

<b>ABSECON POLICE DEPARTMENT</b>		
<b>STANDARD OPERATING</b>		
SUBJECT: <b>BODY WORN CAMERAS</b>		
EFFECTIVE DATE: <b>JANUARY 28, 2022</b>	NUMBER OF PAGES: <b>24</b>	
ACCREDITATION STANDARDS: <b>N/A</b>	BY THE ORDER OF: <b>Chief James Laughlin</b>	

**PURPOSE** The purpose of this standard operating procedure is to maintain guidelines for the use, management, storage, and release of audio-visual media recorded by body worn video/audio cameras (BWC). BWC are intended to enhance officer safety, produce effective materials for training and to produce an additional method of collecting evidence to prosecute those who violate the law.

**POLICY** It is the policy of the Absecon Police Department to utilize BWCs to assist agency personnel in the performance of their duties by providing an accurate and unbiased recorded account of an incident.

BWCs shall be deployed and utilized by all personnel in a manner consistent with manufacturer’s guidelines, the provisions in this SOP, and those directives or guidelines issued by the New Jersey Attorney General, *specifically New Jersey Attorney General Directive 2021-5*, and the Atlantic County Prosecutor’s Office. Failure to use this technology in accordance with this policy and those directives or guidelines set forth in *New Jersey Attorney General Directive 2021-5* and the Atlantic County Prosecutor’s Office shall be subject to discipline.

The Absecon Police Department webpage shall publicize the official deployment of BWCs to the public. It shall contain a clear statement that this department utilizes body worn video/audio recorders and maintain a clearly identifiable link to this SOP. The website posting shall include an image showing what the device looks like and how it is to be worn by uniformed officers or plainclothes detectives so that the public will be able to determine whether an officer is equipped with the device. The Chief of Police shall provide certification to the Atlantic County Prosecutor’s Office of this general notification to the public.

Any willful or repetitive violations of this SOP shall be reported the internal affairs supervisor who shall report such directly to the Chief of Police and/or Atlantic County Prosecutor’s Office. The Chief of Police and/or Atlantic County Prosecutor’s Office is authorized to take such actions as are reasonable and necessary to ensure compliance with this SOP and to prevent future violations.

## PROCEDURES

### I. DEFINITIONS

- A. For purposes of this SOP, the following terms are defined:
1. Activate – means to actuate (put into operation) the recording mode/function of a BWC
  2. Advisement – a statement made by an officer at the outset of using a BWC camera to record a communication, conversation, or interaction with the public for the specific purpose of informing the public that the communication or conversation is being recorded.
  3. Body worn audio/video camera (BWC) – is a device worn by an officer 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).
  4. Constructive authority – involves the use of an officer's authority to exert control over a subject (see this department's SOP 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. Daily tour of duty – an officer's single workday.
  6. Digital evidence – includes photographs, audio and video recordings that are stored electronically.
  7. Force – has the same meanings as defined in this department's SOP on *Use of Force*. The term force shall include physical, mechanical, enhanced mechanical, and deadly force.
  8. Investigation of a criminal offense – means any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, petty disorderly offense, driving while intoxicated incident, 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.

9. Law enforcement incident, as defined in *New Jersey Attorney General Directive 2019-4*, includes:
  - 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.
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. 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.
13. 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.
14. Tagging – is the electronic labeling of a video/audio file captured by a BWC or MVR. The terms categorizing or category can be used interchangeably with the terms tagging or tag.

15. 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.
16. Youth facility – means a facility where children assemble under adult supervision for educational or recreational purposes, such as day-care centers, youth camps, 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. There is no intent to utilize the BWC as a management tool to punish officers for minor departmental rule infractions.
  1. Personnel shall not be subject to criticism for the proper exercise of lawful discretion in enforcement matters.
  2. BWC shall only be utilized for legitimate law enforcement duties and not for personal purposes.
- C. 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 particular 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 restrictions in this SOP, supervisors will be able to view the recordings, select portions to use to train officers in safety, field officer training, interpersonal skills, proper police procedures, and legal doctrines.
  6. Subject to the restrictions in this SOP, recordings can permit supervisors to undertake more meaningful performance evaluations.
  7. Subject to the restrictions in this SOP, recordings augment management's ability to evaluate its basic police practices and interactions between its personnel and the public.

8. Subject to the restrictions in this SOP, recordings enhance management's ability to train personnel in proper police procedures.
- D. When properly used, this equipment will have the following capabilities:
1. Creation of accurate documentation of motorist contacts and other patrol related activities, including, but not limited to, arrests, other police-public contacts, and other critical incidents.
  2. Preservation of an audio and video record of events, actions and conditions during arrests, critical incidents, and prisoner transports. These recordings enhance the department's ability to review probable cause determination, police-public interactions, and evidence for investigatory purposes.
  3. This agency shall not utilize any biometric technology, such as facial recognition, to conduct searches of video files or passive searches of the public.
- E. Adequate safeguards are necessary to ensure that this technology is:
1. Used in a non-discriminating way.
  2. Used to document evidence.
  3. Used to safeguard against potential violations of N.J.S.A. 2A: 156A-1, et seq., *New Jersey Wiretapping and Electronic Surveillance Control Act* (MVR).
- F. While visual and audio evidence may be captured on the recordings, the use of BWC cannot always depict the full story of an encounter. It is also 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. The use of a BWC does not diminish the requirement to provide a thorough, text documentation of an incident. The BWC recordings are only one piece of evidence that provides only one perspective regarding the situation that has been recorded.
- G. Officers shall use only those BWCs purchased by the department. The use of BWCs with electronically enhanced audio/visual capabilities, such as infrared vision features, are not authorized.
- H. BWC equipment and all data, images, video, audio, and metadata captured, recorded, or otherwise produced by the equipment is the sole intellectual property of this department. Under no circumstances will any employee of the Absecon Police Department make a personal copy of any recorded event.
- 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. The Chief of Police shall appoint BWC administrator(s) to maintain a training program on the lawful and proper use of BWC/MVR equipment (Training program shall include training personnel). Responsibilities include, but are not limited to:
  - 1. Provide initial training during a new officer's field training program or for all officers not previously trained.
  - 2. Providing initial and refresher training to non-sworn personnel whose responsibilities include accessing, copying, or distributing BWC records;
  - 3. Provide additional training as required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, a disciplinary matter, and to incorporate changes, updates, or other revisions in procedures and equipment.
  - 4. The BWC user manuals are posted to DMS;
  - 5. If any officer is unclear with this SOP or the operation of a BWC, he/she should contact their supervisor to arrange for additional training.
- L. Only officers who are authorized by the Chief of Police and have received training in the use of BWC are permitted to use these systems and must demonstrate a satisfactory degree of familiarity and efficiency in the use of these systems. Proper use of a BWC is considered an essential job requirement.
- M. The BWC administrator or his/her designee shall manage and coordinate the BWC equipment whose duties shall include maintaining the system and procedures to ensure the integrity and proper handling and storage of all BWC recordings. This system shall include provisions to:
  - 1. Maintain a record of all BWC serial numbers and assignments.
  - 2. Set permission, authority levels, and tag/retention categories in the system software.
  - 3. Repairs to any BWC equipment shall only be performed by the manufacturer or under the direction of the BWC administrator or his/her designee.
  - 4. Ensure that all recordings are uploaded to a secure data storage system in a timely fashion.
  - 5. Prevent tampering with or deletion of recorded data both before and after uploading from the BWC and uploading to the storage system.
  - 6. Restrict unauthorized access to stored BWC recordings.

7. Document all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted (this can be generated by the system software).
  8. Permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.
  9. Review BWC internal audit to ensure compliance on the utilization of these devices in accordance with this SOP. The Chief of Police will be notified immediately if the system or audio/video recordings are compromised or accessed without proper authorization.
  10. Prior to the destruction, erasing or deletion of any BWC recording, other than by automated retention, the BWC administrator or his/her designee shall review the specific recording, as well as any relevant department investigation, supplemental reports or any other reports in the case file to confirm proper retention schedule compliance.
- N. Non-law enforcement personnel shall not be allowed to review BWC recordings at the scene of contact. Officer complaints shall be handled in accordance with the procedures in this department's SOP on *Internal Affairs*. All other requests to view and/or obtain footage by the public shall be handled in accordance with section VIII of this SOP.

### **III. BODY WORN CAMERAS**

- A. When on duty, officers shall wear BWCs as an authorized component of the uniform of the day and utilized daily consistent with the requirements and restrictions in this SOP.
1. Officers are not required to activate their BWCs in police headquarters unless they are investigating a walk-in complaint or other similar related functions.
  2. Subject to availability, detectives and administrative officers shall wear BWCs when conducting arrests and while engaged in field duties (e.g., patrol coverage, search warrant executions, raids, etc.) consistent with the requirements and restrictions in this SOP.
  3. BWCs shall be worn and used on all extra duty assignments.
  4. Officers shall also wear and use a BWC consistent with this SOP when:
    - a. On aggressive driving, DWI interdiction assignments, 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.
- B. When not in use, BWCs shall be stored a designated docking station. The docking station allows for the units to be charged and for the download of events to the secure storage units.

1. BWCs are considered issued equipment until relinquished at the direction of a supervisor.
  2. Officers shall inspect their BWCs at the commencement of their shift to guarantee both video and audio recording readiness of the system. The inspection shall include, but not be limited to:
    - a. Ensuring that the battery is fully charged,
    - b. Ensuring that the device has sufficient memory to complete their tour of duty; and
    - c. Ensuring the proper positioning of the BWC on their uniform.
  3. Officers should conduct a pre-shift inspection of their BWC. Any issues shall be reported to a supervisor.
  4. No later than the end of each shift, officers shall download the contents of the unit by placing the unit in the designated docking station.
- C. Officers will wear the BWC mounted to the front of the uniform using the mounting equipment provided by the manufacturer.
1. BWC units shall be affixed on the officer in a manner that maximizes the camera's ability to capture video footage of the officer's activities.
  2. Officers are responsible for ensuring that the BWC remains in a position to allow them to record an encounter or incident.
  3. While in attendance at ceremonial functions, officers who are off duty, but in uniform, can be relieved of wearing the BWC. Officers who attend a ceremonial function while on duty are not relieved of wearing the BWC.
- D. Officers engaged in undercover operations or surveillance activities are not required to utilize BWC.
- E. BWC shall be used only in conjunction with official law enforcement duties. The BWC shall not be used to record:
1. Strip and/or body cavity searches.
  2. Encounters with undercover officers or confidential informants.
  3. When on break or otherwise engaged in personal activities.
  4. When engaged in police union business.

5. In any location where individuals have a reasonable expectation of privacy, such as a restroom, locker room or break room.
  6. When involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisor-subordinate interaction.
  7. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording, see section V of this SOP.
  8. While discussing criminal investigation strategies.
  9. When engaged in conversations with individuals with whom the officer has a privileged relationship (e.g., spouse, attorney, minister, etc.).
- F. The use of a BWC is optional for:
1. Hostage negotiations by trained hostage negotiators.
  2. Crime scene processing.
- G. When a BWC is activated to transport an arrestee/prisoner, it shall remain activated at all times 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.
- H. 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 or place of abode (e.g., hotel/motel rooms, boarding houses, etc.), 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.
- I. 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 Atlantic 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 (e.g., prior to providing such information, the person indicates that he/she will only provide such information if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded).
    - a. Officers shall not suggest to the person 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 is important to the investigation yet is not critical to require recording.
  2. Officers may deactivate a BWC when a person, other than an arrestee, is seeking emergency medical services for him or herself or another and requests that the BWC be deactivated. In deciding whether to de-activate the BWC, 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.)
  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 the duty OIC as soon as is practicable.

- d. The officer shall document the circumstances of the deactivation in the investigation report concerning the incident under investigation, including the time of activation and/or deactivation.
- 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 the duty OIC as soon as it is safe and practicable to do so.
  - a. If the officer declines a deactivation request, the officer immediately shall 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 Atlantic 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. In any instance where a BWC was deactivated, 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.
- J. 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)"*).
- K. Officers should deactivate or mute 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."*).
- L. 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).

- M. 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 Atlantic 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 Atlantic 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.)
- N. 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 the duty OIC 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.
- O. 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.
- P. Officers shall not activate a BWC while providing security at Council meetings, unless the officer is responding to a call for service or is authorized to use constructive force or authority, or unless the Council President expressly authorizes such activation.
- Q. BWC shall be deactivated and removed while in the ALCOTEST area when the ALCOTEST device is being used. This does not preclude the use of a BWC to record the behavior of a suspected DWI other than while the person is in the ALCOTEST area while the ALCOTEST device is being operated. If this provision requires deactivation of a BWC, 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.
- R. When a BWC is activated, officers are encouraged to provide narration where practical and appropriate to augment the value of the recording and to provide clarity for the viewer.
- S. If an officer fails to activate the BWC, fails to record the entire event contact, or interrupts the recording, the officer shall document in the applicable investigation report the reason why a recording was not made, was interrupted, or was terminated.

#### **IV. INCIDENTS TO RECORD**

- A. When assigned to an officer for duty, the BWC will remain in standby mode ready to be activated at any time. When an officer activates the recording mode / function, the device will record from the moment the record start / stop button is pressed. Activation should occur before arriving at the scene, when feasible.
  
- B. Except when otherwise restricted in this SOP, 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 BWC 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. Investigation of any kind of motor vehicle offense.
  - 3. Investigative detentions/field interviews.
  - 4. Any call for service related to a violation or suspected violation of possessing or consuming alcohol, marijuana, hashish, or cannabis item.
  - 5. An officer is responding to a call for service and is at or near the location to which the officer has been dispatched.
  - 6. The officer is conducting a motorist aid or community caretaking check.
  - 7. Stationary police details, such as DWI checkpoints, car/truck inspections, seatbelt use checkpoints, etc.
  - 8. Criminal investigations.
  - 9. Arrests.
  - 10. Drug recognition expert (DRE) evaluations.
  - 11. Overdose and suspected overdose investigations.
  - 12. Emotionally disturbed person investigations/encounters.
  - 13. Motor vehicle and foot pursuits.
  - 14. Interviews of witnesses when conducting investigations of criminal or motor vehicle violations/offenses (not to include undercover investigations or related surveillance activities).

15. When conducting a custodial interrogation of a suspect unless the interrogation is otherwise being recorded in accordance with Rule 3:17 (electronic recordation of stationhouse interrogations).
  16. Warrantless searches (all types, including frisks, vehicle searches, and consent searches, etc., but not strip or body cavity searches).
  17. Out-of-court identifications (i.e., show ups, lineups, etc.).
  18. Search warrant execution.
  19. Arrestee/prisoner transportation, whether to a law enforcement facility, county jail or other place of confinement, or to a hospital or other medical care or mental health facility.
  20. When an officer uses constructive authority or force, 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).
  21. Domestic violence investigations.
  22. Unruly crowds or any incident requiring activation of the all-hazards or emergency operations plan.
  23. Strikes, picket lines, demonstrations.
  24. When an officer is engaged in a police response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians and the officer or any other officer on the scene may be required to employ constructive authority or force.
  25. 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.
  26. Any contact that becomes adversarial when the BWC has not already been activated.
- C. BWC shall remain activated for the entire duration of a civilian contact required in section V.B (above) until the officer or civilian have departed the scene and the officer has notified communications that the event is closed.
- D. Notwithstanding any other provision of this SOP, 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 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 when feasible.

- E. Notwithstanding any other provision of this SOP, an officer while at the scene of a law enforcement incident (see definitions), 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 deadly force 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.

## V. OFFICER RESPONSIBILITIES

- A. Officers shall note in the narrative portion of any reports related to the incident, the fact that audio/video recordings were made and that BWC is available.
- B. Officers shall categorize/tag their digital files captured at the conclusion of their shifts to include primary and secondary categorizing.
  - 1. BWC units can categorize each recording with a primary identifier.
  - 2. BWCs have recording categories including a 'RESTRICTED' category.
  - 3. Whenever an officer records an incident/event as specified in V.C, he/she will categorize the recording as 'RESTRICTED' for the secondary identifier corresponding with the classification.
- C. To identify BWC recordings that may raise special privacy or safety issues, officers shall appropriately label (tag) recordings that captured:
  - 1. Images of a law enforcement incident, as defined by *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.
    - d. The death of any civilian while in the custody of law enforcement.
  - 2. Images of a victim of a criminal offense.
  - 3. Images of a juvenile.

4. Images made in a residence (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.
5. Recordings of conversation with a person who requested to deactivate the BWC.
6. Video of special operations event of an arrest and/or search warrant where confidential tactical information (e.g., verbal codes and hand signals used to give direction to officers, techniques for interior movements and clearing rooms during execution of a warrant, techniques for convincing persons to open doors during warrant execution, etc.) may have been recorded.
7. Images of any screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information.

## **VI. SUPERVISORY RESPONSIBILITIES**

- A. Supervisor/OICs are responsible for ensuring that on-duty officers are equipped with functioning BWCs at the beginning of each shift. Supervisor/OICs shall:
  1. Ensure that all officers follow proper procedures for the use and operation of BWC equipment.
  2. Document requests for repairs and replacement of damaged or inoperable BWC equipment in accordance with this SOP.
  3. Compiling cases for all BWC footage pertaining to each incident.
- B. Upon discovery of a BWC that is damaged or non-functioning, the supervisor/OIC will remove a BWC from service and then notify the BWC administrator with the details of the malfunction, problem or deficiency via email and request a spare BWC until repairs are made to it. Once the supervisor's request is submitted, he/she will be immediately authorized to assign the spare BWC to the affected officer. The malfunctioning BWC shall be placed BWC administrator's mailbox.
- C. If more than one officer captures video/audio of an event that will be stored as evidence, duty OICs are responsible for ensuring that all recordings of such event are properly and uniformly tagged.
- D. Supervisor/OICs shall take protective custody of the BWC from any officers who are involved in a serious incident to safeguard the recording. Such incidents include, but are not limited to use of, deadly force, use of force resulting in serious bodily injury or death, serious motor vehicle crashes involving an on-duty officer, any incident resulting in the incapacitation of the on-duty officer or any other incident in which the supervisor feels is necessary to protect the recordings. The process shall take place as follows:

1. The supervisor/OIC shall take custody of the BWC after the entire incident has concluded and the BWC's has been deactivated in accordance with the parameters set forth in this SOP.
  2. The supervisor/OIC who takes custody of the BWC shall forward it to the BWC administrator or his/her designee, issue the officer a spare unit and assign the officer to the BWC in the system software.
  3. The BWC administrator or his/her designee shall upload and categorize any footage captured of the incident accordingly.
  4. Such BWCs shall only be placed back in service at the direction of the Chief of Police. In deadly force incidents, only the independent investigator assigned by DCJ can authorize placing the BWC back into service.
- E. Subject to the viewing restrictions in subsection VIII, OICs/supervisors shall formally review one (1) recording of selected non-evidential BWC recordings for each officer under their supervision, during each calendar month using a *Supervisory Review of Digital Video/Audio Recordings Form*, to:
1. Assess officer performance (positive or negative activities);
  2. Ensure the equipment is operating properly;
  3. Assess officer performance and adherence to this SOP;
  4. Flag video/audio recordings that may be deemed appropriate for training and/or disciplinary purposes.
- F. Command Level Staff shall review all available recordings as a component of the meaningful review process in all incidents requiring such a review. Such incidents requiring a meaningful review include:
1. Racially Influenced Policing
  2. Use of Force
  3. Officer Involved Crash
  4. Pursuit
  5. Firearms Discharge (Other than training)
- G. Reviewing supervisors are responsible for ensuring all BWC recordings are tagged, or categorized properly. Officers under their supervision will be retrained on proper tagging, as needed.

## **VII. RETENTION OF BWC RECORDINGS**

- A. All recording media, images, and audio will be stored on the secure agency server or other designated storage device(s). The contents (images and audio) of all BWC are the intellectual property of the Absecon Police Department and will not

be copied, released, or disseminated in any form or manner outside the parameters of this SOP without the expressed written consent of the Chief of Police.

- 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 agency shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in this section. Access to and use of a stored BWC recording is permitted only:
  - 1. When relevant to and in furtherance of a criminal investigation or prosecution.
  - 2. When relevant to and in furtherance of an internal affairs investigation.
  - 3. When relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct, or to determine the existence of a pattern or practice of possible misconduct.
  - 4. When relevant to a supervisor's review of an officer's actions as part of the supervisory.
  - 5. To show to a civilian who intends to file a complaint against an officer to demonstrate what actually occurred during the encounter so that the person can make an informed decision whether to file the complaint.
  - 6. To comply with the State's discovery obligations in prosecutions pursuant to the Rules of Court.
  - 7. To comply with any other legal obligation to turn over the recording to a person or entity.
  - 8. To show or disseminate the recording to a civilian or non-law enforcement entity, or to disseminate it to the public, where the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, determines that disclosure to that particular 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. For 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 depicted individuals have consented to the recording being used for training purposes.
  - 10. To conduct an audit to ensure compliance with this Policy and department's policy, standing operating procedure, directive, or order promulgated pursuant to this Policy.
  - 11. 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 County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee; or

12. Any other specified official purpose where the County Prosecutor or designee, or Director of Criminal Justice or designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.
- D. Restriction on Access to BWC Recording Related to Investigation Conducted Pursuant to AG Directive 2019-4:
1. To ensure the integrity of the investigation of “Law Enforcement Incidents” conducted pursuant to AG Directive 2019-4, and to avoid possible contamination of a witness’s personal recollection of events that could undermine his or her credibility as a witness, notwithstanding any other provision of this Policy, no civilian or law enforcement witness, including principals of the investigation, shall be given access to, view, or receive an accounting of a BWC recording of the incident, or a BWC recording of the response or on-scene investigation of the incident, without the express prior approval of the “Independent Investigator,” as that term is defined in AG Directive 2019-4.
- E. Restrictions on Access to BWC Recordings Prior to Creating Reports, Statements, Interviews:
1. A law enforcement officer shall be permitted to review or receive an accounting of a BWC recording prior to creating any required substantive initial reports, providing a statement, or submitting to an interview regarding the recorded event, except under the following circumstances:
    - a. The incident involves the use of force by the officer, where the officer knows or should know that the use of force resulted in significant or serious bodily injury or death;
    - b. The incident involves the discharge of a firearm or any other use of deadly force by the law enforcement officer;
    - c. The incident involves the death of a person while in law enforcement custody;
    - d. The incident involves the death of a person during an encounter with a law enforcement officer;
    - e. An incident that the officer knows or has been advised is or will be the subject of an internal affairs complaint relating to the officer’s use of force, bias, or dishonesty; or
    - f. An incident that the officer knows or has been advised is or will be the subject of a citizen complaint relating to the officer’s use of force, bias, or dishonesty.
  2. Whenever a law enforcement officer reviews or receives an accounting of a BWC recording prior to the creation of any report, statement, or interview, the law enforcement 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. The law

enforcement officer shall document each BWC recording that was reviewed and the date of the review. If the law enforcement officer received an accounting of a BWC recording, the law enforcement 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. Nothing in sections VII.E shall be construed to require a law enforcement officer to review a BWC recording prior to creating any required initial reports, statements, and interviews regarding the recorded event, nor to prevent a law enforcement officer from reviewing or receiving an accounting of such a BWC recording subsequent to the creation of any required initial report, statement, or interview regarding the recorded event.
  4. As noted above, an officer is prohibiting from reviewing or receiving an accounting of a BWC recording in certain scenarios specified in VII.E.1 (a-f) (the "specified scenarios") prior to the officer documenting or otherwise memorializing the officer's recollection of the incident, namely, by creating any required substantive initial report, providing a statement, or submitting to an interview regarding the recorded event ("the specified incident memorialization"). Whenever an officer participating in a specified scenario, then the officer shall only be permitted to review or receive an accounting of a BWC recording 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. In cases subject to the Attorney General Directive 2019-4, the investigating entity shall be the Independent Investigator. In all other specified scenarios the investigating entity shall be the chief law enforcement executive or designee. The investigating entity shall document the authorization to review or receive an accounting of a BWC of a specified incident.
- F. Officers shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. Officers 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 SOP, N.J.S.A. 2C: 28-7, N.J.S.A. 40A:14-118.5 et seq., or intentionally interferes with a BWCs ability to accurately capture audio or video recordings:
1. The officer, employee, or agent shall be subject to appropriate disciplinary action and potential criminal sanctions; 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 N.J.S.A. 40A:14-118.5 et seq. or any other applicable law shall be immediately destroyed and shall not be admissible as evidence in any criminal, civil, or administrative.
- G. Recordings are considered investigatory records of this police department and shall be maintained on a secure cloud-based server and disposed of in accordance with New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules.
1. Except for recordings being stored for criminal, civil administrative proceedings, or evidentiary purposes, BWC recordings shall be retained for a period of at least 180 days.
  2. Recordings that are being held for criminal or civil purposes shall be processed and submitted as evidence or maintained with the case file.
  3. Recordings that are being held for administrative purposes (e.g., internal affairs investigations) shall be maintained with the investigative file.
  4. 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.
  5. 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.
  6. 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 recording is being retained solely and exclusively for police training purposes; or

- e. Any member of the public who is a subject of the recording; or
  - f. Any parent or legal guardian of a minor who is a subject of the 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 VIII.F.6 (e)(f)(g)) shall be permitted to review the recording in accordance with N.J.S.A. 47:1A-1 et seq. to determine whether to request a three-year retention period
7. 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.
- H. Open public record requests for BWC recordings. Only the following recordings shall be exempt from public inspection:
- 1. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection VII.E.5 of this SOP if the subject of the recording making the complaint requests the body worn camera recording not be made available to the public.
  - 2. Recordings not subject to a minimum three-year retention period or additional retention requirements pursuant to subsection VII.E.6 of this SOP.
  - 3. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection VII.E.6(a)(b)(c)(d) of this SOP.
  - 4. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection VII.E.6(e)(f)(g) if an officer, parent, or legal guardian, or next of kin or designee requests the body worn camera recording not be made available to the public.
- I. The records custodian or his/her designee shall notify the Atlantic County Prosecutor's Office OPRA records custodian within one business day upon receiving any subpoena, court order or OPRA request for a BWC recording before complying with it.
- 1. The form must contain the date the request was received, the deadline by which a response must be made, whether the agency intends to release or deny the request, and the justification for that decision.
  - 2. Provide the type of police action or activity depicted in the recording, including but not limited to, whether the officer was involved in an investigative detention, an arrest, an interrogation of a suspect, a witness interview, a search, a protective frisk for weapons, or was using constructive or actual force.

3. Indicate whether the recording is part of an ongoing criminal or internal affairs investigation or whether release of the recording potentially infringes upon a victim and/or juvenile privacy rights.
  4. The records custodian or his/her designee will receive an email acknowledgement. If no further communication is received within 72 hours, the record custodian or his/her designee should respond to the request as deemed appropriate.
  5. All requests for copies or review of BWC recordings are subject to the fee requirements of the prevailing municipal ordinance.
  6. Recordings can be copied to a Blu-Ray/DVD/CD-R, or the evidence officer or his/her designee can provide an encrypted hyperlink to the recording.
- J. BWC recordings shall be provided in discovery to defendants and their attorneys, in accordance with *R. 3:13-3*, *R. 7:4.2*, and *R. 7:7-7*.
1. Such request must be specific and on the proper instrument, i.e., subpoena, discovery request, etc. Only those portions of the recording pertinent to the request shall be forwarded. This agency reserves the right to redact recordings in accordance with law and applicable court rules.
  2. All requests for copies or review of BWC recordings are subject to the fee requirements of the prevailing municipal ordinance.
  3. If an original recording is required for use in court or by another law enforcement agency, that recording shall not be released without the prior approval of the Chief of Police or designee and only if a duplicate copy is retained by the department.
    - a. Duplicate copies shall be maintained as evidence in accordance with this department's property and evidence guidelines.
    - b. The property/evidence officer shall ensure that any media used for duplicate recordings is properly stored away from magnetic fields (speakers, etc.) or other areas that may facilitate corruption in the property room.
- K. 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 Atlantic 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, the Atlantic 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 sections V.C of this SOP shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Atlantic County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, except supervisors (i.e., sergeants and above) may access and view such recordings. Under no circumstances shall such supervisors disseminate the contents of any recording subject to an investigation pursuant to *Attorney General Law Enforcement Directive 2019-4* prior to any initial reports being created.
  3. The independent investigator or his/her designee overseeing an investigation pursuant to *Attorney General Law Enforcement Directive No. 2019-4*, 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.
- L. The WatchGuard system shall maintain 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 SOP. Minimally, the record keeping system shall document the following information:
1. The date and time of access.
  2. The specific recording(s) that was/were accessed.
  3. The officer or civilian employee who accessed the stored recording.
  4. The person who approved access, where applicable.
  5. The reason(s) for access, specifying the purpose or purposes for access and specifying the relevant case/investigation number, where applicable.
- M. The Chief of Police or his/her designee may conduct random reviews of BWC recordings to assess the training needs of the department and to ensure compliance with current safety procedures.