



STATE OF VERMONT
SERGEANT AT ARMS
CAPITOL POLICE DEPARTMENT

Capitol Police Department Body Worn Camera Policy

Definitions:

Body worn camera (“BWC”): An electronic device capable of capturing audio and visual recordings worn on a person’s body.

Law enforcement officer or sworn member (“Officer”): A Capitol Police Department officer with the authority to conduct searches and make arrests.

Lethal force incident: Any instance in which an officer uses lethal force, whether the subject is injured or not; and any incident where an officer takes action that results in death or serious bodily injury to a person.

Recordings: Refers to files captured by body worn cameras.

Subject of the video footage: Any identifiable law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the recording and shall not include people who only incidentally appear on the recording.

Use of force: Any action beyond verbal commands and compliant handcuffing by a law enforcement officer that is intended to control, restrain, or overcome the resistance of another. This includes any action that results in death, injury, or complaint of injury or pain that persists beyond the use of a physical control hold. Force also includes the use of a weapon (including pointing of a firearm at a person) or empty-handed control and restraint tactics against a member of the public.

Video footage or file: Any images or audio and metadata recorded by a body worn camera.

I. Use of Body Worn Cameras.

A. BWCs shall be worn in a location and manner consistent with the manufacturer’s recommendations and that maximize the camera’s ability to capture video and audio footage of the officer’s activities.

B. Generally, BWCs shall be worn by all officers. An agency head may exempt specific personnel or functions. An agency head may authorize nonsworn personnel to wear a BWC.

C. BWCs are not intended to be used surreptitiously. Specifically, officers should not conceal the presence of a BWC, nor shall they attempt to utilize the BWC to record in secret unless authorized by a judicial order.

D. Both the video and audio recording functions of the BWC shall be activated in any of the following situations:

1. At the beginning of any investigative or enforcement encounter between an officer and a member of the public, except 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.
2. During all requests made in the field to conduct a search and during the performance of the search, including K-9 searches.
3. During administration of Miranda warnings and any response when in the field.
4. At any incident that the officer reasonably anticipates may be confrontational or result in the need to use force.

E. The Sergeant at Arms may recommend that this policy be amended to include additional circumstances where BWCs shall be used by officers.

F. Except as authorized in subsections (G) and (H) of this section, BWCs shall not be deactivated until the encounter has fully concluded and the officer leaves the scene or continued custody of a person has ended.

G. Prior to entering a private residence, or any premises where there is a reasonable expectation of privacy, without a warrant or in non-exigent circumstances, an officer shall notify the occupants of use of the BWC as soon as practical.

1. If an occupant with privacy rights objects to the operation of the BWC, an officer shall consider the need to continue the encounter. If the officer has no lawful basis to continue the encounter absent consent, the officer shall consider terminating the encounter. If the officer has a lawful basis to continue the encounter or remain present, other than the individual's consent, the officer may continue using the BWC.
2. If entering a private residence pursuant to a search warrant, the officer shall, at the time of applying for the search warrant, consult with the State's

Attorney's Office or Attorney General's Office to determine whether a search warrant is needed for use of the BWC.

H. Permissive restrictions on the use of BWCs:

1. There are specific situations in which the use of a BWC is not appropriate and officers should not initiate a recording or, if an audiovisual recording has been initiated, the officer may pause or stop the recording prior to the conclusion of the event. Acceptable reasons for discontinuing recording or activating the mute feature include:

- a. during on-scene conferences between officers, supervisors, advocates, clinicians, EMS personnel, attorneys, prosecutors, or other situations in which the officer determines the conference would violate confidentiality, privacy, or individual rights;
- b. conferences between officers and supervisors that might compromise this or further investigations or would otherwise impede law enforcement efforts or strategy;
- c. encounters with undercover officers or confidential informants;
- d. if a person reporting a crime or assisting with an investigation requests to remain anonymous; and
- e. during times of prolonged waiting absent contact with members of the public such as waiting for a tow truck, funeral home, or similar.

2. Recordings are not expected during:

- a. nonenforcement activities;
- b. operations such as routine regulatory functions that are unique to specialized law enforcement agencies;
- c. the execution of a search warrant for evidence of child pornography where capturing recordings of the material and uploading them to a third-party vendor's storage would constitute a crime;
- d. transports conducted pursuant to a transport order or where a cruiser camera is enabled and captures the individual being recorded; or
- e. personal activities such as meal breaks or conversations with other officers, supervisors, or staff outside of the scope of official duties.

I. Prohibitions on Use of BWCs:

1. Officer shall, upon request of a victim of domestic or sexual violence, stop recording, provided the scene has been stabilized and made safe following initial response.
2. Once a scene has been stabilized and made safe by law enforcement, recording shall stop for victims of domestic or sexual violence during interactions involving matters of safety planning or related to victim privacy.
3. Officers shall not activate a BWC while on the grounds of any public, private, or parochial elementary or secondary school, nor within a hospital or medical facility except when responding to an imminent threat to life or health or when a use of force is anticipated.

The prohibition in this subsection (3) does not prevent officers from using BWCs as recording devices as part of an investigatory interview in a private setting within a school or medical environment.

4. Officers shall not use body cameras to record for the sole purpose of gathering intelligence information on First Amendment-protected activities such as speech, associations, or religion.

The prohibition in this subsection (4) shall not be construed to limit lawful use of BWCs to record investigative encounters between an officer and a member of the public or activity that raises an articulable suspicion of ongoing or imminent criminal conduct.

5. The Capitol Police Department shall not run recordings through facial recognition or automated analysis programs without appropriate judicial review, except for automated redaction processes that are not for the purpose of identification or comparison to any other source.

J. Recording should resume as soon as any exception no longer exists.

K. If an officer pauses or stops a recording, or uses a mute feature, they shall document the reason for the termination or suspension of the recording.

L. Review of Recordings:

1. Except as otherwise prohibited (see section 2 of this policy), an officer may review BWC recordings prior to writing reports about incidents or arrests.
2. In situations that result in an officer-involved shooting, or death or serious bodily injury to a member of the public due to the actions of an officer, the

officer shall not review any recordings or be provided an account of any recordings of the incident prior to being interviewed or writing a report, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

3. See the Appendix A of the Statewide Policy on Police Use of Force for procedures following a lethal force incident.

II. Equipment and Training

A. Responsibilities of Officers:

1. Prior to start of each, shift officers are responsible for checking their BWC equipment to be sure it is operational, fully charged, and free of any defects. Officers shall report any malfunctioning equipment to a supervisor, seek a replacement if available, and make a log note or other written notation of the date and time equipment malfunction was discovered.

During interactions where there is an expectation that the BWC would be activated, an officer should periodically check the BWC to assess that it is functioning properly.

2. In the event a BWC either fails to activate and begin recording or fails to cease recording, the officer will describe this, along with any additional relevant details, in a written report.

3. Officers are responsible for categorizing each recording appropriately. The tags or categories of files correspond to its retention period. Officers must take extreme care to properly categorize each recording. Intentional miscategorization of recordings will result in appropriate disciplinary action.

4. Officers shall transfer data from their assigned BWC to the Capitol Police Department storage as soon as practical, but not less than prior to use by another officer or prior to the capacity of the device being reached.

5. Under no circumstances shall an officer erase, edit, alter, duplicate, share, or otherwise distribute any recordings on their device except as allowed by this policy. Pursuant to section 3 of this policy, only a system administrator is authorized to delete or edit files, and only designated staff are authorized to duplicate and distribute copies of recordings.

6. Should any officer or employee fail to adhere to the recording requirements contained in this policy, intentionally interfere with a BWC's ability to accurately capture video footage, or otherwise manipulate the video footage captured by a BWC during or after its operation, appropriate disciplinary action shall be taken.

B. Responsibilities of the Chief.

1. The Department is responsible for providing training on the proper use of equipment to include the contents of this policy, instruction on operation of the BWC, how and when to transfer files, and proper identification and categorization of recordings.
2. The Department shall provide instruction to officers on how to report and replace malfunctioning equipment.
3. The Chief may review recordings for the purpose of ensuring compliance with established policies, to verify the equipment is functioning properly, to identify any areas in which additional training or guidance is required, and to identify material that would be appropriate for training.
4. The Chief is responsible for ensuring that all BWCs are equipped with a “buffering” feature and have such feature activated and set to record and retain at least the most recent 30 seconds of video prior to activation of the BWC.
5. The Chief is responsible for ensuring that the provisions of section 3 are followed.

III. Storage, Retention, and Release.

A. Storage: The Department is responsible for ensuring the secure storage of all recordings made by officers. All recordings or files are the property of the Department and shall only be used for official purposes.

B. Retention and Release:

1. Recordings shall be held in accordance with the Department’s records retention schedule for BWC recordings. Prior to releasing records pursuant to Vermont’s Public Records Act, the Department shall consult with the Office of Legislative Counsel.
2. Should any employee intentionally fail to adhere to the retention requirements contained in this policy, appropriate disciplinary action shall be taken.
3. If the Department authorizes access to stored footage by a vendor such as a technician, information technology staff, etc., the third party shall not be permitted to access, view, copy, alter, or delete footage unless in accordance with this policy and at the express direction of the agency.

4. When a BWC fails to capture some or all of the audio or video of an incident due to malfunction, displacement of camera, or any other cause, any audio or video footage that is captured shall be treated the same as any other recording as described in this policy.
5. Recording related to the following will be retained indefinitely and require manual deletion:
 - a. officer-involved shootings;
 - b. major incidents such as mass arrests;
 - c. offenses listed under 33 V.S.A. § 5204(a);
 - d. homicide cases; and
 - e. active missing persons cases.
6. Whenever an officer equipped with a BWC is involved in, a witness to, or within audio or sight range of a police use of force that results in a death or serious bodily injury, including discharge of a firearm for other than humane destruction of an animal, or when any officer conduct becomes the subject of a criminal investigation:
 - a. the officer's BWC shall be immediately seized by the Department, or the agency or department conducting the related criminal investigation, and maintained in accordance with the rules governing the preservation of evidence;
 - b. all files on the seized BWC shall be maintained in accordance with the rules governing the preservation of evidence; and
 - c. the procedure referenced in Appendix A of the Statewide Policy on Police Use of Force.
7. Nothing in this policy shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.