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I. Policy

- A. It is the policy of the Division to utilize Body-Worn Cameras (BWC) for the purpose of accurately documenting events, actions, conditions, and statements made during citizen contacts, arrests, and other critical incidents.
- B. Video and/or audio recordings will be utilized to enhance criminal/traffic reporting, evidence collection, investigations, prosecution, and training.
- C. *Officers violating this Directive may be subject to discipline.*

II. *Commentary*

Body worn cameras can provide a unique perspective on police encounters and incidents, but the recordings may have limitations that need to be understood, considered, and explained when evaluating the images they record. Some potential limitations to consider include the following:

- A. A body worn camera documents a broad scene but cannot document where within that scene the officer is looking at any given instant. If the officer glances away from the camera's field of view, he or she may not see actions captured by the recording.
- B. The camera cannot acknowledge physiological and psychological phenomena that an officer may experience under high stress.
- C. Some important danger cues cannot be recorded. The camera cannot record the history and experience that an officer develops over time as a result of participating in many encounters. In other words, the camera captures the officer's actions, not the officer's senses and interpretation.

- D. Depending on the mounting location and body position, the camera view may be obscured and possibly blocked by parts of the officer's own body or gear. *However, officers should endeavor to ensure that the audio and video recording are not impaired and that the recordings are full, accurate and complete to the fullest extent possible.*
- E. High-tech camera imaging may potentially produce images with more clarity than the human eye sees, especially in low light conditions. When footage is screened later, it may actually be possible to see elements of the scene in sharper detail than an officer could at the time the camera was activated. *Conversely*, cameras do not always deal well with lighting transitions. Going suddenly from bright to dim light or vice versa, a camera may briefly blank out images altogether. *Dramatic changes in lighting can cause the camera to briefly blank out images.*

### III. Legal Considerations

- A. All usage of BWC will be consistent with the requirements and directives of Sections 10-401, et seq. of the Courts and Judicial Proceedings Article of the Maryland Annotated Code and other pertinent law. Set forth below is a brief summary of Maryland's Wiretap statute. This is only intended to be a summary. To the extent that the summary might currently, or in the future, conflict with Maryland's Wiretap statute, the law will control with respect to all issues directly and indirectly related to the usage of BWC. Nothing in the summary creates any legal or contractual rights beyond those existing in Sections 10- 401, et seq.
- B. Pursuant to the "State Wiretap Act" under Sections 10-401, et seq. of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, it is unlawful for any person to willfully intercept, endeavor to intercept, disclose, endeavor to disclose, use, or endeavor to use any oral communications. "Oral communication" is defined as any conversation or words spoken to or by any person in private conversation.
- C. The State Wiretap Act makes it lawful for a law enforcement officer, in the course of the officer's regular duty, to intercept an oral communication with a body-worn digital recording device capable of recording video and oral communication if:
  - 1. The law enforcement officer is in uniform or prominently displaying the officer's badge or other insignia;
  - 2. The law enforcement officer is making reasonable efforts to conform to standards in accordance with §3-511 of the Public Safety Article for the use of body worn digital recording devices;
  - 3. The law enforcement officer is a party to the oral communication;
  - 4. The law enforcement officer notifies, as soon as practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and
  - 5. The oral interception is being made as part of a videotape or digital recording.
- D. The State Wiretap Act also makes it lawful for a law enforcement officer to intercept an oral communication where the officer is party to the communication and where all parties to the communication have given prior consent to the recording.

IV. Operating Procedures

- A. The use of BWC recording equipment by officers who have been issued the equipment and trained in its use is mandatory.
- B. Officers will always wear the BWC on their person when on duty in accordance with their training except when:
  - 1. Temporarily removing the camera to recharge the battery or upload videos.
  - 2. Temporarily removing the camera when entering private areas such as bathroom or locker room facilities when there is no valid reason to record video.
  - 3. In Class-A uniform while participating in ceremonial events (e.g., Honor Guard, Funeral Details, Awards Ceremonies, Academy Graduations, etc.).
  - 4. Sitting on interview panels, oral boards, or hearing boards.
  - 5. Conducting plain-clothes assignments.
- C. Officers will test the function of the BWC at the beginning of each shift in accordance with training.
- D. Upon discovering a BWC malfunction, officers will promptly report the malfunction to a supervisor.
- E. Any damage discovered to an issued BWC is required to be reported utilizing the same guidelines as reporting other damaged division equipment.
- F. Officers will upload videos from the BWC to the server in accordance with their training and will ensure that the internal memory of the BWC does not fill to capacity.
- G. If an officer is utilizing a Division-issued BWC and also operating a vehicle with an in-car video system, the in-car video audio transmitter is not required to be worn by the officer. The audio from the BWC footage will suffice.

V. Mandatory Recording

- A. Officers will begin recording with their BWCs at the first reasonable opportunity in the following circumstance unless doing so would be unsafe. ***A BWC activation consists of both audio and video recording.***
  - 1. Prior to arriving at a call for service, or other activity that is investigative or enforcement in nature, in which it is likely that personal interaction will occur.
  - 2. An encounter between the officer and a member of the public that is investigative or enforcement in nature.
  - 3. Any encounter that becomes confrontational at any time.

- B. When victims, witnesses, or other individuals wish to make a statement or share information, but refuse to do so while being recorded, or request that the camera be turned off, then officers may turn off the BWC in order to obtain the statement or information. If the encounter begins when the BWC is not actively recording, officers may, but are not required to, temporarily activate the BWC for the sole purpose of documenting the person's refusal to be recorded.

VI. Prohibited Recording

- A. A BWC will not be intentionally activated to record conversations of fellow officers without their knowledge and consent during administrative and nonenforcement related activities.
- B. *A BWC will not be used to record non-work-related personal activity.*
- C. A BWC will not be used to create recordings in locker rooms, dressing rooms, and restrooms unless part of a criminal investigation.
- D. *BWC will not be used to create recordings at Juvenile Detention facilities, jails, or correctional facilities.*
- E. *The BWC will not be used to create recordings at facilities that prohibit such use.*

VII. Ending a Recording - ***Once recording with a BWC has been initiated, officers will not end, pause, mute, or obstruct the audio or video recording until:***

- A. The event or encounter has fully concluded; or
- B. The officer leaves the scene and anticipates no further involvement in the event; or
- C. A supervisor or agency policy has authorized that a recording may cease because the officer is no longer engaged in a related enforcement or investigative activity; or
- D. When victims, witnesses or other individuals wish to make a statement or share information but refuse to do so while being recorded, or request that the camera be turned off, officers may turn off the BWC in order to obtain the statement or information.
- E. Communications between officers while at a scene may not be muted, unless the event has **fully concluded.**

VIII. Classification and Uploading of Videos

- A. All videos recorded by the BWC will be uploaded by the *end of every shift, absent unusual circumstances* i.e. late arrest/investigation, and then only with supervisory approval.
  - 1. If a serious incident occurs, *which results in an exigent need for the recording*, the *on-scene supervisor will arrange for* the BWC to be brought back to Park Police Headquarters for immediate upload and classification. Park Police Headquarters allows for the fastest uploading of video.

2. Spare BWCs will be kept at Park Police Headquarters for issuance in instances where an issued BWC becomes inoperable or needs replacement for any reason. When a spare BWC is issued, an officer needs to set that new BWC's settings to specifically match that officer (name, ID, shift, etc.) prior to operation.
  3. When an officer is permanently changed to a different unit, shift, or assignment, they are responsible for changing the settings on their BWC to match the shift/unit they are re-assigned to. *(BWC settings can be updated when the Front-End Client is open and the BWC camera is connected via USB cable to the MDT.)*
- B. All videos recorded by the BWC will be classified within *forty-eight (48) hours* of the recording.
- C. The recordings will be classified as follows:
1. Criminal Evidence – all recordings made in relation to any incident that results in a criminal charge or where the issuance of a criminal arrest warrant is anticipated. The case number will be entered into the “Case Number” field.
  2. Traffic - All recordings made in relation to any incident that results in the issuance of a traffic charge, SERO, *written warning, or verbal warning will be classified as “Traffic” in accordance with the following rules or exceptions:*
    - a. *If the traffic stop is cleared with a criminal citation or arrest, it should be classified as “Criminal Evidence” (For example, if a traffic stop gets cleared with a DUI arrest, it should be classified as “Criminal Evidence.”)*
    - b. *If the traffic stop is cleared with a civil citation for the traffic related offense, it will still be classified as “Traffic”.*
    - c. The officer may enter case number, or if there is no case number the event number (“P” number) in the case number field, but it is not required.
  3. Civil – all recordings made in relation to any incident that results in the issuance of a civil citation. The officer may enter the event number (“P” number) in the case number field, but it is not required.
  4. Other – any recording that does not fall into the above categories, will be retained.
  5. Other classifications may be visible within the system, however officer should only use the classifications listed in “1” through “4” of this section.
- D. *Additional Recording Guidelines*
1. *BWC footage recorded by a secondary or back-up unit – If the secondary unit is cancelled or the call is cleared before the unit's arrival, any recorded footage will be classified as “Not Evidence.” However, if a secondary or back-up unit arrives on scene, the recorded footage will be classified respective to the clearance of the call.*

2. *One event with multiple stops – If a single call or event results in multiple stops or incidents, the officer will create individual recordings for each stop or incident. (For example: If an officer is conducting a traffic enforcement detail (i.e. speed enforcement), the officer will create a new recording for each vehicle stopped. Each recording in this example will be classified as “Traffic.”)*

IX. Supervisors Responsibilities

- A. Shift supervisors will conduct a monthly review of the video recordings made by their assigned personnel (“Compliance Review”). This review will verify that the officers are logging into the system properly, testing the system as required, and classifying all recorded videos. This review will be documented by the supervisor on a monthly report.
- B. If a supervisor feels that a recording may be useful as a training tool, he/she will notify the training committee via their Chain of Command. No recording will be used for training purposes while the case is being litigated.

X. Confidentiality

- A. Leased or purchased BWC equipment and all recordings are the property of M-NCPPC Police. Only BWC equipment approved by policy will be worn.
- B. Except as authorized by policy, copying, releasing, altering, erasing or allowing unauthorized viewing of an agency video recording (or portion thereof) is prohibited and may subject an officer to disciplinary action and criminal prosecution. (See, *Pinheiro v. State*, 244 Md. App. 703 (2020))

XI. Required Storage and Maintenance of Recordings

- A. All files will be securely saved and stored in accordance with agency policy.
- B. The BWC System Administrator will maintain the security of and set the user access roles for the BWC system.
- C. All access to and use of the BWC server is logged including the viewing and copying/exporting of videos.
- D. An original, un-edited and unredacted copy of each video will be retained on the server.

XII. Review of Recordings

- A. With the exception of contexts involving disciplinary actions and/or Internal Affairs investigations, involved officers may review video for any reasonable purpose related to official business including, but not limited to:
  1. Report writing and preparation of other official documents
  2. Federal or State court preparation
  3. Review of prosecution evidence

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4. Victim/witness/suspect statements
  5. Crime scenes
  6. Statement of charges
- B. With the exception of contexts involving disciplinary actions and/or Internal Affairs investigations for which they are the subject of the investigation, the Chief, Park Police Division or designee, sworn command staff in an officer's direct line of supervision, and members of the Internal Affairs Section may review video for any reasonable purpose related to official business including, but not limited to:
1. Report writing and preparation of other official documents
  2. Federal or State court preparation
  3. Review of prosecution evidence
  4. Victim/witness/suspect statements
  5. Crime scenes
  6. Statement of charges
  7. Administrative investigations
  8. Training
  9. Performance review
  10. Incident critique
  11. Maryland Public Information Act (MPIA) requests
  12. Compliance review
  13. Disclosures required by law
- C. The FOP reserves the right to file a grievance (and/or otherwise assert its right to file a complaint against police practices) if management's review of video appears to improperly target an officer or otherwise violate the Collective Bargaining Agreement.
- D. A log will be kept that records access to all recordings and officers will have timely and ongoing access to the log of their recording. The log will include:
1. Name of the employee accessing the recording;
  2. Reason for access;
  3. Date recording was accessed; and,
  4. Any copying, downloading, redacting, or sharing.

- E. Internal Use of Recordings
1. A BWC recording of a constitutionally protected activity may not be used to identify persons present at the activity who are not suspected of being engaged in illegal activity or in need of assistance.
  2. The stored video and audio data from a body worn camera may not:
    - a. be used to create a database or pool of mug shots;
    - b. be used as fillers in photo arrays; or
    - c. be searched using facial or voice recognition software.
  3. This subsection does not prohibit an agency from using recognition software to analyze the recording of a particular incident when a supervisory law enforcement officer has reason to believe that a specific suspect or person in need of assistance may be subject of a particular recording.
- F. The BWC system is not intended to be used as a disciplinary tool against officers for Category 1 infractions of Division policies or procedures.
- G. *Supervisors will not arbitrarily review BWC recordings to identify minor infractions of Division policies and procedures.*
- H. If during a review undertaken pursuant to Subsections XII, B. 8, B. 9, B.10, or B.12 above, the Division observes a policy violation on the video, then formal disciplinary action will only occur if the observed violation meets or exceeds a category 2 offense (except Category 2 violations involving the use of profanity that does not abuse or demean citizens or co-workers) as enumerated in the applicable Divisional Directive. This provision in no way restricts the Division's ability to discipline for policy violations captured on a video when a violation is brought to Management's attention by any other means than through a review undertaken pursuant to Subsections XII, B. 8, B. 9, B.10, or B.12 above.
- I. However, when cases of misconduct and/or repetitive negative behavior are brought to the attention of the Division via supervisor review and/or an official complaint, the recording may be reviewed and be used as the basis for performance counseling or disciplinary action.
- J. The Division may use the recordings for training or other purposes as approved by the Chief, Park Police Division or designee.
- K. BWC recordings may be used by Field Training Officers to review the actions of probationary officers participating in the Field Training and Evaluation Program.
- XIII. *Internal Request for BWC Recordings*
- A. Supervisors and management can request a copy of BWC video through the Park Police Help Desk. The Management and Technology Section will then burn a DVD copy, or provide the requested copy in an alternative, current format. Physical copies of recorded videos will only be provided when necessary for inclusion in a case file. Videos that must be reviewed as part of an investigation will be reviewed within the In-Car Video Camera (ICVC) software.

- B. Officers may request a copy of recorded video for court purposes through the Park Police Help Desk. The Management and Technology Section will then burn a DVD copy, or provide the requested copy in an alternative, current format and will forward the copy to the Evidence Section. The requesting officer will then retrieve the copy from the Evidence Section. If the copy is not retained by the State’s Attorney’s Office, it will be returned to the Evidence Section for destruction or maintained in the officer’s case file.
- C. The Montgomery County States Attorney’s Office has the ability to remotely access recordings of body worn cameras.
- D. *BWC recordings may be requested in accordance with the Maryland Public Information Act.*

XIV. Retention

- A. All BWC videos that are classified as Criminal Evidence or Other will be retained consistent with the Commission’s document retention policy, as it may be amended from time-to-time in the future. All BWC videos that are classified as Traffic or Civil will be retained for a minimum of three years and then will be deleted consistent with the Commission’s document retention policy, as it may be amended from time-to-time in the future. If a video originally classified as Traffic or Civil needs to be retained for a longer period of time, the officer will change the video’s classification to “Other.”
- B. All BWC videos that are marked as “Not Evidence” will be automatically deleted after 210 days, unless the submitting officer or management reclassifies the video.
- C. The Evidence Section will send purge requests to the recording officer for all videos classified as Criminal Evidence that are more than one year old to determine if the video is still needed. If the officer determines the video is no longer needed, the Management Sergeant will confirm the status of the case prior to deleting the video.
- D. Videos approved for training may be retained indefinitely.
- E. Videos classified as “Restricted” will be retained until the Chief, Park Police Division or his/her designee grants permission to purge.

XV. External Records Requests and Release of Recordings

- A. The public release of BWC recordings will be conducted in accordance with applicable public records laws *Md. Code, General Provisions §§4-101-601*.
- B. All external requests for copies of recordings, *including subpoenas and MPIA requests*, will be reviewed for compliance with applicable standards imposed by law.
  - 1. The Division will maintain a log of all MPIA requests for BWC recordings that it receives *and will immediately generate a Ten-Day Letter advising the Requestor of the anticipated time and cost of production. If assistance with creating a Ten-Day Letter is needed, please contact the Office of the General Counsel (Legal Division) immediately.*
  - 2. *Alternatively, the custodian of records may immediately grant access to the Requestor if:*



- E. Recordings will not be disseminated by the employee without receiving written permission under the authority of the Chief, Park Police Division.

XVI. Training and Discipline

- A. The Management and Technology commander will coordinate the initial training of all officers on the proper use of the BWC. The initial training will include, but is not limited to the following:
  - 1. Review of the BWC Directive.
  - 2. How to properly logon to the BWC software.
  - 3. How to properly classify a video.
  - 4. How to request a video for court purposes.
  - 5. Alternative methods for effective notification of recording to persons with special needs or limited English proficiency.
  - 6. How to change settings of the BWC when there is a permanent change to an officer's assignment or when a spare BWC is issued.
- B. The Management and Technology commander will coordinate any training that is required when new software, features, or enhancements are implemented within the BWC system.
- C. Any unauthorized manipulation, deletion, or destruction in any manner of BWC data, will subject the officer to disciplinary action.
- D. Officers violating the policies related to the BWC system may be subject to discipline.
- E. An officer or FOP representative will have access to a BWC recording that is directly related to any civil law suit where the officer has been served according to the Maryland Rules and named as a party, except where the officer is named as a plaintiff, in which case the plaintiff is entitled to gain access through the standard discovery mechanisms or other available legal avenues.
- F. If during an internal investigation, the Division intends to present an officer with any video from a recorded incident and ask questions about the video, then the officer will be provided access to all BWC recordings related to the incident at least five (5) working days in advance of the questioning. If the officer is the subject of an internal investigation, the officer will have the ability to review their BWC recordings of the subject incident prior to making a statement.

- XVII. Discretionary Activation - When not otherwise prohibited by law or agency policy, officers may begin recording with their BWC in circumstances when they determine that doing so would be beneficial to the public interest.

XVIII. Incident Reports - Incident reports should note any use of BWC.

XIX. Public Access to *Directive* - This policy will be made available to the public upon request.

**Issuing Authority:**



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**Chief Darryl W. McSwain**  
**Maryland-National Capital Park Police**  
**Montgomery County Division**

**End of Directive**