

ACLU OF VIRGINIA MODEL BWC POLICY

1.00	EFFECTIVE:	_____
	REVISED:	
SUBJECT: BODY WORN CAMERA (BWC) RECORDING DEVICES AND IMAGING EQUIPMENT		
		PAGE:

1.00.1 PURPOSE

The purpose of this policy is to provide direction for the use of audio, visual and imaging recording by Body Worn Camera (BWC) systems. The use of Department-approved body worn camera systems can provide powerful evidence of criminal activity and has proven to be a valuable tool for law enforcement in documenting enforcement members' honesty, integrity, and professionalism.

1.00.2 POLICY

Enforcement members (commissioned officers and animal services officers) shall use their BWC systems and all other recording and imaging devices in compliance with manufacturer's operational guidelines, Department training and this policy. It is the policy of the Department to authorize the use of BWC to collect audio-visual evidence of criminal activity, to evaluate enforcement members' performance, and as a training tool for members. The benefits of the use of these devices can be a useful tool in prosecutions.

1.00.3 PROCEDURES – BWC

- A. Only members with enforcement authority shall be permitted to wear a BWC.
- B. Enforcement members, who serve an undercover role in a specialized assignment on a task force such as DEA, will not be subject to this policy and will refer to the governing policies and procedures for that particular special assignment.
- C. Enforcement members engaging in off-duty assignments shall adhere to this policy while fulfilling the off-duty obligation in any capacity for the Department.
- D. BWC's should be worn in a location and manner that maximizes the camera's ability to capture video footage of the enforcement member's activities.
- E. Enforcement members shall activate the BWC at the inception of all investigative or enforcement contacts that are conducted in person with a member of the public, until the contact with the member of the public has concluded and the enforcement member has left the scene, which include but are not limited to; pedestrian stops, consensual encounters, calls-for-service, on-view events, SWAT deployments.
- F. The enforcement member shall activate the BWC at the first reasonable opportunity to do so, unless an immediate threat to the enforcement member's life or safety makes activating the BWC impossible or dangerous, in which case the enforcement member should activate the BWC as soon as it is safe to do so.

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- G. Additional arriving enforcement members who are equipped with BWC shall activate their cameras and begin recording the situation upon their arrival until the enforcement member leaves the scene.
- H. BWC's shall not be used surreptitiously. Enforcement members wearing a BWC shall notify any person(s) that they are being recorded by a body camera as close to the inception of the encounter as is reasonably possible, unless an immediate threat to the enforcement member's life or safety makes notification impossible or dangerous, in which case the enforcement member should notify the person(s) as soon as it is safe to do so..
- I. During consensual encounters in locations where members of the public have a reasonable expectation of privacy, such as a residence or hospital room, an enforcement member shall offer the member of the public the option to have the BWC discontinue its recording. If the member of the public requests the recording be discontinued the enforcement member shall immediately discontinue use of the BWC.
- J. When interacting with an apparent crime victim, the enforcement member shall, as soon as feasible, ask the apparent crime victim if they want the enforcement member to discontinue use of the BWC. If the apparent crime victim responds affirmatively, the enforcement member shall immediately discontinue use of the BWC.
- K. When interacting with a person seeking to anonymously report a crime or assist in ongoing law enforcement investigation, an enforcement member shall, as soon as feasible, ask the person seeking to remain anonymous, if they would like to remain anonymous and would like the enforcement member to discontinue use of the BWC. If the person seeking to remain anonymous responds affirmatively, the enforcement member shall immediately discontinue use of the BWC.
- L. All enforcement member offers to discontinue the use of the BWC, and the responses thereto, shall be recorded by the BWC prior to discontinuing the use of the BWC.
- M. An arrest or search of a residence or a person(s) is not considered a consensual encounter for the purposes of this policy. The BWC shall remain activated until the event is completed in order to ensure the integrity of the recording.
- N. Deliberative process conversations involving law enforcement, which are not participated in by citizens, which include but are not limited to discussions on charging decisions, and comparing witness accounts, shall not be recorded.
- O. Whenever the enforcement member believes that a recorded contact may lead to a complaint, they shall bring the recording to the attention of their supervisor as soon as practical. If no crime report or supplementary report is being prepared, details of the contact may be documented via information report or memorandum.

1.00.4 PROHIBITED USE OF BWC

- A. BWC's shall not be used for mass surveillance at public events or to gather intelligence information related to First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between an enforcement member and a member of the public.
- B. Audio or video recording devices shall not be used in Department locker rooms, restrooms or any other intimate places where there would be a reasonable expectation of privacy.

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- C. Enforcement members shall not intentionally record confidential informants or undercover officers unless the recording is conducted specifically for the purpose of documenting an operation, drug purchase/sale or other undercover operation in furtherance of a criminal investigation.
- D. The BWC shall not be activated while on the grounds of any public, private or parochial elementary or secondary school, or inside a medical treatment facility, except for the following exceptions:
 - 1. during times when all parties being visibly or audibly recorded are in a private room with consent for such recording;
 - 2. while effecting an arrest; or
 - 3. while controlling a person through response to resistance techniques.

E. Reporting Requirements

1. If an enforcement member is suspected of wrongdoing or involved in an officer-involved shooting or other use of force, the Department expressly prohibits an enforcement member from viewing the video file until after they have completed an initial report. In other circumstances, although the BWC is not a replacement for written reports, enforcement members may refer to the BWC video for exact quotes that were used by the contacted parties.

2. All digital media captured using the BWC will be considered property of the Department. Accessing, copying or releasing any recording by any member for other than official law enforcement purposes is strictly prohibited, except to the extent disclosure is required or authorized by the Virginia Freedom of Information Act and the release is approved by the appropriate Department official.

F. Deletion of Unintentional Recordings

In the event of an unintentional activation of the BWC system during a non-enforcement or non-investigative activity, including but not limited to, restroom, meal break, or other areas where a reasonable expectation of privacy exists, enforcement members may request the recording to be deleted. A memorandum detailing the circumstances of the unintentional recording will be forwarded via the chain of command to the Chief of Police. If approved, the actual deletion requires two-party authorization. One of those parties will be the Chief of Police or designee and the other party will be (Department BWC Administrator).

1.00.5 BWC DOCUMENTATION

If an enforcement member fails to activate their BWC, fails to record the entire contact, or interrupts the recording, the enforcement member shall document why the recording was not made, interrupted or terminated.

1.00.6 OTHER PHOTO, ELECTRONIC AND RECORDING DEVICES

- A. Department members shall not use a personal electronic recording or imaging device while performing police duties except in rare events to record evidence when Departmental issued equipment is not available.

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- B. All photographs containing any individually identifiable patient information are covered by HIPAA privacy laws and must be protected in the same manner as patient care reports and documentation.
- C. Recordings shall be used for evidentiary documentation or training purposes only, except as permitted by prior written approval by the Chief of Police or designee. Only those members acting under their official duties will be permitted access to recordings and/or images.
- D. Department members will not make surreptitious recordings of conversations with other Department members except when necessary in the course of a criminal investigation or for Department administrative investigations. In either case, the Chief of Police or designee will be notified prior to for authorization of the nonconsensual recording.
- E. Any on-scene images/recordings and or any other images/recordings taken by members in the course and scope of their duties are the sole property of the Department. This includes any images taken intentionally or inadvertently with a member's personally owned camera, cell phone camera, or any other digital imaging device. The images shall be downloaded as soon as feasible and deleted off of the member's personal device.
- F. No images/recordings taken by any member in the course and scope of their duties may be used, printed, copied, scanned, e-mailed, posted, shared, reproduced or distributed in any manner, unless for official law enforcement purposes. This prohibition includes the posting of any Department photographs on personal Web sites including but not limited to, Facebook, Myspace, YouTube, other public safety agency Web sites, or e-mailing to friends, relatives or colleagues without prior approval of the Chief of Police.
- G. All Department digital data will be downloaded as soon as feasible, and will be cataloged and stored in a secure database with access limited to appropriate members. After being downloaded, digital data on memory cards will be erased, including any member's personal devices.

1.00.7 AUDITING

- A. BWC will be audited by a designated supervisor on a periodic basis. Documented audits will be completed on the most recently available devices and by selecting downloads at random. These audits will focus on the following areas:
 - 1. customer service;
 - 2. use of a body microphone;
 - 3. training;
 - 4. lighting issues (primarily for traffic stops made at night);
 - 5. enforcement member's articulation for the microphone;
 - 6. compliance with this policy;
 - 7. enforcement member safety issues; and
 - 8. any other issue that could result in generating a citizen complaint, a hindrance to prosecution or liability for the enforcement member or this Department.

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- B. The designated auditing supervisor shall keep a log documenting findings during BWC device auditing.

1.00.8 DATA STORAGE AND RETENTION

- A. Data gathered by the BWC shall be retained and stored by this Department or an authorized third-party for a minimum of 30 days of the date of the recorded incident (if required by state record retention policies) and for up to two (2) years from the date of the recorded incident if deemed by the Department to have evidentiary or exculpatory value in a civil action. If the data is deemed to have evidentiary or exculpatory value in a criminal action it shall be downloaded from the server and booked into evidence and retained as evidence as long as required by applicable Virginia law.
- B. Any third-parties acting as an agent in maintaining BWC footage shall not be permitted to independently access, view or alter any video footage, except to delete videos as required by law or this agency's retention policies.
- C. Data gathered by the BWC shall be retained and stored by this Department for a minimum of two (2) years from the date of the recorded incident (or longer if required by the state's record retention policies governing evidence of a criminal act) if the video footage captures images involving:
 - 1. any use of force;
 - 2. events leading up to an including an arrest for a felony-level offense, or events that constitute a felony-level offense; or
 - 3. an encounter about which a complaint has been registered by a subject of the video footage.
- D. Data gathered by the BWC shall be retained and stored by this Department for a minimum of two (2) years from the date of the recorded incident if a longer retention period is voluntarily requested by:
 - 1. enforcement member, if the video footage is being retained solely and exclusively for Department training purposes;
 - 2. any member of the public who is a subject of the video footage;
 - 3. any parent or legal guardian of a minor who is the subject of the video footage; or
 - 4. a deceased subject person's next of kin or legally authorized designee.
- E. Any member of the public, parent or legal guardian of a minor, or a deceased subject's next of kin or legally authorized designee who is a subject of video footage, shall be permitted to review that specific video footage in order to make a determination as to whether they will voluntarily request it to be subject to a two (2) year retention period.
- F. Pursuant to the Virginia Freedom of Information Act and its requirement that exceptions to disclosure be construed narrowly, it is the goal of this policy to support and promote openness in government by releasing video recordings to the public upon request whenever possible. This policy must also ensure that the privacy of victims, witnesses and suspects is maintained whenever feasible. BWC video footage shall not be divulged or used for any commercial or

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other non-law enforcement purpose. This policy will not affect the release of recordings pursuant to a court order or subpoena.

- G. Nothing in this policy shall be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations and prosecutions.
- H. Data gathered by the BWC may be used and shared with the Commonwealth's Attorney's office or other law enforcement agencies only as permitted by law.

1.00.9 REPAIRS, INSPECTION AND MAINTENANCE

Enforcement members utilizing a BWC will maintain the equipment per the manufacturer's guidelines and inspect the equipment for nonfunctioning or malfunctioning devices before duty and immediately report any nonfunctioning equipment to their supervisor. The shift supervisor may reassign another unit if audio/video equipment has a malfunction provided a unit is available, or reissue another BWC until repairs or replacement can be made, if available.

1.00.10 TRAINING REQUIREMENTS

Enforcement members and supervisors will be provided adequate training in the use of BWC devices prior to being allowed to use the equipment.

1.00.11 ACCOUNTABILITY AND DISCIPLINE

All enforcement members are accountable for complying with this policy governing the use of BWC devices. Appropriate disciplinary action, up to and including termination, will be taken against any enforcement member who is found to have failed to adhere to the recording or retention requirements contained in this policy, to have intentionally interfered with a BWC's ability to accurately capture video footage, or to have engaged in any other intentional violation of the requirements of this policy governing the use of a BWC on or off duty.