

Fairfax County Police Department
Draft Model Policy for Body Worn Camera
January 26, 2017

I. PURPOSE

The use of the Body-Worn Camera (BWC) system is designed to enhance police services by providing officers with an additional tool to document specific incidents in the field. 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, when a person should reasonably know that his or her actions are being recorded.
- E. To reduce unreasonable and/or false complaints made against officers during the course of their duties.
- F. To provide a training and performance mechanism to ensure the professionalism of all officers.

II. POLICY

It is the policy of the Fairfax County Police Department that the 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 personnel as directed by the Chief of Police. Officers, who have been issued a BWC, shall use the equipment unless 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 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 trained prior to using any portion of the BWC system. The training shall be conducted by personnel designated by the Director of the Information Technology Bureau. Training will be documented and forwarded to the Criminal Justice Academy for inclusion in the employee's training record.
- D. Officers will only use a BWC that has been issued and approved by the Department. The use of personally owned BWC equipment or audio/video recording equipment, shall not be permitted.
- E. Employees are specifically prohibited from downloading, copying, displaying, or posting BWC videos, 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 prove 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 community member 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 exception can be made for events of extended duration, where continued recording does not serve a legitimate law enforcement purpose. 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 in these instances, officers should verbally state why they are stopping the recording.
 - 1. 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 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.
- 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.
- F. Officers shall not manipulate, obstruct, interrupt, or delete 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 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, where response driving is warranted;
 - 3. When engaged in any foot chase, provided the activation does not interfere with officer safety;
 - 4. On calls for service involving Emotionally Disturbed Persons;
 - 5. While executing warrantless searches of individuals, vehicles, buildings, and other places, when practical, the BWC should be used to document the officer's request and consent given for such searches.

6. When taking statements from victims, witnesses, suspects, and offenders (see § IX below for privacy concerns);
7. To document vehicle crash and crime scenes, where appropriate;
8. During any other situation where the officer reasonably believes that the use of BWC is in the best interest of public safety.

VI. PROHIBITED USES

- A. The BWC is to only be used for law enforcement purposes and 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, should a conversation between Department employees be intentionally 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.
- D. The BWC shall not be utilized by supervisors to record the conduct of employees, for administrative purposes, unless specifically authorized by a bureau commander.
- E. The BWC shall not be used to intentionally record the activities of confidential informants or undercover officers unless approved by the bureau commander for a valid law enforcement purpose.
- F. Employees shall not use the BWC to record interactions with other law enforcement officials, attorneys, doctors, peer support counselors, or others who may be discussing privileged or sensitive information.
- G. Officers shall not intentionally record confidential information on the BWC from such sources such as NCIC, VCIN, or other criminal databases (i.e. screenshots). This does not include radio transmissions that occur in the course of normal duties.
- H. Employees shall not use the BWC inside of a detention facility, courtroom, or to record interactions with magistrates.

- I. 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 persons 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 articulate the specific reason for not utilizing the BWC in the narrative of their police report or in the memo field of the mobile computer aided dispatch application.

VII. 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 who will coordinate the necessary repairs with the Program Manager.
- B. Supervisors shall conduct a minimum of one audit per month of a sample of BWC footage from a minimum of three officers under their direct supervision, and document the results of the audit using the BWC-Audit form located on the BlueNET.
- 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 purposes. 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. During an administrative investigation or inquiry, and prior to making a statement, supervisors should allow employees the opportunity to review

BWC footage for the incident in question. Supervisors shall be present for this types of review.

VIII. COMMANDER RESPONSIBILITIES

- A. Station Commanders shall be 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.
- D. Commanders may limit or restrict an officer from viewing BWC footage for an incident where the officer is suspected of misconduct or subjected to criminal investigation.

IX. PRIVACY CONSIDERATIONS

When officers are recording persons in locations where the person should have a reasonable expectation of privacy (i.e. home, business office not open to the public, restroom, locker room, etc.), the officer should whenever practical, in the absence of reasonable suspicion or probable cause of criminal activity, inform the person(s) that they are being recorded.

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 itemized below shall be followed to ensure the chain of custody is maintained for use 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 required to be produced 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 shall notify the assigned Assistant Commonwealth's Attorney their case(s) that a BWC recording exists.
- C. In certain circumstances, recordings may be releasable under the Virginia Freedom of Information Act. These requests will be referred to the Public Affairs Bureau and all BWC footage will be subject to the review of the Director of Public 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 Affairs Bureau.
- E. Procedures for requesting DVD copies 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.

XII. STORAGE AND RETENTION

The back-end system for the BWC program includes network storage for the data. To meet the basic provisions of the Library of Virginia, Records Retention and Disposal Schedule, the following is the Department retention schedule:

{DRAFT POLICY NOTE – all retention schedules will be finalized prior to the implementation of a pilot project and/or full program in consultation with all legal stakeholders in the County and State. Therefore all items are to be determined for legal compliance to days and years}

- A. Video/audio recordings not required to support known investigations or litigations should not be retained beyond **[TBD]** days.
- B. BWC recordings categorized below shall be retained under the following schedule : **{All TBD}**
- Traffic Stops: ____
 - Arrest: ____
 - Use of Force: ____
 - Pursuit: ____
 - Transport: ____
 - Investigation: ____
 - Subject Stop: ____
 - Test/training/accidental: ____
 - Administrative Investigation: ____
- C. BWC 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.