

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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).

- C. "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 any person if the officer has un-holstered a firearm or a conducted energy device (e.g., "move out of the way," "get down," etc.).
- D. "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.
- E. "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.
- F. "Law enforcement agency," "agency," or "department" means a law enforcement agency operating under the authority of the laws of the State of New Jersey.
- G. "Law enforcement officer" or "officer" means a sworn officer employed by a law enforcement agency.
- H. "School" means an elementary or secondary school.
- I. "Youth facility" means a facility where children assemble under adult supervision for educational or recreational purposes, such as day-care centers, youth camps, etc.

#### IV. PROCEDURE

- A. Officers employed by this department may only use a BWC system that has been issued and approved by this agency. An officer equipped with a BWC must comply at all times with the requirements established Attorney General Law Enforcement Directive No. 2015-1 and this policy. A BWC shall be used only in performance of official police duties and not for personal purposes. No BWC recording shall be accessed, viewed, copied, disseminated, or otherwise used by a sworn officer or civilian employee of this agency except for an official purpose specified in this policy. Any

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sworn officer or civilian employee of this agency who knowingly violates the requirements of this policy shall be subject to discipline.

### **B. Officers Authorized to Wear/Use BWCs.**

1. Any sworn member of the department regardless of duty assignment is authorized to be equipped with a department issued BWC in performance of his/her duties so long as they are in compliance of this policy and have received training on the proper care and use of the device in accordance with Attorney General Directive NO. 2015-1 and this policy.
2. Uniformed patrol officers shall wear a BWC while working their assigned shift in patrol, so long as there are functioning BWCs to be issued.
3. Officers assigned to other duty assignment (e.g., Detective Bureau, Community Response Unit, etc.) shall wear a BWC when directed by their immediate supervisor.
4. In the case of a task force, team, or unit composed of officers from more than one law enforcement agency, the chief law enforcement officer of the agency overseeing the task force, team, or unit (e.g., the County Prosecutor in the case of a countywide task force) shall determine whether and in what circumstances officers assigned to the task force, team, or unit will wear BWCs.

### **C. Assignment of BWC's.**

1. Officers shall utilize WatchGuard Evidence Library 4 Web to sign out a BWC at the beginning of their assigned shift.
2. Officers shall ensure the BWC is fully charged and is in "ready" status.
3. The shift supervisor shall record the BWC assignments on the "Daily Patrol Assignments" log.
4. At the end of the officer's shift the BWC shall be returned to the docking station. At this time the video footage will be automatically uploaded to the WatchGuard Evidence Library 4.

### **D. Duty to Inspect and Report Malfunctions.**

1. 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.
2. If a malfunction is detected, the officer shall report the malfunction to his/her immediate supervisor before going into the field. IT shall also be notified of the malfunction via an email to the Help Desk.

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3. 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.
4. If a malfunction occurs and after reporting it to the officer's supervisor, the officer shall replace the broken BWC with an operational BWC (if available).
5. If a BWC malfunction occurs, the officer shall generate a call for service (BWC Failure) in our CAD System documenting the malfunction. This is to be done in addition to notifying his/her supervisor and IT through the Help Desk.
6. If a BWC Fails to the point that the video/audio cannot be downloaded at our police department and the BWC needs to be sent to WatchGuard (or other outside vendor) to be fixed the bureau commander will forward a memorandum through the chain of command to the Chief of Police documenting what steps were taken to recover the video/audio and if they were successful.

E. The decision to activate or de-activate a BWC is a police action subject to the rule established in Attorney General Directive NO. 2005-1 which strictly prohibits any form of racially-influenced policing.

### V. NOTICE THAT BWCs ARE DEPLOYED/ACTIVATED

- A. General Public Notice - The department shall publish on the department's website/social networks that officers may be equipped with a BWC and post a picture showing what the device looks like and how it is to be worn.
- B. Specific Notice to Certain Individuals During an Encounter.
  1. When an officer equipped with a BWC is required to activate the device during an encounter with a civilian occurring inside the person's residence, or with a person reasonably believed to be a victim of a criminal offense, the officer shall verbally notify the persons with whom the officer is conversing that the BWC has been activated unless it is unsafe or infeasible to provide such notification.
  2. If the officer decides not to provide notification of BWC activation because it is unsafe or infeasible to do so, the officer shall document the reasons for that decision in a report and/or by narrating the reasons on the BWC recording.
  3. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
- C. Truthful Response to Specific Inquiries.
  1. 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

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expressly authorized the officer to make a covert electronic recording.

2. This 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).

### VI. STANDARDS GOVERNING THE ACTIVATION AND DE-ACTIVATION OF BWCs

#### A. BWCs Used Only in Performance of Official Duties.

1. 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.
2. 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.).
3. 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.

#### B. **Circumstances When Activation by a Uniformed Officer/Plainclothes Officers is Required.** - Except as otherwise expressly provided in any other provision in this policy, a uniformed officer equipped with a BWC shall be required to activate the device in any of the following circumstances as soon as it is safe and practicable to do so:

1. the officer initiates an investigative detention (e.g., Delaware v. Prouse traffic stop, a Terry v. Ohio criminal suspicion stop, or a checkpoint or roadblock stop);
2. the officer is responding to a call for service and is at or near the location to which the officer has been dispatched;
3. the officer is conducting a motorist aid or community caretaking check;
4. the officer is interviewing a witness in the course of investigating a criminal offense;
5. the officer is conducting a custodial interrogation of a suspect, unless the interrogation is otherwise being recorded in accordance with Rule 3:17 (electronic recordation of station house interrogations);
6. the officer is making an arrest;
7. the officer is conducting a protective frisk for weapons;

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8. the officer is conducting any kind of search (consensual or otherwise);
  9. the officer is engaged in a police response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians and the officer or any other officer on the scene may be required to employ constructive authority or force;
  10. the officer uses constructive authority or force, or reasonably believes that constructive authority or force may be used in any encounter or situation not otherwise listed in this subsection based on specific and articulable facts warranting heightened caution that are documented by narration on the recording and/or in any investigation or incident report;
  11. the officer is transporting an arrestee to a police station, county jail, or other place of confinement, or a hospital or other medical care or mental health facility; or
  12. the officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.
  13. Except as otherwise expressly provided in any other provision in this policy, a plain clothed officer equipped with a BWC should activate the device in any of the above circumstances (Section VI B 1-12) unless the activation would be detrimental to their investigation.
- C. Continuous Recording Pending Completion of Encounter.
1. To ensure that the entire encounter/event/episode is recorded, when feasible, a BWC should be activated before an officer arrives at the scene of a dispatched call for service or other police activity listed in section VI subsection B of this policy.
  2. However, the officer need not begin recording at the moment he or she receives instructions from a dispatcher to respond to a call for service. Rather, the officer may delay activation until he or she is near the destination.
  3. Except as otherwise expressly provided in 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 de-activated 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 and/or a supervisor that the event has concluded; the event is "closed" on the department's computer-aided dispatch ("CAD") system, etc.).
  4. When a BWC is activated pursuant to transporting of an arrestee by an officer, it shall remain activated at all times while the BWC-

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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.

- a) When officers enter the Ewing Police Department processing room BWC's can be deactivated after the officer(s) announce that they are deactivating the BWC because they are now in the booking area, which is recorded by in-house cameras. If for any reason the in-house camera system is known to be out of service, the BWC's will remain activated in accordance with the above.
- b) In the event that a prisoner is transported to a hospital/medical/mental health facility, officers can deactivate the BWC in accordance with the above and will not be required to reactivate the BWC simply because they are guarding a prisoner that is in custody and may again be in the prisoner's presence. If conversation is initiated by either the officer or the prisoner, the BWC shall be activated.

D. Special Activation Rules Governing Deadly-Force Incidents and Other Exigent Circumstances Where Officers Are in Danger.

1. Notwithstanding any other provision of this policy, 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 the BWC before arriving at the scene when feasible.
2. Notwithstanding any other provision of this policy, an officer while at the scene of a police deadly-force event or the on-scene investigation of that event shall not de-activate the BWC unless instructed to do so by the assistant prosecutor or assistant or deputy attorney general supervising the investigation of the deadly-force incident pursuant to Attorney General Law Enforcement Guidelines or Directives, 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.

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

1. An officer may, but is not required to, 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

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will not provide information or otherwise cooperate with the officer unless that request is respected.

2. 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).
3. In deciding whether to de-activate the BWC, the officer shall consider the privacy and safety interests of the person requesting de-activation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide only if the de-activation request is honored.

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

1. An officer may, but is not required to, 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.
2. 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.

### G. Procedures for De-Activation Upon a Civilian's Request.

1. When an officer de-activates a BWC pursuant to this policy, the following procedures shall be followed:
  - a) the colloquy between the officer and the civilian concerning the request for de-activation shall be electronically recorded;
  - b) 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.");
  - c) the officer shall report the circumstances concerning the de-activation to his or her superior as soon as is practicable; and
  - d) the officer shall document the circumstances of the de-activation in any investigation or incident report concerning the incident under investigation.

### H. Decision to Decline a Civilian's De-Activation Request.

1. If an officer declines a request to de-activate a BWC pursuant to this policy, 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

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documented and shall be reported to the officer's supervisor as soon as it is safe and practicable to do so.

2. In the event that the officer declines a de-activation request, the officer immediately shall inform the person making the request of that decision.
  3. An officer shall be prohibited from misleading the person making the de-activation request pursuant to this policy 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.
- I. De-Activation During Criminal Investigation Strategy/Planning Discussions.
1. 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).
  2. 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.")
- J. De-Activation on Instruction from Prosecutor.
1. 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.
  2. 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).").
- K. Re-activation When Reason for De-Activation No Longer Exists.
1. In any instance where a BWC was de-activated, 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

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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).

- L. Re-Activation When Actual Law Enforcement Force is Authorized.
  - 1. 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.
- M. Special Restrictions When Recording; in Schools, Healthcare/Treatment Facilities, and Places of Worship.
  - 1. 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:
    - a) 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;
    - b) 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
    - c) is in a place of worship under circumstances where worshipers would be in view of the BWC.
    - d) 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.").
    - e) 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).
    - f) In the event that a BWC captures the image of a patient in a substance abuse treatment facility, the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, shall be notified to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information. See 42 U.S.C. § 290dd-2, 42 C.F.R. §23.1 to 23.41. The recording shall not be accessed without the permission of the

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County Prosecutor or designee, or Director or 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.)

2. Officers responding to a criminal investigation at a school should not activate the BWC until they arrive at the main office or location where the investigation will occur. For example, an officer called to the high school for a student in the main office who was found in possession of contraband. The officer normally should not activate the BWC until just prior to entering the main office.

### N. Special Restrictions When Undercover Officers or Confidential Informants May Be Recorded.

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

### O. Special Precautions When a BWC Recording May Reveal Tactical Operations Information.

1. 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

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this policy (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.13:1 E-3.2 (2) (exempting records that may reveal "surveillance, security, tactical, investigative, or operational techniques").

**P. 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, or unless such activation is expressly authorized by the judge.

**Q. De-Activation/Removal of BWC from Alcohol Breath Testing.**

1. The device shall be de-activated while in the area where an electronic alcohol breath testing device is being used, or, as necessary, shall be removed from the area where such 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 breath-testing area while the electronic breath testing device is being operated.
2. 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.

**R. Restrictions on Using BWCs with Enhanced Audio/Visual Capabilities.**

1. This department does not authorize 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) 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.

**S. Tagging of BWC recordings.**

1. Whenever the officer deactivates his/her BWC, he/she will be prompted by the unit to "tag" the recording. All recordings shall be tagged at this point. The Hierarchy Rule will apply to the tagging of videos. Privacy Issue being the highest and Test Recording being the lowest on the hierarchy list.
  - a) Privacy Issue – see section VIII C of this order.
  - b) DUI – Driving Under the Influence investigation/arrest.

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- c) Arrest – any arrest other than a DUI arrest.
- d) Search – any searches in which no arrests or charges are filed.
- e) Interview – FI cards, suspicious person calls for service not involving criminal charges and arrests.
- f) Criminal – any criminal offense investigation not involving an arrest.
- g) MV Violation – motor vehicle stops where there is no privacy issue, DUI, arrest, search, and/or any criminal offense investigation not involving an arrest.
- h) Injury – injury/illness calls for service.
- i) Other – any other recordings not covered by any other tags.
- j) Test Recording – recordings for testing purposes.

### **VII. RETENTION OF BWC RECORDINGS**

- A. The retention period shall not be less than 90 days (except for test videos), and shall be subject to the following additional retention periods:
  - 1. When a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution.
  - 2. When a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency
  - 3. When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.

### **VIII. SECURE STORAGE AND ACCESSIBILITY OF BWC RECORDINGS**

- A. Protection of the Integrity of BWC Recordings.
  - 1. Evidence 4 Library is designed to do the following:
    - a) All recordings are uploaded to a secure data storage system as soon as the BWC is docked at the end of the officer's shift.
    - b) The BWC does not allow deletion of any recorded data before and after downloading from the BWC and uploading to the storage system unless it is authorized by an administrator.

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- c) Prevent unauthorized access to stored BWC recordings unless the proper security level is authorized by the Chief of Police, or his/her designee.
  - d) The system will document all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted on the system log.
  - e) They system will permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted by an authorized supervisor.
- B. Locating Specific BWC Recordings.
- 1. Officers are to indicate in their reports that BWC's were utilized during that incident.
  - 2. After the BWC is docked and the video uploaded into the system, the officer will need to sign in to the WatchGuard Evidence Library 4 Web and create a case for any incidents that include an arrest, criminal investigation of an indictable offense, or use of force incidents so to ensure copies of BWC recordings comply with the State's discovery obligations. Officers may also create cases for any incidents they record and feel that the creation of a case may be necessary.
  - 3. This is the procedure to create a case for BWC recordings:
    - a) Search for the video.
    - b) Click the settings tab (looks like a small gear) on the right side of the proper video.
    - c) Select "add to case".
    - d) "New Case" is automatically selected. If you are creating the new case, type in the corresponding ENFORSYS Incident number for the event, add any notes, and click "Save Changes".
    - e) If you are adding video to a case, select "Existing Case" and type in the ENFORSYS Incident number. A drop box should appear with that number as an already created case. Select the number and click "Save Changes".
  - 4. This is the procedure to create a disc of the video recording, if necessary:
    - a) Once all videos (BWC and MVR), from all officers, have been added to the case; click on the "Cases" tab at the top of the page. Find the case and click on the settings tab to the right.
    - b) Select "Export Case".

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- c) When the case comes up, ensure that all of the case videos are selected and click on "Media Export" at the bottom of the page.
  - d) Make sure the proper disc type is in the computer and select the corresponding media from the choices.
  - e) Enter the recipient's name (officer who created the case) and hit export media.
  - f) Once the disc has finished burning, submit it as evidence.
- C. Identifying (Tag) Recordings That Raise Special Privacy or Safety Issues.
- 1. Certain BWC recordings may raise special privacy or safety issues.
  - 2. The tag "Privacy Issue" shall be used in the following situations where the BWC recordings:
    - a) captures the image of a victim of a criminal offense;
    - b) captures the image of a child where the child is a predominate figure in the video;
    - c) was made in a residential premise (~, 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 deactivate the BWC was declined;
    - e) captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information (~, 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;
    - g) captures the screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information; or
    - h) captures audio that contains confidential personal or law enforcement sensitive information.
- D. Approval for Access to "Tagged" BWC Recordings.
- 1. An officer may view his/her own BWC recording tagged pursuant to Section VIII C (recordings that raise special privacy or safety issues)

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to assist in preparing a report without having to obtain approval from his/her supervisor provided that the officer does not share the tagged recording with any other person without appropriate approval. The access is subject to the superseding restrictions set forth in section IX B (authorization for access to BWC recordings related to use of force investigations).

2. Except for recordings tagged when a BWC captures the image of a patient at a substance abuse treatment facility and subject to requiring notice to County Prosecutor or Director prior to complying with a subpoena, court order, or request for records under the Open Public Records Act or the common law right to know, the County Prosecutor or Director may authorize the chief of the department, and one or more superior officers or duty positions (e.g., head of the detective bureau) identified by the chief of the department, to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to section VIII C of this policy. See also section IX A of this policy (specifying the purposes for which access to a BWC recording is permitted).
3. The Mercer County Prosecutor has authorized the following individuals to access, view, copy, disseminate or otherwise use tagged BWC recordings identified in section VIII C (recordings that raise special privacy or safety issues):
  - a) Chief of Police
  - b) Captain
  - c) Lieutenant
  - d) Sergeant
  - e) Detective Bureau Personnel
  - f) Internal Affairs Personnel

(See attached approval letter from the Mercer County Prosecutor's Office)

### E. Compliance with Discovery Obligations Relating to BWC Recordings That Might Expose Officers or Other Persons to Danger.

If disclosure of a BWC recording as part of the State's discovery obligations in a prosecution might present a danger to any officer or civilian (e.g., reveal an undercover officer, confidential informant, surveillance site, etc.), or might reveal confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms during execution of warrant, techniques for convincing persons to open doors during warrant execution, etc.), the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee in cases

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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.

### IX. RESTRICTIONS ON ACCESS TO, USE, AND DISSEMINATION OF BWC RECORDINGS

#### A. Specified Authorized Purposes for Accessing/Using Stored BWC Recordings.

1. 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.
2. 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) To assist the officer whose BWC made the recording in preparing his or her own police report, subject to the restrictions established in this policy;
  - e) When relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency;
  - f) 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;
  - g) To comply with the State's discovery obligations in prosecutions pursuant to the Rules of Court;
  - h) To comply with any other legal obligation to turn over the recording to a person or entity (see section X of this policy);
  - i) 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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- j) 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;
  - k) To conduct an audit to ensure compliance with this policy.
  - l) 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
  - m) 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.
- B. Authorization for Access to BWC Recordings Related to Use-of-Force Investigations.
- 1. The assistant prosecutor or assistant or deputy attorney general overseeing a police use-of force investigation, or his or her designee, 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.
  - 2. To ensure the integrity of investigations of police-involved shootings and other use-of-force incidents 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 principal(s) 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 assistant prosecutor, assistant or deputy attorney general, or designee.
- C. Documenting Access to Stored BWC Recordings.
- 1. Each department that deploys a BWC shall maintain a record of all access to stored BWC recordings pursuant to this Directive.
  - 2. The department's record keeping system shall document the following information:
    - a) The date and time of access;
    - b) The specific BWC recordings that was/were accessed;

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- c) The officer or civilian employee who accessed the stored BWC recording;
- d) The person who approved access, where applicable; and
- e) The reasons for access, specifying the purpose or purposes for access authorized pursuant to this policy, and specifying the relevant case/investigation number, where applicable.

**X. PUBLIC DISCLOSURE OF BWC RECORDINGS**

**A. Notice to Prosecutor of Subpoena, Court Order, or OPRA/Common Law Request.**

- 1. If this agency receives 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.
- 2. Such notice shall state clearly the deadline by which a response must be made.

**B. Disclosure of BWC Recordings Pertaining to Criminal Investigations.**

Except as otherwise provided in this policy, 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 law enforcement agency in consultation with the County Prosecutor or designee, or the Director of the Division of Criminal Justice or 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.

**XI. Training**

- 1. The department's training supervisor will ensure each employee (sworn/civilian – only if they have to access the BWC system or handle BWC recordings in the course of their duties) receives training on this policy before they are allowed to use a BWC and/or access/handle recordings from the BWC system.