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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2015-1

TO: Director, Division of Criminal Justice
Superintendent, New Jersey State Police
All County Prosecutors
All County Sheriffs
All Chief Law Enforcement Executives

FROM: John J. Hoffman, Acting Attorney General

DATE: July 28, 2015

SUBJECT: **Law Enforcement Directive Regarding Police Body Worn Cameras (BWCs) and Stored BWC Recordings**

In recent months, law enforcement agencies have begun to equip their officers with body worn cameras ("BWCs"). A small number of police departments in New Jersey already deploy BWCs, while others plan to do so and currently are balancing the costs and benefits of these devices. New grant programs will incentivize departments to acquire BWCs by helping to defray costs.

In light of the proliferation of BWCs across the State, it is appropriate for the Attorney General, as the State's chief law enforcement officer, to provide guidance to police departments on how to make the best possible use of electronic recording technology. See N.J.S.A. 52:17B-98 (Attorney General is responsible for general oversight of law enforcement, and for ensuring the uniform and efficient enforcement of the criminal laws and the administration of criminal justice). It is decidedly in the public interest to establish foundational statewide standards with respect to certain critical policy issues, such as how an agency explains its BWC policy to the general public, when officers are required to activate their BWCs, when officers are permitted to turn off the recording device during an ongoing police-civilian encounter, and when and for what purposes law enforcement agencies and officers are authorized to access, view, copy, or disseminate stored BWC recordings. Although the statewide standards will establish basic requirements that all police departments must satisfy, these standards also should permit agencies to account for local community needs and interests, and should encourage agencies to develop and share best practices as they gain experience in using these devices.

Accordingly, I, John J. Hoffman, Acting Attorney General of the State of New Jersey,



pursuant to the authority granted to me by the Constitution of the State of New Jersey and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, hereby DIRECT that all law enforcement agencies and officers shall implement and comply with the following procedures, standards, and practices concerning the use of body worn cameras and recordings.

1. GOVERNING PRINCIPLES

1.1 Establishing Uniform Statewide Standards While Permitting Departmental Policies to Address Local Concerns.

The policies and standards established in this Directive are designed to help police departments achieve an optimal balance between potentially competing interests. For example, it is necessary to balance the need to promote police accountability and transparency on the one hand, against the need to respect the privacy interests of persons whose images and home interiors will be captured in a BWC recording on the other. So too, it is necessary to balance the benefits achieved by electronically recording evidence that might help to solve a crime and successfully prosecute an offender against the costs incurred if a BWC were to chill a victim or witness from providing a camera-equipped officer with information necessary to solve a crime and convict the offender.

This Directive does not mandate the acquisition or deployment of BWCs. Rather, the decision to acquire these devices, and the decision as to when and in what circumstances officers will be equipped with them, is left to each law enforcement agency. If a department decides to equip an officer with a BWC, this Directive provides guidance on how the device is to be used, when it will be activated, when it might be de-activated in the course of an unfolding police-civilian encounter, and when a BWC recording may be accessed, viewed, copied, disseminated, or otherwise used. In providing such guidance, this Directive establishes certain foundational requirements that all police departments must satisfy. Law enforcement agencies nonetheless are expressly authorized to impose additional requirements beyond – but not inconsistent with – those established in this Directive. In this way, police agencies are afforded an opportunity to tailor their BWC policies and procedures to address local concerns and needs.

Although police executives are afforded some flexibility in developing departmental policies and practices that address local needs and community concerns, this Directive makes clear that all policies must limit the discretion of individual officers in the field. The decision to activate a BWC must be based on objective criteria (e.g., the initiation of a specified type of police action, such as a consensual field inquiry, or the start of an officer's duty shift). Furthermore, in any circumstance where an officer is afforded discretion in deciding whether to de-activate a BWC, the reasons for exercising that discretion must be documented to permit supervisory review.

1.2 Recognizing the Multitude of Reasons for Deploying BWCs.

It is widely recognized that BWCs can play an important role in addressing public concerns about police use of force. A BWC recording of a police-involved shooting or other use-of-force event provides objective evidence of what occurred. The practical utility of BWCs, however, lies not only in their ability to record objectively the circumstances of a police-civilian confrontation, but also in their capacity to discourage both officers and civilians from engaging in inappropriate conduct. Thus, for example, a BWC operating during a police-civilian encounter can deter the officer from using force inappropriately, while at the same time deter a civilian from engaging in provocative conduct that might prompt the officer to use force. These devices also can serve to discourage both law enforcement and civilian witnesses from providing false information about the circumstances of the encounter; a BWC recording not only can vindicate an officer who is falsely accused of misconduct, and do so very quickly, but also will discourage a person from making false allegations against the officer in the first place.

The foregoing benefits provide ample reason for police departments to consider deploying BWCs. The practical utility of these recording devices, however, is not limited to those rare occasions when police employ force, or are accused by civilians of misconduct. BWC recordings will be used far more routinely to document visual and aural evidence learned in the course of conducting police investigations. Not only will BWC recordings preserve accurate visual depictions of physical evidence, such as weapons and illicit drugs and paraphernalia, but also will document where and how physical evidence was found, thereby helping to establish the facts that must be presented in Fourth Amendment suppression hearings. BWCs also will record the physical appearance of suspects and crime victims, preserving evidence of any apparent injuries. The audio portion of BWC recordings, meanwhile, will document witness and suspect statements, preserving not only the substantive content of those statements, but also showing whether officers had complied with Miranda and other legal requirements.

Although BWCs record events accurately and objectively, they do not replace the need for complete and accurate police reports and testimony. The fact that a BWC is not activated to record an encounter or event does not, of course, preclude an officer from testifying as to the circumstances of the encounter or event, or affect the admissibility of evidence. Nor does it suggest that the officer's written report or testimony is inaccurate or incomplete. However, a BWC recording can supplement and corroborate the accuracy of written reports and testimony, which is one of the significant benefits of deploying these devices.

1.3 Practical and Policy-Related Differences Between BWCs and Vehicle-Mounted Video Cameras.

Many police departments have been using vehicle-mounted dashboard cameras (“dash cams”) for years. Those departments already have well-established and reliable procedures in place for downloading electronic video/audio data securely, for preserving recordings, and for making

them available for discovery in criminal prosecutions.

Police officers in jurisdictions that deploy dash cams have developed expertise in using these electronic recording devices to preserve evidence and to protect themselves against false allegations of misconduct. Our State's longstanding experience with dash cams is important and must be integrated into the development of sound BWC practices and procedures. But it is not enough simply to copy and apply existing dash cam policies to this new form of electronic recording device. The inherent differences between dash cams and BWCs require a careful analysis of existing policies, practices, and procedures, recognizing that BWCs will record events that transpire during a much broader range of police-civilian encounters than traditionally have been recorded by dash cams. Vehicle-mounted cameras, of course, record events that occur out on the street, where there is a reduced expectation of privacy as compared to police-civilian encounters that occur, for example, inside private homes. An activated BWC, in contrast to a dash cam, will record events occurring during any type of police-civilian encounter occurring in any setting. BWCs thus raise privacy issues and other complex issues that dash cam policies have not had to address.

Accordingly, it is appropriate and necessary by means of this Directive to provide guidance to police departments on how best to balance competing interests and values to make the best possible use of this new law enforcement technology.

2. DEFINITIONS

For purposes of this Directive:

- a. "Activate" means to actuate the recording mode/function of a body worn camera.¹
- 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 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).

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Some BWC models may be turned on and remain in a standby or buffering mode, during which the device does not make a permanent record of images/sounds unless the officer activates the recording mode/function. With respect to these models, when the officer activates the recording mode/function, the device automatically preserves an electronic recording of the events that transpired a fixed period of time (*e.g.*, 30 seconds) before the recording mode/function was activated. This time-delay or "buffering" feature allows the device to capture data concerning the event/circumstances that prompted the officer to activate the BWC. When an officer does not activate the recording mode/function, data captured while the device is in standby/buffering mode is overwritten automatically.

- 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.

3. POLICE DEPARTMENT POLICIES GOVERNING DEPLOYMENT AND USE OF BWCs AND RECORDINGS

3.1 Promulgation of Police Department Policies and Procedures.

Within 60 days of the issuance of this Directive, every law enforcement agency that already has equipped any of its officers with a BWC shall promulgate and enforce a policy, standing operating procedure, directive, or order, in a form as may be appropriate given the customs and practices of the agency, which shall comply with the policies, standards, and requirements of this Directive. In the event that an agency has not deployed BWCs prior to the issuance of this Directive, the agency shall not deploy or use BWCs without first promulgating a policy, standing operating

procedure, directive, or order in accordance with this paragraph.

Any policy, standing operating procedure, directive, or order promulgated by an agency pursuant to this Directive shall provide that: 1) a law enforcement officer employed by the agency only may use a BWC system that has been issued and approved by the agency; 2) an officer equipped with a BWC must comply at all times with the requirements established in this Directive and in the agency's policy, standing operating procedure, directive, or order issued pursuant to this Directive; 3) a BWC shall be used only in performance of official police duties and not for personal purposes; 4) no BWC recording shall be accessed, viewed, copied, disseminated, or otherwise used by a sworn officer or civilian employee of the agency except for an official purpose specified in this Directive; and 5) any sworn officer or civilian employee of the agency who knowingly violates the requirements of this Directive or the agency's policy, standing operating procedure, directive, or order shall be subject to discipline.

3.2 Officers Authorized to Wear/Use BWCs.

The chief law enforcement officer of the department shall determine which officers will be equipped with BWCs, and shall determine the type(s) of duty assignments (e.g., uniformed patrol, plainclothes detective, special/tactical operations deployments, etc.) when those officers will wear BWCs. 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.

An officer shall not wear a BWC unless he or she: 1) has been authorized to do so by the chief law enforcement officer of the department, or by the chief law enforcement officer of the agency overseeing a multi-agency task force, team, or unit; and 2) has received training on the proper care and use of the device in accordance with the requirements of this Directive and the policy, standing operating procedure, directive, or order promulgated pursuant to section 3.1. Nothing in this Directive shall be construed to require that officers assigned to any particular type of duty assignment will be equipped with BWCs. That decision is left to the department. Rather, this Directive provides foundational standards governing the use of BWCs by officers who have been directed by their agency to wear the device. Nothing in this Directive shall be construed to prevent an agency from developing a pilot program to determine when and in what circumstances/duty assignments the deployment of BWCs would be most efficacious.

3.3 Duty to Inspect and Report Malfunctions.

An officer equipped with a BWC shall be responsible for determining that the device is fully functional and that its battery is adequately charged at the start of the officer's duty shift and before going into the field. If a malfunction is detected, the officer shall report the malfunction to a supervisor before going into the field. If the BWC malfunctions while out in the field, the