

County of Fairfax, Virginia

DATE: DRAFT

TO: Command Staff

**FROM: Robert A. Blakley, Captain
Commander, Sully District Station**

SUBJECT: Policy and Procedure for Use of Body-Worn Cameras

The Department is in the process of testing and evaluating different Body-Worn Camera (BWC) systems. This draft policy, in its current state, is not intended to be the established policy of the Fairfax County Police Department in the implementation of the BWC program. Rather, it is to serve as a working document that will be used to solicit feedback and ideas from various stakeholders.

I. PURPOSE

The use of the Body-Worn Camera (BWC) system is designed to increase public and community trust, improve transparency in and enhance police services by providing officers with additional audio and video tools to document specific incidents in the field and during interactions between police officers and members of the public whom we are sworn to serve and protect. In addition, specific uses of the BWC are:

- A. To capture criminal events, whether perpetrated against officers or members of the community, and provide evidence of such events for court.
- B. To accurately document crime scenes, the discovery of evidentiary items, and the actions of police pursuant to criminal investigations.
- C. To aid in the documentation of victim, witness, and suspect statements pursuant to an on-scene investigation.
- D. To act as a deterrent for the purposes of officer safety, and reduce injuries to police officers when a person should reasonably know that his or her actions are being recorded.
- E. To reduce unreasonable, frivolous, and/or false complaints made against officers and civil litigation arising out of their actions during the course of their duties.
- F. To provide a training and performance mechanism that is fair and impartial and that will ensure the professionalism of all officers.

II. POLICY

It is the policy of the Fairfax County Police Department that the Body-Worn Camera (BWC) system shall be used only as set forth in this memorandum, which will remain in effect until the adoption of a Standard Operating Procedure or General Order.

III. PROCEDURES

- A. BWC equipment will be issued to be worn on the person of a uniformed law enforcement officer, or a law enforcement officer prominently displaying the officer's badge or other designated insignia, or such personnel as directed by the

Chief of Police. Officers, who have been issued a BWC, shall activate the equipment only when conducting official police duties, unless specifically otherwise authorized by a supervisor.

B. All BWC equipment is the property of the Fairfax County Police Department and, as such, falls under Regulation 206.1, Title to Equipment/Care and Maintenance. Officers shall not attempt to alter or tamper with any part of the BWC equipment or data. Equipment malfunctions should be reported to a supervisor as soon as possible so a replacement can be issued.

C. All employees shall be appropriately trained prior to using any portion of the BWC system. The training shall be conducted by personnel designated by the Commander of the Resource Management Bureau. Training will be documented and forwarded to the Criminal Justice Academy for inclusion in the employee's training record.

D. Officers utilizing BWC while on duty will only use a BWC that has been issued and approved by the Department. The use of personal video recorders is specifically not authorized.

E. Employees are specifically prohibited from downloading, displaying, or posting BWC videos to or on any public and or social media websites, or to any person or entity with the ability to download such a recording, unless specifically done in the furtherance of a genuine law enforcement purpose. Videos shall never be shown or disseminated to those outside of the criminal justice system, without specific approval from the Commander of the Internal Affairs Bureau, or as otherwise authorized by this policy.

IV. OFFICER RESPONSIBILITIES

The BWC will enhance, not replace, the perspectives of officers during the course of their law enforcement related duties. The recordings have proven to be beneficial in administrative and criminal investigations and provide an unbiased account of events. For this reason, the BWC should be used in all instances of police/individual contacts and law enforcement response, except as prohibited by this policy.

A. Officers shall inspect their assigned BWC prior to each shift in order to verify proper functionality. Any issues shall be reported to a supervisor immediately.

B. The BWC shall be properly affixed on the officer's uniform at the beginning of the shift, in accordance with the guidelines provided during training. The BWC shall be worn for the entire shift.

C. The BWC, once activated, shall be left active until the police/individual contact or event has concluded. An event shall be deemed "concluded" when:

- 1) All arrests have been made and subjects of the arrest have been transported and released from custody;
- 2) All relevant witnesses have been interviewed;
- 3) The continued recording will not likely serve to obtain any additional evidence; and
- 4) No further law enforcement activity is likely to occur.

An exception can be made for events of extended duration, where recording provides no evidentiary value. Example: Waiting for tow trucks at the scene of a crash, or protecting a crime scene awaiting the arrival of additional investigative resources. Prior to deactivating the BWC, officers should verbally state why they are stopping the recording.

A supervisor or commander who determines that continued recording of an incident does not serve specific law enforcement purpose may authorize personnel to discontinue recording. The authorizing supervisor or commander should be identified in the appropriate report narrative.

D. Any time the BWC is used to capture an incident, the officer shall note in the appropriate narrative field of the [written?]report that a BWC camera was utilized to capture the incident. This includes the note fields of arrest, citation, and field contact modules, in addition to accident and investigation modules. Moreover, the officer shall state in his or her report the names of all other personnel who had employed BWC during the same particular incident.

E. In the event that the BWC is not used, or is discontinued prior to the end of an event, an explanation for the lack of video shall be documented in the notes field of the appropriate report module being used. If no module is used, the officer shall make a notation in the memo field of the mobile computer aided dispatch application, explaining the absence of video. This documentation should also include the name of the supervisor who authorized such deactivation, when applicable. Ideally, the reason for not recording an activity that is required, or ceasing the recording once initially activated, shall be articulated on camera or in writing.

F. Officers shall not manipulate, obstruct, interrupt, delete or attempt in any manner to alter the BWC device's video and/or audio recording during mandatory use situations, unless stated otherwise herein.

V. REQUIRED ACTIVATION

A. Officers shall activate their BWC when making contact with individuals in the performance of their official duties. This includes, but is not limited to, the following circumstances:

1. Prior to any officer initiated person contact involving actual or potential violations of law, to include arrests, traffic stops, subject stops, etc., provided that such activation does not interfere with officer safety or the safety of others;
2. When responding to any call for service, transports, and where response driving is warranted;
3. When engaged in any vehicular and/or foot chase, provided the activation does not interfere with officer safety;
4. On all calls involving Emotionally Disturbed Persons or mental health interventions;
5. While executing warrantless searches of individuals, vehicles, buildings, and other places, but not to include strip searches; when practical, the BWC should be used to document the request and consent of such searches.
6. When in anticipation of interviews and interrogations, e.g., taking statements from victims, witnesses, suspects, and offenders (see privacy concerns);
7. To document accident and crime scenes, where appropriate;
8. When any contact becomes adversarial, following what began as initially a non-adversarial contact, or in a situation that would not have ordinarily required recording.
9. During any other situation where the officer believes that the use of BWC is in the best interest of public safety., e.g., suspicious situations.

Therefore, the BWC shall remain in operation until the conclusion of the daily shift of each such employee using the BWC.

VI. PROHIBITED USES

A. The BWC can only be used for law enforcement purposes. It shall not be used to record non-law enforcement related activities. Use of the BWC for personal use is strictly prohibited.

B. Under no circumstances, except those instances involving criminal investigations of Department personnel, will a conversation between Department employees be recorded, without all parties to the conversation being made aware of the fact that it is being recorded.

C. The BWC shall not be used to document activities occurring in hospitals, or other medical facilities, unless those activities are for specific law enforcement purposes. In such instances where the BWC is used in these facilities, care should be taken to limit who and what is being recorded. As one example, victims of certain sexual crimes should normally not be recorded during interviews unless such persons specifically and clearly consent to be interviewed. In such instances, the officer shall attempt to record the person's oral consent prior to conducting the interview.

D. The BWC shall not be used to record interactions between law enforcement officers, unless such recording is being made for legitimate law enforcement purposes.

E. The BWC shall not be utilized by supervisors to record the conduct of employees, unless specifically authorized by a commander.

F. The BWC shall not be used to record the activities of confidential informants or undercover officers.

G. Officers shall not use BWCs to record interactions with other law enforcement officials, attorneys, doctors, peer support counselors, or others who may be discussing privileged or sensitive information.

H. Officers shall not intentionally record confidential information on the BWC from such sources such as NCIC, VCIN, or other criminal databases. This does not include radio transmissions that occur in the course of normal duties.

I. Employees shall not use the BWC inside of a detention facility, courtroom, or to record interactions with magistrates.

J. Additionally, some interactions by their very nature are sensitive and discretion should be used when determining whether or not these events should be recorded.

These types of incidents do not occur often, and include, but are not limited to:

1. Interviews with those wishing to provide confidential information;
2. Complainants who do not wish to be identified;
3. Victims and witnesses of crimes, who wish to protect their identity;
4. Instances involving juveniles.

In the above instances, officers shall deactivate the BWC, and document the specific reason for not utilizing the BWC. The officer shall, in such instances, re-activate his or her BWC upon completion of the encounter, as soon as practical and safe to do so, and articulate on camera the circumstances that give rise to re-activating the BWC.

K. Employees will not use BWC to surreptitiously record conversations of citizens and employees.

VII. PRIVACY CONSIDERATIONS

A. When officers are recording persons in locations where the person should have a reasonable expectation of privacy (e.g., in a home, business office not open to the public, restroom, locker room, or similar settings), the officer should, when practical, inform the person that they are being recorded. If a person in such a setting objects to being recorded by the BWC, the officer shall orally state why they are stopping the recording and thereafter shut off the device.

1. The 4th Amendment protects people, and provides them with a reasonable expectation of privacy from government intrusion. Guidance explaining protections against unreasonable search and seizure can be found in the case of *Katz v. United States*, 389 U.S. 347 (1967), which extends Fourth Amendment protection to all areas where a person has a "reasonable expectation of privacy." In summary, the

court found that the government may not intrude into places, unwanted, when a person enjoys a reasonable expectation of privacy.

B. If officers are lawfully present (i.e. arrest warrant, search warrant, criminal investigation, etc.) at a location where a person has a reasonable expectation of privacy, there is no requirement that the officer inform the person that video is being taken. Additionally, there is no requirement that the officer discontinue use of the BWC upon an individual's request.

C. If, however, officers are invited (service complaint, voluntary contact, person filing police report, etc.) into a location where a person has a reasonable expectation of privacy, and the officer otherwise has no lawful right to occupy that space, the officer should inform the person they are being recorded. If the person requests the officer not to record, the officer shall discontinue use of the BWC. The officer should attempt to capture the individual's request to stop recording prior to deactivating the BWC.

Special Considerations

Officers employing BWC should be mindful of special circumstances and or consideration when entering the homes of persons with religious constraints with regard to recording such persons. An example would be the home of persons whose religious faith preclude females in the home from being seen without appropriate headgear, such as a scarf, prior to speaking with an officer responding to a service call at the residence of the female.

VIII. SUPERVISOR RESPONSIBILITIES

Supervisors are responsible for ensuring that all personnel under their supervision adhere to this policy.

A. It shall be the responsibility of each supervisor to investigate and document any damage to any part of BWC device. Any reported damage shall be forwarded to the Station Logistic Technician (SLT) who will coordinate the necessary repairs with the Program Manager.

B. Supervisors shall conduct random inspections of officers to ensure that the BWC equipment is operating properly, and that officers are using the devices appropriately and in accordance with this policy.

C. Supervisors are encouraged to conduct incident-based reviews of their officers' recordings for the purposes of gathering information that may be useful in establishing training needs, investigating allegations of misconduct, and observing superior performance. A supervisor may request a DVD of the video to be used for such purpose. If a recording is burned to DVD for training purposes, a copy may also be forwarded to the Criminal Justice Academy for inclusion in the officer's training files.

D. A supervisor shall be present when an officer(s) reviews video footage of an incident in which they were involved, prior to making a statement about the incident during any administrative investigation or inquiry.

E. A supervisor shall be responsible for ensuring that all BWC recordings are downloaded by each respective officer at the end of his or her assigned shift, unless an exception is authorized by a supervisor. The officer will be responsible for properly categorizing and tagging the recording at the time of the download.

F. Whenever there is a critical incident (e.g., an officer involved shooting, in custody death, use of force incident, or other such incident that results in serious injury or death, a supervisor shall immediately take custody of the BWC and be responsible for the download on such occasions.

G. A supervisor shall authorize an officer who is required to respond to a citizen or administrative complaint to have access to any BWC system to allow the officer to review any such BWC recording of the relevant incident prior to making a statement regarding the incident.

IX. COMMANDER RESPONSIBILITIES

A. Station Commanders are responsible for ensuring that all personnel under their command adhere to the provisions of this policy.

B. Station Commanders shall review all requests for the use of BWC recordings for training purposes.

C. Station Commanders shall ensure that employees do not release any video from the BWC system, outside of this agency, except as provided in this policy.

X. LEGAL CONTROL AND DISSEMINATION

One of the most important purposes of BWC data is its use in criminal proceedings. The video/audio is of great evidentiary value, as it provides an unbiased account of events as they transpired. In order to maintain the integrity of BWC evidence, the following procedures must be followed to ensure their admissibility in court.

A. Recordings are releasable under a ***Subpoena Duces Tecum*** or when ordered as part of the discovery rules of evidence. In certain circumstances, recordings may also be releasable under the Virginia Freedom of Information Act. All BWC footage will be subject to review by the Commander of the Internal Affairs Bureau prior to any release outside of the Department. Furthermore, when video footage is copied for this purpose, only the segment of the incident necessary to the need is to be released.

B. Officers intending to use any recording in court should advise the Office of the Commonwealth's Attorney prior to the initial court date. Officers must also ensure that any Assistant Commonwealth's Attorney assigned to one of their cases is notified when a recording exists for that case.

C. In certain circumstances, recordings may be releasable under the Virginia Freedom of Information Act. These requests will be referred to the Internal Affairs Bureau and all BWC footage will be subject to the review of the Commander of the Internal Affairs Bureau, or his/her designee, prior to any release outside of the Department.

D. All other external requests for BWC video shall be referred to the Public Information Office.

E. Procedures for internal dissemination of BWC videos will be the responsibility of the Program Manager.

XI. LEGAL ISSUES

A. The Office of the Commonwealth's Attorney has provided the following opinion on several issues concerning the usage and admissibility of video for Court purposes.

1. An officer must authenticate the video/audio as an accurate depiction of what transpired during the incident. Under Best Evidence Rules, there is no case law which prohibits the transfer of video/audio material to compact disk or other formats. The critical aspect is that officers must be able to authenticate information contained and reviewed by the court as an accurate depiction of the events.
2. If needed for court, officers shall have DVDs and all notes available during any court proceedings.
3. There is no law prohibiting officers from recording persons in public. Individuals in a public area have no expectation of privacy. Audio recording of any police contact with individuals is allowed in a private residence, provided that the officers have legal standing to be in that location (i.e., domestic violence cases).

XII. STORAGE AND RETENTION

The back-end system for the Body Camera program includes network storage for the data. In accordance with the provisions of the Library of Virginia, Records Retention and Disposal Schedule, the following retention times apply:

A. Video/audio recordings not required to support known investigations or litigations: retain for 30 days after recording, then delete.

B. Video/audio not falling into either of the above categories:

- Traffic Stops: 190 days
- Arrest: 190 days
- Use of Force: 190 days
- Pursuit: 190 days
- Transport: 100 days
- Investigation: 100 days
- Subject Stop: 100 days
- Test/training/other: 100 days
- Administrative Investigation: Indefinitely

C. Video footage shall be classified for automatic deletion based on the above retention periods. If videos classified as "Administrative Investigation" are re-classified to a different category, they will be subject to deletion based on the category and the original date of the recording.