Harding Township Police Department POLICIES AND PROCEDURES	
SUBJECT: BODY WORN CAMERAS	
EFFECTIVE DATE: April 1, 2023	NUMBER OF PAGES: 24
BY THE ORDER OF: Chief Michael R. Gromek #23	

PURPOSE The purpose of this policy is to maintain uniform guidelines for the lawful use and operation of the agency-authorized body worn camera recording system (BWCs). The goals and objectives in deploying BWCs are the accurate documentation of interactions between law enforcement and members of the public, arrests, and other critical incidents. Further, this policy establishes protocols for the maintenance, storage, retrieval, and preservation of recordings to maintain the lawful chain of custody.

POLICY It is the policy of the Harding Township Police Department to utilize body worn video/audio cameras (BWCs) to assist agency personnel in the performance of their duties by providing an accurate and unbiased recorded account of an incident.

Officers shall use this equipment consistent with manufacturer's guidelines, this policy, and those policies or guidelines issued by the New Jersey Attorney General and Morris County Prosecutor's Office. Failure to use this technology in accordance with this policy and those policies or guidelines issued by the New Jersey Attorney General and Morris County Prosecutor's Office can result in discipline.

The use of body worn recorders with electronically enhanced audio/visual capabilities, such as infrared vision features, is not authorized.

The Harding Township Police Department website/webpage shall contain a clear statement that this department utilizes body worn cameras. The website posting shall include an image showing what the device looks like and how it is to be worn by officers so that the public will be able to determine whether an officer is equipped with the device.

Any willful or repetitive violations of this policy and/or *Attorney General Law Enforcement Directive 2022-01* shall be promptly reported to the Morris County Prosecutor's Office. The Morris County Prosecutor may take such actions as are reasonable and necessary to ensure compliance with *New Jersey Attorney General Directive 2022-01* and to prevent future violations.

PROCEDURES

I. DEFINITIONS

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

1. Activate – means to actuate (put into operation) the recording mode/function of a BWC.

2. Body worn audio/video camera (BWC) – is an officer worn device that makes an electronic audio/video recording of activities that take place during any law enforcement action. The term does not include any form of electronic recording device worn by a law enforcement officer while acting in an undercover capacity nor does the term include an electronic recording device when used to comply with the requirements of Court Rule *R.* 3:17 (electronic recording of station house custodial interrogations).

3. Consent – Consent to record shall be considered obtained when the recording party (officer) has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that the communication or conversation is being recorded. This announcement itself to the other parties must also be recorded.

4. Constructive authority –involves the use of an officer's authority to exert control over a subject (see this agency's policy on *Use of Force*), except that the term shall apply only to constructive authority directed against a person who is subject to an investigative detention or arrest (e.g., "…*show me your hands*," "…*get out of the vehicle*", etc.), or directed against any person if the officer has unholstered a firearm (e.g., "…*move out of the way*", "…*get down*", etc.).

5. Deactivate – means to shut off the recording mode of a BWC.

6. Digital evidence – includes photographs, images, audio, and video recordings that are stored digitally.

7. Equipped with a BWC – means that an officer is wearing a BWC at the time in question, as opposed to simply receiving BWC equipment from their agency.

8. Force – has the same meanings as defined in this agency's policy on *Use of Force*.

9. 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.

10. Proactive enforcement team – includes officers who are typically assigned to target vice, drugs, organized street crime, violent crime and/or any other targeted enforcement. Unlike officers who are responsible for responding to traditional calls for service, these officers are typically assigned the singular responsibility of addressing these activities (e.g., street crime unit, crime suppression unit, etc.). The nature of their work may include being dressed in traditional uniform, modified uniform, or plain clothes. These officers may work alongside undercover officers, conduct surreptitious surveillance, engage in high intensity enforcement via motor vehicle/pedestrian stops and/or interact with confidential informants or witnesses who wish to remain anonymous.

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

12. Serious bodily injury – means bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. For purposes of this policy, serious bodily injury and serious bodily harm have the same meaning.

13. Significant bodily injury – means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.

14. Subject of the video footage – means any law enforcement officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body worn camera recording and shall not include a person who only incidentally appears on the recording.

15. Substantive report – means a report that includes a detailed accounting of the incident. It does not include a report which simply refers to other reports or to the existence of BWC or other camera recordings.

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

17. Tagging – is an electronic labeling of an electronic file captured by a BWC.

18. Undercover officer – is a law enforcement officer operating with an assumed identity and/or disguise for the purposes of gaining the trust of an individual or organization to learn or confirm confidential information or to gain the trust of targeted individuals to gather information or evidence. Plain-clothed officers and detectives are not considered undercover officers unless working with an assumed identity and/or disguise.

19. Youth facility – means a facility where children assemble under adult supervision for educational or recreational purposes, such as day-care centers, youth camps, residential and/or treatment facilities, etc.

II. GENERAL ADMINISTRATION

A. BWC recordings are invaluable to law enforcement for evidential purposes. BWC have consistently demonstrated its value in the prosecution of criminal, traffic, and other related offenses and to protect personnel from false claims of misconduct. Additionally, this equipment will provide valuable instructional material that can be utilized for in-service training programs.

B. While visual and audio evidence may be captured on the recordings, the use of a BWC is not intended to document all evidentiary material relevant to court or administrative proceedings, but it can serve to supplement an officer's senses and eyewitness account. There is no intent to utilize the BWC as a management tool to punish officers for minor departmental rule infractions.

1. Officers shall not be subject to criticism for the proper exercise of lawful discretion in enforcement matters.

2. BWCs shall only be utilized for legitimate law enforcement purposes.

C. Adequate safeguards are necessary to ensure that this technology is:

1. Used in a non-discriminatory way; and

2. Used to document visual evidence.

D. When properly used, this equipment will have the following capabilities:

1. Creation of accurate documentation of motorist contacts and other patrol related activities.

2. Preservation of an audio and video record of events, actions and conditions during arrests, critical incidents, and prisoner transports.

E. These recordings will serve the following purposes:

1. Recordings serve as protection for police officers when there are complaints about their conduct or professionalism during encounters with the public.

2. The recordings can be introduced into evidence in criminal and motor vehicle prosecutions as well as in civil litigation.

3. The recordings can resolve disputes concerning what occurred during incidents, thereby protecting both the public and the officers involved.

4. When complete recall is not possible, such as when multiple events are happening simultaneously or out of an officer's line of sight, an audio/visual recording can provide an accurate record of events.

5. Subject to the viewing restrictions in this policy, supervisors will be able to view the recordings with the permission of the Chief of Police or his/her designee and select portions to use to train officers in safety, field training, interpersonal skills, proper police procedures, and legal doctrines.

6. Subject to the viewing restrictions in this policy, recordings can permit supervisors to undertake more meaningful performance evaluations.

7. Subject to the viewing restrictions in this policy, recordings augment management's ability to evaluate its basic police practices and interactions between its personnel and the public.

8. Recordings enhance management's ability to train personnel in proper police procedures.

F. The Chief of Police or his/her designee shall maintain a training program on the lawful and proper use of BWC equipment. Only officers who have received training in the use of BWCs are permitted to use this system and must demonstrate a satisfactory degree of familiarity and efficiency in the use of this system. The proper use of a BWC is considered an essential job requirement.

G. The BWC administrator is responsible for:

1. Providing initial training to all newly hired officers or to officers who have not been previously trained.

2. Providing periodic refresher training, as required, to ensure the continued effective use and operation of the equipment.

3. Providing initial and refresher training to non-sworn personnel whose responsibilities include accessing, copying, or distributing BWC records.

4. Ensuring proper calibration and performance of the BWC equipment.

5. Incorporating changes, updates, or other revisions in policy and equipment.

6. Providing supplemental training as part of this department's performance improvement or progressive disciplinary processes.

H. Repairs to any BWC equipment shall only be performed by the manufacturer or under the direction of the BWC administrator or his/her designee. The BWC administrator's responsibilities include:

1. Ensure that all recordings are uploaded to a secure data storage system in a timely fashion.

2. Prevent tampering with or deletion of recorded data both before and after downloading from the BWC and uploading to the storage system.

3. Prevent unauthorized access to stored BWC recordings.

4. Document all instances when BWC recordings are accessed, viewed, copied, disseminated, or deleted; permit auditing of all instances when BWC recordings are accessed, viewed, copied, or deleted; and

5. Authorize access to downloaded BWC files.

I. BWCs are intended for official police department use only and are not to be used for frivolous or personal activities. Intentional misuse or abuse of the units will result in disciplinary action.

J. This department will not tolerate the reliance by any officer on race, ethnicity, gender, gender identity, gender expression, sexual orientation, religion, economic status, age, culture, LGBTQ+ status, or any other immutable characteristic of a group or class of persons, in determining whether to activate or deactivate a BWC.

K. All recording media, images, and audio are the sole intellectual property of the Harding Township Police Department and will not be copied, released, or disseminated in any form or manner outside the parameters of this policy without the expressed written consent of the Chief of Police, Morris County Prosecutor, or the Division of Criminal Justice.

L. Under no circumstances will any employee of the Harding Township Police Department make a personal copy of any recorded event or have another employee make a personal copy except when permitted by this policy; see section V of this policy.

M. Officers will use only those BWCs approved and issued by the Chief of Police. Wearing any personally owned video/audio recorder is not authorized without the expressed permission of the Chief of Police, the Morris County Prosecutor's Office, or the New Jersey Division of Criminal Justice. Violations will be subject to disciplinary action, up to and including termination.

N. BWCs shall be used only in conjunction with official law enforcement duties.

1. Officers engaged in undercover operations or surveillance activities are not required to utilize BWCs.

2. BWCs shall be used only in conjunction with official law enforcement duties. The BWC shall not be used to record:

a. Encounters with undercover officers or confidential informants; or

b. Strip and body cavity searches; or

c. When the officer is on break or otherwise engaged in personal activities; or

d. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room; or

e. When the officer is involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisor-subordinate interaction, NOTE: the use of a BWC is authorized to record internal affairs interviews (e.g., principal, witness, complainant, etc.) provided the interviewee is <u>fully aware</u> that the interview is being audio/video recorded; or

f. When the officer is engaged in police union business; or

g. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording, see section III.B of this policy; or

h. While discussing criminal investigation strategies.

3. Officers are not required to wear and use a BWC:

a. When engaged in hostage negotiations.

b. When processing crime scenes.

c. When conducting searches of cellphones, tablets, computers, or other electronic devices pursuant to a search warrant, when such items have already been seized and the search is performed at a location other than the premises of the initial search and seizure.

d. When conducting searches of cellphones, tablets, computers, or other electronic devices that are suspected to contain images of child sexual exploitation.

4. BWCs shall not be used surreptitiously.

5. BWCs shall not be used to gather intelligence information based on 1st Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public, except in accordance with any applicable guidelines, policies, or directives promulgated by the New Jersey Attorney General.

III. INCIDENTS TO RECORD

A. Officers assigned to or assisting in that event shall activate their BWC immediately upon acknowledging dispatch to a call for service or in the performance of a proactive event as soon as is safely possible. This will allow the maximum amount of information regarding the incident to be captured, such as events that transpire while on the way to a call for service and/or violations committed by a motorist during a motor vehicle stop.

B. Except when otherwise restricted in this policy, officers shall video and audio record all law enforcement activity including any law enforcement interaction with a civilian. However, if an immediate threat to the officer's life or safety makes activating the BWC impossible or dangerous, the officer shall activate the body worn camera at the first reasonable opportunity to do so. Examples of such required recordings include, but are not limited to:

1. All traffic stops from the initiation of the stop until the stop is concluded, including sobriety testing.

2. All calls for service.

3. Stationary police details, such as DWI checkpoints, car/truck inspections, seatbelt use checkpoints, etc.

4. Investigation of any kind of motor vehicle offense.

5. Crash scenes, including interviews on the scene.

6. Crime scenes except for crime scene processing.

7. Motor vehicle and foot pursuits.

8. Investigations of criminal violations (not to include undercover investigations or related surveillance activities).

9. Any call for service related to a violation or suspected violation of possessing or consuming alcohol, marijuana, hashish, or cannabis item.

10. Out-of-court identifications (i.e., show ups, lineups).

11. Investigative detentions/field interviews (assigned and officer-initiated).

12. Warrantless searches (all types, including frisks, but not strip or body cavity searches).

13. Search or arrest warrant execution (entire execution).

14. Arrests.

15. Arrestee/prisoner/emotionally disturbed person/civilian transportation.

16. Drug recognition expert (DRE) evaluations:

    a. If the arresting officer is the DRE or if he/she is on duty and responds to another agency, the BWC would have to be activated for the evaluation.

    b. If the DRE is off duty and not in uniform, a member of the arresting agency should be present and record the evaluation on a BWC.

17. Overdose and suspected overdose investigations.

18. Emotionally disturbed person investigations/encounters.

19. When an officer uses force or constructive authority, or reasonably believes that constructive authority or force may be used in any encounter or situation not otherwise listed in this subsection based on specific and articulable facts warranting heightened caution (must be documented by narration on the recording and/or in any investigation report).

20. Crowd control, unruly crowds, or incidents requiring activation of the all-hazards or emergency operations plan.

21. Domestic violence investigations.

22. Strikes, picket lines, demonstrations.

23. Welfare checks of residents and motorists (motorist aid).

24. When an officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.

25. Any contact that becomes adversarial when the BWC has not already been activated.

C. When an officer equipped with a BWC is dispatched to a call for service, upon acknowledging dispatch, the officer shall immediately begin to record the response.

D. When an officer equipped with a BWC volunteers for a call for service or assistance, upon advising dispatch, the officer shall immediately begin to record the response unless impracticable. In a situation where it is impractical to record the situation, the officer must notify their immediate supervisor as soon as it is safe to do so. Reasons for not recording the incident shall be documented in an operations report.

E. 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 goes to a scene where an officer has requested emergency assistance (e.g., an officer in distress, shots fired, etc.), the officer shall activate his/her BWC before arriving at the scene unless impracticable to do so.

F. Notwithstanding any other provision of this policy, an officer while at the scene of a police deadly-force event, pursuit resulting in a death or serious bodily injury, in-custody death, or the on-scene investigation of such events shall not deactivate his/her BWC unless instructed to do so by the independent investigator supervising the investigation of the incident pursuant to *Attorney General Law Enforcement Directive 2019-4*. The independent investigator or his/her designee supervising the investigation can provide such instruction telephonically.

1. Officers can deactivate their BWCs once they leave the scene of the incident.

2. BWCs do not need to remain activated while officers are receiving medical evaluation, medical treatment, or have returned to headquarters.

3. Once officers deactivate their BWCs in these instances, they shall surrender their BWCs to a supervisor, who shall submit them as evidence in accordance with this agency's policy on *Evidence and Property*.

G. BWCs shall remain activated for the entire duration of public contacts in this section until the officer has departed the scene and the officer has notified communications that the event is closed. Officers shall narrate when intentionally stopping the recording.

H. When a BWC is activated to transport an arrestee/prisoner, it shall remain activated while the BWC-equipped officer is in the presence of the arrestee and until the arrestee is secured in the processing room or a cell, 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. Officers shall narrate when intentionally stopping the recording.

I. When wearing a BWC, officers shall notify the subject of the recording that they are being recorded unless it is unsafe or unfeasible to provide such notification. Such notification shall be made as close to the inception of the encounter as is reasonably possible.

1. Prior to entering a private residence, officers shall notify the occupant that the occupant is being recorded and, if the occupant requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that the officer will be required to use constructive authority or force.

2. When interacting with an apparent crime victim, officers shall, as soon as practicable, notify the apparent crime victim that he or she is being recorded and, if the apparent crime victim requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC.

3. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, if the person requests that the officer discontinue use of the body worn camera, officers shall evaluate the circumstances and, if appropriate, discontinue use of the BWC.

4. If the officer decides not to provide notification of BWC activation because it is unsafe or unfeasible to do so, the officer shall document the reasons for that decision in the investigation report of the incident and/or by narrating the reasons on the BWC recording.

5. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.

J. 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 Morris County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, has expressly authorized the officer to make a covert electronic recording.

1. Officers may deactivate 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 provided however, that the agreement to participate under that condition is itself recorded.

a. Officers shall not suggest to the person being recorded that the BWC should be deactivated; nor shall the officer ask the person whether he or she would prefer that the BWC be deactivated. Rather, the request for deactivation must be self-initiated by the civilian. The officer may explain the consequences of deactivation (e.g., evidence relevant to a criminal investigation will not be recorded).

b. In deciding whether to deactivate the BWC, the officer shall consider the privacy and safety interests of the person requesting deactivation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide only if the deactivation request is honored.

2. Officers may deactivate a BWC when a person, other than an arrestee or prisoner, is seeking emergency medical services for him/herself or another and requests that the BWC be deactivated. The officer shall consider the privacy interests of the person requesting deactivation and the person in need of medical assistance (e.g., a victim of an assault during a fight does not want to be recorded, etc.). However, in situations when an officer reasonably believes that the officer or another person is likely to use force, the BWC shall be re-activated as soon as it is safe and practicable to do so.

3. When an officer deactivates a BWC:

   a. The conversation between the officer and the civilian concerning the request for deactivation shall be electronically recorded.

   b. The officer before deactivating the BWC shall narrate the circumstances of the deactivation (e.g., "*…I am now turning off my BWC as per the victim's request"*.).

   c. The officer shall report the circumstances concerning the deactivation to their supervisor as soon as is practicable.

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

4. If an officer declines a request to deactivate a BWC, the reasons for declining the request (e.g., the officer believes that there is a reasonable possibility that it may be necessary to use constructive authority or force during the encounter) must be memorialized on the recording and documented and shall be reported to an immediate supervisor as soon as it is safe and practicable to do so.

   a. If the officer declines a deactivation request, the officer shall immediately inform the person making the request of that decision.

   b. Officers are prohibited from misleading the person making the deactivation request into believing that the BWC has been turned off when in fact it is operating unless the Morris County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, expressly has authorized covert recording.

5. Officers can deactivate a BWC when specifically authorized to do so by an assistant prosecutor for good and sufficient cause as determined by the assistant prosecutor. When an officer deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation indicating the assistant prosecutor who authorized the deactivation (e.g., *"…I am now turning off my BWC as per the instruction of assistant prosecutor (insert name)*").

6. Officers may deactivate a BWC while participating in a discussion pertaining to criminal investigation strategy and planning (e.g., to consider what investigative techniques to pursue, such as what questions to pose to a suspect or witness, whether to 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 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 deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation (e.g., *"…I am now turning off my BWC to discuss investigative strategy with my supervisor*").

7. **If** an officer is required to deactivate the BWC when entering a school, house of worship, health care facility, substance abuse treatment center, etc., the officer shall narrate the reason for deactivation (e.g., "*…I am entering a school building where children are present.*"). The BWC shall be reactivated as soon as it is safe and practicable to do so when the circumstances requiring deactivation no longer exist (e.g., the officer is conversing with an adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWC).

8. If a BWC captures the image of a patient in a substance abuse treatment facility, the Chief of Police or his/her designee shall notify the Morris County Prosecutor or his/her designee to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information (42 USC § 290dd- 2, 42 CFR §23.1 to 23.41). The recording shall not be accessed without the permission of the Morris County Prosecutor or his/her designee. (Note that destruction of the recording would be inappropriate until it has been determined that it had not captured exculpatory information that must be provided to a defendant in discovery.)

9. In any instance when a BWC was deactivated pursuant to this section, the device shall be reactivated as soon as it is safe and practicable to do so when the circumstances justifying deactivation no longer exist (e.g., the interview of the person requesting deactivation is completed, etc.) and the officer would otherwise be required to activate the BWC.

K. Officers shall not activate a BWC, and shall deactivate a BWC that has been activated, if the officer knows or reasonably believes that the BWC would capture the image of an undercover officer or confidential informant or otherwise would pose a risk to the safety of an undercover officer or confidential informant, unless such activation is expressly authorized by a supervisor, or unless the exigency of the situation and danger posed to an officer (e.g., active shooter, actual use of police force, officer in distress, etc.) require that the encounter/incident be recorded, in which event the officer shall inform their supervisor that the image of an undercover officer or confidential informant was recorded. The BWC shall be activated/reactivated as soon as it is safe and practicable to do so when the risk of capturing the image of an undercover officer or confidential informant no longer exists.

L. Officers shall not activate a BWC while in a courtroom during court proceedings, unless the officer is responding to a call for service or is authorized to use constructive force or authority, or unless the presiding judge expressly authorizes such activation.

M. BWCs shall be deactivated and removed while in the ALCOTEST area when the ALCOTEST device is being used. Nothing herein shall be construed to preclude the use of a BWC to record the behavior of a person arrested for driving while intoxicated other than while the person is in the ALCOTEST area while the ALCOTEST device is being operated. The officer shall narrate the reasons for deactivation (e.g., "…*I am deactivating the BWC because the suspect is about to take a breath test"*), and the BWC shall be reactivated when safe and practicable to do so following the completion of the breath testing operation.

N. Non-law enforcement personnel shall not be allowed to review the recordings at the scene of contact. Officer complaints shall be handled in accordance with this agency's policy on *Internal Affairs*. All other requests to view and/or obtain footage by the public shall be handled in accordance with section V of this policy.

IV. OFFICER AND SUPERVISORY RESPONSIBILITIES

A. All personnel shall be issued a body worn camera. The BWC administrator will maintain a record of all BWC serial numbers and assignments.

1. BWCs shall be utilized daily consistent with the requirements and restrictions in this policy.

2. Officers are not required to activate their BWCs in police headquarters unless they are investigating a walk-in complaint, processing an arrestee, or other similar law enforcement related functions.

3. Plain clothes and administrative officers shall wear BWCs when conducting arrests and while engaged in field duties (e.g., patrol coverage, search and arrest warrant executions, raids, etc.) consistent with the requirements and restrictions in this policy.

4. Subject to availability, BWCs shall be worn and used on all extra duty assignments.

5. Officers shall also wear and use a BWC consistent with this policy when:

a. On aggressive driving, DWI interdiction assignments, checkpoints, or other proactive enforcement team.

b. When assigned to front desk assignments and interacting with the public on a law enforcement matter.

c. When assigned to or assisting any tactical team in the field.

d. When assigned to duties at demonstrations or potential civil disturbances.

6. If an officer, who has not officially reported for duty and has not signed out the assigned BWC for his/her shift comes upon an incident, the officer can tend to the incident even if he/she does not have his/her BWC. In that instance, the officer should tend to the incident in accordance with applicable policies and report the absence of the BWC to their supervisor, and note the encounter in an operations report, or have the communications center make a note in CAD/RMS if a formal report is not required. Officers shall obtain their assigned BWC at the earliest time.

B. Officers who have an assigned BWC that is low on power or damaged, can still work duty assignments. However, they must be issued a temporary BWC for their assignment. The officer must notify the BWC administrator by email.

C. BWCs shall be worn on the upper portion of the outer-most garment facing the officer's point of view. It will be secured to the garment using the mount/clip supplied by the BWC vendor that is part of the BWC equipment. Plain clothes officers have the option of wearing the BWC either on the shirt, jacket, or belt. Officers are responsible to ensure that the BWC remains in a position to allow the recording of an encounter or incident to the extent possible.

D. ONLY agency-issued cellphones can be equipped with the BWC system's SmartControl application. <u>The use of the SmartControl application on a personal cellphone is prohibited</u>. Officers can use the SmartControl mobile application to:

1. Adjust the camera angle.

2. Review events on the camera (see subsection V.C of this policy for restrictions).

3. Categorize events.

4. Set secondary event tags.

5. Live stream the current V300 view.

6. Start / stop recordings in real time.

7. Enable / disable covert mode.

8. Adjust alert notifications and LED brightness.

9. View BWC status.

E. All officers assigned a BWC are responsible for its use and maintenance during their tour of duty.

F. When not in use, BWCs shall be stored in the designated multi-charger docking stations.

1. The docking stations allow for the units to be charged and for the download of events to the BWC server.

2. Only those BWCs believed to be in full working order will be stored in the docking station to ensure that all data is transferred, the battery is fully charged, and the unit is ready to be issued for service.

G. Prior to beginning a shift, officers assigned a BWC will ensure its readiness by conducting an operational inspection. Officers shall also inspect BWCs at the conclusion of each shift to ensure system integrity.

1. When conducting the pre-shift inspection, the officer shall activate the BWC and verbally state the date, time, and that a test is being performed on the unit.

2. Any problems preventing the use of the unit during the shift will be reported to the officer's immediate supervisor upon discovery. The supervisor shall assign a spare BWC from the charger and note the number of the fresh unit in an email directed to the BWC administrator.

3. Officers shall not use the BWC of another without the expressed permission of the BWC administrator.

H. At the conclusion of each shift, officers shall ensure that all assigned BWC units have been returned to their charging stations. BWCs *must* be docked for a long enough period for the data to upload and completely recharge.

I. When video/audio footage is captured, it shall be noted in the coinciding report (e.g., incident, NJTR1, etc.), by typing/writing the capital letters *BWC* at the end of the report to signify that video/audio is available for the case. BWC recordings are not a replacement for written reports. *Under no circumstances shall officers simply refer to a BWC recording on an investigation report instead of detailing the facts and circumstances of their investigation/observations*.

J. Officers shall classify recordings that correspond to their name. Classifying shall include the case number and/or any other identifying markers to link it to a specific case. Officers shall assign recordings to all applicable categories, that are evidentiary in nature and/or they feel are pertinent to any investigation(s). Classifying such recordings shall not be used to generate overtime. Recordings that have not been downloaded prior to the end of a shift shall be classified upon the officer's return to work.

K. Officers shall also categorize recordings as 'special privacy' that capture any of the following circumstances that the New Jersey Attorney General has deemed special privacy issues (see below). Officers must tag those recordings falling into these categories by the end of their shift. Recordings marked 'special privacy' will have viewing immediately restricted to commanding officers and departmental designated staff personnel assigned by the Chief of Police. All initial police reports must be written prior to a video being categorized 'special privacy'. To identify BWC recordings that may raise special privacy or safety issues, officers shall appropriately label recordings that:

1. Captured a law enforcement incident, as defined in *New Jersey Attorney General Directive 2019-4*:

a. Any use of force by a law enforcement officer resulting in death or serious bodily injury.

b. Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury.

c. The death of any civilian during an encounter with a law enforcement officer; and

d. The death of any civilian while in the custody of law enforcement.

2. Captured the image of a victim of a criminal offense; or

3. Captured the image of a juvenile; or

4. Were made in a dwelling (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; or

5. Captured a conversation with a person whose request to deactivate the BWC was declined; or

6. Captured a special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded; or

7. Captured the image of an undercover officer or confidential informant; or

8. Captured the screen of a law enforcement computer monitor that is displaying confidential personal or law enforcement sensitive information.

L. Anyone accessing any recording for any purpose and subject to the viewing restrictions in this policy (e.g., report preparation, meaningful review, etc.) shall document, in the 'Notes' box under the video, the date, purpose for viewing the recording, their initials and badge number.

M. Supervisors are responsible for ensuring that on-duty officers assigned a BWC unit are equipped with functioning BWC's at the beginning of each shift.

1. Sergeants/OICs will conduct a formal review of one segment per officer assigned to their shift per set of workdays (i.e., four workdays), to assess officer performance as well as to flag video/audio that may be appropriate for training purposes. Such reviews shall be documented with a Guardian Tracking record.

2. Sergeants/OICs shall formally review all instances when a BWC is deactivated prior to the conclusion of an incident. Such reviews shall be documented with a Guardian Tracking record.

3. If an internal affairs complaint is associated with a recorded event, or an officer believes an incident may generate an internal affairs complaint, the reviewing supervisor will label the video/audio for indefinite retention.

4. As part of the meaningful review process, supervisors shall review all BWC footage involving the below, unless restricted in section V of this policy:

   a. Use of force; and

   b. Motor vehicle and foot pursuits; and

   c. Officer involved collisions; and

   d. Officer involved injuries.

V. RECORDS RETENTION AND REVIEW

A. Viewing of BWC events is strictly limited to sworn officers of this department. Viewing by any other person is prohibited unless authorized by the Chief of Police, his/her designee, or consistent with the provisions of this policy.

B. BWC recordings shall not be divulged or used for any commercial or other non-law enforcement purpose.

C. No law enforcement officer or civilian employee of this department shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose. Access to, use of, and receiving an account of a stored BWC recording is permitted only:

   1. To assist the officer whose BWC made the recording in preparing his/her **own** substantive police report, providing a statement, or submitting to an interview.

      1. Except when:

         1) The incident involves the use of force by the officer, when the officer knows or should know that the use of force resulted in significant or serious bodily injury or death; or

         2) The incident involved the discharge of a firearm or any use of deadly force by the officer (see this agency's policy on *Use of Force*); or

         3) The incident involved the death of a person while in law enforcement custody; or

         4) The incident involved the death of a person during an encounter with a law enforcement officer; or

         5) An incident the officer knows or has been advised is or will be the subject of an internal affairs or civilian complaint relating to the officer's use of force, bias, or dishonesty.

      2. Whenever an officer reviews or receives an accounting of a BWC recording prior to the creation of any report, statement, or interview, the officer shall acknowledge that prior review or receipt of an accounting of the BWC recording either verbally or in writing within each such report, statement, or interview.

1) The officer shall document each BWC recording that was reviewed and the date of the review.

2) If the officer received an accounting of a BWC recording, the officer shall document the name of each person who provided an accounting of the BWC recording, the date of the accounting, and the specific BWC recording for which an accounting was provided.

3. Officers shall only be permitted to review or receive an accounting of such BWC recordings once the investigating entity concludes that (a) the officer has in fact completed the specified incident memorialization and (b) the officer's review or receipt of an accounting of the BWC recording will not otherwise interfere with the ongoing investigation.

1) In cases subject to *Attorney General Directive 2019-4*, the independent investigator is the investigating entity.

2) In all other cases, the Chief of Police or his/her designee is the investigating entity.

3) The appropriate investigating entity shall document the authorization to review or receive an accounting of a BWC of a specified incident.

2. When relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency.

3. To show to a civilian who intends to file a complaint against an officer to demonstrate what occurred during the encounter so that the person can make an informed decision whether to file the complaint. Only the internal affairs supervisor or his/her designee can show such a recording to a civilian.

4. To comply with the state's discovery obligations in prosecutions pursuant to the Rules of Court:

a. Such request must be specific and on the proper instrument, i.e., subpoena, discovery request, etc.

b. Only those portions of the recording pertinent to the request shall be forwarded.

c. This agency reserves the right to redact video/audio as applicable by law with software approved by the BWC vendor or the Morris County Prosecutor's Office.

1) Redaction includes, blurring images or muting audio segments.

2) Redactions could include, but are not limited to:

a) Faces of victims by blurring.

b) Faces of civilians that are not part of the investigation by blurring.

c) Addresses, social security numbers, dates of birth, etc. unless pertinent to the investigation by muting.

3) Consult with an assistant prosecutor before redacting any recording involving a criminal matter under its jurisdiction.

4) Consult with the municipal prosecutor before redacting any recording involving a matter under municipal court jurisdiction.

5) Consult with the township attorney before redacting any recording involving a civil matter involving litigation against the township, the department, or an employee.

6) NOTE: when providing discovery in a domestic violence matter, ensure that the recording is reviewed prior to release to verify that there is no confidential information that should be redacted.

7) This confidential information includes, but is not limited to, the location where the victim is being sheltered or contact phone numbers for those assisting the victim, etc.

d. Advise the attending assistant prosecutor at the Morris County Prosecutor's Office when releasing any BWC recordings for discovery in a criminal matter under its jurisdiction. Ensure that the MCPO receives a copy.

e. Advise the municipal prosecutor when releasing any BWC recordings in discovery matters under the jurisdiction of the municipal court. Ensure that the municipal prosecutor receives a copy.

f. Contact the township attorney/solicitor before releasing any BWC recordings in civil matters when this township, police department, or any officer/agent of the township is the subject of a tort/civil claim. If authorized for release under discovery, ensure that the township attorney/solicitor receives a copy.

g. All requests for copies or review of BWC recordings are subject to the fee requirements of the prevailing ordinance.

5. To comply with any other legal obligation to turn over the recording to a person or entity.

6. Solely and exclusively for internal training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording cannot be determined by persons viewing the training video, unless the depicted individuals have consented to the recording being used for training purposes:

a. Note: consent is not required from Harding Township police officers appearing in the recording.

b. Recordings retained beyond 180 days solely and exclusively for training purposes shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.

7. 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 Morris County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee.

8. To show or disseminate the recording to a civilian or a non-law enforcement entity or to disseminate it to the public, when the Morris County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, determines that disclosure to that person, entity, or the public is warranted because the person's/entity's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.

9. To conduct an audit to ensure compliance with this policy.

10. Any other specified official purpose when the Morris County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording

D. Officers/employees shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. Officers/employees shall not instruct another to alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. If an officer, employee, or agent fails to adhere to the recording or retention requirements contained in this policy or N.J.S.A. 40A:14-118.5 et seq., or intentionally interferes with a BWC's ability to accurately capture audio or video recordings.

1. The officer, employee, or agent shall be subject to appropriate disciplinary action; and

2. There shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured; and

3. There shall be a rebuttable presumption that evidence supporting a plaintiff's claim was destroyed or not captured in favor of a civil plaintiff suing the government, a law enforcement agency, or a law enforcement officer for damages based on police misconduct if the plaintiff reasonably asserts that evidence supporting the plaintiff's claim was destroyed or not captured.

4. Any recordings from a BWC recorded in contravention of this policy or any other applicable law shall be immediately brought to the attention of the BWC administrator and the Chief of Police and immediately destroyed by the BWC administrator or the Chief of Police following consultation and approval by the Morris County Prosecutor or Director of the Office of Public Integrity and Accountability. Such recordings shall not be admissible as evidence in any

criminal, civil, or administrative proceeding, except as evidence in any proceeding related to the unauthorized use of a BWC.

E. Recordings are considered criminal investigatory records of this police department and shall be maintained on a secure server and disposed of in accordance with law and New Jersey Bureau of Records Management (NJBRM) records retention schedules.

1. Except for recordings being stored for criminal, civil administrative proceedings, or evidentiary purposes, recordings shall be retained for a period of at least 180 days.

2. Recordings being stored for criminal, civil, or administrative purposes must be retained until the conclusion of the case plus any retention period.

3. Recordings of an arrest that did not result in an ongoing prosecution, or records the use of police force, shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer or the employing law enforcement agency.

4. BWC recordings shall automatically be retained for not less than three years if it captures images involving an encounter about which a complaint has been registered by a subject of the BWC recording.

5. BWC recordings shall be retained for not less than three years if requested by:

a. The officer whose BWC made the recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or

b. The officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or

c. Any immediate supervisor of an officer whose BWC made the recording or who is a subject of the BWC recording, if that immediate supervisor reasonably asserts the recording has evidentiary or exculpatory value; or

d. Any officer, if the BWC recording is being retained solely and exclusively for police training purposes; or

e. Any member of the public who is a subject of the BWC recording; or

f. Any parent or legal guardian of a minor who is a subject of the BWC recording; or

g. A deceased subject's next of kin or legally authorized designee.

h. NOTE: the member of the public, parent, or legal guardian, or next of kin or their designee (subsections V.E.5 (e)(f)(g)) shall be permitted to review the body worn camera recording in accordance with N.J.S.A. 47:1A-1 et seq. to determine whether to request a three-year retention period.

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

F. Open public record requests. Only the following BWC recordings shall be exempt from public inspection:

1. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection V.E.4 of this policy if the subject of the BWC recording making the complaint requests the BWC recording not be made available to the public.

2. BWC recordings not subject to a minimum three-year retention period or additional retention requirements pursuant to subsection V.E.5 of this policy.

3. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection V.E.5(a)(b)(c)(d) of this policy.

4. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection V.E.5(e)(f)(g) if an officer, parent, or legal guardian, or next of kin or designee requests the BWC recording not be made available to the public.

G. The Chief of Police or his/her designee shall notify the Morris County Prosecutor's Office within one business day upon receiving any subpoena, court order or OPRA request for a BWC recording *before complying with the request*. Such notice shall clearly state the deadline by which a response must be made.

1. When responding to a subpoena or court order, or a request pursuant to the Open Public Records Act or common law right to know, notify the Morris County Prosecutor's Office at *ProsecutorBWC@co.morris.nj.us*.

2. Such notification should include the following:

a. Type of request (e.g., subpoena, court order, OPRA/common law).

b. Municipality.

c. Location of recording.

d. Requestor's identity.

e. Type of officer interaction.

f. If related to potential indictable conduct provide known complaint, Promis-Gavel, or case numbers

g. Whether related to DP/PDP conduct, municipal ordinance enforcement, or a traffic violation.

h. Whether not related to the enforcement of criminal or traffic laws.

3. Do not release the BWC footage to the requestor for a minimum of two (2) business days following the notification to the Morris County Prosecutor's Office. Following the passage of two (2) business days:

   a. When the requested footage is related to indictable conduct or a Morris County Prosecutor's Office involved investigation or prosecution, do not release the footage until receiving approval from the Morris County Prosecutor's Office.

   b. When the requested footage is not related to indictable conduct or a Morris County Prosecutor's Office investigation/prosecution, consult with the municipal prosecutor and/or municipal attorney before release.

H. A BWC recording of an event or encounter that involves an investigation of a criminal offense shall not be shared with or provided or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the Rules of Court governing discovery in prosecutions, or by a court order, or unless the Chief of Police in consultation with the Morris County Prosecutor or his/her designee determines that the person's/entity's/non-law enforcement agency's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.

1. If disclosure of a BWC recording as part of the state's discovery obligations in a prosecution might present a danger to any officer or civilian (e.g., reveal an undercover officer, confidential informant, surveillance site, etc.), or might reveal confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms during execution of a warrant, techniques for convincing persons to open doors during warrant execution, etc.), the Morris County Prosecutor or his/her designee shall, in the exercise of sound prosecutorial discretion, take such steps as are appropriate and authorized by law and/or court rule to protect the information from disclosure, such as by seeking a protective order from the court.

2. A BWC recording tagged pursuant to subsections IV.K.2 through IV.K.8 (special privacy) of this policy shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Morris County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee. The Morris County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee may authorize the Chief of Police and one or more supervisory officers to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to subsections IV.K.2 through IV.K.8.

3. The independent investigator or his/her designee overseeing an investigation, pursuant to *Attorney General Law Enforcement Directive 2019-4* (subsection IV.K.1 of this policy), 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.

I. The server software maintains a record of all BWC recordings that are accessed, viewed, copied, disseminated, or deleted. The Chief of Police shall cause a periodic audit of these records to ensure compliance with this policy. Minimally, this recordkeeping system shall document the following information:

1. The date and time of access; and

2. The specific recording(s) that was/were accessed; and

3. The officer or civilian employee who accessed the stored recording; and

4. The person who approved access, where applicable; and

5. The reason(s) for access, specifying the purpose or purposes for access and specifying the relevant case/investigation number, where applicable.

J. Officers and employees shall not reproduce or store any recordings to any device or storage medium. This shall include, but not limited to, cell phones, electronic notebooks, etc.

K. Recorded video of unusual or significant incidents, deemed to be beneficial for departmental training, may be utilized for departmental in-service training purposes only with the approval of the Chief of Police. Officers are encouraged to notify their supervisors of recordings, which may be beneficial for training purposes.

VI. DELETION REQUESTS

A. Only the BWC administrator can delete BWC recordings with the expressed consent of the Chief of Police or the Morris County Prosecutor's Office. BWC footage from cases involving an arrest shall not be deleted without the expressed authorization of the Morris County Prosecutor's Office.

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

1. The recording shall not be viewed, but the officer shall tag the recording as 'special privacy' and submit a written report to the internal affairs supervisor and to the BWC administrator. The actual BWC shall be taken out of service and turned over to the internal affairs supervisor for downloading. The officer shall be issued a spare unit as a replacement.

2. Depending on the circumstances, the internal affairs supervisor may investigate the incident.

3. When investigating, the internal affairs supervisor shall respect all rights to personal privacy, having the BWC recording viewed only by an officer of the same sex, if necessary.

4. Upon completion of the investigation, the internal affairs supervisor shall notify the Chief of Police and request permission to delete the recording if warranted.