

Law Enforcement Advisory Board
Report to General Assembly and House and Senate Committees on
Judiciary and on Government Operations
Act. No 163 of 2016
Model Body Worn Camera (BWC) Policy

2016 Act No. 163 tasked the Law Enforcement Advisory Board make a report to House and Senate Committees on Judiciary and on Government Operations on a statewide policy for the use of body worn cameras (BWC) by Vermont law enforcement agencies. Specifically:

- (A) any costs associated with establishing the statewide policy, including strategies for minimizing the costs of obtaining cameras and storing data; and*
- (B) potential grants available to alleviate the costs of establishing the statewide policy.*
- (b) The model policy required by this section shall include provisions regarding:*
 - (1) when a law enforcement officer should wear a body camera; (2) under what circumstances a law enforcement officer wearing a body camera should turn the camera on and off, and a requirement that the officer provide the reasons for doing so each time the camera is turned on and off;*
 - (3) when a video recording made by a law enforcement officer's body camera should be exempt from disclosure under the Public Records Act as determined by 1 V.S.A. chapter 5, subchapter 3; and*
 - (4) treatment of situations when a law enforcement officer's body camera malfunctions or is unavailable.*

To complete this report, the LEAB gathered information from Vermont law enforcement agencies currently using BWC, and received input from representatives from the ACLU and the Vermont Network Against Domestic Violence and Domestic Abuse. We also relied on a comprehensive report prepared by the Police Executive Research Forum (PERF), and the PERF policy guidelines were incorporated into Appendix A, which provides agencies with suggested language for a model policy's essential components. This narrative will attempt to answer each section of Act 163 individually.

Costs and Grants: Any costs associated with establishing a BWC program would center on the purchase of equipment and associated storage. A single camera purchase tended to range from \$400 to \$1000, depending on agency model choice. The average cost appeared to be in the \$500 to \$600 range. Storage costs varied as well, from an agency supporting a 24 TB system with a one-time purchase cost of \$2500, to annual fees for 'cloud' storage that ranged from \$99/unit to almost \$500/unit (we did not attempt to explore why such a disparity, except to note that it is likely related to services the storing entity would provide).

Agencies already adopted a number of strategies for minimizing costs that revolved around the camera purchased and the storage system selected, and the LEAB would not be able to offer

anything to agencies that would significantly improve what they were already doing about managing costs. A few agencies noted that they took advantage of grant funds to absorb or offset the initial purchase, but in general, grants are available only for initial purchase and would not help agencies adding to or replacing existing equipment (depending on a given grant's parameters).

Model Policy Provisions: We discovered in the course of researching existing policies that almost all Vermont agencies using BWC's had policies that met most of the requirements specified in (b)(1) through (b)(4). We did incorporate language around filming lawful public gatherings and language regarding non-evidentiary use of a video, such as training, without the express permission of the victim if the incident involves domestic violence or sexual assault and the victim can be identified, because those were not universal among the policies.

The ACLU had requested that officers be prohibited from viewing BWC recordings prior to preparing his/her report after an incident involving serious use of force, but when that idea was presented to the law enforcement community at large, it was vehemently rejected.

We noted that Vermont law already provided for confidentiality of recordings and when they can/should be made public, though we would observe that the law wouldn't seem to forbid an agency from releasing information if the agency CEO believed it would be more beneficial than harmful. We would be reluctant to compel an agency CEO to release information that VT law has already shielded.

The essential components of a model policy and suggested language can be found in Appendix A. A copy of the PERF policy recommendations can be found in Appendix B.

Recommendation

The LEAB recommends that agencies use the contents of Appendix A as the essential components of its BWC policy, using the provided or very similar language. At this point in time, the LEAB would recommend against specific policy provisions in statute because the science around human memory and perception relative to traumatic events is still evolving, particularly with regards to the U.S. Supreme Court provisions around what is considered a reasonable use of force in *Graham v. Connor*.

Appendix A

Purpose: The purpose of this policy is to direct officers and supervisors in the proper use and maintenance of **Body Worn Cameras (BWC)** as well as directing how video will be utilized as a quality control mechanism and evidence.

Policy: The policy of this agency is to provide officers with body worn cameras in an effort to collect evidence to be used in the prosecution of those who violate the law, for officer evaluation

and training, and to provide accurate documentation of police and citizen interaction. The use of a BWC system provides persuasive documentary evidence and helps defend against civil litigation and allegations of officer misconduct. Officers assigned the use of these devices shall adhere to the operational objectives and protocols outlined herein so as to maximize the effectiveness and utility of the BWC and the integrity of evidence and related video documentation.

Objectives:

1. To enhance Officer safety
2. To document statements and events as they are occurring
3. To document crime or incident scenes
4. To enhance an Officer's ability to document and review statements and actions for reporting and criminal prosecution
5. To preserve visual and audio information for use in current and future investigations
6. To serve as a tool for officer training
7. To enhance public trust

Procedures for BWC Use

BWC equipment is issued primarily to uniformed personnel as authorized by this agency. Officers who are assigned BWC equipment must use the equipment unless otherwise authorized by supervisory personnel.

Police personnel shall use only BWCs issued by this department. The BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of the agency.

Police personnel who are assigned BWCs must complete an agency approved and/or provided training program to ensure proper use and operations. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy and equipment.

BWC equipment is the responsibility of individual officers and will be used with reasonable care to ensure proper functioning. Equipment malfunctions shall be brought to the attention of the officer's supervisor as soon as possible so that a replacement unit may be procured.

Officers shall inspect and test the BWC prior to each shift in order to verify proper functioning and shall notify their supervisor of any problems.

1. Officers shall not edit, alter, erase, duplicate, copy, share, or otherwise distribute in any manner BWC recordings without prior written authorization and approval of the chief executive officer (CEO) or his or her designee.
2. Officers are encouraged to inform their supervisor of any recordings that may be of value for training purposes.

3. If an officer is suspected of wrongdoing or involved in an officer-involved shooting or other serious use of force, the department reserves the right to limit or restrict an officer from viewing the video file.
4. Requests for deletion of portions of the recordings (e.g., in the event of a personal recording) must be submitted in writing and approved by the chief executive officer or his or her designee in accordance with state record retention laws. All requests and final decisions shall be kept on file.
5. Officers shall note in incident, arrest, and related reports when recordings were made during the incident in question. However, BWC recordings are not a replacement for written reports.

Permitted and Prohibited Use

1. Officers shall activate the BWC to record with audio and video the following incidents:

- a. All calls for service in which citizen contact is made
- b. All traffic stops
- c. All citizen transports (excluding ride-alongs)
- d. All investigatory stops
- e. All foot pursuits
- f. When arriving at law enforcement events and/or citizen contacts initiated by other Officers
- g. Other incidents the officer reasonably believes should be recorded for law enforcement purposes, i.e., any contact with the public that becomes adversarial after initial contact.

2. The recording shall include, but are not limited to:

- a. Arrests of any persons
- b. Searches of any kind
- c. Seizure of any evidence
- d. Requests for consent to search
- e. Miranda warnings and response from in custody suspect
- f. Statements made by citizens and defendants
- g. K-9 searches of vehicles
- h. Issuance of written violations

3. The recording shall continue until the law enforcement event or citizen contact is completed and the citizen involved departs or until the officer, who is recording the event through a BWC discontinues his or her participation in the law enforcement event or citizen contact by leaving the scene.

4. Officers shall avoid using the BWC to record individuals who are picketing or engaging in a protest or during First Amendment demonstrations unless an obvious violation of criminal or municipal law is occurring or if the Officer is in the same vicinity for other legitimate law

enforcement purposes; or as directed by the Chief of Police of their designee under circumstances where disorder or criminal conduct is anticipated.

5. A recording may be stopped in cases of a sensitive nature such as domestic assault or sexual assault, once 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 offence. In these circumstances the user should consider whether continuing to record through statement-taking or other administrative processes is appropriate or necessary.

6. 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.

7. Officers should, when reasonable and when circumstances allow, obtain consent prior to recording interviews with crime victims.

8. In all instances where the officer deliberately stops recording, the officer will make verbal notification, on the record, of the date and time the recording is being stopped and the reason why.

9. Officers will not be permitted to use privately-owned cameras while on duty.

Officer Responsibility

Officers will make every reasonable effort to ensure that the BWC recording equipment is accurately capturing events. A reasonable effort includes:

Activating the video/audio recording as soon as the officer makes citizen contact or the law enforcement event begins

Activating the video/audio when the officer arrives at a street encounter, or citizen contact initiated by another officer

Positioning and adjusting the BWC to record the event

Officers should record all contacts in their entirety unless the officer enters an agency location where another recording device is available to continue recording the contact (ex.: DUI Processing Room, Interview Room), or a citizen in their residence asks not to be recorded.

Officers shall not erase, alter, modify or tamper with BWC recordings.

A malfunctioning BWC will be replaced as soon as reasonably possible. If a replacement BWC is immediately available, it will be issued and checked to ensure it's operating properly, per this policy, before the officer resumes his/her duties.

Recordings Storage and Documentation

1. An agency may delete BWC recordings only if it has a record retention schedule approved by the State Archivist or the deletion is already authorized by law.
2. In a case where an event is recorded which involves an arrest or any seizure of evidence or property, the arresting officer shall indicate that the event has been recorded, in a format approved by the agency.
3. BWC recordings containing information that may be of value for case prosecution or in any criminal or civil proceeding shall be handled as other forms of evidence and a proper chain of custody will be maintained at all times.
4. These recordings will be subject to the same restrictions and chain of evidence safeguards as detailed in the agency evidence control procedures.
5. All BWC recordings are the property of this agency. Dissemination outside the agency is strictly prohibited without specific authorization of the agency head or designee.
6. To prevent damage to, or alteration of, the original recorded media, it shall not be copied, viewed or otherwise inserted into any device not approved by the agency CEO or designee.
7. Malicious destruction or deletion of BWC recordings is prohibited.
8. All BWC recordings are subject to open records request as allowed by Vermont law. Recordings that are the subject of a denied open records request must be maintained until the dispute between the department and the person or entity requesting the recordings is resolved.
9. If a recording is used by the department for training purposes, the recording shall be maintained as a training record for five years. In no circumstances should a domestic violence or sexual assault video be used in training without the express written consent of the victim, if the victim can be identified in the video.
10. If a recording is used in a disciplinary action against an employee, then the recording shall be held for a minimum of three years from the completion of the disciplinary action, or a length of time designated in bargaining contract.
11. Recordings shall be subject to review by the Chief of Police or a supervisor designated by the Chief of Police or their designees
12. In the event that a complaint is lodged against an employee, the employee's supervisor may review the recording. If upon review, the supervisor finds that corrective action is necessary regarding an officer's conduct, the supervisor will follow the agency's disciplinary policy

Exemptions from Disclosure Under the Public Records Act

1 VSA 317 (c) and all subsections under (c) specify those records that are exempt from public viewing and copying.