

## ***Body Camera Statewide Policy***

Purpose: Body Worn Cameras are intended to record police-citizen interactions. These recordings serve many purposes including enhancing agency transparency, accountability and public trust while documenting emergency responses and crime scenes, collecting evidence and more. This policy provides consistent guidance statewide for how and when body cameras will be used by law enforcement. It also provides consistent guidance on storage, retention and release of recordings.

This policy shall apply to any Vermont law enforcement agency that chooses to equip their officers with Body Worn Cameras.

### Definitions as used in this policy:

**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:** A Vermont law enforcement officer with the authority to conduct searches and make arrests. Referred to as "officer" in this policy.

**Lethal force incident:** Whenever 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 BWCs.

**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 body camera 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 camera.

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**SECTION 1. USE OF BWCs**

- (a) Only sworn officers shall be permitted to wear a BWC.<sup>1</sup> BWCs shall be worn in a location and manner consistent with the manufacturer's recommendations that maximize the camera's ability to capture video and audio footage of the officer's activities. BWCs are not intended to be used surreptitiously. Specifically, officers should not conceal the presence of a body worn camera, nor shall they attempt to utilize the body camera to record in secret unless so authorized by a judicial order.
- (b) Both the video and audio recording functions of the body camera shall be activated in any of the following situations:
  - (1) Whenever an officer arrives on scene at a call for service.
  - (2) At the beginning of any other investigative or enforcement encounter between an 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.

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<sup>1</sup> *Non-sworn employees hired specifically to perform ancillary law enforcement functions, such as Community Service Officers, may be authorized to wear BWCs. Also, undercover law enforcement officers are not expected to wear BWCs.*

- (3) During all requests made in the field to conduct a search and during the performance of the search, including K-9 searches.
- (4) During administration of Miranda warnings and any response when in the field.
- (5) At any incident that the officer reasonably anticipates may be confrontational or result in the need to use force.

Except as noted in section (c)(1) & (c)(3) below, the body camera shall not be deactivated until the encounter has fully concluded and the officer leaves the scene.

(c) Notwithstanding the requirements of subsection (b):

- (1) Prior to entering a private residence, or premise where there is a reasonable expectation of privacy, without a warrant or in non-exigent circumstances, an officer shall notify the occupant(s) of use of the body camera and ask if continued use is acceptable. If the occupant says no, the sworn officer shall immediately discontinue use of the body camera.
- (2) If entering a private residence pursuant to a search warrant or in exigent circumstances, or during the completion of any custodial arrest, use of the body worn camera shall continue regardless of consent being granted.
- (3) When interacting with an apparent crime victim, an officer shall, as soon as practical, notify the apparent crime victim of body camera usage and ask if continued use is acceptable. If the apparent crime victim says no, the officer shall immediately discontinue use of the body camera.
- (4) Unless the encounter occurs in a location where there is an expectation of privacy, an officer does not have an obligation to cease a body camera recording when interacting with an individual suspected of involvement in unlawful conduct, even if the individual requests the recording to be stopped.

- (d) In instances where the individual requests the officer to discontinue the use of a body camera made pursuant to subsection (c), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

DISCONTINUING OR NOT STARTING A RECORDING:

- (e) There are occasions where an officer should not initiate a recording; or, if an audiovisual recording has been initiated, the officer may determine it necessary to pause or stop the recording prior to the conclusion of the event. If the officer pauses or stops a recording, they shall document the reason for the termination or suspension of the recording. Acceptable reasons for discontinuing recording or activating the mute feature include:
- (1) During on scene conferences between officers, supervisors, advocates, clinicians, EMS personnel, attorneys, etc. where the officer determines the conference would violate confidentiality, privacy or individual rights.
  - (2) Conferences between officers and supervisors that might compromise this or further investigations or would otherwise impede law enforcement efforts or strategy.
  - (3) Encounters with undercover officers or confidential informants.
  - (4) If a person reporting a crime or assisting with an investigation requests to remain anonymous, the recording may be stopped.
  - (5) During times of prolonged waiting absent citizen contact such as waiting for a tow truck, funeral home or similar.
  - (6) Officers are expected to be respectful of individual's dignity and use sound judgments as to when and how the device will be used. Officers will try to avoid recording persons who are nude or have genitalia exposed, and officers will refrain from activating recordings in places where a reasonable expectation of privacy exists such as locker rooms, dressing rooms, rest rooms and similar unless such recording is necessary for a legitimate law enforcement purpose.
  - (7) Recordings shall not be made to record personal activities such as meal breaks or conversations with other officers, supervisors or staff outside of the scope of ongoing field activities.
  - (8) Recordings are not expected during innocuous activities such as taking telephone complaints, foot patrols, security assignments, providing directions, non-enforcement roadside assistance, humane destruction of a wounded animal, traffic control, providing unlocks and similar.
  - (9) See sections c.(1) and c.(3) above regarding recording inside residences or other places where citizens have a reasonable expectation of privacy.

**Recording should resume as soon as one of the above reasons no longer exists.**

#### PROHIBITIONS ON USE OF BWCS:

- (f) Officers shall not activate a body camera 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. This prohibition 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.
- (g) Officers shall avoid using body cameras to record for the sole purpose of gathering intelligence information on First Amendment protected activities such as speech, associations, or religion. This shall not be construed to limit lawful use of body cameras to record investigative encounters between an officer and a member of the public or activity that raises an articulable suspicion of possible on-going or imminent criminal conduct.
- (h) Officers shall not run recordings through facial recognition or automated analysis programs without appropriate judicial review, except for automated redaction processes which are not for the purpose of identification or comparison to any other source.

#### REVIEW OF RECORDINGS:

- (i) Except as otherwise prohibited (see section j. below), an officer may review BWC recordings prior to writing reports about incidents or arrests.
- (j) 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.
- (k) See appendix A for procedures following a lethal force incident.

## **SECTION 2: EQUIPMENT & TRAINING**

#### RESPONSIBILITIES OF OFFICERS:

- (a) Prior to start of each shift officers are responsible for checking their body camera 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.

- a. During interactions where there is an expectation that the body camera would be activated, an officer should periodically check the body camera to assess that it is functioning properly.
- (b) In the event a body camera 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.
- (c) Officers are responsible for “tagging” each recording appropriately. The tags or categories of files correspond to its retention period; therefore, officers must take extreme care to properly categorize each recording. Intentionally “mistagging” recordings will result in appropriate disciplinary action.
- (d) Officers shall transfer data from their assigned BWC to the agency’s storage as soon as practical, but no less than prior to use by another officer and/or prior to the capacity of the device being reached.
- (e) 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. Only a system administrator is authorized to delete or edit files pursuant to section 3 of this policy. Only designated staff are authorized to duplicate and distribute copies of recordings pursuant to section 3 of this policy.
- (f) Should any officer or employee fail to adhere to the recording requirements contained in this policy, intentionally interfere with a body camera’s ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation, appropriate disciplinary action shall be taken.

#### RESPONSIBILITIES OF AGENCY HEADS:

- (g) Each agency 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, proper identification and proper “tagging” of recordings.
- (h) Agencies shall provide instruction to officers on how to report and replace malfunctioning equipment.
- (i) Agency supervisors may review recordings for the purpose of ensuring compliance with

established policies, verifying 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.

- (j) Agency heads are responsible for ensuring that all BWCs that are equipped with a “buffering” feature have such feature activated and set to record and retain at least the most recent 30 seconds of video and audio prior to an officer’s activation of the BWC.
- (k) Agency heads are responsible to ensure that the retention schedule listed in section 3 below is followed.

### **SECTION 3: STORAGE, RETENTION and RELEASE:**

#### **STORAGE:**

- (a) Agencies are responsible for ensuring the secure storage of all recordings made by their employees. All recordings or files are the property of this agency and shall only be used for official purposes.

#### **RETENTION & RELEASE:**

- (b) At a minimum, all recordings shall be held in accordance with the State’s record retention act for law enforcement records. [See VT State Archives & Records Administration’s specific record schedule for this agency]. When appropriate and not exempt under 1 V.S.A. 317, recordings shall be released, or released with redaction, upon request to members of the public or media.
- (c) Should any employee intentionally fail to adhere to the retention requirements contained in this policy, appropriate disciplinary action shall be taken.
- (d) Agencies shall make a good faith effort to locate recordings of interest to the public. If recordings exist of an interaction or event captured by a BWC and that interaction or event is identified with reasonable specificity, the agency will make that recording(s) available for review or release consistent with 1 V.S.A. 317 and any other applicable records release schedule.
- (e) Recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.
- (f) In the event that an agency authorizes access to stored footage by a vendor such as a technician, information technology staff, etc. they 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.

(g) The following retention guidelines are in addition to the requirements of the specific record schedule for this agency. 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.

(1.) 14 (fourteen) days - In instances where a body camera is activated mistakenly and records no discernable human activity, such footage may be permanently deleted after 14 days by the law enforcement agency. The time, date, length of recording, assigned body camera designator, and a brief summary of the image depicted shall be documented in some fashion by the law enforcement agency prior to permanent deletion.

(2.) 90 (ninety) days - Recordings shall be retained for no less than ninety days if the recording captures an interaction or event involving:

- i. response to calls for service where no enforcement action occurs;
- ii. traffic stops with no enforcement action taken beyond a written warning;
- iii. traffic stops with enforcement action taken shall be kept until the civil case is closed;
- iv. police-citizen interactions that do not involve enforcement action, a search or seizure;

(3.) 3 (three) years - Recordings shall be retained for no less than three (3) years if the recording captures an interaction or event involving:

- i. any use of force;
- ii. a recording related to any incident in which a member of the public has made a complaint against an agency employee;
- iii. recording(s) used in disciplinary action against an employee shall be held for a minimum of three years from the completion of the disciplinary action;
- iv. recordings shall also be retained for no less than three (3) years if a longer than normal retention period is voluntarily requested by the officer whose body camera recorded the video footage or their supervisor, or any officer who is a subject of the recording, if the officer or supervisor reasonably

asserts the video footage has evidentiary or exculpatory value;

- v. recordings shall be retained for no less than three years upon written request from a member of the public who is a subject of the recording, the next of kin of a subject who is deceased, or the parent/guardian of a juvenile who is a subject.

(4.) 7 (seven) years – Recordings shall be retained for no less than seven (7) years if the recording captures an interaction or event involving:

- i. Recordings related to misdemeanor arrests or non-violent felony arrests (or longer if the case is not resolved in this time frame);

(5.) Recording related to the following will be retained indefinitely and require manual deletion:

- i. Use of force incidents resulting in injury or allegation of injury;
- ii. Officer involved shootings;
- iii. Major incidents such as mass arrests;
- iv. Serious felony offenses;
- v. Homicide cases;
- vi. Active missing persons cases.

(h) 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. Such officer's body camera shall be immediately seized by the officer's agency or 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 body camera shall be maintained in accordance with the rules governing the preservation of evidence; and
- c. The procedure referenced in Appendix A "*Lethal force incident procedures and statewide policy on review of BWC recordings following lethal force incidents*".

(i) BWC footage may only be offered as evidence by any government entity, agency, department or prosecutorial office, in accordance with established rules of evidence.

- (j) Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person's voice, provided the redaction does not interfere with a viewer's ability to fully ,completely, and accurately comprehend the events captured on the video footage.
- (k) This policy is publicly available on this agency's website or by contacting the agency.
- (l) Nothing in this chapter shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.

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## **Appendix A - DRAFT Statewide Use of Force Policy on lethal force post-incident procedures and statewide policy on review of BWC recordings following lethal force incidents**

### INTRODUCTION:

Impartial and thorough investigation of officer involved shootings and other serious use of force incidents is essential to ensure police accountability, transparency and to maintain public trust. The following procedure is to be followed whenever an officer is involved in a lethal force incident (see definition below).

Among other things, this document describes the transition from an officer(s) being the investigator to that officer(s) becoming the subject of parallel investigations (administrative and potential criminal) in the wake of a lethal force incident. It also provides clear direction on the use of BWC recordings in the wake of a lethal force incident.

### DEFINITIONS:

**Chief Executive Officer (CEO):** Means the person in control of a police agency, normally the Chief, Colonel or Sheriff.

**Lethal force incident:** Whenever an officer uses lethal force (whether the subject is injured or not); and, any incident where an officer takes any action that results in death or serious bodily injury to a person. Hereinafter referred to as "incident".

**Public Safety Statement:** A statement given at the scene of a lethal force incident, or as soon as practical, that allows the on-scene investigation to continue once the involved officer(s) leaves the area. It is a brief statement provided to the on-scene supervisor. The statement should include initial information such as type of force used; location of injured or dead person(s); description of any outstanding subject(s) including direction and mode of travel, known weapons, clothing description, etc.; description and location of any known victims, witnesses or evidence; and, any other information necessary to ensure officer and public safety and assist in the apprehension of outstanding suspects.

### PROCEDURE:

When an incident covered by this policy occurs:

- A. Officers should take actions necessary to render the scene safe.
- B. When necessary, officers shall immediately summon emergency medical services and immediately provide appropriate medical attention.
- C. The ranking officer on scene shall assume incident command, and immediately request the response of a supervisor. Upon arrival, the supervisor shall take control of the incident scene.
- D. The incident location should be secured for purposes of investigation and evidence preservation.
- E. The involved officer(s) will provide a Public Safety Statement prior to leaving the scene when

practical. The Public Safety Statement should be made as contemporaneously to the event as possible.

F. The involved officer(s) should be removed from the scene to a secure location or a medical treatment facility if necessary. An officer or other support person should be assigned to stay with the involved officer(s). If available, a Peer Officer Support Team (POST) member or similar crisis response staff should be assigned this task. The support person should avoid conversations about the incident and instead focus on the officer's health and well being.

G. To maintain the integrity of the investigation those involved should not discuss the incident amongst themselves. This excludes communication with family, legal counsel, mental health personnel, medical personnel or union representation. Employees should be encouraged to refrain from watching or listening to the news, social media or podcasts regarding the incident in which they were involved.

H. Appropriate personnel should be contacted, including but not limited to the CEO, the VT State Police Major Crime Unit, the State's Attorney's Office and POST members or counselors as necessary.

I. At the direction of the Major Crime Unit, the involved officer(s) shall be photographed, and any injuries documented prior to the end of the shift. All BWC or other recordings of the incident shall be preserved as evidence by the home agency. The home agency will be asked to provide all video, audio, phone and radio transmission recordings of the entire incident to the Major Crimes Unit. Additionally, the officer(s)' firearm or other tools used in the incident will be collected and preserved as evidence. The CEO will determine if and when a replacement firearm will be issued to the involved officer(s).

J. When practical, the involved officer may walk through the scene to assist Major Crimes Unit with their location at the time lethal force was used and/or leading up to lethal force.

K. Involved officers shall **not** be allowed to view their body-worn camera footage prior to being interviewed by the Major Crime Unit, nor will they be permitted to review any other recordings of the incident or have them described by others. (See below for additional detail)

#### VT STATE POLICE INVESTIGATION:

When a Vermont law enforcement agency is involved in a lethal force incident, there are multiple priorities that must be considered. First and foremost, the agency must ensure public safety by cooperating with any investigation that seeks to identify person(s) who violate State or Federal law. Further, the agency has an obligation to its community to be as transparent and accountable as possible. Agencies also have an obligation to their employees who have the right to be treated fairly and in accordance with applicable collective bargaining agreements. There are times in the wake of a lethal force incident, when the officer(s) becomes the focus of a criminal investigation to assess compliance with the law.

Officers involved in lethal force incidents are afforded the same constitutional rights as any person under criminal investigation. It is preferable for transparency that officers participate in the Major Crime Unit's investigative process.

The following procedure is the statewide practice for Major Crime Unit review of lethal force incidents:

1. Officer(s) provides a public safety statement at the scene.
2. Officer(s) do not review BWC or other recordings of the incident, nor are they given an account of any recordings by anyone.
3. Officer and their attorney meet with investigators to provide an initial statement unaided by recordings or other information surrounding the incident.
4. Following this statement, the officer and their attorney may review the officer's BWC or cruiser camera footage and or other video that would show the officer's perspective at the time force was used.
5. The officer and their attorney may then provide investigators with additional information.

Discrepancies between an officer's unaided and aided statements following an incident are expected. The science of memory in the wake of a stressful or traumatic event is extensive and points to numerous physiological phenomena during acutely stressful situations (I.e. auditory exclusion and tunnel vision) being common causes of discrepancies.

#### ADMINISTRATIVE INVESTIGATION:

Whenever an officer uses lethal force, the home agency will initiate a parallel administrative investigation. The CEO of the home agency may request an independent review or investigation by an outside entity. Even if an outside entity is used, the administrative investigation is different from a potential criminal investigation in that the involved officer(s) is/are compelled to participate in the administrative investigation process as a condition of employment. The administrative investigation will be conducted in compliance with 20 V.S.A. Sections 2401(4) and 2402 and any other applicable law or regulation of the Vermont Criminal Justice Council.

In the event that an outside law-enforcement agency with jurisdiction (normally the VSP Major Crime Unit) initiates an investigation into the incident for the purpose of determining if there is criminal liability, the administrative investigation should occur after the criminal investigation and decisions by the Attorney General's Office and the State's Attorney's Office are complete.

The administrative investigator will interview the involved officer(s) and witnesses, and review all available evidence, information and statements. The administrative investigator may use information obtained as part of the criminal investigation but may **not** provide any information from the administrative investigation to criminal investigators or prosecutors. All applicable collective bargaining agreements will be followed during an administrative investigation.

The officer shall be kept informed of the progress of the administrative investigation and upon completion, notified in writing of the outcome.

The CEO or designee shall notify the State's Attorney, relevant municipal/state legal counsel, and any duly appointed police oversight body (in executive session) of the administrative investigation's outcome. If the investigation concludes a necessity to report to the VCJC, it shall be done without delay.

## RECOMMENDATIONS PRIOR TO RETURN TO DUTY:

The officer(s) should be placed on administrative leave or assigned to administrative duties with no enforcement responsibilities pending completion of the criminal investigation and decision about prosecution by both the Attorney General's Office and the State's Attorney's Office.<sup>2</sup>

It is strongly recommended that the CEO direct the officer to obtain psychological follow-up for post-incident trauma and that the agency pays for such services. With prior approval from the CEO, an officer may seek psychological follow-up from a licensed professional of their choice. At least an initial psychological follow-up should be completed before the officer is reassigned to duty.

## RELEASE OF BWC OR OTHER RECORDINGS IN THE WAKE OF A LETHAL FORCE INCIDENT:

Recordings, or portions thereof, taken during the course of these significant incidents do become public pursuant to public records law. In the wake of an incident, ensuring due process for every person involved is essential. The question of releasing recording is not *if*, but *when*.

Following lethal force incidents, it is not uncommon for multiple agencies to possess copies of BWC or other recordings. For instance, the home agency, the Vermont State Police and the State's Attorney's Office or Attorney General's Office may all have copies of the relevant recordings. This can create confusion, duplication of effort and expense as well as inconsistency when presented with public information requests for release of the footage. Because multiple copies of digital recordings will exist, the following guidance is intended to identify the agency with the superordinate interest at certain stages post-incident.

When an outside agency (usually VSP) conducts a criminal investigation, the investigating agency will provide the home agency with a letter requesting preservation of all evidentiary items and describing the investigative process. Recordings are considered evidence in a criminal investigation. While the criminal investigation is ongoing, VSP (or other outside agency) is in control of the record<sup>17</sup> and, in consultation with prosecutors, will control release of recordings until the investigation is complete and the case has been reviewed by both the Attorney General's Office and the State's Attorney's Office.

- a. If the VSP investigation results in criminal charges, the prosecuting agency shall be in control of the record and control release until such charges are resolved.
- b. If the VSP investigation does not result in criminal charges, the home agency resumes its controlling role as the keeper of the record.

This procedure is intended to provide clarity to involved agencies, members of the public and media and to avoid confusion and unnecessary duplication of effort to process requests for recordings. Nothing in this guidance is intended to shield recordings from public examination. There are numerous

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<sup>2</sup> Keeping an officer on admin duty may not be feasible in some agencies. The CEO should carefully evaluate the circumstances and consult with the State's Attorney and Attorney General's Office prior to returning the officer to duties that may involve enforcing laws/ordinances or using force.

factors that impact the release of body-worn camera or other recordings of a serious incident. It is not possible to create a definitive timeline for the release of recordings given the number of legal, investigative, operational, and external factors that bear on events on a case by case basis. Footage should be released as soon as practical in consultation with investigators, prosecutors, and organizational leaders. Whenever possible, release will occur within 30 days of the incident.

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