Vermont Department of Public Safety Law Enforcement Advisory Board

SUMMARY REPORT

2022

The Law Enforcement Advisory Board advises the commissioner of public safety, the governor, and the general assembly on issues involving the cooperation and coordination of all agencies and constables that exercise law enforcement responsibilities.

Prepared by: Law Enforcement Advisory Board

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Table of Contents

LEAB Members..... 1

Introduction..... 2

Body Worn Camera Policy..... 3

Law Enforcement Advisory Board Members

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- Chief Shawn Burke, Vermont Association of Chiefs of Police

Vice-Chair

- Director Anthony Facos, Vermont Department of Motor Vehicles

Members

- Commissioner Jennifer Morrison, Department of Public Safety
- Colonel Matthew Birmingham, Director of the Vermont State Police
- Colonel Justin Steadman, Director of Vermont Fish & Game
- Gwynn Zakov, Municipal Policy Advocate, Vermont League of Cities and Towns
- Domenica Padula, Attorney General's Office
- John Campbell, Executive Director, State's Attorney & Sheriff's Office
- Kraig LaPorte, U. S. Attorney's Office
- Matthew Valerio, Defender General's Office
- Michael O'Neil, Vermont Troopers Association Representative
- Constable Nelson Tift, Vice-President, Vermont Constable Association
- Chief George Merkel, Vermont Police Association Representative
- Chief Matthew Romei, Capitol Police
- Thomas Mozzer, Vermont State Employees Association
- Director Heather Simons, Vermont Criminal Justice Council
- Sheriff Jennifer Harlow, Orleans County Sheriff, Vermont Sheriff's Association

SUMMARY REPORT 2022

INTRODUCTION

In 2004, the Vermont General Assembly created a Law Enforcement Advisory Board (LEAB) of the Department of Public Safety with authorizing language contained in 20 V.S.A. §1818.

The purpose of the Board is to advise the Commissioner of Public Safety, the Governor, and the General Assembly on issues involving the cooperation and coordination of all agencies that exercise law enforcement responsibilities. Membership of the board is set by statute.

Each year the board identifies issues that are of importance to the law enforcement community, takes testimony on these matters and offers recommendations to advance the issues. Often the Vermont legislature will provide the law enforcement advisory board with issues that require study. The board then takes testimony and prepares written reports in support of the work that is accomplished. The board uses a collaborative approach in its work, creating working groups from a variety of interested persons, organizations and/or subject matter experts.

In 2022, the LEAB addressed the following:

- Statewide model Body Worn Camera Policy

As always, LEAB members would welcome an opportunity to offer testimony and answer any questions regarding any subject in this report.

Respectfully submitted,

Shawn P. Burke, Chief of Police
South Burlington Police Department
2022 Chair, LEAB

LEAB Report – Statewide Model Body Worn Camera Policy

In January of 2022 Vermont Criminal Justice Council Director Heather Simons provided the LEAB with an overview of the Council's recent action of implementing a statewide model body worn camera policy. Pursuant to Title 20 VSA § 2369 the Council adopted a model policy that had been in development since 2016.

Once the policy was operationalized, there were a number of challenges identified. Stakeholders and law enforcement expressed an interest in examining the challenges faced with the goal of evolving the policy. Representatives of the LEAB were asked to engage their constituents in an attempt to coalesce the challenges of the body worn camera policy in its current form.

The LEAB extended invitations to a variety of stakeholders through early 2022. Given that the challenges identified were primarily in the realm of uniform police services the consistent effected parties were; the Department of Public Safety, Vermont Sheriff's, and the Vermont Chief's Association.

A work group consisting of Sheriff Mark Anderson, VSP Captain Barbara Kessler, VSP Lt. Timothy Gould, and Chief Shawn Burke met regularly throughout 2022. The areas of policy focus included:

- Establishing the essential elements of a model policy,
- Reconciling the model policy with the different technologies in use,
- Examining the use of body worn camera technology in private settings,
- Improving the policy language for clarity and consistency,
- Examining the records retention section

Through this process a draft policy was created and presented to the LEAB, the draft known as the Statewide Model Body Worn Camera Policy 9.12.2022. The LEAB voted to approve this version of the model policy and advance the policy to the Vermont Criminal Justice Council for their consideration.

Chief Burke presented the LAB approved draft policy to the Vermont Criminal Justice Council and received feedback from that entity on October 5th, 2022. The work group expanded to include representatives from the Attorney General's Office and the Department of Public Safety. The draft policy was further refined, with specific focus on operating body worn camera technology in areas with privacy interests.

Chief Burke presented a final draft of the Statewide Model Body Worn Camera Policy to the Vermont Criminal Justice Council on December 7th, 2022. The Council approved the revised policy which was subsequently disseminated to all of Vermont law enforcement for implementation. The 2022 approved Statewide Model Body worn Camera Policy is attached to this report as Appendix A.

Body Camera Statewide Policy

Purpose: Body Worn Cameras are intended to record police interactions with members of the public. These recordings serve many purposes including enhancing agency transparency, accountability and public trust while documenting emergency responses and crime scenes, collecting evidence and more. This policy provides consistent guidance statewide for how and when body cameras will be used by law enforcement. It also provides consistent guidance on storage, retention, and release of recordings.

Agencies are required to adopt each component of this policy and may adopt additional components, provided that the additional components do not conflict with provisions of this policy. Agency policies that do not meet the minimum requirements of this policy shall be void, and that agency shall be subject to this model policy.

The policy must be publicly available on the agency's website or by contacting the agency.

This policy shall apply to any Vermont law enforcement agency that equip their officers with Body Worn Cameras. Generally, only uniformed officers are required to wear Body Worn Cameras unless individual agencies determine otherwise.

Policy: This policy provides consistent statewide guidance for how and when body cameras will be used by law enforcement.

Definitions:

Body Worn Camera (BWC): An electronic device capable of capturing audio and visual recordings worn on a person's body.

Law enforcement officer or sworn member: A Vermont law enforcement officer with the authority to conduct searches and make arrests. Referred to as "officer" in this policy.

Lethal force incident: Whenever an officer uses lethal force (whether the subject is injured or not); and any incident where an officer takes action that results in death or serious bodily injury to a person.

Recordings: Refers to files captured by BWCs.

Subject of the video footage: Any identifiable law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording and shall not include people who only incidentally appear on the recording.

Use of force: Any action beyond verbal commands and compliant handcuffing by a law enforcement officer that is intended to control, restrain, or overcome the resistance of another. This includes any action that results in death, injury, or complaint of injury or pain that persists beyond the use of a physical control hold. Force also includes the use of a weapon (including pointing of a firearm at a person) or empty-handed control and restraint tactics against a member of the public.

Video footage or file: any images or audio and metadata recorded by a body camera.

Table of Contents:

1. Use of BWCs
2. Equipment & Training
3. Storage, Retention & Release of Recordings

SECTION 1. USE OF BWCs

A. BWCs shall be worn in a location and manner consistent with the manufacturer's recommendations that maximize the camera's ability to capture video and audio footage of the officer's activities.

B. Generally, body worn cameras (BWC)'s shall be worn by all sworn uniform officers. An agency head may exempt specific personnel or functions. An agency head may authorize non-sworn personnel to wear a BWC.

C. BWCs are not intended to be used surreptitiously. Specifically, officers should not conceal the presence of a body worn camera, nor shall they attempt to utilize the body camera to record in secret unless authorized by a judicial order.

D. Both the video and audio recording functions of the body camera shall be activated in any of the following situations:

   1. At the beginning of any other investigative or enforcement encounter between an officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous. The officer shall activate the camera at the first reasonable opportunity to do so.

   2. During all requests made in the field to conduct a search and during the performance of the search, including K-9 searches.

   3. During administration of Miranda warnings and any response when in the field.

   4. At any incident that the officer reasonably anticipates may be confrontational or result in the need to use force.

   5. Agency heads may develop a local policy establishing additional circumstances where BWC's shall be used.

E. Except as authorized in subsections (G & F) of this section, body cameras shall not be deactivated until the encounter has fully concluded and the officer leaves the scene or continued custody of a person has ended.

F. Prior to entering a private residence, or premise where there is a reasonable expectation of privacy, without a warrant or in non-exigent circumstances, an officer shall notify the occupant(s) of use of the body camera.

1. If entering a private residence pursuant to a search warrant, the officer shall, at the time of applying for the search warrant, consult with the State's Attorney's Office or Attorney General's Office to determine whether a search warrant is needed for use of the body worn camera.

G. Permissive agency restrictions on the use of BWCs:

1. There are specific situations in which the use of BWCs is not appropriate and officers should not initiate a recording or, if an audiovisual recording has been initiated, the officer may pause or stop the recording prior to the conclusion of the event. Acceptable reasons for discontinuing recording or activating the mute feature include:

    a. During on scene conferences between officers, supervisors, advocates, clinicians, EMS personnel, attorneys, or other situations in which the officer determines the conference would violate confidentiality, privacy, or individual rights.

    b. Conferences between officers and supervisors that might compromise this or further investigations or would otherwise impede law enforcement efforts or strategy.

    c. Encounters with undercover officers or confidential informants.

    d. If a person reporting a crime or assisting with an investigation requests to remain anonymous.

    e. During times of prolonged waiting absent contact with members of the public such as waiting for a tow truck, funeral home, or similar.

    f. Recordings are not expected during non-enforcement activities.

    g. Recordings are not expected during operations such as routine regulatory functions that are unique to specialized law enforcement agencies.

    h. Recordings are not expected during the execution of a search warrant for evidence of child pornography where capturing recordings of such material and uploading them to a third-party vendor's storage would constitute a crime.

    i. Recordings are not expected during transports conducted pursuant to a transport order or where a cruiser camera is enabled and captures the individual being recorded.

    j. Recordings should not be made to record personal activities such as meal breaks or conversations with other officers, supervisors, or staff outside of the scope of official duties.

H. Prohibitions on Use of BWCs:

1. Officer shall, upon request of a victim of domestic or sexual violence, stop recording, provided the scene has been stabilized and made safe following initial response.

2. Once a scene has been stabilized and made safe by law enforcement, recording shall stop for victims of domestic or sexual violence during interactions involving matters of safety planning or related to victim privacy.

3. Officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, nor within a hospital or medical facility except when responding to an imminent threat to life or health or when a use of force is anticipated.

    a. This prohibition does not prevent officers from using BWCs as recording devices as part of an investigatory interview in a private setting within a school or medical environment.

4. Officers shall not use body cameras to record for the sole purpose of gathering intelligence information on First Amendment protected activities such as speech, associations, or religion.

    a. This shall not be construed to limit lawful use of body cameras to record investigative encounters between an officer and a member of the public or activity that raises an articulable suspicion of on-going or imminent criminal conduct.

5. Agencies shall not run recordings through facial recognition or automated analysis programs without appropriate judicial review, except for automated redaction processes which are not for the purpose of identification or comparison to any other source.

I. Recording should resume as soon as any exception no longer exists.

J. If an officer pauses or stops a recording, or uses a mute feature, they shall document the reason for the termination or suspension of the recording.

K. Review of Recordings:

1. Except as otherwise prohibited (see section 2 below), an officer may review BWC recordings prior to writing reports about incidents or arrests.

2. In situations that result in an officer involved shooting, or death or serious bodily injury to a member of the public due to the actions of an officer, the officer shall not review any recordings or be provided an account of any recordings of the incident prior to being interviewed or writing a report, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

3. See appendix A for procedures following a lethal force incident.

SECTION 2: EQUIPMENT & TRAINING

A. Responsibilities of Officers:

1. Prior to start of each shift officers are responsible for checking their body camera equipment to be sure it is operational, fully charged and free of any defects. Officers shall report any malfunctioning equipment to a supervisor, seek a replacement if available, and make a log note or other written notation of the date and time equipment malfunction was discovered.

    a. During interactions where there is an expectation that the body camera would be activated, an officer should periodically check the body camera to assess that it is functioning properly.

2. In the event a body camera either fails to activate and begin recording or fails to cease recording, the officer will describe this, along with any additional relevant details, in a written report.

3. Officers are responsible for classifying each recording appropriately. The tags or categories of files correspond to its retention period; therefore, officers must take extreme care to properly categorize each recording. Intentionally misclassifying recordings will result in appropriate disciplinary action.

4. Officers shall transfer data from their assigned BWC to the agency's storage as soon as practical, but no less than prior to use by another officer and/or prior to the capacity of the device being reached.

5. Under no circumstances shall an officer erase, edit, alter, duplicate share or otherwise distribute any recordings on their device except as allowed by this policy. Only a system administrator is authorized to delete or edit files pursuant to section 3 of this policy. Only designated staff are authorized to duplicate and distribute copies of recordings pursuant to section 3 of this policy.

6. Should any officer or employee fail to adhere to the recording requirements contained in this policy, intentionally interfere with a body camera's ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation, appropriate disciplinary action shall be taken.

B. RESPONSIBILITIES OF AGENCY HEADS:

1. Each agency is responsible for providing training on the proper use of equipment to include the contents of this policy, instruction on operation of the BWC, how and when to transfer files, proper identification and proper classification of recordings.

2. Agencies shall provide instruction to officers on how to report and replace malfunctioning equipment.

3. Agency supervisors may review recordings for the purpose of ensuring compliance with established policies, verifying the equipment is functioning properly, to identify any areas in which additional training or guidance is required and to identify material that would be appropriate for training.

4. Agency heads are responsible for ensuring that all BWCs are equipped with a "buffering" feature have such feature activated and set to record and retain at least the most recent 30 seconds of video prior to activation of the BWC.

5. Agency heads are responsible to ensure that the provisions of section 3 below are followed.

SECTION 3: STORAGE, RETENTION and RELEASE:

A. Storage:

1. Agencies are responsible for ensuring the secure storage of all recordings made by their employees. All recordings or files are the property of this agency and shall only be used for official purposes.

B. Retention and Release:

1. At a minimum, all recordings shall be held in accordance with the State's record retention act for law enforcement records. [See VT State Archives & Records Administration's specific record schedule for this agency]. When appropriate and not exempt under 1 V.S.A. 317, recordings shall be released, or released with redaction, upon request to members of the public or media.

2. Should any employee intentionally fail to adhere to the retention requirements contained in this policy, appropriate disciplinary action shall be taken.

3. Agencies shall make a good faith effort to locate recordings of interest to the public. If recordings exist of an interaction or event captured by BWC and that interaction or event is identified with reasonable specificity, the agency will make that recording(s) available for review or release consistent with 1 V.S.A. 317 and any other applicable records release schedule.

4. If an agency authorizes access to stored footage by a vendor such as a technician, information technology staff, etc. they shall not be permitted to access, view, copy, alter, or delete footage unless in accordance with this policy and at the express direction of the agency.

5. When a BWC fails to capture some or all of the audio or video of an incident due to malfunction, displacement of camera, or any other cause, any audio or video footage that is captured shall be treated the same as any other recording as described in this policy.

6. Recording related to the following will be retained indefinitely and require manual deletion:

    i. Officer involved shootings;

    ii. Major incidents such as mass arrests;

    iii. Serious felony offenses;

    iv. Homicide cases;

    v. Active missing persons cases.

7. Whenever an officer equipped with a BWC is involved in, a witness to, or within audio or sight range of a police use of force that results in a death or serious bodily injury including discharge of a firearm for other than humane destruction of an animal, or when any officer conduct becomes the subject of a criminal investigation:

    i. Such officer's body camera shall be immediately seized by the officer's agency or department, or the agency or department conducting the related criminal investigation, and maintained in accordance with the rules governing the preservation of evidence;

    ii. All files on the seized body camera shall be maintained in accordance with the rules governing the preservation of evidence; and

    iii. The procedure referenced in Appendix A "*Lethal force incident procedures and statewide policy on review of BWC recordings following lethal force incidents*".

8. Nothing in this policy shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.