

Body Camera Statewide Policy

Purpose: Body Worn Cameras are intended to record police-citizen interactions. 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.

Definitions as used in this policy:

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.

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) Only sworn officers shall be permitted to wear a BWC.* 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. 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 so authorized by a judicial order.
- (b) Both the video and audio recording functions of the body camera shall be activated in any of the following situations:
- (1) Whenever an officer arrives on scene at a call for service.
 - (2) 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.
 - (3) During all requests made in the field to conduct a search and during the performance of the search, including K-9 searches.
 - (4) During administration of Miranda warnings and any response when in the field.
 - (5) At any incident that the officer reasonably anticipates may be confrontational or result in the need to use force.

Except as noted in section (c)(1) & (c)(3) below, the body camera shall not be deactivated until the encounter has fully concluded and the officer leaves the scene.

**Non-sworn employees hired specifically to perform ancillary law enforcement functions may be authorized to wear BWCs. [Community Service Officers, etc – need to anticipate effects of defunding]*

- (c) Notwithstanding the requirements of subsection (b):
- (1) Prior to entering a private residence without a warrant or in non-exigent circumstances, an officer shall notify the occupant(s) of use of the body camera and ask if continued use is acceptable. If the occupant says no, the sworn officer shall immediately discontinue use of the body camera.
 - (2) If entering a private residence pursuant to a search warrant or in exigent circumstances, or during the completion of any custodial arrest, use of the body worn camera shall continue regardless of consent being granted.
 - (3) When interacting with an apparent crime victim, an officer shall, as soon as practical, notify the apparent crime victim of body camera usage and ask if continued use is acceptable. If the apparent crime victim says no, the officer shall immediately discontinue use of the body camera.
 - (4) Unless the encounter occurs in a location where there is an expectation of privacy, an officer does not have an obligation to cease a body camera recording when interacting with an individual suspected of involvement in unlawful conduct, even if the individuals requests the recording to be stopped.
- (d) In instances where the individual requests the officer to discontinue the use of a body camera made pursuant to subsection (c), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

DISCONTINUING OR NOT STARTING A RECORDING:

- (e) There are occasions where an officer should not initiate a recording; or, if an audiovisual recording has been initiated, the officer may determine it necessary to pause or stop the

recording prior to the conclusion of the event. If the officer pauses or stops a recording, he/she shall document the reason for the termination or suspension of the recording. Acceptable reasons for discontinuing recording or activating the mute feature include:

- (1) During on scene conferences between officers, supervisors, advocates, clinicians, EMS personnel, attorneys, etc. where the officer determines the conference would violate confidentiality, privacy or individual rights.
- (2) Conferences between officers and supervisors that might compromise this or further investigations or would otherwise impede law enforcement efforts or strategy.
- (3) Encounters with undercover officers or confidential informants.
- (4) If a person reporting a crime or assisting with an investigation requests to remain anonymous, the recording may be stopped.
- (5) During times of prolonged waiting absent citizen contact such as waiting for a tow truck, funeral home or similar.
- (6) Officers are expected to be respectful of individual's dignity and use sound judgments as to when and how the device will be used. Officers will try to avoid recording persons who are nude or have genitalia exposed, and officers will refrain from activating recordings in places where a reasonable expectation of privacy exists such as locker rooms, dressing rooms, rest rooms and similar unless such recording is necessary for a legitimate law enforcement purpose.
- (7) Recordings shall not be made to record personal activities such as meal breaks or conversations with other officers, supervisors or staff outside of the scope of ongoing field activities.
- (8) Recordings are not expected during innocuous activities such as taking telephone

complaints, foot patrols, security assignments, providing directions, non-enforcement roadside assistance, humane destruction of a wounded animal, traffic control, providing unlocks and similar.

- (9) See sections c.(1) and c.(3) above regarding recording inside residences or other places where citizens have a reasonable expectation of privacy.

Recording should resume as soon as one of the above reasons no longer exists.

PROHIBITIONS ON USE OF BWCS:

- (f) 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.
- (g) Officers shall avoid using body cameras to record for the sole purpose of gathering intelligence information on First Amendment protected activities such as speech, associations, or religion. This shall not be construed to limit lawful use of body cameras to record investigative encounters between an officer and a officer of the public or activity that raises an articulable suspicion of possible on-going or imminent criminal conduct.
- (h) Officers shall not run recordings through facial recognition or automated analysis programs without appropriate judicial review.

REVIEW OF RECORDINGS:

- (i) Under normal circumstances, an officer may review BWC recordings prior to writing reports about incidents or arrests.

- (j) 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.
- (k) After the initial interview with investigators, the officer will be allowed to review his/her footage of the incident. At this time, the officer may provide additional details in the form of a supplemental report or follow-up interview.

SECTION 2: EQUIPMENT & TRAINING

RESPONSIBILITIES OF OFFICERS:

- (a) 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.
- (b) 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.
- (c) Officers are responsible for “tagging” 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 “mistagging” recordings will result in appropriate disciplinary action.

- (d) 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.
- (e) 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.
- (f) 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.

RESPONSIBILITIES OF AGENCY HEADS:

- (g) 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 “tagging” of recordings.
- (h) Agencies shall provide instruction to officers on how to report and replace malfunctioning equipment.
- (i) 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.

- (j) Agency heads are responsible to ensure that the retention schedule listed in section 3 below is followed.

SECTION 3: STORAGE, RETENTION and RELEASE:

STORAGE:

- (a) 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.

RETENTION & RELEASE:

- (b) 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 VSA 317, recordings shall be released, or released with redaction, upon request to members of the public or media.
- (c) Should any employee intentionally fail to adhere to the retention requirements contained in this policy, appropriate disciplinary action shall be taken.
- (d) 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 a 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 VSA 317 and any other applicable records release schedule.
- (e) Recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.
- (f) In the event that 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.

(g) The following retention guidelines are in addition to the requirements of the specific record schedule for this agency. 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.

(1.) 14 (fourteen) days - In instances where a body camera is activated mistakenly and records no discernable human activity, such footage may be permanently deleted after 14 days by the law enforcement agency. The time, date, length of recording, assigned body camera designator, and a brief summary of the image depicted shall be documented in some fashion by the law enforcement agency prior to permanent deletion.

(2.) 90 (ninety) days - Recordings shall be retained for no less than ninety days if the recording captures an interaction or event involving:

- i. response to calls for service where no enforcement action occurs;
- ii. traffic stops with no enforcement action taken beyond a written warning;
- iii. traffic stops with enforcement action taken shall be kept until the civil case is closed;
- iv. police-citizen interactions that do not involve enforcement action, a search or seizure;

(3.) 3 (three) years - Recordings shall be retained for no less than three (3) years if the recording captures an interaction or event involving:

- i. any use of force;

- ii. a recording related to any incident in which a member of the public has made a complaint against an agency employee;
- iii. recording(s) used in disciplinary action against an employee shall be held for a minimum of three years from the completion of the disciplinary action;
- iv. recordings shall also be retained for no less than three (3) years if a longer than normal retention period is voluntarily requested by the officer whose body camera recorded the video footage or his/her supervisor, or any officer who is a subject of the recording, if the officer or supervisor reasonably asserts the video footage has evidentiary or exculpatory value;
- v. recordings shall be retained for no less than three years upon written request from a member of the public who is a subject of the recording, the next of kin of a subject who is deceased, or the parent/guardian of a juvenile who is a subject.

(4.) 7 (seven) years – Recordings shall be retained for no less than seven (7) years if the recording captures an interaction or event involving:

- i. Recordings related to misdemeanor arrests or non-violent felony arrests (or longer if the case is not resolved in this time frame);

(5.) Recording related to the following will be retained indefinitely and require manual deletion:

- i. Use of force incidents resulting in injury or allegation of injury;
- ii. Officer involved shootings;
- iii. Major incidents such as mass arrests;

- iv. Serious felony offenses;
- v. Homicide cases;
- vi. Active missing persons cases.

(h) 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:

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

c. RELEASE OF RECORDINGS FOLLOWING INCIDENTS OF HEIGHTENED PUBLIC INTEREST - THIS SUBSECTION IS UNDER CONSTRUCTION.

- (i) BWC footage may only be offered as evidence by any government entity, agency, department or prosecutorial office, in accordance with established rules of evidence.
- (j) This policy is publicly available on this agency's website or by contacting the agency.
- (k) Nothing in this chapter shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.

##