



December 15, 2016

Rick Gauthier, Vice Chair  
Law Enforcement Advisory Board  
Sent via email: richard.gauthier@vermont.gov

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**Re: ACLU of Vermont Objections to Proposed Model Body Worn Camera Policy**

Dear Rick:

**Board of Directors**

*James Morse, president*  
*Julie Kalish, vice president*  
*Pamela Marsh, secretary*  
*Bernie Lambek, treasurer*  
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*William Sayre*  
*Bill Schubart*  
*Abe Sender*  
*Rosalynne Whitaker-Heck*

I write on behalf of the American Civil Liberties Union of Vermont (ACLU-VT) to submit feedback about the proposed Law Enforcement Advisory Board (LEAB) Model Body Worn Camera (BWC) Policy and associated report to the House and Senate Committees on Judiciary and Government Operations. I would appreciate if you would distribute these comments to the members of the LEAB.

BWCs raise difficult questions about privacy and surveillance on one hand and transparency, accountability, and public trust on the other. The ACLU-VT opposes the use of BWCs unless accompanied by policies that adequately protect the public interest in both viewing certain body cam footage and maintaining the privacy of footage that ought to remain private, while also serving the officer accountability and credibility interests necessary to enhancing public trust.

The proposed policy does not achieve these ends, nor does it make any serious effort to do so. Until that changes, the ACLU-VT will be opposed to this policy.

Pre-Statement Review of Footage

We are aware that the issue of officer review of video evidence prior to submitting an initial statement or report is a controversial one, in Vermont and around the country. But we do not believe there is any room for controversy when the rationales for barring such review in certain circumstances are both compelling and numerous.

Research is mounting about the malleability of memory and how great an influence external inputs can have on what a person “remembers.” See Jay Stanley & Peter Bibring, *Should Officers Be Permitted to View Body Camera Footage Before Writing Their Reports?*, ACLU (Jan. 13, 2015), available at <https://www.aclu.org/blog/free-future/should-officers-be-permitted-view-body-camera-footage-writing-their-reports>. Investigators do not allow suspects or witnesses to review footage before they are interviewed or interrogated. Law enforcement agencies routinely withhold dash cam and BWC footage from the public while an investigation is underway, citing its potential to taint witnesses’ recollection of events

before they are interviewed.<sup>1</sup> Yet insistence on pre-statement review suggests a belief that law enforcement officers—who, after all, experience the same physiological and mental phenomena as the rest of us—are not susceptible to the same influences. There is simply no good reason to intentionally taint an officer’s memory before she has the opportunity to put on record an uncontaminated version of the relevant events.<sup>2</sup>

Moreover, the reasonableness of an officer’s conduct is judged on the basis of what he actually perceived at the time of his action, not what a BWC happened to capture or not capture. If, for example, the officer did not see a weapon, but the camera did, the existence of the weapon is irrelevant to any assessment of the officer’s conduct. By the same token, an officer who did see a weapon that was not captured by the BWC might second-guess his

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<sup>1</sup> For example, this was the rationale given for not releasing the footage of the officer-involved shooting of Jesse Beshaw in Winooski this fall. *See, e.g.,* Pat Bradley, *Calls Mounting to Release Body Cam Video in Winooski Police Shooting*, WAMC (Sept. 27, 2016) (“Despite the pressure to release the video, Chittenden County State’s Attorney T.J. Donovan . . . told WAMC Tuesday he will not compromise the police investigation. ‘We need the Vermont State Police to finish their investigation. We have to protect the integrity of the investigation. . . . But we’ve got to make sure that the Vermont State Police have ample time to finish and conduct a thorough investigation. That’s what justice requires. I understand the public has a right to know. I believe in transparency. But we can’t taint anybody’s possible testimony by releasing it before people, witnesses, are interviewed.’”), available at <http://wamc.org/post/calls-mounting-release-body-cam-video-winooski-police-shooting>.

To be clear, the ACLU-VT recognizes that there are some instances where it may be appropriate to delay the release until initial statements can be taken from the officer(s) involved and other known eyewitnesses, but this rationale can only justify a delay of a couple of days, at most. *See* Jay Diaz, *For Timely Disclosure, Greater Transparency*, VTDigger (Oct. 12, 2016), available at <https://vtdigger.org/2016/10/12/jay-diaz-timely-disclosure-greater-transparency/>.

<sup>2</sup> The Police Executive Research Forum (PERF), in its 2014 report, recognized the competing arguments with respect to pre-report reviewing and ultimately came out in favor of allowing such review. *See* Lindsay Miller, Jessica Toliver, & Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 29-30 (2014), available at [http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf). However, since that report was issued, Chuck Wexler, Executive Director of PERF, has had second thoughts about that recommendation:

“Research shows that watching videos affects memory. It alters it,” Saltzman said. “If they watch it first, we will miss what the officer’s perception was at the time they used force and why they felt force was necessary.”

PERF Executive Director Chuck Wexler agreed, saying his position has shifted since the group issued its report. In an interview, Wexler cited academic research showing that video can “essentially erase and record over” an officer’s memory.

“If [police] are going to review the video, other [eyewitnesses] should be allowed to see it, too,” Wexler said. “How can they expect to have any credibility if they keep it to themselves?”

Kimberly Kindy & Julie Tate, *Police Withhold Videos Despite Vows of Transparency*, Wash. Post (Oct. 8, 2015), available at <http://www.washingtonpost.com/sf/national/2015/10/08/police-withhold-videos-despite-vows-of-transparency/>.

memory, leading to a less accurate, and potentially less credible, report. We may never get an accurate accounting of what the officer actually perceived if his initial statement is taken after his memory has been altered by viewing the video.

We all know that eyewitnesses are often unreliable sources, particularly with respect to traumatic events. There is no reason to expect that an officer's initial recollection will be 100% accurate; of course officers should be allowed to watch the footage after giving an initial statement, to offer additional information if the footage jogs their memory of something they left out or misremembered, and to provide context if it shows something they missed entirely.<sup>3</sup> That is how we can get the fullest, most accurate, picture of what happened without contaminating the officers' initial recollection.

Because pre-statement reviewing of footage compromises officers' recollection, a BWC policy allowing for the practice will corrode the public trust. Moreover, people understand that an officer who is inclined to misrepresent events can do so with impunity if she knows what the footage will or will not show. Pre-statement review undermines the credibility of officer statements and the integrity of investigations of officer conduct—whether the officers actually lie or not.

The draft policy permits agencies to limit or restrict an officer from reviewing footage if the officer “is suspected of wrongdoing or involved in an officer-involved shooting or other serious use of force.” It thus appears that the policy acknowledges the problems set forth above, but this arbitrary and discretionary “solution” will be utterly ineffective in addressing them: in many cases, an officer will have already reviewed the footage by the time an agency is aware of and reacts to the incident. Even if it is not too late, the agency may decide not to impose any limits or restrictions. An effective BWC policy must contain a uniform standard that applies across the board, not a haphazard and selective one.

For all of these reasons, the BWC policy should prohibit officer review prior to writing initial reports or giving initial statements in any instance where: (1) any officer uses force; (2) the incident led to a felony-level arrest or the events captured would constitute a felony-level offense; or (3) a complaint has been registered by a subject of the footage.<sup>4</sup> The same prohibitions should apply to someone else reviewing the footage and relaying information about its contents to the officer. *See, e.g.*, Westmoreland County [Virginia] Sheriff's Office General Order 04-24 § VI.C.5 (Westmoreland BWC Policy) (prohibiting pre-statement officer review of any incident involving the use of force and recognizing the influence of viewing the video on an officer's recollection of his perception of the event) (n.b.: there are two subsections labeled “C.” in Section VI; this reference is to the latter reference, on pages 9-10 of the attached order) (attached and available at <https://www.aclu.org/other/westmoreland-county-va-sheriffs-office-general-order-body-worn-cameras>); Parker [Colorado] Police Department Recording Devices and Imaging Equipment Policy § 3.25.5.E (Parker BWC Policy) (“If an enforcement member is suspected of wrongdoing or involved in an officer-involved shooting or other serious use of force, the Department expressly prohibits an enforcement member from viewing the video file until

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<sup>3</sup> For this reason, officers should not be disciplined for giving an initial statement that contradicts the footage unless there is evidence that the officer intentionally misstated the facts.

<sup>4</sup> As to the last category, of course, the restriction would only apply if the complaint were registered before the officer writes the initial report—which would seem to be the minority of cases.

after they have completed an initial report.”) (attached and available at <https://www.bwscorecard.org/static/policies/2016-05-06%20Parker%20-%20BWC%20Policy.pdf>); Commerce City [Colorado] Police Department Portable Audio/Video Recorders Policy § 450.8 (Commerce City BWC Policy) (“If a member is involved in (or a witness to) an incident that any policy requires an administrative review or is suspected of wrongdoing, the member shall not review any recordings of the incident until the member has completed an initial report or received the approval of a supervisor. This includes, but is not limited to: (a) Officer Involved Shootings or any other incident that will be investigated by the Adams County Critical Incident Team; (b) Any motor vehicle accident that will be investigated by the Adams County Critical Incident Team; (c) Use of Force; (d) Motor vehicle accident; (e) Pursuit; (f) Employee Injury; (g) Citizen Inquiry or complaint of officer misconduct; (h) Self-Inflicted Injury.”) (attached and available at <https://www.aclu.org/other/commerce-city-co-policy-manual-portable-audio-video-recorders>); ACLU, *A Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement* § 1(n) (ACLU Model Act) (attached and available at [https://www.aclu.org/files/field\\_document/aclu\\_police\\_body\\_cameras\\_model\\_legislation\\_may\\_2015.pdf](https://www.aclu.org/files/field_document/aclu_police_body_cameras_model_legislation_may_2015.pdf)).

### Interaction with the Public Records Act

The policy lacks sufficient clarity on when footage is/is not exempt from disclosure under the Public Records Act, and creates an unclear, and potentially broad, new exemption.

We agree that BWC footage is a public record subject to the Public Records Act, and that the Act’s existing exemptions, if properly applied, adequately protect victims’/witnesses’ privacy interests. However, because of the significant likelihood of capturing extremely sensitive footage, particularly of victims of crime, the legislation should include a statement of intent to guide agencies and courts in their interpretations of when a particular exemption is appropriate:

It is the intent of the General Assembly that, consistent with 1 V.S.A. § (c)(5)(D), footage depicting an apparent victim of a crime of sexual or domestic violence or of a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation be presumptively treated as exempt from disclosure under 1 V.S.A. § 317(c)(5)(iii). This presumption can be overcome if: (1) the subject of the footage consents to disclosure; or (2) the public benefit of disclosure substantially outweighs the risk of harm to the subject. If that presumption is overcome, the footage may be disclosed only after redacting, blurring, or otherwise anonymizing the subject, unless the subject consents to disclosure of the unaltered footage.

The new exemption for “recordings made in violation of this policy” is problematic and potentially extremely broad. We understand if the intent of this provision was to shield from disclosure recordings that never should have been made—for example, if an officer kept her BWC on recording mode after “a citizen in their residence asks not to be recorded.” But, as presently worded, this provision would give an agency CEO broad authority to refuse to disclose footage even where there was only a technical violation (e.g., failure to note the existence of the recording in a “related report[.]”) and release of the footage is otherwise very much in the public interest. Worse, an officer could intentionally commit such a technical violation to render such footage, in the discretion of the CEO, exempt. Likewise, even

serious deviations from policy (e.g., unjustified failure to activate the BWC until well into the encounter or unjustified termination of the recording before the encounter has ended) may result in footage that a law enforcement agency might prefer not to release, but that it is critical for the public to see.

We believe that this new exemption is unnecessary, insofar as the existing exemptions adequately protect from release footage, whether captured in conformity with or violation of the policy, that the Legislature has determined should be withheld. If a new exemption is to be created, it must be much narrower than currently drafted so as to cover only those recordings that are justifiably withheld from public review.

### Recording of Victims, Anonymous Tipsters, and Otherwise Sensitive People/Places

The policy does not provide sufficient privacy protections for sensitive people and/or places.

First, the policy permits, but does not require, an officer to stop a recording in “cases of a sensitive nature such as domestic assault or sexual assault”—but only after “the offender has been removed from the scene and the body camera user has recorded an initial account from the victim and recorded the scene of the alleged offen[s]e.” This provision severely undermines victims’ rights to privacy and to give or withhold consent to being recorded. We fear that failure to protect these important rights, along with victims’ fear of footage becoming public, will deter victims from reporting crimes to the police. The policy must be changed in several respects: (1) there must be an affirmative requirement for the officer, as soon as is practicable, to notify the victim of the right to withhold consent to be filmed; (2) the decision must rest with the victim, not the officer; and (3) the victim must have a right not be recorded during the initial interview. *See, e.g.*, N.H. Rev. Stat. §§ 105-D:2.VII(d) (prohibiting recording an “interview with a crime victim unless his or her express consent has been obtained before the recording is made”) (attached); Parker BWC Policy § 3.25.4.J; Commerce City BWC Policy § 450.5.1.

The model policy developed by the United Kingdom’s Body Worn Video Steering Group, [www.bwvsg.com](http://www.bwvsg.com), and put forth as a framework by the Department of Justice’s Office of Community Oriented Policing Services (COPS), has explicit and strong privacy protections for victims of sexual assault:

9.5 In the case of victims of serious sexual offences the user must consider the guidance in ACPO (2009) Guidance on Investigating and Prosecuting Rape. The victim’s explicit permission for video recording of the initial disclosure should be sought and if the victim is in any way unsure of the need for the recording to be made or is uncomfortable with the thought of being recorded then the user should not record using video.

9.6 If the victim does not consent to being video recorded the user may consider the option to divert the camera away from the victim, or obscuring the lens and then record the encounter using the audio only facility. Again in these circumstances the explicit consent of the victim must be obtained prior to audio only recording.

Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, Office of Community Oriented Policing Services 8 (suggesting that this model policy can be used as a

framework by other agencies in developing their own policies), App. B at §§ 9.5, 9.6 (2014), available at <https://www.ncjrs.gov/app/publications/abstract.aspx?ID=270041>.

Second, the policy states that a recording should be stopped if “citizen in their residence asks not to be recorded.” However, unless acting pursuant to a warrant or in exigent circumstances, when filming in such a sensitive location, officers should be affirmatively required to notify the individual of the recording and only continue recording with the individual’s express consent. *See, e.g.*, N.H. Rev. Stat. §§ 105-D:2.IX (“In locations where an individual has a reasonable expectation of privacy, such as a residence, a restroom, or a locker room, a citizen may decline to be recorded unless the recording is being made while executing an arrest warrant, or a warrant issued by a court, or the officer is in the location pursuant to a judicially-recognized exception to the warrant requirement. Officers shall inform an individual of this option. If a citizen then declines to be recorded, the officer shall deactivate the audio and video functions, and any images shall, as soon as practicable, be permanently distorted or obscured. The officer shall document the reason why the camera was not activated in the associated police report.”); Parker BWC Policy § 3.25.4.I (requiring officers to affirmatively offer the option of discontinuing the recording during consensual encounters in a place where people have a reasonable expectation of privacy); Commerce City BWC Policy § 450.5.1 (same); ACLU Model Act § 1(d)(1).

Third, unlike many other policies, this policy makes no provision regulating use of BWCs on school grounds. *See, e.g.*, N.H. Rev. Stat. § 105-D:2.VII(f) (prohibiting BWC recordings “[w]hile on the grounds of any public, private, or parochial elementary or secondary school, except when responding to an imminent threat to life or health or a call for service”); Westmoreland BWC Policy § VI.A.1.h (page 7) (prohibiting BWC recordings “[i]n any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health”); Parker BWC Policy § 3.25.5.D (prohibiting, except in specified circumstances, BWC recordings in schools and medical treatment facilities)<sup>5</sup>; Commerce City BWC Policy (same); ACLU Model Act § 1(h). On those rare occasions where police operations in schools are justified, their activities should be closely, directly, and actively monitored by school personnel, not by body cameras. The strict monitoring of police activities by school officials and the need to protect the privacy of school children easily outweigh any justifications for allowing BWCs to operate in schools.

Finally, the policy does not adequately protect the privacy interests of the officers themselves and of their colleagues. *See, e.g.*, Westmoreland BWC Policy § VI.A.1.a, b, e, f, g (page 7); N.H. Rev. Stat. § 105-D:2.VII.(a), (b), (g); Parker BWC Policy §§ 3.25.4.N, 3.25.5.B; Commerce City BWC Policy §§ 450.4, 450.5.1, 450.6

For all of these reasons, the policy falls short of the necessary privacy requirements and must be substantially revised.

### Miscellaneous Other Provisions

The policy omits several key protections and must be amended to include:

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<sup>5</sup> We also believe that this general prohibition on filming in medical treatment facilities should be included in the Vermont policy.

- A requirement that officers may use BWCs only while in uniform, *see, e.g.*, N.H. Rev. Stat. § 105-D:2.IV, and a prohibition on surreptitious use of BWCs, *see, e.g.* Parker BWC Policy § 3.24.4.E; ACLU Model Act § 1(f).
- A requirement that officers inform members of the public that they are being recorded as close to the inception of the encounter as is reasonably possible. *See, e.g.*, Westmoreland BWC Policy § VI.D.1 (page 4); N.H. Rev. Stat. § 105-D:2.VIII); ACLU Model Act § 1(c).
- A prohibition on subjecting BWC footage to automated analysis or analytics of any kind, including but not limited to facial recognition technology or data mining. *See, e.g.*, N.H. Rev. Stat. § 105-D:2.XII, XV.
- A clear requirement that footage not be deleted if it is the subject of a civilian complaint or if a civilian who is a subject of the footage (or that person’s parent, legal guardian, or, if the subject is deceased, next of kin or legally authorized designee) so requests. *See, e.g.*, N.H. Rev. Stat. § 105-D:2.XVI(a)(4); ACLU Model Act § 1(j)(1)(C), (2)(E)-(G).
- Adequate discussion of “treatment of situations when a law enforcement officer’s body camera malfunctions or is unavailable,” as required by Act 163. The policy states that equipment malfunctions must be brought to the officer’s supervisor and that malfunctioning units should be replaced as soon as reasonably possible, and prohibits malicious destruction of recordings, but does not establish any consequences for such destruction or for the failure to record (intentionally or otherwise) in circumstances calling for the activation of the camera. We believe the ACLU Model Act strikes the appropriate balance between imposing consequences for intentional or malicious failures to record and recognizing that there are circumstances where a failure to record is reasonable and should not carry any adverse consequences. *See* ACLU Model Act §§ 1(r), (s).<sup>6</sup>
- A prohibition against law enforcement agencies divulging or using BWC footage for any commercial or other non-law enforcement purpose. *See, e.g.*, N.H. Rev. Stat. § 105-D:2.XV, Parker BWC Policy § 3.25.9.F.
- Any direction as to proper downloading of recorded files, *see, e.g.*, Vt. League of Cities and Towns, Body Worn Video Recording (VLCT Model Policy) § VI.A; Westmoreland BWC Policy VI.C.1, 2 (pages 8-9); Commerce City BWC Policy § 450.10(e), and proper storage of,<sup>7</sup> and log of access to, those files, *see, e.g.*, VLCT

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<sup>6</sup> Although the ACLU Model Act contemplates that these consequences will be triggered when an officer “fail[s] to adhere to the recording or retention requirements contained in this chapter, or intentionally interfere[s] with a body camera’s ability to accurately capture video footage,” there is some risk that the first clause could be read too broadly, as with the proposed new Public Records Act exemption for “recordings made in violation of this policy.” As with the exemption, we would suggest more specific language that ties the consequences only to the types of failures that justify them, perhaps by triggering these consequences only by violations of particular sections of this policy. Alternatively, there could be language added to § 1(s) expanding when the presumptions do not apply, as in the case of accidental, technical/minor violations.

<sup>7</sup> In particular, these records must be stored in such a way as to protect against hacking and other cybersecurity-

Model Policy § VI.J, K, N. We recognize that the specific procedures will vary by agency, but this policy should at least include some minimum parameters.

- Any discussion of *maximum* retention times for evidentiary and non-evidentiary videos. The policy only contains *minimum* retention times, but, to the extent destruction is not otherwise mandated by records retention laws, there must be limits on how long agencies can retain videos, lest they assemble vast video libraries of people’s movements, speech, and actions. *See* N.H. Rev. Stat. §§ 105-D:2.XVI, XVII; ACLU Model Act §§ 1(i), (j).
- Necessary restrictions on access to and use of BWC footage by any third party acting as a law enforcement agency’s agent in storing recordings.<sup>8</sup> *See, e.g.*, N.H. Rev. Stat. § 105-D:2.XV; Parker BWC Policy §§ 3.25.8.A, B.
- Sufficiently strong protection for First Amendment protected activities. We recommend the following:

BWCs shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public.<sup>9</sup>

Finally, Act 163 contemplates the creation of a statewide policy that agencies must adopt if they are to use BWCs, while the report’s recommendations seem to contemplate this being a model policy that agencies can adopt or adapt, or not, as they see fit. We recommend language similar to that found in New Hampshire’s BWC law:

This chapter shall apply to any law enforcement agency that elects to equip its law enforcement officers with body-worn cameras. All BWCs shall be operated in a manner consistent with the provisions of this chapter. Every law enforcement agency that elects to equip its officers with BWCs shall adopt policies and procedures relating to the use of BWCs and the retention and destruction of data consistent with this chapter.

N.H. Rev. Stat. § 105-D:2.I.

### Conclusion

The policy purports to have among its objectives enhancing public trust. However, because of the many shortcomings discussed above, any use of BWCs consistent with this proposed policy will have precisely the opposite effect. Moreover, this policy fails both to adequately protect against the significant privacy and surveillance concerns BWC use raises and to

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related threats.

<sup>8</sup> *See supra* n.7.

<sup>9</sup> Adapted from the ACLU Model Act § 1(g); *see also* Parker BWC Policy § 3.25.5.A; Commerce City BWC Policy § 450.6.




strike an appropriate balance regarding when footage should and should not be made public. Unless and until these significant concerns are addressed, the ACLU-VT opposes any use of BWCs by Vermont law enforcement officers.

Thank you for the opportunity to weigh in. Please feel free to contact me at (802) 223-6304 x 112 or [lernst@acluvt.org](mailto:lernst@acluvt.org) with questions or concerns.

Sincerely,

Lia Ernst  
Staff Attorney  
ACLU of Vermont

Encl.: ACLU Model Act; N.H. Rev. Stat. §§ 105-D:1 to 105-D:2

<b>WESTMORELAND COUNTY SHERIFF'S OFFICE GENERAL ORDERS</b>	
<b>SUBJECT: BODY WORN CAMERAS</b>	<b>NUMBER: 04-24</b>
<b>ORIGINAL EFFECTIVE DATE: 12-08-15</b>	<b>REVIEW: 04-1-2016</b>
<b>AMENDS/SUPERSEDES: 12-08-15</b>	<p style="text-align: center;"><b>APPROVED:</b> </p> <hr/> <p style="text-align: center;"><b>C.O. Balderson, Sheriff</b></p>

**NOTE:** This general order is for internal use only, and does not enlarge a deputy's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by the Sheriff's Office, and then only in a non-judicial administrative setting.

**I. POLICY:**

The use of body worn cameras are a valuable tool for promoting transparency in law enforcement by accurately recording contacts and interactions between members of the public and deputies, documenting evidence, deputy training, preventing and resolving complaints of deputy misconduct brought by members of the public, defending against civil litigation and strengthening the sheriff's office performance and accountability. The Westmoreland County Sheriff's Office employs body cameras for the benefit of law enforcement and the community we serve, including simultaneously and objectively documenting information about the details of contacts and interactions between members of the public and deputies, increasing , professionalism, helping the sheriff's office evaluate and improve deputy performance, allow the sheriff's office to identify, correct larger structural problems within the sheriff's office and demonstrate that all deputies are engaged in constitutional law enforcement on a consistent basis.

**II. PURPOSE:**

To enhance the services provided to the community, the Westmoreland County Sheriff's Office authorizes the use of body worn camera technology as an additional layer of documentation of events, actions, conditions and statements made during critical incidents to assure the public that the sheriff's office is earnest about transparency and deputy accountability and facilitate the strengthening of trust and the sheriff's office authenticity within the community and to improve deputy's reports, collection of evidence and testimony in court. The use of body worn camera technology is meant to assist and compliment deputies in the performance of their duties and is not meant to replace or relieve the deputy of submitting all required written reports.

### III. LEGAL AUTHORIZATION TO RECORD:

- A. In conformity with *Virginia Code 19.2-61*, Definitions and *Virginia Code 19.2-62*, Interception of Wire, Electronic or Oral Communications, an individual that is a party to a conversation may record that conversation. Additionally, the Supreme Court ruled in *Pennsylvania vs. Muniz*, that a deputy has the right to observe what the deputy can see if the deputy has a legal right to be present. It follows that if a deputy may observe, a deputy also has a right to photograph or videotape. The recording of an interaction between a member of the public and a deputy, whether recorded by the deputy or the member of the public is protected and allowed by virtue of "one party consent."

### IV. OBJECTIVES:

- A. To augment the wellbeing of deputies and the public.
- B. To accurately document statements and events during the course of an incident and elevate the behavior on both sides of the body worn camera.
- C. To enhance a deputy's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation and testimony.
- D. To preserve visual and audio information for the use in current and future investigations.
- E. To provide an impartial measurement for self-critique and field evaluation during deputy field training, coaching, counseling sessions, and the opportunity to raise standards of performance when it relates to tactics, communication and community service.
- F. To enhance the public trust by building positive relationships with the community and the professionalism of deputies by preserving and making available factual and accurate representations of deputy-citizen interactions in the form of audio and video recordings.
- G. To assure the public that the sheriff's office is earnest about transparency and deputy accountability and facilitate the strengthening of trust and the sheriff's office authenticity within the community.
- H. To increase the perceived legitimacy and sense of procedural justice that the community has about the Westmoreland County Sheriff's Office.

V. EQUIPMENT:

A. The approved Body Worn Camera, hereafter referred to as "BWC", shall be the WATCHGUARD VISTA.

1. The BWC has 720 p HD resolution, 130 degree wide angle field of view, adjustable 40 degree rotatable lens, with an extended capacity battery providing nine hours of continuous HD recording.
2. The approved BWC mounting hardware is the auto-aligning magnetic undershirt base front assembly with locking pins.

VI. PROCEDURES:

A. Mandated Training:

1. All patrol deputies' are required to wear the BWC during their assigned shift.
2. Prior to a deputy being issued, equipped and utilizing a BWC, the deputy shall be required to attend a sheriff's office in-house training program addressing the following points at a minimum:
  - a. All practices and protocols contained within this general order which will be distributed to all deputies during the training.
  - b. An overview of relevant Virginia laws governing consent, evidence, privacy and disclosure to the public.
  - c. Enumerate the procedures for operating the BWC's safely and efficiently.
  - d. Enumerate the procedures for tagging recorded data.
  - e. Enumerate the procedures for uploading, accessing and reviewing data.
  - f. Enumerate the procedures for documenting and reporting a malfunctioning device or a supporting system.
  - g. Training on implicit bias and its effects on policing.
3. An annual refresher class will be required to address the following:
  - a. Usage and protocols
  - b. Technology updates on equipment

- c. Liability and legal issues
- d. Community feedback
- e. Audit review discoveries
- f. Policy changes pertaining to BWC use

B. BWC Body Location:

1. To produce an effective recording, the tested and approved location for the BWC, is the top of the BWC shall be placed below the right shirt pocket flap (left portion of the shirt pocket flap) and the external magnetic mount shall align with the adjacent shirt button seam.
  - a. The BWC undershirt magnetic base will be affixed to the Velcro portion of the deputy's body armor with the supplied Velcro straps for BWC stability.
  - b. The deputy will adjust the 40 degree adjustable BWC lens for optimal aiming.
  - c. The same location will be utilized for the winter jacket.
2. The BWC shall be affixed to the Class A uniform shirt or winter jacket utilizing the issued chest mount magnetic undershirt base and the front assembly with locking pins.

C. Deputy BWC Maintenance and Care:

1. It is the exclusive responsibility of the deputy to ensure that their BWC is fully charged prior to the start of their shift, its function ability, and adequate event storage is available. The deputy will be required to activate the record button to confirm the above is functional and will tag the event as **TEST**.
2. In the event the BWC has been lost, stolen, damaged or sustains a malfunction, the deputy will immediately contact their immediate supervisor, who in turn will contact the administrative first sergeant to resolve the issue or the support services lieutenant.
3. To prevent damage when the cleaning of the BWC lens is necessary, only an approved lens cleaning fluid and cleaning tissue will be applied.

D. Operational Procedures for BWC use:

1. Deputies shall inform members of the public that they are being recorded as close to the inception of the encounter as is reasonably possible, unless an immediate threat to the enforcement member's life or safety makes notification impossible or dangerous, in which

case the deputy should notify the person(s) as soon as it is safe to do so.

2. Deputies shall cease recording an event, situation or circumstance at the request of a member of the public in the following circumstances:
  - a. During consensual encounters in locations where members of the public have a reasonable expectation of privacy, such as a residence or hospital room, a deputy shall offer the member of the public the option to have the BWC discontinue its recording. If the member of the public requests the recording be discontinued the deputy shall immediately discontinue use of the BWC.
  - b. When interacting with an apparent crime victim, the deputy shall, as soon as feasible, ask the apparent crime victim if they want the deputy to discontinue use of the BWC. If the apparent crime victim responds affirmatively, the deputy shall immediately discontinue use of the BWC.
  - c. When interacting with a person seeking to anonymously report a crime or assist in ongoing law enforcement investigation, a deputy shall, as soon as feasible, ask the person seeking to remain anonymous, if they would like to remain anonymous and would like the deputy to discontinue use of the BWC. If the person seeking to remain anonymous responds affirmatively, the deputy shall immediately discontinue use of the BWC.
  - d. All offers by deputies to discontinue the use of the BWC, and the responses thereto, shall be recorded by the BWC prior to discontinuing the use of the BWC.
3. Deputies while on duty or assigned to a sheriff's office sanctioned off duty assignment where law enforcement powers may be anticipated, shall wear the BWC. The use of a privately-owned body worn camera, under any circumstances is not permitted and therefore is **PROHIBITED**.
4. Upon being dispatched for a law enforcement related call for service or activity while on duty, whether by radio, MDT, or verbally, the deputy shall activate the BWC to record mode and verbally announce a preamble stating the nature of the call.
5. During the hours of darkness and/or prior to entering an unlit structure, a deputy shall activate and sustain the covert mode of the BWC.
6. To thwart allegations of discretionary recording or tampering, unless otherwise documented within this general order, the deputy

will continue to record the event uninterrupted until the event is concluded or the deputy has departed the scene.

7. Upon the termination of the event and prior to discontinuing the recording, the deputy will verbally state a post enunciation stating the event disposition.
  - a. If a deputy activates his or her BWC during an event, the deputy shall document within the narrative portion of the offense report of its existence.
  - b. If it is a non-reportable event, it will be noted within the CFS report of its existence.

#### E. Required Activation of the BWC:

1. Although deputies are not required to record all encounters with citizens, deputies are required to record all law enforcement related encounters and activities. This general order does not have the intent to describe every possible circumstance; however the following examples of incidents shall be recorded.
  - a. All calls for service where citizen contact is made.
  - b. All traffic stops.
  - c. All vehicle pursuits
  - d. All citizen, victim, witness transports
  - e. All investigatory stops
  - f. All foot pursuits
  - g. Any and all arrests
  - h. Any and all searches
  - i. Evidence seizure
  - j. Miranda warnings and the response from the in custody individual
  - k. Any and all statements uttered by citizens, victims, witnesses and suspects
  - l. K-9 searches of vehicles
  - m. Search warrants executed by the SRT team
  - n. Any incident that the deputy believes should be recorded for the official purposes of law enforcement.

- o. During the course of any encounter with the public that becomes adversarial after initial contact

**NOTE: IF IN DOUBT RECORD IT**

A. Prohibited Recording:

1. BWC's will not be utilized to record the following situations:
  - a. Surreptitiously record communications with any and all Westmoreland County Sheriff's Office employees.
  - b. When deputies and other Sheriff's Office employees are on break or are otherwise engaged in personal or non-work related activities.
  - c. Encounters with undercover law enforcement or informants.
  - d. In any location where individuals have a reasonable expectation of privacy, such as a restroom, or locker room.
  - e. In any location where deputies and other Westmoreland County Sheriff's Office employees have a reasonable expectation of privacy, such as a restroom, locker room, or station house office, hallway or break room.
  - f. Conversations with other sheriff's office personnel that involve case tactics or strategy.
  - g. The purposeful and intentional activation of BWC's during personal conversations between supervisors and deputies involving counseling, guidance sessions, or personnel evaluations.
  - h. In any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health.
  - i. Courts.
  - j. Correctional Facilities.

B. Event Category Tagging:

1. The event tag function is used to classify a recorded event and is used to control how Evidence Library Software applies preset retention policies to recorded events. Some events are



automatically archived or purged at the end of their configured retention period. It is compulsory that deputies correctly tag their events to prevent being archived or improperly purged.

2. The following is a list of category event tags, which may be used alone or in combination as events warrant:
  - a. Test
  - b. Domestic
  - c. Arrest
  - d. Use of Force
  - e. Vehicle Pursuit
  - f. DUI/DUID
  - g. Traffic Accident
  - h. Traffic Stop/Summons/Warning
  - i. Civil process
  - j. Evidentiary
  - k. Non Evidentiary
  - l. ECO and TDO

#### C. Uploading, Viewing, Duplication and Ownership of BWC Data:

1. Prior to the conclusion of a deputies shift assignment, he or she will place their BWC into the docking base to upload the BWC data which under normal operating conditions the upload procedure is completed within ninety seconds.
  - a. In the event due to time constraints at the completion of the deputies assigned shift or location within the county, the deputy will be permitted to upload the BWC at the beginning of his or hers next assigned shift.
  - b. Regardless of any situation all data contained within the BWC will be uploaded prior to the end of the deputy's last assigned work day of the week.
2. Regardless if the BWC is in the on or off mode, the data is automatically transferred to the Evidence Library.

3. Due to the technological advancements and data encryption of the BWC, the deputy is unable to view, edit, copy or otherwise tamper with the data from the BWC.
4. Deputies will be assigned a unique user name and password to access the Evidence Library to only view their event recordings.
  - a. Deputies shall have unlimited access to their BWC data.
  - b. The deputy will submit the required form to obtain copies of the event to the administrative first sergeant.
  - c. Deputies should review the BWC media prior to completing offense reports to ensure accuracy.
  - d. As soon as practical, the deputy will make three DVD copies of the event, if evidentiary in nature:
    - 1) A master copy which will be packaged/sealed in a DVD protective sleeve, as directed in General Order 18-02, marked as MASTER, and kept within the deputy's master case file,
    - 2) A DVD working copy for the deputy to review for case documentation and preparation.
    - 3) A DVD copy of the event to be forwarded to the Commonwealths Attorney's office.
5. In the event a deputy is involved in any incident involving use of force, the deputy will immediately relinquish the physical custody of their BWC to a supervisor in order to maintain chain of custody, and the supervisor will upload the BWC data.
  - a. The involved deputy will be not be permitted to view the recorded event, prior to making a written statement, which may or may not be utilized in an administrative review or a criminal or civil proceeding.
  - b. Viewing a video prior to preparing and providing a written statement influences a deputy's representation of his or her perspective of the event at the time that he or she used force. It is the deputy's ability to articulate his or her perception of the event, not match his or her perception to that of the recorded event.
  - c. The deputy shall complete his or her use of force documentation and then immediately sit down with the supervisor and view the video.

- d. If there are any discrepancies between the deputy's written documentation and the event video, the supervisor will provide an explanation within the supervisor's investigatory report.
  - e. Regarding deadly force incidents, after the deputy provides a written statement of his or her perceived version of the event, the video can be viewed during the deputy's interview with a supervisor and any discrepancies shall be addressed at that time within the supervisor's investigatory report.
6. Supervisory Review of Event Data:
- a. Field Training officers will be permitted to view the recruits BWC media to provide immediate training or remedial training.
  - b. A supervisor is authorized to view a deputy's BWC data in relation to the following circumstances:
    - 1) To investigate a complaint against a deputy or a specific incident in which the deputy was involved.
    - 2) To identify data for training purposes or for instructional value.
    - 3) When deputies are within a probationary review period or while the deputy is active in a field training program.
    - 4) When a pattern of verbal or physical abuse is alleged or determined in an early intervention.
  - c. The administrative first sergeant will conduct a monthly random review of BWC data to ensure compliance with this general order and an overall evaluation of a deputy's performance
  - d. The administrative first sergeant will conduct a monthly random review of BWC data to ensure compliance with this general order and an overall evaluation of a deputy's performance.
7. Any member of the public, parent or legal guardian of a minor, or a deceased subject's next of kin or legally authorized designee who is a subject of video footage, has the right to review that footage pursuant to the Government Data Collection and Dissemination Practices Act, Virginia Code Section 2.2-3800 et seq and shall be

permitted to review that specific video footage at any time during regular business hours.

8. All data, images, video, audio and metadata, (“BWC data”) captured, recorded, or otherwise produced by the BWC is the sole property of the Westmoreland County Sheriff’s Office.
  - a. Deputies are not authorized and will not make copies of any recordings for their personal use, distribution to unauthorized persons, or posting on social media sites and are prohibited from using a recording device (such as a phone camera or secondary video and audio camera) to record media from the Evidence Library Software. Violations will be subject to disciplinary recourse.
9. The Administrative Services Division shall make DVD copies of BWC data as requested in accordance with this general order.
  - a. Requests for BWC metadata from other law enforcement agencies shall be made on that agencies official letterhead and signed by the agency head.
  - b. Requests from the media, a non-law enforcement agency or an individual will be subject to the FOIA laws. All such requests will be in writing and from individuals entitled to view such recordings in accordance with this policy and applicable law. Records will be kept of all requests and all duplicates made and the distribution of such duplicates.
  - c. All FOIA related duplicates will be accompanied with a \$5.00 fee per event.

VII. The preservation, Management and Information Technology, (IT) regarding Stored Metadata.

A. Preservation:

1. All BWC data related to any criminal proceeding, civil complaint filed and/or pending litigation or an employee complaint will be preserved in accordance with the Library of Virginia, GS-17.
2. Evidentiary:
  - a. BWC data that captures any incident or encounter, a crime, arrest, summons, use of force, or a confrontational encounter with a citizen will be flagged and retained for a minimum of two (2) years or the applicable statute of limitations period if the video is relevant to a criminal complaint, charge or investigation, whichever is greater to allow the conclusion of an investigation, court proceedings,

or an administrative investigation for which they might be used.

- b. BWC shall also be flagged and retained for a minimum two (2) years from the date of the recorded incident if requested by:
    - 1) An enforcement member, if the video footage is being retained solely and exclusively for training purposes;
    - 2) Any member of the public who is a subject of the video footage;
    - 3) Any parent or legal guardian of a minor who is the subject of the video footage; or
    - 4) A deceased subject person's next of kin or legally authorized designee.
  - c. If a deputy is involved in a shooting, in custody death or any incident that results in a person's bodily harm or death, the BWC recording will be archived and maintained for perpetuity.
  - d. Use of force BWC recordings where civil litigation is anticipated, traffic accidents, etc., will be archived for a period of two years and one month, unless there is litigation, whereas the event will be purged at the conclusion of the litigation and the appeals process is concluded.
  - e. Evidentiary videos, at the conclusion of the investigation, court proceeding, or administrative hearing for which they were used shall be purged unless the data subject requests they be retained.
3. If the deputy captures an event on his or her BWC in relation to a homicide, rape, robbery, maiming or any other egregious felony crime, the deputy shall be required to package and label a DVD copy of the event, as directed in General Order 18-02 and place the DVD into property and evidence.
4. Non-Evidentiary:
- a. BWC data that captures innocuous events such as test, assisting a motorist, clearing a roadway hazard, civil process, etc. will be flagged for thirty days and will subsequently be purged on the thirty first day.
  - b. If a deputy is involved in an incident where he or she reasonably believes a complaint may be alleged against him or her by a citizen, the deputy will compose an inter-office memorandum to their immediate supervisor providing a

synopsis of the circumstances and requesting additional time to be added to the event to delay purging.

The memorandum will be forwarded through the chain of command to the administrative first sergeant, (primary), or in his or her absence to the lieutenant of support services, (secondary).

#### B. Management:

1. The BWC digital metadata files which are archived within the Evidence Library are maintained by the administrative first sergeant, who is the primary, and the lieutenant of support services who is the secondary.
2. The administrative first sergeant is the supervisor of the BWC evidence library and has full access to all use rights. The responsibilities of the supervisor are as follows and at a minimum:
  - a. Assigning and tracking the inventory of equipment.
  - b. User and password issuance
  - c. User access rights
  - d. Quality control
  - e. Maintaining and conducting an audit trail
  - f. The administrative first sergeant serves as the sheriff's office liaison to the manufacturer in relation to equipment operation, equipment that is non-operational and any and all related matters.

## C. Information Technology, (IT):

### 1. Storage:

- a. The designated server is a HP DL180G6 server with thirty six TB of storage. All BWC data will be stored within a secured partition.
- b. The BWC Evidence Library software access will be permitted through Active Directory Logon permissions solely based on Security Groups.
- c. No individual user access shall be allowed and all access will be controlled by the login policy.

### 2. Back-Up:

- a. All metadata that is selected for backup is handled internally on the HP DL 180G6 and will use Microsoft DFS replication services to back up the data to a mirrored server.
- b. All data is backed up daily and the metadata is encrypted and limited access is provided based on the access control.
- c. All data from this replication will be stored locally and will be removed based on the Watch Guard Video software's retention policies.

### 3. Security:

- a. Based on current internal policies and Windows security there are minuscule apprehensions with security issues.
- b. The Westmoreland County Sheriff's Office deploys and utilizes ESET Anti-Virus and Endpoint protection on this and all servers and office PC's.
- c. Sheriff's Office internet access is further protected by Watch Guard firewall and ESET.

**PARKER POLICE DEPARTMENT POLICY AND PROCEDURES MANUAL**

<b>3.25</b>	<b>EFFECTIVE:</b>	_____ David King, Chief of Police
	<b>REVISED:</b>	
<b>SUBJECT: RECORDING DEVICES AND IMAGING EQUIPMENT</b>		
<b>CALEA: 41.3.8</b>		<b>PAGE: 1 of 9</b>

**3.25.1 PURPOSE**

The purpose of this policy is to provide direction for the use of audio, visual and imaging recording devices including Mobile Video Recording (MVR) devices and Body Worn Camera (BWC) systems. The use of Department-approved body worn camera systems can provide powerful evidence of criminal activity and has proven to be a valuable tool for law enforcement in documenting enforcement members' honesty, integrity, and professionalism.<41.3.8 a.>

**3.25.2 POLICY**

Enforcement members (commissioned officers and animal services officers) shall use their MVR equipment, BWC systems and all other recording and imaging devices in compliance with manufacturer's operational guidelines, Department training and this policy. It is the policy of the Department to authorize the use of MVR and BWC to collect audio-visual evidence of criminal activity, to evaluate enforcement members' performance, and as a training tool for members. The benefits of the use of these devices can be a useful tool in prosecutions. <41.3.8 a.>

**3.25.3 PROCEDURES – MVR <41.3.8 b.>**

- A. MVR equipment installed in vehicles is the responsibility of the commissioned officer assigned to that vehicle and must be maintained according to manufacturer's recommendations. Prior to each shift, commissioned officers shall determine whether their MVR equipment is working satisfactorily and shall bring any problems with the equipment to the attention of their immediate supervisor as soon as feasible.
- B. MVR equipment will automatically activate when the vehicle's emergency warning devices are in operation.
- C. The equipment may be manually deactivated during nonenforcement activities, such as when protecting accident scenes from other vehicular traffic.
- D. Commissioned officers shall use their MVR equipment, to include video and audio, if vehicles are equipped with MVR devices, in the following situations:
  - 1. whenever a commissioned officer operates a patrol vehicle twenty (20) mph or more over the posted speed limit;
  - 2. traffic stops and related enforcement actions;
  - 3. to record the actions of subjects who are in close proximity to the patrol unit, when activation of MVR is feasible;
  - 4. when conducting sobriety checks; and



5. when placing a person(s) in custody, when feasible.
  6. Commissioned officers transporting any person other than a ride-along will ensure that the camera is positioned in a manner to collect video on the subject being transported. The commissioned officer will also keep in mind that any interferences such as radio traffic, music or other noises may prohibit the in-car camera microphone from collecting spontaneous statements made by the transporting person, to a minimum.
- E. Any time the MVR equipment is activated, the commissioned officer should do the following:
1. check that the video recorder is positioned and adjusted to record events;
  2. check that the MVR is not deactivated until the enforcement action is completed; and
  3. check that the wireless microphone is activated in order to provide narration with the video recording.
- F. MVR Management <41.3.8 c.>
1. Commissioned officers shall not erase, reuse or in any manner alter MVR hard drives, DVDs or DVR, except in accordance with this policy.
  2. Each MVR hard drive, tape, DVR or DVD, herein referred to as MVR devices, will have a unique number or identifier that shall be referenced on reports and summonses regarding recorded events. Each MVR device will have marked on the protective sleeve, the MVR device number, the unit to which it is assigned and the most recent date of use.
  3. The shift supervisor will issue the MVR device. Issued MVR devices shall remain in the patrol unit to which they were issued, until there is insufficient space to record activities. It will be the commissioned officer's responsibility to notify the shift supervisor when less than one (1) hour of available space remains on the media.
  4. Log sheets for the MVR devices shall also remain in the patrol units and be completed by all commissioned officers who utilize the MVR equipment in a patrol vehicle. The shift supervisor will be responsible for installing and removing MVR devices from the MVR equipment. Commissioned officers shall not install or remove MVR devices unless otherwise authorized by a supervisor.
  5. MVR devices that include recordings that may be of evidentiary value shall be removed from the vehicle by the shift supervisor or authorized designee, and the custody of the MVR device will then be transferred to the commissioned officer. This will be accomplished by the shift supervisor's or authorized designee's signature on the bottom of the log sheet.
  6. If an original MVR device is released for an administrative, investigative, judicial or other purpose, the chain-of-custody record will record the identity of the person to whom the MVR device was released, along with the date and time of release.
  7. When the MVR device is requested, a duplicate MVR digital media copy will be produced if the original is not specifically needed.

8. Requests for duplications of events appearing on MVR devices shall be submitted to the Evidence Section with the case number, date of offense, violation or incident in question and the requestor's relationship to the event.
9. All Department-established fees for video/audio duplication will apply to this activity.
10. All completed MVR devices shall be properly labeled and identified prior to being submitted.
11. Commissioned officers are encouraged to inform their shift supervisor of any video footage sequences that may be of value for training purposes.
12. The commissioned officer operating the MVR will note on the notes section of tickets, incident, arrest and related reports when video/audio recordings were made during the incident in question, along with the MVR device number. For each activation of the MVR device, the commissioned officer shall complete a standard log sheet. The MVR device counter number will be recorded in the notes section of the commissioned officer's summons or in the report to assist in duplication of the sequences.

#### G. Supervisory Responsibilities

1. Supervisory personnel who manage commissioned officers whose vehicles are equipped with MVR equipment shall ensure that all commissioned officers follow established procedures for the use and maintenance of MVR equipment and the completion of MVR documentation.
2. The shift supervisors, evidence technician or authorized designees will be responsible for issuing the MVR device and making sure there is an adequate supply of media, DVRs and log sheets available for use.
3. The shift supervisors, evidence technician or authorized designees will be responsible for installing and removing digital media from the MVR equipment.
4. MVR devices that are reasonably known to be of evidentiary value should be removed from the vehicle by the shift supervisor or authorized designee, and the custody of the MVR devices will then be transferred to the commissioned officer, which shall be evidenced by the signature of the supervisor or authorized designee on the bottom of the log sheet.
5. Keys will be issued to supervisors and their authorized designees for the removal of MVR device recordings from patrol vehicles.

#### 3.25.4 PROCEDURES – BWC <41.3.8 b.>

- A. Only members with enforcement authority should be permitted to wear a BWC.
- B. Enforcement members, who serve an undercover role in a specialized assignment on a task force such as DEA, will not be subject to this policy and will refer to the governing policies and procedures for that particular special assignment.

- C. Enforcement members engaging in off-duty assignments shall adhere to this policy while fulfilling the off-duty obligation in any capacity for the Department.
- D. BWC's should be worn in a location and manner that maximizes the camera's ability to capture video footage of the enforcement member's activities.
- E. Enforcement members should activate the BWC at the inception of all investigative or enforcement contacts that are conducted in person with a member of the public, until the contact with the member of the public has concluded and the enforcement member has left the scene, which include but are not limited to; pedestrian stops, consensual encounters, calls-for-service, on-view events.
- F. The enforcement member should activate the BWC at the first reasonable opportunity to do so, unless an immediate threat to the enforcement member's life or safety makes activating the BWC impossible or dangerous, in which case the enforcement member should activate the BWC as soon as it is safe to do so.
- G. Additional arriving enforcement members that are equipped with BWC should activate their cameras and begin recording the situation upon their arrival until the enforcement member leaves the scene.
- H. BWC's should not be used surreptitiously. Whenever possible, enforcement members wearing a BWC should notify any person(s) that they are being recorded by a body camera as close to the inception of the encounter as is reasonably possible.
- I. During consensual encounters in locations where members of the public have a reasonable expectation of privacy, such as a residence, an enforcement member shall offer the member of the public the option to have the BWC discontinue its recording. If the member of the public requests the recording be discontinued the enforcement member should immediately discontinue use of the BWC.
- J. When interacting with an apparent crime victim, the enforcement member should, as soon as feasible, ask the apparent crime victim, if they want the enforcement member to discontinue use of the BWC. If the apparent crime victim responds affirmatively, the enforcement member should immediately discontinue use of the BWC.
- K. When interacting with a person seeking to anonymously report a crime or assist in ongoing law enforcement investigation, an enforcement member should, as soon as feasible, ask the person seeking to remain anonymous, if they would like to remain anonymous and would like the enforcement member to discontinue use of the BWC. If the person seeking to remain anonymous responds affirmatively, the enforcement member should immediately discontinue use of the BWC.
- L. All enforcement member offers to discontinue the use of the BWC, and the responses thereto, should be recorded by the BWC prior to discontinuing the use of the BWC.
- M. Recordings made pursuant to an arrest or search of the residence or person(s) is not considered a consensual encounter for the purposes of this policy. The BWC should remain activated until the event is completed in order to ensure the integrity of the recording.

- N. Deliberative process conversations involving law enforcement, which are not participated in by citizens, which include but are not limited to discussions on charging decisions, and comparing witness accounts, should not be recorded.
- O. Whenever the enforcement member believes that a recorded contact may lead to a complaint, they should bring the recording to the attention of their supervisor as soon as practical. If no crime report or supplementary report is being prepared, details of the contact may be documented via information report or memorandum.

### 3.25.5 PROHIBITED USE OF BWC <41.3.8 b.>

- A. BWC's shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between an enforcement member and a member of the public.
- B. Audio or video recording devices shall not be used in Department locker rooms, restrooms or any other intimate places where there would be a reasonable expectation of privacy.
- C. Members shall not intentionally record confidential informants or undercover officers unless the recording is conducted specifically for the purpose of documenting an operation, drug purchase/sale or other undercover operation in furtherance of a criminal investigation.
- D. The BWC should not be activated while on the grounds of any public, private or parochial elementary or secondary school, or inside a medical treatment facility, except for the following exceptions:
  - 1. during times when all parties being visibly or audibly recorded are in a private room with consent for such recording;
  - 2. while affecting an arrest;
  - 3. while controlling a person through response to resistance techniques; or
  - 4. any other circumstances that are extraordinary.
- E. If an enforcement member is suspected of wrongdoing or involved in an officer-involved shooting or other serious use of force, the Department expressly prohibits an enforcement member from viewing the video file until after they have completed an initial report.
- F. Reporting Requirements
  - 1. Although the BWC is not a replacement for written reports, enforcement members may refer to the BWC for exact quotes that were used by the contacted parties.
  - 2. All digital media captured using the BWC will be considered property of the Parker Police Department. Accessing, copying or releasing any recording by any member for other than official law enforcement purposes is strictly prohibited, except to the extent disclosure is required pursuant to the Colorado Open Records Law.

## G. Deletion of Unintentional Recordings

In the event of an unintentional activation of the BWC system during a nonenforcement or noninvestigative activity, including but not limited to, restroom, meal break, or other areas where a reasonable expectation of privacy exists, enforcement members may request the recording to be deleted. A memorandum detailing the circumstances of the unintentional recording will be forwarded via the chain of command to the Chief of Police. If approved, the actual deletion requires two-party authorization. One of those parties will be the Chief of Police or designee and the other party will be an Evidence Section supervisor (Department BWC Administrator).

**3.25.6 MVR AND BWC DOCUMENTATION**

If an enforcement member fails to activate their MVR or BWC, fails to record the entire contact, or interrupts the recording, the enforcement member shall document why the recording was not made, interrupted or terminated. Appropriate disciplinary action shall be taken against any enforcement member who is found to have intentionally failed to adhere to the recording or retention requirements contained in this policy, or to have intentionally interfered with a BWC's ability to accurately capture video footage.

**3.25.7 OTHER PHOTO, ELECTRONIC AND RECORDING DEVICES**

- A. Department members shall not use a personal electronic recording or imaging device while performing police duties except in rare events to record evidence when Departmental issued equipment is not available.
- B. All photographs containing any individually identifiable patient information are covered by HIPAA privacy laws and must be protected in the same manner as patient care reports and documentation.
- C. Recordings shall be used for evidentiary documentation or training purposes only, except as permitted by prior written approval by the Chief of Police or designee. Only those members acting under their official duties will be permitted access to recordings and/or images.
- D. Department members will not make surreptitious recordings of conversations with other Department members except when necessary in the course of a criminal investigation or for Department administrative investigations. In either case, the Chief of Police or designee will be notified prior to for authorization of the nonconsensual recording.
- E. Any on-scene images/recordings and or any other images/recordings taken by members in the course and scope of their duties are the sole property of the Department. This includes any images taken intentionally or inadvertently with a member's personally owned camera, cell phone camera, or any other digital imaging device. The images shall be downloaded as soon as feasible and deleted off of the member's personal device.
- F. No images/recordings taken by any member in the course and scope of their duties may be used, printed, copied, scanned, e-mailed, posted, shared, reproduced or distributed in any manner, unless for official law enforcement purposes. This prohibition includes the posting of any Department photographs on personal Web sites including but not limited to, Facebook,

Myspace, YouTube, other public safety agency Web sites, or e-mailing to friends, relatives or colleagues without prior approval of the Chief of Police.

- G. All Department digital data will be downloaded as soon as feasible, and will be cataloged and stored in a secure database with access limited to appropriate members. After being downloaded, digital data on memory cards will be erased, including any member's personal devices.

### **3.25.8 DUTIES OF THE EVIDENCE SECTION**

The Evidence Section shall be responsible for storing and sorting all MVR and BWC media. Approved third-parties may be used for the storage of some MVR and BWC media.

#### **3.25.7 AUDITING <41.3.8 g.>**

- A. MVR devices and BWC will be audited by a designated supervisor on a periodic basis. Documented audits should be completed on the most recently available devices and by selecting downloads at random. These audits will focus on the following areas:
  - 1. whether a contact card was issued to the motorist if a summons was not issued;
  - 2. customer service;
  - 3. use of a body microphone;
  - 4. training;
  - 5. lighting issues (primarily for traffic stops made at night);
  - 6. enforcement member's articulation for the microphone;
  - 7. enforcement member safety issues; and
  - 8. any other issue that could result in generating a citizen complaint, a hindrance to prosecution or liability for the enforcement member or this Department.
- B. The designated auditing supervisor shall keep a log documenting findings during MVR device auditing.

#### **3.25.8 DATA STORAGE AND RETENTION <41.3.8 d.>**

- A. Data gathered by the MVR or BWC shall be retained and stored by this Department or an authorized third-party for a minimum of one (1) year from the date of creation however shall not exceed three (3) years unless it has evidentiary or exculpatory value in a criminal or civil action. In those circumstances, the applicable data should be downloaded from the server and booked into the Evidence Section via the BEAST and will be retained following the Town of Parker Records Retention Schedule.
- B. Any third-parties acting as an agent in maintaining MVR or BWC footage shall not be permitted to independently access, view or alter any video footage, except to delete videos as required by law or this agency's retention policies.

- C. Data gathered by the MVR or BWC shall be retained and stored by this Department for a minimum of three (3) years if the video footage captures images involving:
  - 1. any use of force;
  - 2. events leading up to an including an arrest for a felony-level offense, or events that constitute a felony-level offense; or
  - 3. an encounter about which a complaint has been registered by a subject of the video footage.
- D. Data gathered by the MVR or BWC shall be retained and stored by this Department for a minimum of three (3) years if a longer retention period is voluntarily requested by:
  - 1. enforcement member, if the video footage is being retained solely and exclusively for Department training purposes;
  - 2. any member of the public who is a subject of the video footage;
  - 3. any parent or legal guardian of a minor who is the subject of the video footage; or
  - 4. a deceased person's next of kin or legally authorized designee.
- E. Any member of the public, parent or legal guardian of a minor, or a deceased subject's next of kin or legally authorized designee who is a subject of video footage, shall be permitted to review that specific video footage in order to make a determination as to whether they will voluntarily request it to be subject to a three (3) year retention period.
- F. Pursuant to Colorado's Criminal Justice Records statutes, it is the goal of this policy to support and promote openness in government by releasing nonconfidential video recordings to the public upon request. This policy must also ensure that the privacy of victims, witnesses and suspects is maintained whenever feasible. MVR and BWC video footage should not be divulged or used for any commercial or other non-law enforcement purpose. This policy will not affect the release of recordings pursuant to a court order or subpoena.
- G. Nothing in this policy shall be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations and prosecutions.
- H. Data gathered by the MVR or BWC may be used and shared with the District Attorney's office or other law enforcement agencies only as permitted by law.

#### **3.25.10 REPAIRS, INSPECTION AND MAINTENANCE <41.3.8 e.>**

Enforcement members utilizing a BWC or operating vehicles equipped with MVR devices will maintain the equipment per the manufacturer's guidelines and inspect the equipment for nonfunctioning or malfunctioning devices before duty and immediately report any nonfunctioning equipment to their supervisor. The shift supervisor may reassign another unit if audio/video equipment has a malfunction provided a unit is available, or reissue another BWC until repairs or replacement can be made, if available.

**3.25.11 TRAINING REQUIREMENTS <41.3.8 f.>**

Enforcement members and supervisors will be provided adequate training in the use of BWC and MVR devices prior to being allowed to use the equipment.



## Portable Audio/Video Recorders

### 450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this Department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes.

#### 450.1.1 DEFINITIONS

**BUFFERING Mode:** The portable video recorder continuously loops a video recording for up to 30 seconds before the recording is started by the officer. While buffering, video only (no audio) is being recorded.

**Critical/Major Incident:** The definition is deliberately broad and should ensure that potential critical incidents are not missed. It recognizes the fundamental significance of community confidence and trust in the police response to critical incidents. Including any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and/or the community. Critical incidents include but are not limited to a use of force where serious bodily injury or death is sustained by anyone involved, or determined to be a critical incident by a supervisor.

**EVENT Mode:** Once activated by pressing the EVENT button, the portable video recorder saves the recorded buffered video and continues to record both audio and video.

**Evidence Transfer Manager (ETM):** Docking unit used to recharge and upload previously recorded audio and video (stored media) from the portable video recorder. The ETM automatically transfers all stored media to evidence.com.

**Evidence.com:** An online, cloud-based digital media storage repository. All media is stored in a highly secure environment, accessible only by authorized personnel.

**Portable Video Recorder System Administrator:** The Support Services Deputy Chief, or their designee, is the portable recording system administrator and they will maintain the integrity and efficiency of the data management and file retention systems.

### 450.2 POLICY

The Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department, and promote greater transparency and accountability, by accurately capturing contacts between members of the Department and the public, as well as increasing public and member safety during such contacts.

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Members are prohibited from using personally owned recording devices while on-duty.

### **450.3 MEMBER PRIVACY EXPECTATIONS**

All recordings made by members acting in an official capacity shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

Per City Policy 6.3 (18) Recording communications with another employee without that employee's knowledge and consent, except for meetings for which a transcript is required or customarily kept or where the recording is made in accordance with supervisory responsibilities.

### **450.4 MEMBER RESPONSIBILITIES**

If a member is issued a portable recorder by the Department, the member shall, prior to the start of his or her shift, ensure that he/ she is in possession of the issued recorder and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

The following members are required to be equipped with a portable video recorder prior to going into service:

1. Officers and Sergeants assigned to Patrol
2. Officers and Sergeants assigned to the Traffic Unit
3. Officers and Sergeants assigned as a School Resource Officer
4. Officers assigned to Crime Prevention
5. Community Service Officers
6. Any members engaging in off duty assignments shall adhere to this policy while fulfilling the off duty obligation in any capacity for the department

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful.

Portable video recorders should be turned off while inside the police department unless the member is in contact with a prisoner, witness, reporting party, victim, or suspect of a crime. While in the field, all members shall place the portable video recorder in buffering mode.

Assigned member(s) shall record his/her name, CCPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording. Members shall document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members shall include the reason for deactivation.

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### 450.5 ACTIVATION OF THE PORTABLE RECORDER

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable recorder shall be activated at the inception of any of the following situations:

- (a) All enforcement and investigative contacts including calls for service, stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify Dispatch and a member is likely to come into contact with the public for a law enforcement purpose.
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
- (e) Anytime a person other than a ride along is being transported. Members should keep in mind that any interferences such as radio traffic, music or other noises may prohibit the BWC microphone from collecting spontaneous statements made by the person being transported.
- (f) Additional arriving enforcement members that are equipped with BWC should activate their cameras and begin recording the situation upon their arrival until the member leaves the scene.
- (g) To assist in documenting warrantless or consensual searches of individuals, vehicles, buildings and other places:
  1. The portable recorder will be utilized to record the request and consent. This recording is intended to enhance a documented consent. It is not intended to replace the use of the Consent to Search Form.
- (h) The portable recorder can be used to record the search itself.
  1. To assist in documenting an individual's Miranda Advisement, the portable recorder will be utilized to record the advisement and the subject's responses when practical. This recording is intended to enhance a documented consent. It is not intended to replace the use of an Advisement/Waiver form.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as practicable.

#### 450.5.1 CESSATION OF RECORDING

Once activated, the portable recorder shall remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recordings may be stopped during significant periods of inactivity such as report writing or other

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breaks from direct participation in the incident.

During consensual encounters in locations where members of the public have a reasonable expectation of privacy, such as a residence, an enforcement member shall notify members of the public that they are recording the encounter. If the member of the public requests the recording be discontinued the enforcement member should immediately discontinue use of the portable recorder.

Recordings made pursuant to an arrest or a search of a residence or person(s) pursuant to a warrant or subject to a lawful exception thereto, or in an exigent circumstance is not considered a consensual encounter for the purposes of this policy. The portable recorder should remain activated until the event is completed in order to ensure the integrity of the recording.

When interacting with an apparent crime victim, the member should, as soon as feasible, ask the apparent crime victim, if they want the member to discontinue use of the portable recorder. If the apparent crime victim responds affirmatively, the member should immediately discontinue use of the portable recorder. Interactions between victim services and a victim or witness should not be recorded.

When interacting with a person seeking to anonymously report a crime or assist in ongoing law enforcement investigation, a member should, as soon as feasible, ask the person if they would like to remain anonymous and, if the person responds affirmatively, the member should immediately discontinue use of the portable recorder.

All member offers to discontinue the use of the portable recorder, and the responses thereto, should be recorded by the BWC prior to discontinuing the use of the portable recorder.

Deliberative process conversations involving only law enforcement personnel, which include but are not limited to discussions on charging decisions, and comparing witness accounts, should not be recorded.

#### **450.5.2 EXPLOSIVE DEVICE**

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

#### **450.6 PROHIBITED USE OF PORTABLE RECORDERS**

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or

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ridicule.

Portable recorders shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a member and a member of the public.

Audio or video recording devices shall not be used in Department locker rooms, restrooms or any other intimate places where there would be a reasonable expectation of privacy.

Members shall not intentionally record confidential informants or undercover officers unless the recording is conducted specifically for the purpose of documenting an operation, drug purchase/sale or other undercover operation in furtherance of a criminal investigation.

The portable recorder should not be activated while on the grounds of any public, private or parochial elementary or secondary school, or inside a medical treatment facility, including ambulances, except for the following exceptions:

1. During times when all parties being visibly or audibly recorded are in a private room with consent for such recording;
2. While affecting an arrest;
3. While controlling a person through response to resistance techniques; or

#### **450.7 RETENTION OF RECORDINGS**

All recordings will be tagged in accordance with current procedure for storing and retention. Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files and document the existence of the recording in the related case report. Transfers should occur at the end of the member's shift, or any time the storage capacity is nearing its limit.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact, an interaction that may lead to a complaint by a member of the public), the member should promptly notify a supervisor of the existence of the recording. The supervisor may extend the retention period for the recorded contact, if necessary.

##### **450.7.1 RETENTION REQUIREMENTS**

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 60 days, except in the event of unintentional as outlined in 450.9.

Anytime the category of portable recorder media changes, it is the responsibility of the member assigned the investigation to ensure the proper retention level is assigned to the media.

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#### 450.7.2 RETENTION CATEGORY DEFINITIONS

**Administrative Review (ADMN)** – Any incident that does not meet the criteria for any category other than no action taken and requires an administrative review will be maintained for 90 days. The Professional Standards Commander, or his designee, is responsible for changing the category or extending the retention period if necessary.

**Evidence (EVID)** – Any offense where prosecution is likely or has been initiated will be retained for the life of the case and until proper authorization for disposition of the evidence has been received.

**Felony 10 years (FTEN)** – Vehicular homicide and leaving the scene of the accident in the same criminal episode shall be retained for 10 years when no suspect has pending prosecution.

**Felony 5 years (FEL5)** – Vehicular homicide or leaving the scene of an accident that resulted in the death of a person shall be retained for 5 years when no suspect has pending prosecution.

**Felony no limit (FNOL)** – Murder, Sex Offense on a Child, Kidnapping, Treason, and Forgery shall be retained permanently whether completed, attempted, conspiracy, or solicitation applies when no suspect has pending prosecution.

**Felony other (FEL3)** – All other felonies not included in another retention category definition shall be retained for 3 years when no suspect has pending prosecution.

**Fugitive of Justice Arrest (FOJA)** – Any arrest of a fugitive of justice with no additional charges will be retained for 1 year.

**Major/Critical Incident (CRIT)** – All incidents determined to be a major or critical incident by any supervisor will be maintained permanently or until the category is authorized to be changed by a Commander. Major/Critical incident media will be restricted to personnel that are actively involved in the incident.

**Misdemeanor, Petty Offense, Municipal Ordinance Violations (MNOS)** – All violations in this category shall be retained for 18 months when no suspect has pending prosecution.

**No Action Taken (NACT)** – Contacts resulting in a warning, calls for service where no crime occurred or action is taken, or any other incident where no administrative review will occur will be retained for 60 days.

**Restricted (REST)** – Any media that contains sensitive information that should remain confidential, if the sensitive information cannot be redacted. Any member or supervisor may determine that this category should be utilized. A memo submitted through the member's chain of command to the Portable Recorder Administrator shall be completed explaining the need to restrict the media. All efforts should be taken to make videos of interest to the public available to the public while also protecting individual privacy. Restricted media will be retained permanently, or until the category is authorized to be changed by a Commander, or meets the criteria established in 450.9 Deletion of Unintentional Recording.

**Traffic Citation/Summons (SUMM)** – All traffic citations will be retained for 180 days unless an request for extension is received by the prosecuting authority.

**Training (TRNG)** – Any training exercises will be maintained for 30 days.

**Transport (TRAN)** – Anytime a person is transported in a vehicle and no other category except no action taken applies, will be retained for 1 year.

#### 450.8 REVIEW OF RECORDINGS

If a member is involved in (or a witness to) an incident that any policy requires an administrative review or is suspected of wrongdoing, the member shall not review any recordings of the incident until the member has completed an initial report or received the approval of a supervisor. This includes, but is not limited to:

- (a) Officer Involved Shootings or any other incident that will be investigated by the Adams County Critical Incident Team.
- (b) Any motor vehicle accident that will be investigated by the Adams County Accident Investigation Team.
- (c) Use of Force
- (d) Motor vehicle accident
- (e) Pursuit
- (f) Employee Injury
- (g) Citizen Inquiry or complaint of officer misconduct
- (h) Self-Inflicted Injury

When preparing written reports, members should review their recordings as a resource. Members may only review recordings from their assigned portable recorder. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

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### 450.9 Deletion of Unintentional Recording

In the event of an unintentional activation of the portable recording system during a non-enforcement or non-investigative activity, including but not limited to, restroom, meal break, or other areas where a reasonable expectation of privacy exists, members may request the recording to be deleted. A memorandum detailing the circumstances of the unintentional recording will be forwarded via the chain of command to the Chief of Police. If approved, the actual deletion requires two-party authorization. One of those parties will be the Chief of Police or designee and the other party will be an Evidence Section supervisor (Department Portable Recorder Administrator).

### 450.10 MEMBER RESPONSIBILITIES

- (a) Members will not use a portable video recorder or evidence.com until they have successfully completed the required training.
- (b) Members will ensure the following when assigned a portable video recorder at the beginning of each shift:
  - 1. The portable video recorder will be properly affixed upon the member's outer most layer of uniform with a department approved mount. Any modification to the mount is prohibited.
  - 2. Each member will ensure their portable video recorder is positioned correctly and verify the camera position by use of the viewer.
  - 3. The portable video recorder will be worn for the entire shift.
  - 4. Under normal operations, the portable video recorder's audible alert signal must remain in the ON position. The audible alert signal may be muted for tactical situations; however, the audible alert signal must be immediately reactivated at the conclusion of the tactical portion of the incident.
  - 5. In order to record all situations required by this policy, the member must maintain the portable video recorder in a constant state of operational readiness. Operational readiness means the portable video recorder has adequate battery life, available storage, remains properly affixed to the member's uniform, and is set to buffering mode.
- (c) Members will document the use of the portable video recorder within all reports and citations.
- (d) Officers will appropriately tag each recorded video.
- (e) Prior to going off duty, members will place the portable video recorder into the Evidence Transfer Manager (ETM) for charging and uploading of all stored media to evidence.com. The portable video recorder will not be removed from the ETM until the media has been fully uploaded and the battery is full recharged.

### 450.11 INVESTIGATOR RESPONSIBILITIES

- (a) Investigators will not use the portable video recorder system or evidence.com until they have successfully completed the required training.
- (b) When assigned a case for investigation, the assigned investigator will:
  - 1. Determine the identify of all involved members.
  - 2. Search evidence.com for any associated media, using multiple search parameters in order to verify that they have located all relevant files.
  - 3. Create a digital media file folder within evidence.com. The investigator will add



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all relevant/associated media into the folder.

4. Verify the accuracy of the category section, ensuring all media is properly categorized. If the category is incorrect, the investigator is responsible for entering the correct category.
5. View all applicable portable video recorder media and notate in their supplemental report that portable video recorder media does exist.

#### 450.12 SUPERVISOR RESPONSIBILITY

- (a) Supervisors will not use the portable video recorder system or evidence.com until they have successfully completed the required training.
- (b) When an incident arises that requires the immediate retrieval of portable video recorder media for chain of custody purposes (including but not limited to: serious crime scenes, officer involved shootings, critical incidents or other incidents as determined by policy/supervision) a supervisor will respond to the scene and ensure the portable video recorder remains affixed to the member in the manner it was found and that the portable video recorder data remains uncompromised. Through direct and uninterrupted supervision, the supervisor is responsible for the care and custody of the portable video recorder until it has been removed and secured by the lead investigator.
- (c) Supervisors will be responsible for ensuring that all portable video recorder media is properly categorized.
- (d) Supervisors are required to review portable video recorder media under the following circumstances and/or when the following reports are generated:
  1. Any incident that requires an administrative review
  2. The supervisor is investigating a specific act of officer conduct
  3. The officer has been placed on a performance improvement plan to address identified behavioral or performance deficiencies
  4. The supervisor is conducting a random audit of officer performance or in addition to a customer satisfaction survey
  5. Requests to review portable video recordings outside of these parameters must be approved by a Commander or higher rank.
  6. Nothing included above is meant to limit or restrict the Department's review as part of an official investigation.
- (e) Documentation will include whether the portable video recording media was reviewed and a synopsis of what is contained in the video footage.
- (f) When a supervisor is notified of a malfunctioning camera, the supervisor will ensure that the camera is operational prior to deploying the camera. If the supervisor is unable to deploy the camera, the Portable Video Recorder Administrator will be notified.
- (g) All supervisors with the rank of Sergeant or higher, will have access to view portable video recorder media in evidence.com, except for cases that have restricted access. All viewing of portable video recorder media in evidence.com is documented in an online audit trail.
- (h) Supervisors will ensure that every officer has turned in their assigned Portable video recorder prior to going off duty.

#### 450.13 PORTABLE RECORDER ADMINISTRATOR RESPONSIBILITIES:

The Portable Recorder system will be administered by the Support Services Deputy Chief or their designee. They are responsible for:

- (a) Ensuring that members are trained in the use of the portable recorder system and equipment prior to issuance.

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- (b) Ensuring that the portable video equipment meets the standards and requirements of the Commerce City Police Department.
- (c) Providing technical support for malfunctioning portable video recording equipment and facilitate all warranty repairs with the vendor.

**450.14 PROPERTY AND EVIDENCE PERSONNEL RESPONSIBILITIES**

- (a) Property and Evidence personnel will not use the portable video recorder system or evidence.com until they have successfully completed the required training.
- (b) Property and Evidence Personnel will be responsible for the following:
  - 1. Evidence Requests submitted by a prosecuting authority.
  - 2. Redacting portable recorder media.
  - 3. Providing portable recorder media to Records staff following an approved open records request.
  - 4. For all media not deleted through assignment of a retention time, the evidence unit will be responsible for disposing of portable recorder media through the normal disposition of physical evidence.
  - 5. An audit of all portable recorder media to ensure it is categorized and the retention schedule is applied. Any uncategorized media that is identified will require notification of the member and the member's immediate supervisor in writing.



**A MODEL ACT FOR REGULATING THE USE OF  
WEARABLE BODY CAMERAS BY LAW ENFORCEMENT**

Be it enacted by the [*NAME OF THE STATE LEGISLATIVE BODY OF THE STATE OR COMMONWEALTH*]:

SECTION 1.

- (a) Only law enforcement officers with the authority to conduct searches and make arrests shall be permitted to wear a body camera. Such body cameras shall be worn in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities.
- (b) Both the video and audio recording functions of the body camera shall be activated whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a law enforcement 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. The body camera shall not be deactivated until the encounter has fully concluded and the law enforcement officer leaves the scene.
- (c) A law enforcement officer who is wearing a body camera shall notify the subject(s) of the recording that they are being recorded by a body camera as close to the inception of the encounter as is reasonably possible.
- (d) Notwithstanding the requirements of subsection (b):
  - (1) Prior to entering a private residence without a warrant or in non-



exigent circumstances, a law enforcement officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer's body camera. If the occupant responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera;

(2) When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, ask the apparent crime victim, if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime victim responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera; and

(3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body camera. If the person seeking to remain anonymous responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera.

(e) All law enforcement offers to discontinue the use of a body camera made pursuant to subsection (d), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

(f) Body cameras shall not be used surreptitiously.

(g) Body cameras shall not be used to gather intelligence information based on



First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public.

- (h) Law enforcement officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health.
- (i) Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for six (6) months from the date it was recorded, after which time such footage shall be permanently deleted.
- (j) Notwithstanding the retention and deletion requirements in subsection (i):
  - (1) Video footage shall be automatically retained for no less than three (3) years if the video footage captures images involving:
    - (A) Any use of force;
    - (B) Events leading up to and including an arrest for a felony-level offense, or events that constitute a felony-level offense; or
    - (C) An encounter about which a complaint has been registered by a subject of the video footage.
  - (2) Body camera video footage shall also be retained for no less than three (3) years if a longer retention period is voluntarily requested by:
    - (A) The law enforcement officer whose body camera recorded the video footage, if that officer reasonably

- asserts the video footage has evidentiary or exculpatory value;
- (B) Any law enforcement officer who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;
  - (C) Any superior officer of a law enforcement officer whose body camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary or exculpatory value;
  - (D) Any law enforcement officer, if the video footage is being retained solely and exclusively for police training purposes;
  - (E) Any member of the public who is a subject of the video footage;
  - (F) Any parent or legal guardian of a minor who is a subject of the video footage; or
  - (G) A deceased subject's next of kin or legally authorized designee.
- (k) To effectuate subsections (j)(2)(E), (j)(2)(F) and (j)(2)(G), any member of the public who is a subject of video footage, the parent or legal guardian of a minor who is a subject of the video footage, or a deceased subject's next of kin or legally authorized designee, shall be permitted to review that specific video footage in order to make a determination as to whether they will



voluntarily request it be subject to a three (3) year retention period.

- (l) The following video footage shall be exempt from the public inspection requirements of the [*NAME OF STATE OPEN RECORDS ACT/FOIA LAW*]:
  - (1) Video footage not subject to a minimum three (3) year retention period pursuant to subsection (j);
  - (2) Video footage that is subject to a minimum three (3) year retention period solely and exclusively pursuant to subsection (j)(1)(C), where the subject of the video footage making the complaint requests the video footage not be made available to the public;
  - (3) Video footage that is subject to a minimum three (3) year retention period solely and exclusively pursuant to subsection (j)(2)(A), (j)(2)(B), (j)(2)(C) or (j)(2)(D); and
  - (4) Video footage that is subject to a minimum three (3) year retention period solely and exclusively pursuant to subsection (j)(2)(E), (j)(2)(F), or (j)(2)(G), where the person making the voluntary request requests the video footage not be made available to the public.
- (m) Any video footage retained beyond six (6) months solely and exclusively pursuant to subsection (j)(2)(D) shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.
- (n) No law enforcement officer shall review or receive an accounting of any body camera video footage that is subject to a minimum three (3) year retention period pursuant to subsection (j)(1) prior to completing any required initial reports, statements and interviews regarding the recorded event.

- (o) Video footage not subject to a minimum three (3) year retention period shall not be viewed by any superior officer of a law enforcement officer whose body camera recorded the footage absent a specific allegation of misconduct, nor shall it be subject to automated analysis or analytics of any kind.
- (p) Video footage shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.
- (q) Where a law enforcement agency authorizes a third-party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view or alter any video footage, except to delete videos as required by law or agency retention policies.
- (r) Should any law enforcement officer, employee or agent fail to adhere to the recording or retention requirements contained in this chapter, or intentionally interfere with a body camera's ability to accurately capture video footage:
  - (1) Appropriate disciplinary action shall be taken against the individual officer, employee or agent;
  - (2) A rebuttable evidentiary presumption shall be adopted in favor of criminal defendants who reasonably assert that exculpatory evidence was destroyed or not captured; and
  - (3) A rebuttable evidentiary presumption shall be adopted on behalf of civil plaintiffs suing the government, a law enforcement agency and/or law enforcement officers for damages based on police misconduct who reasonably assert that evidence supporting their claim was destroyed or not captured.





- (s) The disciplinary action requirement and rebuttable presumptions in subsection (r) may be overcome by contrary evidence or proof of exigent circumstances that made compliance impossible.
- (t) Any body camera video footage recorded in contravention of this or any other applicable law shall be immediately destroyed and shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.
- (u) Nothing in this chapter shall be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations and prosecutions.
- (v) As used in this section, “law enforcement officer” means any person authorized by law to conduct searches and effectuate arrests and who is employed by the state, or a county, municipality, or metropolitan form of government.
- (w) As used in this section, “subject of the video footage” means any law enforcement officer or any 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.

SECTION 2. This act shall take effect [DATE].

Revised Statutes Annotated of the State of New Hampshire  
Title VII. Sheriffs, Constables, and Police Officers (Ch. 104 to 106-K) ([Refs & Annos](#))  
Chapter 105-D. Body-Worn Cameras ([Refs & Annos](#))

N.H. Rev. Stat. § 105-D:1

105-D:1 Definitions.

Effective: January 1, 2017

[Currentness](#)

<[RSA 105-D:1 effective January 1, 2017.]>

In this chapter:

I. “Body-worn camera” or “BWC” means an electronic camera system for creating, generating, sending, receiving, storing, displaying, and processing audiovisual recordings that may be worn about the person of a law enforcement officer.

II. “Community caretaking function” means a task undertaken by a law enforcement officer in which the officer is performing an articulable act unrelated to the investigation of a crime. It includes, but is not limited to, participating in town halls or other community outreach, helping a child find his or her parents, providing death notifications, dealing with individuals asking for directions or other assistance, and performing in-home or hospital well-being checks on the sick, elderly, or persons presumed missing.

III. “In uniform” means a law enforcement officer who is wearing any officially authorized uniform designated by a law enforcement agency, or a law enforcement officer who is visibly wearing articles of clothing, a badge, tactical gear, gun belt, a patch, or other insignia that he or she is a law enforcement officer acting in the course of his or her duties.

IV. “Law enforcement officer” or “officer” means any person employed by a law enforcement agency.

V. “Law enforcement agency” or “agency” means a state, county, municipality, special district, security service or police of the community college system of New Hampshire and the university system of New Hampshire, security service of the legislative or judicial branch, unit of local government police department or any other entity authorized by law to employ law enforcement officers or exercise police authority.

VI. “Law enforcement-related encounters or activities” include, but are not limited to, traffic stops, pedestrian stops, arrests, searches, interrogations, investigations, pursuits, crowd control, traffic control, non-community caretaking interactions with an individual while on patrol, or any other instance in which the officer is enforcing the laws of the municipality, county, or state. The term does not include:

(a) Activities when the officer is completing paperwork alone or is in the presence of another law enforcement officer or officers; or

(b) Community caretaking functions.

VII. “Recording” means the process of capturing data or information stored on a recording medium.

VIII. “Recording medium” means any recording medium for the retention and playback of recorded audio and video including, but not limited to, VHS, DVD, hard drive, cloud storage, solid state, digital, flash memory technology, or any other electronic medium.

IX. “Subject of the recording” means any law enforcement officer or any suspect, victim, detainee, conversant, injured party, witness, or other similarly situated person who appears on the recording, and shall not include people who only incidentally appear on the recording.

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N.H. Rev. Stat. § 105-D:1, NH ST § 105-D:1

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Revised Statutes Annotated of the State of New Hampshire  
Title VII. Sheriffs, Constables, and Police Officers (Ch. 104 to 106-K) ([Refs & Annos](#))  
Chapter 105-D. Body-Worn Cameras ([Refs & Annos](#))

N.H. Rev. Stat. § 105-D:2

105-D:2 Use of Body-Worn Cameras.

Effective: January 1, 2017

[Currentness](#)

<[RSA 105-D:2 effective January 1, 2017.]>

I. This chapter shall apply to any law enforcement agency that elects to equip its law enforcement officers with body-worn cameras. All BWCs shall be operated in a manner consistent with the provisions of this chapter. Every law enforcement agency that elects to equip its officers with BWCs shall adopt policies and procedures relating to the use of BWCs and the retention and destruction of data consistent with this chapter.

II. Officers shall only use BWCs issued by their respective law enforcement agencies. BWC equipment and all data, images, and video captured, recorded, or otherwise produced by the equipment are the property of the officer's law enforcement agency and shall be subject to the restrictions in this chapter.

III. Officers who are assigned BWCs shall successfully complete an agency-approved training program to ensure proper use and operations.

IV. Officers shall only use BWCs while in uniform.

V. Officers shall activate the video and audio components of BWCs and start recording upon arrival on scene of a call for service or when engaged in any law enforcement-related encounter or activity, or, if so required by local policy, upon activation of lights and siren; provided, however, that in those cases set forth in subparagraphs VII(d) and (e), and paragraph IX in which an individual has a right not to be recorded, officers shall inform an individual of this option. If a citizen then declines to be recorded, the officer shall deactivate the audio and video functions. The officer shall document the reason why the camera was not activated in the associated police report. If exigent circumstances exist which prevent the BWC from being activated as set forth above, the device must be turned on as soon as practicable.

VI. Recordings shall be specific to an incident. Officers shall not indiscriminately record entire duties or patrols.

VII. A BWC shall not be used to record any of the following:

(a) Communications with other police personnel except to the extent such communications are incidental to a permissible recording.

(b) Encounters with police personnel or individuals whom the officer knows are acting in an undercover capacity or as confidential informants respectively, unless expressly directed to be included as part of the investigation.

(c) Intimate searches, when otherwise permitted by the agency's strip-and-body-cavity search policy.

(d) An interview with a crime victim unless his or her express consent has been obtained before the recording is made. Any recording obtained shall be consistent with the New Hampshire attorney general's model protocol for response to adult sexual assault cases, the New Hampshire attorney general's domestic violence protocol for law enforcement, the New Hampshire attorney general's stalking protocol for law enforcement, and the New Hampshire attorney general's child abuse and neglect protocol, as applicable. This subparagraph may be waived upon approval of the head of the law enforcement agency or his or her designee when the parent or legal guardian is the subject of the investigation to which a juvenile is a victim or witness.

(e) Interactions with a person seeking to report a crime anonymously. In such an instance, the law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous if the person wants the officer to use the officer's BWC. If the person responds negatively, the law enforcement officer shall deactivate the audio and video functions.

(f) While on the grounds of any public, private, or parochial elementary or secondary school, except when responding to an imminent threat to life or health or a call for service.

(g) When on break or otherwise engaged in personal activities.

(h) In any instance when it is believed that an explosive device may be present and electrostatic interference from the BWC may trigger the device.

VIII. Officers shall inform an individual that he or she is being recorded as soon as practicable. When notification is not made, the recording officer shall note the reason for non-notification within the associated report.

IX. In locations where an individual has a reasonable expectation of privacy, such as a residence, a restroom, or a locker room, a citizen may decline to be recorded unless the recording is being made while executing an arrest warrant, or a warrant issued by a court, or the officer is in the location pursuant to a judicially-recognized exception to the warrant requirement. Officers shall inform an individual of this option. If a citizen then declines to be recorded, the officer shall deactivate the audio and video functions, and any images shall, as soon as practicable, be permanently distorted or obscured. The officer shall document the reason why the camera was not activated in the associated police report.

X. Once activated, the BWC shall remain activated until the event is completed in order to ensure the integrity of the recording unless otherwise provided in this section.

XI. If an officer fails to activate the BWC, fails to record the entire contact, interrupts the recording, or if the BWC malfunctions, the officer shall document why a recording was not made, was interrupted, or was terminated as part of the associated police report.

XII. Except as authorized in this section, no person, including without limitation officers and their supervisors, shall edit, alter, erase, delete, duplicate, copy, subject to automated analysis or analytics of any kind, including but not limited to facial recognition technology, share, display, or otherwise distribute in any manner any BWC recordings or portions thereof. This paragraph shall not apply to the sharing of a still image captured by the BWC to help identify individuals or vehicles suspected of being involved in a crime.

XIII. Recorded images and sound made from an agency-issued BWC shall be for law enforcement purposes only. All access to this data shall be audited to ensure that authorized users only are accessing the data for law enforcement purposes only. All access to BWC data shall be authorized by the head of the law enforcement agency and only for the purposes set forth in this chapter.

XIV. If an officer is suspected of wrongdoing or involved in an officer-involved shooting or other use of deadly force, the agency may limit or restrict an officer from viewing the video file.

XV. All recordings shall be securely stored no later than the end of each shift, or as soon thereafter as is reasonably practicable, in conformity to the most recent security policy of the Criminal Justice Information Services (CJIS) of the criminal justice information services division of the Federal Bureau of Investigation of the United States Department of Justice. Recordings shall not be divulged or used by a law enforcement agency for any commercial or other non-law enforcement purpose. Where a law enforcement agency authorizes a third party to act as its agent in storing recordings, the agent shall not independently access, view or alter any recording, except to delete videos as required by law or agency retention policies. Neither the agency nor its agent shall subject any recording to analysis or analytics of any kind, including without limitation facial recognition technology and data mining.

XVI. Recordings made by a BWC shall be permanently destroyed by overwriting or otherwise no sooner than 30 days and no longer than 180 days from the date the images were recorded, except that such recording shall be retained by the law enforcement agency that employs the officer whose BWC made the recording, or an authorized agent thereof, for a minimum of 3 years if:

(a) The recording captures images involving any of the following:

- (1) Any action by a law enforcement officer that involves the use of deadly force or deadly restraint.
- (2) The discharge of a firearm, unless for the destruction of an animal.
- (3) Death or serious bodily injury.

(4) An encounter about which a complaint has been filed with the police department within 30 days after the encounter.

(b) The recording is being retained by the law enforcement agency as evidence in a civil or criminal case or as part of an internal affairs investigation or as part of an employee disciplinary investigation.

XVII. Notwithstanding the provisions of paragraph XVI:

(a) If there is any other legal requirement for retaining the recording, including but not limited to litigation, a pending criminal case, or a valid court or administrative order, then the recording shall be retained only as long as is legally required; and

(b) The chief law enforcement officer of the agency may designate the recording as a training tool, provided that a person's image and vehicle license plate numbers shall first be permanently deleted, distorted, or obscured, or the person has been given an opportunity in writing to decline to have his or her image and/or vehicle license plate number to be so used. A recording so designated and prepared may be viewed solely by officers for training purposes only.

XVIII. Any recording undertaken in violation of this chapter or any other applicable law shall be immediately destroyed and, whether destroyed or not, shall not be admissible as evidence in any criminal or civil legal or administrative proceeding, except in a proceeding against an officer for violating the provisions of this chapter. In a proceeding against an officer for violating the provisions of this chapter, the recording shall be destroyed at the conclusion of the proceeding and all appeals.

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N.H. Rev. Stat. § 105-D:2, NH ST § 105-D:2

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