



Body-worn Camera Procedural Reference Guide

The following document entitled ***“Body-worn Camera Procedural Reference Guide”*** is provided as a **REFERENCE** guide/toolkit to accompany the ***“Body Worn Camera Policy”*** developed and published online by the Maryland Police Training Commission pursuant to PS § 3-511.

For its part, the ***“Body-worn Camera Procedural Reference Guide”*** is **ADVISORY ONLY**. It contains reference, background and research material from various professional publications that address both the implementation of a body-worn camera program and the use of the cameras in the field. The editorial boxes in the document contain citations from the Police Training Commission’s “Body-worn Camera Policy” with the Ad Hoc Commission’s recommendations. It also contains the policy references listed in Public Safety Article - § 3 – 511 (1-17). Endnotes are provided at the end of the document should executives or others have a need to refer to source documents that were used to prepare the ***“BWC Procedural Reference Guide.”***

The ***“Body-worn Camera Procedural Reference Guide”*** is intended to assist law enforcement agencies as they work to develop their own BWC policies and procedures and, as stated above, its contents are **advisory** only.

The Maryland Police Training Commission recognizes that **each law enforcement agency which plans to implement a body-worn camera program will need to develop its own BWC policy and procedure**, one that meets the particular needs of that agency and the community which it serves and is in a format that is the most useful to its members.

Agencies are reminded that the Courts and Judicial Proceedings Article - § 10-402 (c) (11) applies and states, in part:

- (ii) It is lawful under this subtitle for a law enforcement officer in the course of the officer’s regular duty to intercept an oral communication with a body-worn digital recording device...if:*
- 2. The law enforcement officer is making reasonable efforts to conform to standards in accordance with § 3-511 of the Public Safety Article for the use of body-worn digital recording devices...*

“Body-worn Camera [BWC] Procedural Research Guide”

I. TITLE: BODY-WORN DIGITAL RECORDING DEVICE [BODY WORN CAMERA (BWC) MODEL POLICY and PROCEDURE

I – A. EFFECTIVE DATE: [TBD BY AGENCY]

I – B. ISSUING AUTHORITY: [AGENCY NAME]

The Maryland Police Training Commission’s “Body-worn Camera Policy” [Ad Hoc Commission recommendation]:

N. WRITTEN POLICY REQUIRED

Each law enforcement agency shall develop and issue a written policy for using BWCs that is consistent with state law and policy issued by the Maryland Police Training Commission prior to implementing a BWC program. **1**

§3–511 of the Public Safety Article reference:

“On or before January 1, 2016, the Maryland Police Training Commission shall develop and publish online a policy for the issuance and use of a body-worn camera by a law enforcement officer that addresses:

- (1) the testing of body-worn cameras to ensure adequate functioning;
- (2) the procedure for the law enforcement officer to follow if the camera fails to properly operate at the beginning of or during the law enforcement officer’s shift;
- (3) when recording is mandatory;
- (4) when recording is prohibited;
- (5) when recording is discretionary;
- (6) when recording may require consent of a subject being recorded;
- (7) when a recording may be ended;
- (8) providing notice of recording;
- (9) access to and confidentiality of recordings;
- (10) the secure storage of data from a body-worn camera;
- (11) the review and use of recordings;
- (12) retention of recordings;
- (13) dissemination and release of recordings;
- (14) consequences for violations of the agency’s body-worn camera policy;
- (15) notification requirements when another individual becomes a party to the communication following the initial notification;
- (16) specific protections for individuals when there is an expectation of privacy in private or public places; and
- (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.” **2**

COMMENTARY

The Maryland Police Training Commission offers its “BWC Procedural Reference Guide” as a supplement to its published “Body-worn Camera Policy.” This document is intended to provide agency executives and those responsible for drafting each agency’s own BWC policy and procedure with material from a variety of sources that they may find useful as they prepare their agencies’ BWC policy and procedures. The material contained in the editorial boxes included in the “BWC Procedural Reference Guide” represents many of the professional practices that have been developed as other law enforcement agencies pioneered the use of this technology. It is hoped that this material will provide executives with an understanding of not only the benefits of using BWC technology but also the challenges that come with implementing a BWC program.

*References are "end-noted" as appropriate. The material contained in this document is **ADVISORY ONLY!***

REFERENCE MATERIAL

"In order to maximize the many advantages that BWC may provide...it will be **crucial for Maryland law enforcement agencies to develop and implement clear policies governing recording, access, usage, storage, retention, and other issues.** Law enforcement leaders, police union representatives, policy experts, and civil liberties experts nationwide have expressed concern that **deploying BWC with no official policy in place could undermine public confidence in the program, as well as jeopardize the privacy of officers and the public.** Having a suitable policy in place is so critical to the deployment of a BWC program that the Police Executive Research Forum (PERF) Executive Director Chuck Wexler said in a recent report that **if police departments deploy body-worn cameras without well-designed policies and practices, the effectiveness of BWC and the public trust they seek to foster could be undermined.** While law enforcement executives generally agree that **policies and procedures are essential, they involve multifaceted and complex issues. Every law enforcement agency in Maryland is unique by virtue of size, the constituency served, budgets, and other factors.** Because of this, **law enforcement agencies may find it necessary to craft policies and procedures that meet their individual needs and philosophies, as well as enforcement tactics and strategies.**

"Although there may not be a "one size fits all" policy that can apply to all law enforcement agencies in Maryland using BWC, there may be **some key elements for agencies to consider.** The report recently issued by PERF contains additional suggestions for policies and procedures related to BWC...that may be used to help guide...individual law enforcement agencies as they consider policies and procedures." **3**

"The Police Executive Research Forum [PERF] recommends that **each agency develop its own comprehensive written policy to govern body-worn camera usage. Policies should [at a minimum] cover the following topics:**

- **basic camera usage**, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
- the **designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with cameras, and for reissuing working cameras to avert malfunction claims** if critical footage is not captured;
- **recording protocols**, including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited;
- the **process for downloading recorded data** from the camera, **including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion;**
- the **method for documenting chain of custody;**
- the **length of time recorded data will be retained** by the agency in various circumstances;
- **the process and policies for accessing and reviewing recorded data**, including the **persons authorized to access data and the circumstances in which recorded data can be reviewed;**
- policies for **releasing recorded data to the public**, including **protocols regarding redactions and responding to public disclosure requests;**
- policies requiring that **any contracts with a third-party vendor for cloud storage** explicitly state that the **videos are owned by the police agency and that its use and access are governed by agency policy.**

In summary, **policies must comply with all existing laws and regulations, including those governing evidence collection and retention, public disclosure of information, and consent.** Policies should **be specific enough to provide clear and consistent guidance to officers yet allow room for flexibility as the program evolves.** Agencies should make the policies available to the public, preferably by posting the policies on the agency website. **4**

"There is a **consensus from numerous sources regarding the critical importance of developing policies and procedures regarding camera use** and training officers in how to use the camera. **Many of the camera systems are simple and intuitive in terms of use, but training and policy requirements vary depending on the system...** Police officer **reluctance to accept the technology can be minimized by their active involvement in policy development.** The NIJ guide highlights the importance of department policy:

'If cameras are to be used, policies and procedures will have to be put in place, or expanded on, to address

several legal issues. These **issues extend beyond the more obvious privacy and civil liberties protections toward which agencies must be sensitive.** For example, a policy would have to address when a camera should be used and when it should be turned on or not turned on to ensure fair treatment of all citizens. Parameters would need to be set for voluntary, compulsory and prohibited use of the camera. Camera video may also be considered a public record item and a procedure would need to be created for public assessment and information requests. This **policy should be in place before testing or deployment.**'

"There is a **wide range of important issues that should be governed by administrative policy**...such as the following:

- selection of technology vendor;
- elements of officer training;
- data storage and management;
- video download procedures;
- redaction of video;
- preparation of video for prosecution;
- maintenance and upkeep of the equipment;

"The policy template [should] also address the following questions:

- Will officers volunteer to wear cameras or will it be required?
- When should officers turn on the camera; when should they turn it off?
- How should officers divide responsibilities if multiple cameras are on scene?
- Whether or not (and how) officers should announce that an encounter is being recorded?
- What should officers record or not record during an encounter?
- When can supervisors review video?

Departments that have adopted body-worn cameras have varied widely on many of these issues." 

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

I. TITLE: BODY-WORN DIGITAL RECORDING DEVICE [BODY WORN CAMERA (BWC)] SAMPLE POLICY and PROCEDURE

I – A. EFFECTIVE DATE:

[TBD BY AGENCY]

I – B. ISSUING AUTHORITY:

[AGENCY NAME]

I – C. POLICY/PROCEDURE CONTENTS:

- I. Title Page;
- II. Background/Discussion;
- III. Purpose and Scope;
- IV. Legal Citations/Authority;
- V. Definitions;
- VI. Policy:
 - i. policy statement;
 - ii. policy availability;
 - iii. policy review;
- VII. Body-worn Camera [BWC] Equipment:
 - i. authorized equipment;
 - ii. official use restriction;
- VIII. BWC Implementation Procedures – Administration/Management:
 - i. BWC ADMINISTRATOR;
 - ii. BWC COORDINATOR;
- IX. BWC Operating Procedures:

- i. First-line Supervisor Responsibilities;
 - ii. BWC User Responsibilities:
 - a. pre-deployment testing;
 - b. malfunctioning BWCs;
 - c. recording procedures;
 - d. recordings by multiple BWC users;
 - e. review of recordings PRIOR to downloading;
 - f. “tagging” and downloading recordings;
 - g. docking – end of shift;
- X. Storage/Retention/Maintenance of BWC Recordings:**
- i. Method:
 - a. internal storage;
 - b. external storage;
 - ii. Security/Confidentiality;
 - iii. BWC Recordings as Evidence;
 - iv. Retention Schedule:
 - a. EVIDENTIARY recordings;
 - b. NON-EVIDENTIARY recordings;
 - v. Copying and releasing Digital Evidence;
 - vi. Chain of Custody;
 - vii. BWC File Sharing:
 - a. intra-agency;
 - b. allied law enforcement/criminal justice agencies;
 - viii. Deletion of BWC Recordings;
- XI. View Downloaded BWC Recordings:**
- i. Discovery of Member Misconduct;
 - ii. Restricted Investigative Uses of;
- XII. Dissemination/Release of BWC Recordings;**
- i. General;
 - ii. Requests for Recordings by Law Enforcement/Criminal Justice Agency Personnel;
 - a. Copying BWC Recordings for Investigative Purposes;
 - iii. Copying and Disseminating/Releasing BWC Recordings;
 - iv. Copying/Releasing Pursuant to Court Orders;
 - v. Requests Pursuant to Maryland Public Information Act:
 - a. general procedure;
 - b. EVIDENTIARY recordings;
 - c. NON-EVIDENTIARY recordings;
 - vi. BWC Recordings Redaction;
 - vii. Proactive BWC Recording Release;
 - viii. Release for Commercial Gain;
 - ix. Third-Party Release of BWC Recordings;
 - x. Communication of BWC Release Policy to the Public;
- XIII. BWC Training:**
- i. Pre-operation Requirements;
- XIV. Discipline;**
- XV. Policy and Program Evaluation:**
- i. Policy and Procedure Random Inspection;
 - ii. BWC Program Evaluation;

II. BACKGROUND/DISCUSSION/COMMENTARY:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 6

COMMENTARY

*While there is no specific recommendation from the *Ad Hoc* Commission for including **BACKGROUND INFORMATION** in the agency's policy and procedure, agencies should consider using this section to provide both its personnel and the public with its rationale for implementing a body-worn camera program. Doing so may afford an agency the opportunity to identify the many issues, especially those involving citizen privacy, that the agency had to consider as it developed its BWC program. Likewise, this section can also be used to set realistic expectations for its BWC program. And finally, this section can serve as a historical and institutional record as to the anticipated benefits and considered limitations that attach to the agency's BWC program.*

REFERENCE MATERIAL

"Technology has been increasingly used as a mechanism for surveillance and observation, both by citizens and the police. In the early 1990s, dashboard cameras emerged as a new method for capturing the real-time encounters between police and citizens. Despite early resistance to the dashboard cameras by officers, research [has] demonstrated that the cameras [have] led to increased officer safety and accountability and reduced agency liability. As a result, the technology has been widely embraced by law enforcement. Closed circuit surveillance systems (CCTV) have also become increasingly popular among city leaders and law enforcement as both a method of surveillance (crime prevention) and as a tool for *post-hoc* criminal investigation (e.g., Boston Marathon bombing). And of course the proliferation of smartphones has also increased the ability to record events as they transpire, especially police-citizen encounters. As a result, **video and audio recording has become a ubiquitous part of life in the 21st century.**" 7

[Additionally]..."the public has become growingly aware of its legal right in videotaping police officers and has increasingly used it as a tool in keeping officer conduct in check. In September 2014, the California Highway Patrol lost \$1.5 million in a settlement after one of its officers was caught beating a 51 year-old grandmother by the side of a road. The CHP officer ultimately resigned from the force and may yet face serious criminal charges. A passing driver caught the beating on tape and the footage quickly went viral. As another testament to the ubiquity of cameras, the ACLU has promoted a smartphone app called "Police Tape" that allows the phone owner to secretly videotape police officers and send the footage directly to an ACLU-operated server. Also, WITNESS, an international human rights organization, has provided a how-to manual available to the public, titled "Activists' Guide to Archiving Video", to assist in documenting human rights abuses, including those committed by law enforcement officers." 8

[As applies to policing]..."the latest technological development for law enforcement in the area of surveillance involves **officer body-worn cameras**. There are a number of body-worn camera manufacturers. [And]...the technology includes several components that vary across manufacturers. For example...[one system] includes a small camera worn by the officer (on a shirt lapel, hat, or sunglasses) that captures what the officer sees; a device (e.g., smartphone) that records and stores the video (similar to a DVR); and a battery pack that lasts typically from 12–14 hours and includes an on/off switch for recording...[One] system comes with a cloud-based data storage service whereby the officer places the recording device in a docking station at the end of the shift, and the storage service securely uploads and stores all video evidence...[Another] system is a self-contained, pager-sized device that officers wear on their torso, and [this] device includes a docking station for video download and cloud-based data storage." 9

"Police officer body-worn camera technology received significant media attention in 2013. In August 2013, Judge Shira Scheindlin of the Federal District Court in Manhattan ruled that the New York Police Department's (NYPD) stop, question, and frisk (SQF) program is unconstitutional, and as part of the ruling, the judge ordered officers in the highest volume SQF precincts to wear cameras in an effort to prevent racial profiling." 10

"Among police executives whose departments currently use body-worn cameras, there is an overall perception that the cameras provide a useful tool for law enforcement. For these agencies, the perceived benefits that body worn cameras offer – capturing a video recording of critical incidents and encounters with the public, strengthening police accountability, and providing a valuable new type of evidence – largely outweigh the potential drawbacks... By providing a video record of police activity, body-worn cameras have made their [law enforcement agencies] operations more transparent to the public and have helped resolve questions following an encounter between officers and members of the public...Body-worn cameras are helping to prevent problems from arising in the first place by increasing officer professionalism, helping agencies evaluate and improve officer performance, and allowing agencies to identify and correct larger structural problems within the department. As a result they report that their agencies are experiencing fewer complaints and that encounters between officers and the public have improved." 11

"There is a groundswell of public demand for police departments across the country to outfit their officers with BWCs. However, the benefits of requiring officers to wear them are not only to satisfy and appease popular demand or assuage departments' litigation concerns; BWCs additionally confer benefits to individual officers and departments. Some of these benefits include protecting an officer's personal safety, vitiating frivolous complaints about police misconduct, and leading to faster and easier convictions of alleged criminals. There have been repeated instances where police officers who were once skeptical of a BWC program later actively requested their employment." 12

"While there are many benefits, it is also important to note any BWC policy will have its detrimental effects as well." 13 The most pressing issues facing a law enforcement agency and its body-worn camera program rests with concerns directly related to "privacy concerns that have never been considered before:

- ...body-worn cameras give officers the ability to record inside private homes and to film sensitive situations that might emerge during calls for service; 14

- ...concern about how the footage from body-worn cameras might be stored and used; 15

- ...decisions about when officers will be required to activate cameras; how long recorded data should be retained; who has access to the footage; who owns the recorded data; and how to handle internal and external requests for disclosure; 16

- ...decisions about where to store video footage and how long to keep it can have a far-reaching effect on privacy; 17

- ...the length of time that departments retain body-worn camera footage plays a key role for privacy; the longer recorded videos are retained, the longer they are subject to public disclosure, which can be problematic if the video contains footage associated with privacy concerns; 18

- ...public disclosure laws, often known as freedom of information laws, govern when footage from body-worn cameras is subject to public release; most of these laws were written long before law enforcement agencies began deploying body-worn cameras, so the laws do not necessarily account for all of the considerations that must be made when police departments undertake a body-worn camera program; 19

- ...although broad disclosure policies can promote police agency transparency and accountability, some videos— especially recordings of victims or from inside people's homes—will raise privacy concerns if they are released to the public or the news media; when determining how to approach public disclosure issues, law enforcement agencies must balance the legitimate interest of openness with protecting privacy rights;" 20

Finally, law enforcement agencies need to consider as they develop their policy and procedure what are realistic goals and objectives for their BWC programs and what are seen as unreasonable expectations. As was noted in the Police Executive Research Forum publication "Implementing a Body-worn Camera Program" a BWC program can create unreasonable expectations that need to be tempered from not only the general public but also members of judiciary and prosecutors:

..."police executives [have] said that it has become increasingly common for courts, arbitrators, and civilian review boards to expect police departments to use body-worn cameras. People often expect that officers using body-worn cameras will record video of everything that happens while they are on duty. But most police departments do not require officers to record every encounter. Many agencies have policies against recording when it is unsafe or impossible, and some agencies give officers discretion to deactivate their cameras in certain sensitive situations, such as during interviews with victims or witnesses. Camera malfunctions may also occur. Some agencies have taken steps to inform judges, oversight bodies, and the public about these realities of using body-worn cameras. Police executives said that these expectations can undermine an officer's credibility if questions arise about an incident that was not captured on video...This is one reason why many agencies require officers to articulate, either on camera or in writing, their reasons for turning a camera off in the middle of an incident or for not turning it on in the first place. Expectations about body-worn cameras can also affect how cases

are prosecuted in criminal courts. Some police executives said that judges and juries have come to rely heavily on camera footage as evidence, and some judges have even dismissed a case when video did not exist. "Juries no longer want to hear just officer testimony—they want to see the video," said Detective Cherry of Baltimore. "But the video only gives a small snapshot of events. It does not capture the entire scene, or show the officer's thought process, or show an officer's investigative efforts. This technology shouldn't replace an officer's testimony. I'm concerned that if juries rely only on the video, it reduces the important role that our profession plays in criminal court." 21

However, in considering whether to implement a BWC program law enforcement executives may want to consider some of the technological limitations and concerns that are associated with the use of body-worn cameras. It is essential that decision-makers consider these limitations and concerns attached to BWC technology before committing their agency to a long-term investment of significant dollars. To balance the positives of a body-worn camera program that most law enforcement executives readily acknowledge, several technological concerns and limitations that may not have been considered are provided below:

"...body cameras can provide a unique perspective on police encounters. But like other devices, a camera mounted on an officer's uniform or head has limitations that need to be understood and considered when evaluating the images they record... Being unaware of, or ignoring, the limitations of body camera footage can have a profoundly damaging impact on the true goal of the use of that technology—which is surfacing the truth. Cameras are a powerful tool that can help investigators, supervisors and the community gain a more complete understanding of what happened during an encounter but they are not to be considered the only source of detail. Certainly, a camera can provide *more* information about what happened on the street. But it can't necessarily provide all the information needed to make a fair and impartial final judgment. There still may be influential human factors involved, apart from what the camera sees:

1. A camera doesn't follow officers' eyes or see as they see.

"A body camera photographs a broad scene but it can't document where within that scene what an officer is looking at any given instant. Likewise, the camera can't acknowledge physiological and psychological phenomena that an officer may experience under high stress. As a survival mechanism, [the] brain may suppress some incoming visual images that seem unimportant in a life---threatening situation so [an individual] can completely focus very narrowly on the threat. [Individuals] won't be aware of what [their] brain is screening out.

"[An individual's] brain may also play visual tricks...that the camera can't match. If someone is driving a vehicle toward an officer, for example, it will seem to be closer, larger, and [moving] faster than it really is because of a phenomenon called 'looming.' Camera footage may not convey the same sense of threat that the officer experienced. In short, there can be a huge disconnect between an officer's field of view and visual perception and the camera's. Later, someone reviewing what's caught on camera and judging the officer's actions could have a profoundly different sense of what happened than the officer had at the time it was occurring.

2. Some important danger cues can't be recorded.

"Tactile cues that are often important to officers in deciding to use force are difficult for cameras to capture. 'Resistive tension' is a prime example. An officer can usually tell when they touch a suspect whether he or she is going to resist. The officer may quickly apply force as a preemptive measure, but on camera it may look like that officer made an unprovoked attack, because the sensory cue he felt doesn't record visually.

"The camera can't record the history and experience an officer brings to an encounter. Suspect behavior that may appear innocuous on film to a non---law enforcement civilian can convey the risk of mortal danger to a streetwise officer... For instance, an assaultive subject who brings his hands up may look to a civilian like he's surrendering, but to an officer, based on past experience, that [motion] can be a very intimidating and combative movement, signaling his preparation for a fighting attack. The camera just captures the action, not an officer's interpretation.

3. Camera speed differs from the speed of life.

“Because of the reactionary curve, an officer can be half a second or more behind the action as it unfolds on the screen...Whether he’s shooting or stopping shooting, his recognition, decision---making, and physical activation all take time— but obviously can’t be shown on camera. People who don’t understand this reactionary process won’t factor it in when viewing the footage. They’ll think the officer is keeping pace with the speed of the action as the camera records it. So without knowledgeable input, they aren’t likely to understand how an officer can unintentionally end up placing rounds in a suspect’s back or firing additional shots after a threat has ended.

4. A camera may see better than a human does in low light.

“The high---tech imaging of body cameras allows them to record with clarity in many low---light settings...When footage is screened later, it may actually be possible to see elements of the scene in sharper detail than an officer could at the time the camera was activated. If [an individual is] receiving less visual information than the camera is recording under time--- pressured circumstances, [the individual is] going to be more dependent on context and movement in assessing and reacting to potential threats. In dim light, a suspect’s posturing will likely mean more to an officer immediately than some object he’s holding. When footage is reviewed later, it may be evident that the object in his hand was a cell phone, say, rather than a gun. If an officer is expected to have seen that as clearly as the camera did, his reaction might seem highly inappropriate. On the other hand cameras do not always deal well with lighting transitions. Going suddenly from bright to dim light or vice versa, a camera may briefly blank out images altogether...

5. An officer’s body may block the view.

“How much of a scene a camera captures is highly dependent on where it’s positioned and where the action takes place...Depending on location and angle, a picture may be blocked by an officer’s own body parts, from his nose to his hands. If an officer is firing a gun or a Taser, for example, a camera on his chest may not record much more than his extended arms and hands. Or just blading his stance may obscure the camera’s view. Critical moments within a scenario that the officer can see may be missed entirely by his body cam because of these dynamics, ultimately masking what a reviewer may need to see to make a fair judgment.

6. A camera only records in 2---D.

“Because cameras don’t record depth of field — the third dimension that’s perceived by the human eye —accurately judging distances on their footage can be difficult. Depending on the lens involved, cameras may compress distances between objects or make them appear closer than they really are. Without a proper sense of distance, a reviewer may misinterpret the level of threat an officer was facing. There are technical means for determining distances on 2---D recordings but these are not commonly known or accessed by most investigators.

7. The absence of sophisticated time---stamping may prove critical.

“The time---stamping that is automatically imposed on camera footage is a gross number, generally measuring the action minute by minute. In some high---profile, controversial shooting cases that [time stamping] is not sophisticated enough. To fully analyze and explain an officer’s perceptions, reaction time, judgment, and decision---making it may be critical to break the action down to units of one--- hundredths of a second or even less. There are post--- production computer programs that can electronically encode footage to those specifications. When reviewers see precisely how quickly suspects can move and how fast the various elements of a use---of---force event unfold, it can radically change their perception of what happened and the pressure involved officers were under to act.

8. One camera may not be enough.

“The more cameras there are recording a force event, the more opportunities there are likely to be to clarify uncertainties. The angle, the ambient lighting, and other elements will almost certainly vary from one officer’s perspective to another’s, and syncing the footage up will provide broader information for understanding the dynamics of what happened. What looks like an egregious action from one angle may seem perfectly justified from another. The problem is that many times there is only one camera involved...and in that case the limitations must be kept even firmer in mind.

9. A camera encourages second---guessing.

“According to the U. S. Supreme Court in *Graham v. Connor*, an officer’s decisions in tense, uncertain, and rapidly evolving situations are not to be judged with the ‘clear, 20/20 vision of hindsight.’ “But in the real---world aftermath of a shooting, camera footage provides an almost irresistible temptation for reviewers to play the ‘coulda---shoulda’ game. Under calm and comfortable conditions, they can infinitely replay the action, scrutinize it for hard---to---see detail, slow it down [and] freeze it. The officer had to assess what he was experiencing while it was happening and under the stress of his life potentially being on the line. That disparity can lead to far different conclusions.”

10. A camera can never replace a thorough investigation.

When officers oppose wearing cameras, civilians sometimes assume they fear “transparency.” But more often they [the officers] are concerned that camera recordings will be given undue, if not exclusive, weight in judging their actions. A camera’s recording should never be regarded solely as the truth about a controversial incident. It needs to be weighed and tested against witness testimony, forensics, the involved officer’s statement, and other elements of a fair, thorough, and impartial investigation that takes human factors into consideration... Early testing has shown that [body-worn cameras] tend to reduce the frequency of force encounters as well as complaints against officers. But a well---known police defense attorney is not far wrong when he calls cameras ‘the best evidence and the worst evidence.’ The limitations of body cams and others need to be fully understood and evaluated to maximize their effectiveness and to assure that they are not regarded as infallible ‘magic bullets’ by people who do not fully grasp the realities of force dynamics.” 22

II. BACKGROUND/COMMENTARY/DISCUSSION:

TO BE COMPOSED BY ISSUING AGENCY

III. PURPOSE and SCOPE:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 23

COMMENTARY

While there is no specific recommendation from the Ad Hoc Commission for including PURPOSE and SCOPE in an agency's written policy and procedure, agencies should consider using PURPOSE to provide both its personnel and the community with the stated goals and objectives of the agency's BWC program. Likewise, the SCOPE of the policy and procedure can be used not only to identify personnel who will be required to wear body-worn cameras and but other agency personnel who will be responsible for adhering to the provisions contained in its BWC policy-procedure.

REFERENCE MATERIAL

There have been a number of claims made about the benefits of body-worn cameras. While many of those claims are anecdotal they seem, on the surface and when using conventional wisdom, to make sense. In "Implementing a Body-worn Camera Program: Recommendations and Lessons Learned" the authors summarize the perceived benefits of a BWC program as follows:

"...there is an **overall perception that the cameras provide a useful tool for law enforcement**. For these agencies, **the perceived benefits that body-worn cameras offer**—capturing a video recording of critical incidents and encounters with the public, strengthening police accountability, and providing a valuable new type of evidence—**largely outweigh the potential drawbacks.**" 24

However, as Michael White, PhD., notes in "Police Body-worn Cameras: Assessing the Evidence," there currently has been very limited research to support each claimed benefit. He stated "**most of the claims made by advocates and critics of the technology remain untested**" 25 and White recommends "any agency interested in adopting body-worn camera technology should proceed cautiously and consider the issues to fully inform their decisions." 26

Since this section is intended to point out the PURPOSE of a BWC policy and procedure and to support the agency's BWC program the following perceived benefits of body-worn camera use, as reported by law enforcement agencies currently using the technology, are listed below as general information:

ACCOUNTABILITY AND TRANSPARENCY: 27

- "the number one reason why police departments choose to implement body-worn cameras is to provide a more accurate documentation of police encounters with the public;
- "help agencies strengthen accountability and transparency;"
- "make operations more transparent to the public and help resolve questions following an encounter between officers and members of the public;"
- "help prevent problems from arising by increasing officer professionalism, helping agencies evaluate and improve officer performance, and allowing agencies to identify and correct larger structural problems within the department;"

REDUCING COMPLAINTS AND RESOLVING OFFICER-INVOLVED INCIDENTS: 28

- "experience fewer complaints and encounters between officers and the public have improved;"
- "lead to more civil interactions between officers and the public; have a civilizing effect, resulting in improved behavior among both police officers and citizens;"
- "having footage discourages people from filing unfounded complaints against officers;"
- "reduces unfounded complaints saving departments significant amounts of time/money spent on lengthy investigations and lawsuits; citizens are less likely to file frivolous complaints against officers wearing cameras;"

IDENTIFYING AND CORRECTING INTERNAL AGENCY PROBLEMS: 29

- “identify and correct problems within the department;
- “aid in administrative reviews;”
- “raise standards of performance when it comes to tactics, communication, and customer service;”
- “identify officers who abuse their authority or commit other misconduct and to assist in correcting questionable behavior before it reaches that level;”
- “identify potential weaknesses within their agencies and to develop solutions for improvement, such as offering new training programs or revising their departmental policies and protocols;

EVIDENCE DOCUMENTATION: 30

- “improve how officers capture evidence for investigations and court proceedings;”
- “provide a record of interrogations and arrests, as well as what officers witness at crime scenes;
- “capture everything that happens as officers travel around the scene and interview multiple people;”
- “useful in accurately preserving information.”
- “capture more reliable evidence for court, particularly in matters like domestic violence cases that can be difficult to prosecute;”
- “videotape victim statements; footage shows first-hand the victim’s injuries, demeanor, and immediate reactions;”

IMPROVE TRAINING: 31

- “use footage from body-worn cameras to provide scenario-based training, to evaluate the performance of new officers in the field, and to identify new areas in which training is needed;
- “hold great promise as a training tool for law enforcement, both in the academy and as part of performance evaluation;”
- “post-hoc review of officer behavior during recorded encounters can serve as a mechanism for positive feedback, identify problems in officer behavior, help identify best practices in handling critical incidents (e.g., de-escalation) and eliminate traditional reliance on “final frame” review of officer decisions when forced is used;”

Maryland Law, Courts and Judicial Proceedings, § 10-402 (c) (11) (II) states:

It is **lawful** under this Subtitle **for a law enforcement officer in the course of the officer’s regular duty to intercept an oral communication with a body-worn digital recording device** or an electronic control device capable of recording video and oral communications if:

1. The law enforcement **officer is IN UNIFORM or PROMINENTLY DISPLAYING THE OFFICER’S BADGE OR OTHER INSIGNIA;**
2. The law enforcement **officer is MAKING REASONABLE EFFORTS TO CONFORM TO STANDARDS IN ACCORDANCE WITH § 3- 511 OF THE PUBLIC SAFETY ARTICLE FOR THE USE OF BODY-WORN DIGITAL RECORDING DEVICES** or Electronic Control Devices capable of recording video or oral communications;
3. The law enforcement **officer is a PARTY TO THE ORAL COMMUNICATION;**
4. **Law enforcement NOTIFIES, AS SOON AS IS PRACTICABLE, THE INDIVIDUAL THAT THE INDIVIDUAL IS BEING RECORDED, UNLESS IT IS UNSAFE, IMPRACTICAL, OR IMPOSSIBLE TO DO SO;** and
5. The **oral interception is BEING MADE AS PART OF A VIDEOTAPE OR DIGITAL RECORDING.**

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

III. PURPOSE and SCOPE:

III – A. PURPOSE:

Body-worn cameras, which an increasing number of law enforcement agencies are adopting, represent one new form of technology that is significantly affecting the field of policing. Law enforcement agencies are using body-worn cameras in various ways: to improve evidence collection; to strengthen officer performance and accountability; to enhance agency transparency; to document encounters between police and the public; and to investigate and resolve complaints and officer involved incidents. 32

The purpose of this policy and standard operating procedure is to **PROVIDE ALL [AGENCY NAME] PERSONNEL WITH INSTRUCTIONS ON WHEN AND HOW TO USE BODY-WORN CAMERAS [BWCs]** so that they can **record designated encounters with the public in accordance with existing law and to preserve those recordings in accordance with this agency's policy and procedure and applicable law.** 33

BWCs will be used to record, as OBJECTIVELY as possible given the current state of available technology, certain events and capture certain data as defined by this policy and procedure. 34 Those events and that data will be preserved in either a web-based digital storage facility [cloud] and/or in a local digital storage system maintained and managed by the [NAME OF AGENCY]. These recordings are protected with multiple layers of system security and, **once captured by the BWC the recordings shall not be altered/edited/deleted or otherwise changed except as authorized in this policy and procedure.**

Members of the [AGENCY NAME] and the public need to know that the [NAME OF AGENCY] has adopted the use of BWC technology for a number of reasons to include, but not be limited to, an effort to:

- 1) **promote officer safety** by potentially deterring criminal activity, uncooperative behavior during encounters between its members and the public and acts of aggression against its officers;
- 2) **visually record crimes in progress;**
- 3) **record events and statements taken during the course of an incident/investigation;**
- 4) **promote law enforcement accountability and improve professionalism;**
- 5) **enhance its members' ability to document and review statements, actions and evidence for both internal reporting requirements and for courtroom preparation/presentation;**
- 6) **preserve independent visual and audio information for use in current and future investigations;**
- 7) **collect and preserve evidence**, including crime scene details, for use in criminal investigations and prosecutions;
- 8) **record the advice of rights to individuals**, when applicable;
- 9) **provide an impartial measurement for self-critique and field evaluation during officer training;**
- 10) **assist in resolving complaints** against agency personnel including false allegations by members of the public;
- 11) **aid in debriefing critical incidents;**
- 12) **provide realistic training to agency personnel;**
- 13) **reduce the number of false complaints made against its officers** during the course of their duties;
- 14) **enable the timely resolution of complaints against its officers** when they do occur;
- 15) **enhance public trust** by preserving a recording of officer-citizen interactions from the perspective of its officers; 35

The public must be made aware that Command and supervisory members of the [NAME OF AGENCY] understand that despite their apparent objectivity, **BWC recordings may, and often do, provide a limited perspective of an event/encounter and must be considered with all other available evidence, such as witness statements, officer interviews, forensic analysis and documentary evidence when evaluating the appropriateness of an officer's actions.**

III – B. SCOPE:

1. Designated law enforcement personnel in certain selected assignments in the [AGENCY NAME] will be equipped with and be required to use a Body-worn Digital Recording Device, hereinafter referred to as a Body-Worn Camera (BWC), under certain circumstances as defined under this policy.
2. Use of BWCs will be in strict compliance with existing law and the [NAME OF AGENCY] BWC policy and procedure.
3. **ALL AGENCY PERSONNEL, WHETHER REQUIRED TO WEAR A BWC OR NOT, SHALL BE FAMILIAR WITH THE ADMINISTRATION AND OPERATION OF THE [AGENCY NAME] BWC PROGRAM AND ADHERE TO THE POLICY AND PROCEDURES SET FORTH HEREIN.**

IV. **LEGAL AUTHORITY/CITATIONS:**

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:

(17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 36

COMMENTARY

*While there is no specific recommendation from the Ad Hoc Commission for including **LEGAL AUTHORITY/CITATIONS** in the agency's policy and procedure, agencies may want to consider using this section to provide both its personnel and the public with the various legal citations that are relevant to its body-worn camera program, including appropriate citations regarding access to records, etc.*

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IV. **LEGAL AUTHORITY/CITATIONS:**

1. Maryland law does **NOT REQUIRE** law enforcement agencies TO DEPLOY BODY-WORN CAMERAS. However, it does **AUTHORIZE** THEIR USE UNDER THE CERTAIN CONDITIONS SET FORTH BELOW:

A. COURTS AND JUDICIAL PROCEEDINGS - § 10 – 402 (c) (11) (i):

(11) (i) 1. In this paragraph the following words have the meanings indicated.

2. "Body-worn digital recording device" means a device worn on the person of a law enforcement officer that is capable of recording video and intercepting oral communications.

3. "Electronic control device" has the meaning stated in § 4 - 109 of the Criminal Law Article.

[§ 4 – 109 of the Criminal Law Article states, in part, that an "electronic control device" means a portable device designed as a weapon capable of injuring, immobilizing or inflicting pain on an individual by the discharge of electrical current.] (ECDs are included in this section because they are specifically mentioned in Senate 482; some ECDs provide video recordings when used; while mentioned in Senate Bill 482 recordings made by ECDs are not included in the model BWC policy and procedure.)

B. COURTS AND JUDICIAL PROCEEDINGS - § 10 – 402 (c) (11) (ii):

(11) (ii) It is **lawful** under this Subtitle for a law enforcement officer in the course of the officer's regular duty to **intercept an oral communication with a body-worn digital recording device** or an electronic control device capable of recording video and oral communications **if:**

1. The law enforcement officer is **IN UNIFORM** or **PROMINENTLY DISPLAYING THE OFFICER'S BADGE** or **OTHER INSIGNIA**;
2. The law enforcement officer is **MAKING REASONABLE EFFORTS TO CONFORM TO STANDARDS IN ACCORDANCE WITH § 3- 511 OF THE PUBLIC SAFETY ARTICLE FOR THE USE OF BODY-WORN DIGITAL RECORDING DEVICES** or electronic control devices capable of recording video or oral communications;
3. The law enforcement officer is **a PARTY TO THE ORAL COMMUNICATION**;
4. Law enforcement **NOTIFIES, AS SOON AS IS PRACTICABLE, THE INDIVIDUAL THAT THE INDIVIDUAL IS BEING RECORDED, UNLESS IT IS UNSAFE, IMPRACTICAL, OR IMPOSSIBLE TO DO SO**; and
5. The oral interception is **BEING MADE AS PART OF A VIDEOTAPE OR DIGITAL RECORDING**.

C. PUBLIC SAFETY ARTICLE - §3-511:

On or before January 1, 2016, the Maryland Police Training Commission shall develop and publish online a policy for the issuance and use of a body-worn camera by a law enforcement officer that addresses:

- (1) the testing of body-worn cameras to ensure adequate functioning;
- (2) the procedure for the law enforcement officer to follow if the camera fails to properly operate at the beginning of or during the law enforcement officer's shift;
- (3) when recording is mandatory;
- (4) when recording is prohibited;
- (5) when recording is discretionary;
- (6) when recording may require consent of a subject being recorded;
- (7) when a recording may be ended;
- (8) providing notice of recording;
- (9) access to and confidentiality of recordings;
- (10) the secure storage of data from a body-worn camera;
- (11) review and use of recordings;
- (12) retention of recordings;
- (13) dissemination and release of recordings;
- (14) consequences for violations of the agency's body-worn camera policy;
- (15) notification requirements when another individual becomes a party to the communication following the initial notification;
- (16) specific protections for individuals when there is an expectation of privacy in private or public places; and
- (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.

D. SENATE BILL 482 – EMERGENCY BILL – entitled “Public Safety – Law Enforcement Officers – Body-worn Digital Recording Device and Electronic Control Device” passed by the Maryland General Assembly and signed into law on May 12, 2015 and states, in part:

Section 2:

- (a) There is a **COMMISSION REGARDING THE IMPLEMENTATION AND USE OF BODY CAMERAS BY LAW ENFORCEMENT OFFICERS;**
- (f) The **COMMISSION SHALL STUDY AND MAKE RECOMMENDATIONS REGARDING THE BEST PRACTICES FOR THE USE OF BODY CAMERAS BY A LAW ENFORCEMENT OFFICER;**
- (g) On or before October 1, 2015, the **COMMISSION SHALL REPORT ITS FINDINGS AND MAKE RECOMMENDATIONS TO THE MARYLAND POLICE TRAINING COMMISSION** and, in accordance with § 2 – 246 of the State Government Article, the General Assembly.

Section 3:

- (1) **A JURISDICTION THAT COMMENCES A PILOT PROGRAM FOR THE USE OF BODY-WORN CAMERAS OR ELECTRONIC CONTROL DEVICES BEFORE THE ISSUANCE OF A POLICY ESTABLISHED IN ACCORDANCE WITH § 3-510 [sic] OF THE PUBLIC SAFETY ARTICLE IS NOT SUBJECT TO § 10-402 (c)(11)(II)2 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE FOR THE DURATION OF THE PILOT PROGRAM.**
- (2) **ON CONCLUSION OF A PILOT PROGRAM DESCRIBED IN THIS SECTION, A JURISDICTION'S FULLY IMPLEMENTED PROGRAM SHALL CONFORM TO § 10-402 (c)(11)(II)2 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE;**

Section 4: A JURISDICTION THAT HAS ESTABLISHED A PROGRAM TO USE BODY-WORN CAMERAS OR ELECTRONIC CONTROL DEVICES ON OR BEFORE THE DATE THIS ACT BECOMES EFFECTIVE IS NOT SUBJECT TO § 10-402 (c)(11)(II)2 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE UNTIL A POLICY IS ISSUED IN ACCORDANCE WITH § 3-510 [sic] OF THE PUBLIC SAFETY ARTICLE.

E. GENERAL PROVISIONS ARTICLE - § 4 – 101:

(j) (1) **“Public record” means the original or any copy of any documentary material that:**

(i) **is made by a unit or an instrumentality of the State or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and**

(ii) **is in any form, including:**

1. a card;
2. **a computerized record;**
3. correspondence;
4. a drawing;
5. film or microfilm;
6. a form;
7. a map;
8. a photograph or photo-stat;
9. **a recording; or**
10. **a tape.**

F. GENERAL PROVISIONS ARTICLE - § 4 – 103:

(a) **ALL PERSONS ARE ENTITLED TO HAVE ACCESS TO INFORMATION ABOUT THE AFFAIRS OF GOVERNMENT AND THE OFFICIAL ACTS OF PUBLIC OFFICIALS AND EMPLOYEES;**

(b) To carry out the right set forth in subsection (a) of this section, **UNLESS AN UNWARRANTED INVASION OF THE PRIVACY OF A PERSON IN INTEREST WOULD RESULT, THIS TITLE SHALL BE CONSTRUED IN FAVOR OF ALLOWING INSPECTION OF A PUBLIC RECORD**, with the least cost and least delay to the person or governmental unit that requests the inspection.

REFER TO:

MARYLAND PUBLIC INFORMATION ACT MANUAL (14th ed., October 2015),
www.oag.state.md.us/Opengov/pia

V. DEFINITIONS:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:
(17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 37

COMMENTARY

Many of the terms used throughout this document will be self-explanatory to most law enforcement officers. However, because Maryland law may require agencies to publish and make available to the public a copy of their BWC policy and procedure, they may want to consider providing definitions of certain terms used in their document for benefit of the lay person.

While the Ad Hoc Commission did not specifically define terms in its report to the Police Training Commission, their meanings can be inferred by the recommendations that the Ad Hoc Commission submitted in its report. In other instances, terms have been taken from a variety of BWC resources/references and these definitions have been appropriately footnoted.

Depending on the type of BWC system deployed by an agency and the policy and procedure developed to explain and govern its use, some of the terms defined in this section may or may not be applicable to every policy and procedure. A number of the terms listed in this section are frequently used in publications dealing with BWC systems and procedures. Law enforcement agencies should consider modifying any BWC terms found in this section that are not consistent with their policy as long as they are keeping with Maryland law and the recommendations of the Ad Hoc Commission.

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

V. DEFINITIONS:

The following terms used in this policy and procedure have the meanings as indicated:

- A. ACCIDENTAL/UNINTENTIONAL RECORDING** - means a BWC recording that was inadvertently made and has NO EVIDENTIARY value or official purpose as specified in this policy and procedure;
- B. ACTIVATION** – any process that causes a body-worn camera [BWC] to record, transmit or store video/audio data;
- C. BODY-WORN DIGITAL RECORDING DEVICE [Body-worn Camera (BWC)]** - a device worn on the person of a law enforcement officer that is capable of recording video and intercepting oral communications; 38 for purposes of this policy and procedure these devices must be authorized by the agency for such use;
- D. "BWC" PROGRAM ADMINISTRATOR [if applicable]** - an individual, designated by the Head of the agency, who is authorized with full access to and has full user rights to an agency's BWC system and is responsible for the overall, agency-wide administration and management of an agency's BWC program; the BWC ADMINISTRATOR is responsible for the duties listed in this policy and procedure under Section VIII – A. BWC PROGRAM ADMINISTRATOR; 39
- E. "BWC" UNIT COORDINATOR [if applicable]** – an individual, designated by the Head of the agency or designee, to oversee the inventory, control and operational maintenance of the agency's BWC system and equipment at a unit level as well as the other duties specified in SECTION VIII – B. BWC UNIT COORDINATOR of this policy and procedure; 40
- F. "BWC" RECORDING** – any audio-video signal recorded by and digitally stored on a body-worn camera or recorded by a body-worn camera, downloaded to and stored on the agency's BWC storage system as described in this policy and procedure; "BWC" recording also refers to metadata as defined in this policy and procedure;

- G. “BWC” TECHNICIAN [if applicable]** – an individual trained and certified in the operation/maintenance/repair of the agency’s body-worn camera system and authorized by the agency to maintain/repair/otherwise alter any component of the agency’s BWC system as specified in this policy and procedure; the “BWC” technician may be an employee of the manufacturer, acting under the direction and control of the agency when working on or with the agency’s BWC system; **41**
- H. “CLOUD” STORAGE** – “Cloud” storage is a data storage model in which digital data is maintained, managed and backed up remotely and made available to users over a network; “Cloud” storage means “the storage of data online in the cloud wherein an organization’s data is stored in and accessible from multiple but connected resources that comprise a “cloud.”
- I. COMMAND OFFICIAL** – any commissioned sworn officer of the agency or any sworn officer designated by the Head of the agency as a command official of the agency;
- J. CONFIDENTIAL** – means that all BWC recordings contain information that is the property of the agency and that the unauthorized release may be prejudicial to the best interests of the agency and/or the individuals recorded; confidentiality prohibits the unauthorized viewing/copying/altering/editing/erasing of a recording or any portion thereof; **42**
- K. DISCRETIONARY BWC ACTIVATION** – means using a body-worn camera [BWC] to record an event during circumstances when an officer, command official or supervisor determines that doing so would be beneficial to the public interest and is not otherwise prohibited by law or agency policy from doing so; **43**
- L. DOWNLOADING RECORDINGS** - the process of transferring recorded video and audio from a body-worn camera to an agency’s secure BWC recording retention file which is either maintained locally by the agency or maintained by a third party vendor in the “cloud” or similar digital data storage medium;
- M. “ELECTRONIC CONTROL DEVICE”** - a portable device designed as a weapon capable of injuring, immobilizing or inflicting pain on an individual by the discharge of electrical current and for the purposes of this policy and procedure is capable of video and oral recording. **44**
- N. EVIDENTIARY RECORDING** – any BWC video or footage of an incident/encounter that is relevant to an administrative, civil, or criminal investigation; such BWC footage may include, but not be limited to, a video and/or audio recording of a crime, an arrest, the issuance of a citation, a search, a field stop, a stop and frisk encounter, a use of force incident, a confrontational encounter or an incident in which a citizen makes or threatens to make a complaint to the agency; EVIDENTIARY recordings also include verbal statements given by a victim, witness or suspect during the investigation into a crime or potential crime; **45**
- O. INCIDENT REPORT** – the official agency document that is used to record calls for service, crimes or other law enforcement activities or incidents; typically, these documents record the agency’s initial response to an incident and do not include investigative follow-up reports or other documents that may contain confidential or sensitive material and do not include agency administrative reports;
- P. LAW ENFORCEMENT RELATED ENCOUNTER** – any encounter between an officer and a member of the public in which there is the potential for, the likelihood of or certainty of some type of official law enforcement action including, but not limited to, a call for service or an on-view intervention; a field stop or traffic stop; a stop and frisk; the issuance of a criminal or traffic citation; an arrest; a suspect interrogation; a search – either consensual, probable cause based or incidental to an arrest.; a law enforcement encounter does NOT mean a casual greeting given to the public or an encounter in which a member of the public seeks information such as directions or other general information from an officer; **46**
- Q. MALFUNCTION** – any instance in which a body-worn camera [BWC] and/or its components including a docking station or recharging station fails to function normally, satisfactorily or according to the manufacturer’s specifications or the instructions given by the agency during pre-use BWC training; malfunctions can occur during pre-shift testing or at any time during use in the field and shall be handled and reported as specified in Section IX – B – 2. Inoperable/Malfunctioning/Lost BWCs of this policy and procedure;
- R. MANDATORY BWC ACTIVATION** – means the requirement to use a body worn camera [BWC] to record:
- i. at the initiation of a call for service or other activity that is investigative or enforcement in nature; or
 - ii. an encounter between an officer or a member of the public that is investigative or enforcement in nature;
 - iii. any encounter that becomes confrontational after the initial contact; **47** and
 - iv. any other BWC recording that is required by this agency’s BWC policy and procedure;
- S. MEMBER OF AGENCY** – means any sworn employee of the agency designated to wear and use an agency authorized BWC; a member of the agency as is defined by CP § 10 – 402 (c) (11) (II) 1;

T. METADATA – means information, generally not visible when an electronic document is printed, describing the history, tracking or management of the electronic document, including information about data in the electronic document that describes how, when and by whom the data is collected, created, accessed, or modified and how the data is formatted; **48** [see GP § 4-205 (a) (1) of the Maryland Annotated Code]

U. NON-EVIDENTIARY RECORDING – means BWC footage that does **not** aid in an investigation or prosecution such as footage of an incident or encounter that does **not** lead to an arrest, citation or other law enforcement action; a recording of general non-enforcement/non-investigative activities that an officer might perform while on duty such as assisting a motorist, clearing a roadway or casually greeting a member of the public, providing general information to a member of the community, etc.; **49**

V. NOTIFICATION [NOTICE OF RECORDING] – means bringing to the attention of an individual, as soon as is practicable, the fact that the individual is being recorded unless it is unsafe, impractical or impossible to do; this notification is satisfied even if another individual becomes a party to the communication after the initial notice has been provided; **50** this notification can occur verbally at the beginning of the encounter or passively by way of a medallion or other pin authorized by the agency that is prominently displayed on an officer's uniform; **51**

W. PARTIAL RECORDING – a BWC recording that only partially captures an incident due either to a technical failure of the camera, the failure to record due to the BWC being dislodged/knocked askew/covered etc. during a struggle or because of the nature of the incident the camera view is restricted; **52**

X. PROHIBITED "BWC" ACTIVATION – means using a body-worn camera [BWC] to record agency personnel during routine administrative activities or non-work related personal activity or to record activity on such occasions as prohibited in Section XI – B – 4 – d. Prohibited BWC Activation of this agency's BWC policy and procedure; **53**

Y. PUBLIC DISSEMINATION AND RELEASE OF "BWC" RECORDINGS - the release [authorized or unauthorized] of any BWC recording to any member of the public, including the news media, for any purpose; for purposes of the **DISSEMINATION AND RELEASE OF BWC RECORDINGS** members of the public include a member of the public; a member of an allied law enforcement agency; a member of the State's Attorney's Office; a defense attorney; any elected or government official; agency response to requests for public disclosure of BWC recordings shall be handled in accordance with existing law, the agency's policy and procedure regarding requests for public information and Section XII. Copying/Dissemination/Release of BWC Recordings of this agency's BWC policy and procedure; **54**

Z. PUBLIC RECORD – means the original or any copy of any documentary material that:

(i) is made by a unit or an instrumentality of the State or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;
2. a computerized record;
3. correspondence;
4. a drawing;
5. film or microfilm;
6. a form;
7. a map;
8. a photograph or photostat; **55**

AA. PERSONAL INFORMATION – (1) means information that identifies an individual;

(2) except as provided in GP § 4 – 355, includes an individual's:

- (i) name;
- (ii) address;
- (iii) driver's license number or any other identification number;
- (iv) medical or disability information;
- (v) **PHOTOGRAPHY OR COMPUTER-GENERATED IMAGE**;
- (vi) Social Security number; and
- (vii) telephone number; **56**

- BB. REDACTION** – the process by which a BWC recording is “edited,” in order to blur/make indistinct or camouflage an individual’s image or other image determined by the agency to be sensitive or confidential; redactions may occur only as ordered/ directed by a member of the law enforcement agency authorized to do so by this policy and procedure;
- CC. RETENTION SCHEDULE** – means the length of time each BWC recording will be retained by the [NAME OF AGENCY] as an active record for one or more of the reasons enumerated in this policy and procedure and the final disposition of each BWC recording.
- DD. REVIEW OF RECORDINGS** – means any authorized viewing of/listening to the video or oral recording produced by an agency body-worn camera or any portion thereof; the circumstances under which such review of recordings are authorized are enumerated in this policy and procedure; 57
- EE. STORAGE OF RECORDINGS** – the means by which the agency manages and stores/retains BWC recordings; recording management and storage systems are typically either **IN-HOUSE storage** maintained and managed by the agency or **WEB-BASED [CLOUD-BASED] storage** maintained and managed by a third party vendor; in either case the agency maintains sole “ownership” of all BWC recordings; 58
- FF. SUPERVISOR (OIC or FTO)** – means any sworn member designated as a supervisor including an individual temporarily designated as Officer-in-Charge (OIC) in the absence of an authorized supervisor; for purposes of this policy and procedure an individual designated as a Field Training Officer (FTO) is considered a supervisor when assigned an Officer-in-Training and acting as a Field Training Officer to that officer;
- GG. “TAGGING” OF RECORDINGS [if applicable]** – the process by which each officer equipped with a BWC annotates each BWC recording with information that will categorize the recorded incident for later search/retrieval purposes; “tagging” a BWC recording occurs prior to downloading the recording to the agency’s data storage system in accordance with the procedures outlined in Section IX – B – 4- o – 1. “Tagging Recordings” of this agency’s BWC policy; some BWC units may automatically annotate a recording with the camera serial #, date and time of the recording; during “tagging” a BWC User is required to categorize/catalogue a recorded event in a category under which the recording will be saved, e.g. traffic stop, arrest, etc.; the agency’s incident/complaint number, the officer’s identification # and whether the recording is evidentiary or not will normally be used to annotate a recording; annotation procedures will be established by the agency in conjunction with the BWC manufacturer; “tagging” procedures shall not alter, modify or otherwise change the recording. 59
- HH. BWC TEST** - means the pre-shift body-worn camera [BWC] function test conducted by an agency member in accordance with the manufacturer’s recommendations and agency policy and training; 60

VI. POLICY:

The Maryland Police Training Commission's "*Body-worn Camera Policy*" [*Ad Hoc* Commission recommendation]:

N. WRITTEN POLICY REQUIRED

Each law enforcement agency shall develop and issue a written policy for using BWCs that is consistent with state law and policy issued by the Maryland Police Training Commission prior to implementing a BWC program. ⁶¹

COMMENTARY

The Maryland Police Training Commission recognizes that each law enforcement agency which implements a body-worn camera program will develop its own BWC policy and procedure, one that is particular to the needs of that agency and the community which it serves and is in a format that is the most useful to its members. To assist its client agencies, the Commission has developed this "BWC Procedural Reference Guide" for agencies to consider as they prepare their BWC programs.

REFERENCE MATERIAL

"In order for law enforcement agencies in Maryland and members of the public to obtain all of the potential benefits discussed above, **policies should be written and promulgated to provide proper controls for the use of this relatively new technological tool [BWCs].** Developing a thorough set of policies and procedures governing how audio and video are recorded, stored, and accessed will help ensure that the program has the community's support while meeting the needs of other entities that use the footage. Addressing these needs and policy concerns **will also ensure that the implementation of this program is conducted appropriately while minimizing unanticipated costs and operational problems.**" ⁶²

The Police Executive Research Forum [PERF] recommends that **each agency develop its own comprehensive written policy to govern body-worn camera usage. Policies should cover the following topics:**

- **agency members required to wear and use body-worn cameras;**
- **basic camera usage,** including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
- **designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with cameras, and for reissuing working cameras to avert malfunction claims if critical footage is not captured;**
- **recording protocols,** including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited;
- **process for downloading recorded data** from the camera, including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion;
- **method for documenting chain of custody;**
- **length of time recorded data will be retained** by the agency in various circumstances
- **process and policies for accessing and reviewing recorded data,** including the persons authorized to access data and the circumstances in which recorded data can be reviewed;
- **policies for releasing recorded data to the public,** including protocols regarding redactions and responding to public disclosure requests;
- policies requiring that any **contracts with a third-party vendor for cloud storage explicitly state that the videos are owned by the police agency and that its use and access are governed by agency policy;**

In summary, **policies must comply with all existing laws and regulations, including those governing evidence collection and retention, public disclosure of information, and consent.** Policies should be specific enough to **provide clear and consistent guidance to officers yet allow room for flexibility as the program evolves.** Agencies should make the policies available to the public, preferably by posting the policies on the agency website. ⁶³

EXAMPLE - POLICY STATEMENTS: 64

The following law enforcement agency BWC policy statements are provided for illustration purposes only. More policy statement examples can be found at www.bja.gov/bwc/pdfs:

"It is Department policy to employ the use of Wearable Video Recorders to insure an accurate and unbiased documentation of the interaction in law enforcement related incidents." 64-a
[Laurel (Maryland) Police Department]

"It is the goal of the Duluth Police Department to use mobile video recording (MVR) technology to more effectively fulfill the department's mission and to ensure these systems are used securely, efficiently and in compliance with the law. The MVR is not intended to be used for the purpose of surveillance of officers or initiating disciplinary action against an officer." 64-b
[Duluth (Minnesota) Police Department]

"It shall be the policy of the Grand Forks Police Department to use Body-Worn Camera Recording Equipment (BWC), when available, for the purposes of documenting violations of law, ensuring accountability and making training opportunities available to officers. Officers shall follow the procedures for BWC equipment use as set forth in this directive. This policy does not govern the use of recording devices used in undercover operations." 64-c
[Grand Forks (North Dakota) Police Department]

"The Louisville Metro Police Department (LMPD) has adopted the use of wearable, on-officer cameras to further the mission of the department and enhance service to the community by accurately documenting events, actions, conditions and statements made during citizen encounters, traffic stops, arrests and other incidents in order to promote officer and public safety. The wearable video system (WVS) allows hands-free video and audio recording of important or critical incidents from the perspective of the user as they are occurring. This allows the officer to record locations and activities that are not available to in-car recording equipment. The WVS may be used as a stand-alone recorder or in conjunction with/to supplement the Mobile Video System (MVS) (refer to SOP 4.1). Officers shall only utilize the WVS issued by the LMPD. The WVS shall only be used by officers working in an official law enforcement capacity. This policy does not govern the use of covert recording devices, such as those used in undercover operations." 64-d
[Louisville (Kentucky) Metro Police Department]

"It shall be the policy of the Orlando Police Department to utilize the Body-Worn Camera (BWC) and the In-Car Camera equipment to document law enforcement interaction with the public with video and audio recordings. Through the use of mobile recording systems, this agency will better protect the rights of citizens and police officers while balancing privacy interests." 64-e
[Orlando (Florida) Police Department]

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

VI. POLICY:

VI – A. POLICY STATEMENT:

1. It is the policy of the [AGENCY NAME] to continually improve its efficiency and effectiveness as a law enforcement agency while at the same time reinforcing the integrity and professionalism of its members and improving its accountability to the community. One step the [AGENCY NAME] can take towards achieving these objectives is to make use of available technology such as is offered by body-worn cameras [BWCs]. The [AGENCY NAME] sees the use of body-worn cameras not only as an opportunity to create a greater sense of transparency concerning its actions with the community but also to use recorded footage as an investigative aid to assist in the prosecution of crime as well as a training tool to improve officer performance and to resolve complaints against its personnel.
2. It is the policy of the [AGENCY NAME] to enhance service to the community by recording the events, actions, conditions and statements made during calls for service, field stops, traffic stops, arrests and other similar citizen-officer encounters.

3. It is the policy of the [AGENCY NAME] to designate certain law-eligible operational personnel to wear authorized body-worn cameras; to record certain law enforcement activities and events from the perspective of the law enforcement officer; to download and retain these recordings in keeping with this policy and procedure; and to use these retained recordings in criminal, civil and administrative investigations and as a means of improving officer performance.
4. Members of the [AGENCY NAME] equipped with body-worn cameras will record officer-public encounters while also recognizing the privacy concerns of the community and, when appropriate, the privacy concerns of law enforcement officers, in accordance with existing law and recognized best professional practices.
5. Likewise, it is the policy of the [AGENCY NAME] to make BWC recordings available to the public and media in accordance with existing law while at the same time taking the necessary steps to safeguard the privacy rights and confidentiality of victims, witnesses and other individuals who may be unintentionally recorded during a particular event.
6. Members of the [AGENCY NAME] designated to use a body-worn camera who fail to comply with its usage as set forth in the [NAME OF AGENCY] BWC policy and procedure may face disciplinary action in accordance with established procedures.

VI – B. AVAILABILITY OF AGENCY POLICY:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [Ad Hoc Commission recommendation]:

P. AGENCY BWC POLICIES

BWC policies of agencies shall be made available to the public. 65

COMMENTARY

*Two of law enforcement’s most stated goals when deploying body-worn cameras and recording various interactions between officers and the public are to enhance agency transparency and increase officer accountability. It is only logical, therefore, that the policies and procedures that govern the use of BWCs, the storage and retention of the recordings, the potential uses of those recordings and their availability to the public should be clearly defined not only for agency personnel but for the public. Supporters of the use of body-worn cameras frequently advocate the publication of an agency’s BWC policy and procedures on its website. The Ad Hoc Commission went so far as to word its recommendation to the Police Training Commission to make agency BWC policies and procedures available to the public by using the word **SHALL** in its bullet. While the Ad Hoc Commission did not specify how agencies should accomplish this task, the most effective way appears to be by publishing the agency’s BWC policy and procedure on the agency’s or local government’s website.*

REFERENCE MATERIAL

This theme of affording access to an agency’s plans to deploy body-worn cameras has been repeated in a number of publications about BWC programs:

“...many police executives found it useful to notify and engage with the community before initiating their BWC programs. For example, the Rialto Police Department **used social media to inform the public about its program**. There are indications **the public is more accepting of a BWC program if police departments are transparent about their policies and practices**. Some police departments have proactively posted BWC footage on their websites to demonstrate this transparency and to help resolve questions surrounding controversial officer-related incidents.” 66

“...the public is more accepting of body-worn cameras if agencies are transparent about their camera policies and practices. Some agencies post their camera policies on their websites;” 67

"Transparency about the agency's camera policies and practices, both prior to and after implementation, can help increase public acceptance and hold agencies accountable. **Examples of transparency include posting policies on the department website...**" 68

"Agencies have found it useful to communicate with the public, local policymakers, and other stakeholders about what the cameras will be used for and how the cameras will affect them." 69

"Agencies should clearly **state all retention times in the policy and make the retention times public by posting them on their websites** to ensure community members are aware of the amount of time they have to request copies of video footage." 70

"PERF generally recommends a broad **public disclosure policy for body-worn camera videos**. By implementing a body-worn camera program, agencies are demonstrating that they are committed to transparency and accountability, and their disclosure policies should reflect this commitment:

→ **agencies should always communicate their public disclosure policies to the public.** 71

"Collecting and **releasing data about body-worn cameras helps promote transparency and trust within the community**. It also helps agencies to evaluate the effectiveness of their programs, to determine whether their goals are being met, and to identify areas for improvement. Agencies can also use the findings when presenting information about their body-worn camera programs to officers, oversight boards, policymakers, and the community:

→ **statistics should be publicly released at various specified points throughout the year or as part of the agency's year-end report.** 72

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

VI – B. POLICY AVAILABILITY:

1. A copy of the **[NAME OF AGENCY]** "BODY-WORN DIGITAL RECORDING DEVICE [BODY WORN CAMERA (BWC) POLICY AND PROCEDURES" will be available to the public:
 - i. posted on the homepage of **[NAME OF AGENCY]** website;
 - ii. distributed, upon a public information request, according to existing law.
2. It is the responsibility of the BWC **ADMINISTRATOR** [or the BWC Unit Coordinator if no BWC **ADMINISTRATOR** is appointed] to ensure that a current version of this agency's BWC policy is posted on the **[NAME OF AGENCY]** website.

VI – C. POLICY REVIEW:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATIONS

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 73

COMMENTARY

*While there is **no specific recommendation from the Ad Hoc Commission for including POLICY REVIEW in the agency's policy and procedure, agencies should consider including this section to ensure that the operation and administration of their BWC programs remain current.***

REFERENCE MATERIAL

“Body-worn camera technology is new and evolving. In addition, the policy issues associated with body-worn cameras are just recently being fully considered and understood. Agencies must continue to examine whether their policies and protocols take into account new technologies, are in compliance with new laws, and reflect the most up-to-date research and best practices. Evaluations will also help agencies determine whether their policies and practices are effective and appropriate for their departments.” 74

Even as police departments are increasingly adopting body-worn cameras, **many questions about this technology have yet to be answered.** 75

“Agencies should conduct periodic reviews of their body-worn camera policies and protocols. Evaluations should be based on a set standard of criteria, such as the following:

- recording policies;
- data storage, retention, and disclosure policies;
- training programs;
- community feedback;
- officer [user] feedback;
- internal audit review discoveries;
- [→ court decisions;]
- [→ legislative changes;]” 76

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

VI – C. POLICY REVIEW:

1. Because body-worn camera technology is new and evolving the **[NAME OF AGENCY]** may find it necessary to revise its existing **“BODY-WORN DIGITAL RECORDING DEVICE [BODY WORN CAMERA (BWC) POLICY AND PROCEDURES”** due to:

- i. technological/operational/administrative changes;
- ii. statutory changes; or
- iii. relevant court decisions

which may affect the agency’s BWC program. Therefore, the **[NAME OF AGENCY]** will revise its BWC policy and procedure, consistent with existing law, whenever it is determined to be necessary.

2. It will be the responsibility of the BWC **ADMINISTRATOR** [or the BWC Unit Coordinator if no BWC **ADMINISTRATOR** has been appointed] to notify the Head of the agency, as soon as practical, in the event there is any need to change the agency’s existing **“BODY-WORN DIGITAL RECORDING DEVICE [BODY WORN CAMERA (BWC) POLICY AND PROCEDURES:”**

- i. **Notification of recommended changes** to the existing policy and procedure will be done **in writing**, citing the suggested change and the reason for it. **Once authorized by the Head of the agency, changes to the policy will be published and disseminated to agency personnel** as per existing policy and procedure;

3. Notwithstanding any need to make changes to the BWC policy and procedure, the BWC **ADMINISTRATOR** shall review the existing BWC policy and procedure **annually** [in **[month]** of each calendar year] in keeping with existing agency policy and procedure and ensure that the BWC policy and procedure is current.

4. The BWC **ADMINISTRATOR** [or BWC Unit Coordinator] will ensure the policy posted on the agency’s website is updated as soon as practical.

VII. BWC EQUIPMENT:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

G. CONFIDENTIALITY

1. "...only BWC equipment approved by agency policy shall be worn. 77

COMMENTARY

As can be seen from the preceding pages of this document "the decision to implement body-worn cameras should not be entered into lightly." 78 There are a wide range of considerations that merit study and discussion before a BWC program can be implemented. These include, but are not limited to:

- *determining when and how to engage community members into a discussion about the agency's BWC program;*
- *preserving those informal positive relationships that already exist between police officers and members of the community;*
- *the challenge and expense of purchasing a body-worn camera system that allows the agency to effectively and efficiently reach its goal of demonstrating transparency and accountability during its interactions with the public;*
- *developing policies and procedures that respect the public's and the officer-user's right to privacy while ensuring that the agency's BWC program requires officer-users to record those activities that merit recording ;*
- *identifying when officers will be required to activate their cameras, how long recorded data should be retained, who has access to the footage, who owns the recorded data, and how to handle internal and external requests for disclosure;*
- *providing training to agency personnel in how to use the cameras and components;*
- *selecting and training staff to administer and oversee the BWC program to ensure that recordings are properly downloaded, securely stored and available for downloading when appropriate;*
- *determining appropriate ways that evidentiary recordings can be used to investigate and prosecute crimes.*

Once an agency's chief executive officer has an understanding of how these issues will impact the agency's BWC program the work to select a body-worn camera system can begin.

Agencies should consider that, whatever BWC system is selected for use, they include a description in its policy and procedure to ensure that all agency personnel, as well as members of the community, know what type of BWC is authorized by the agency for use by its members.

REFERENCE MATERIAL

BACKGROUND - FINANCIAL CONSIDERATIONS:

"For some agencies, costs make it challenging to implement a body-worn camera program...they come at a considerable financial cost. In addition to the initial purchasing cost, agencies must devote funding and staffing resources toward storing recorded data, managing videos, disclosing copies of videos to the public, providing training to officers, and administering the program." 79

"Many police agencies have found it useful to conduct a cost-benefit analysis when exploring whether to implement body-worn cameras. For example, agencies can conduct an audit of their claims, judgments, and settlements related to litigation and complaints against officers to determine what costs they may already be incurring. The costs associated with deploying body-worn cameras may be offset by reductions in litigation costs, and agencies should carefully assess their ongoing legal expenses to determine how they could be reduced through the use of body-worn cameras." 80

"Prices vary depending on factors such as functionality, storage capacity, and battery life. Agencies must make this initial purchase up front, and sometimes they purchase cameras as part of a contract with the manufacturer for related services, such as data storage and technical assistance." 81

"In addition to the cost of purchasing cameras and storing data, **administering a body-worn camera program requires considerable ongoing financial and staffing commitments. Many agencies appoint at least one full-time officer to manage the camera program. Agencies must provide ongoing training programs, ensure that cameras are properly maintained, fix technical problems, and address any issues of officer noncompliance.**" 82

"The cost of data storage will depend on how many videos are produced, how long videos are kept, and where the videos are stored. If the videos are stored on an online cloud database, the costs typically go toward paying a third-party vendor to manage the data and to provide other services, such as technical assistance and forensic auditing. If videos are stored on an in-house server, agencies must often purchase additional computer equipment and spend money on technical staff and systems to ensure the data are secure." 83

BACKGROUND - TECHNOLOGICAL CONSIDERATIONS:

"...the biggest challenge is not deciding whether to adopt one particular technology but rather **finding the right mix of technologies for a given jurisdiction based on its crime problems, funding levels, and other factors. Finding the best mix of technologies, however, must begin with a thorough understanding of each type of technology.**" 84

"A major issue with the use of BWCs is a **lack of technical standards and operational standards for protocols and procedures.** Without such standards in place, law enforcement practitioners lack adequate information to select the proper system that meets their requirements." 85

"While there are **numerous body worn camera systems in the marketplace today, it is important to recognize that most of them are not specifically designed for law enforcement use, and may not be well-suited to collect evidence or readily usable by officers in the field due to physical dimensions, accessibility, and usability.**" 86

"There are many specification issues to consider before purchasing a camera system. The system requirements and trade-offs will be dependent on the intended use, budget, unit cost, interoperability, operating environment, etc. **A single set of BWC technical requirements does not exist, but is of interest to a wide range of law enforcement agencies. Typical specifications to consider include:**

- **battery life** – minimum of 3 hours of continuous recording per full charge;
- **video quality/resolution** - minimum of 640 x 480 pixels;
- **frame rate** – 25 frames per second;
- **recording [duration] limits;**
- **night/low light recording capabilities** – low lux rating or IR illuminator for low light recording;
- **camera focal width** (need wide point-of-view, or POV);
- **on camera recording storage capacity** – minimum of 3 hours of recording;
- **audio recording;**
- **camera placement;**
- **radio integration capability;**
- **camera and component warranty** – minimum 1 year;
- [→ **camera durability;**
- [→ **simplicity of system operation;** 87

"Units can be mounted in several areas to include around the ear or head, on a helmet or hat, on the lapel, pocket, badge or in many other places. Mounting is a serious item to consider as lapel/chest mounted cameras are always body-facing units, whereas head-mounted units have a view of exactly what the officer is seeing." 88

"Standard cameras are likely to have image quality issues (e.g., fuzzy pictures and poor quality at night) as compared to more high-end cameras due to technical compromises to manage costs. There can also be quality issues with stability. For example, when an officer is running or fighting, the video may be shaky and the camera may not be secure; this again links back to placement of the camera on the officer being extremely important... Many vendor websites host sample capture video from systems for potential users to sample." 89

“...one of the most significant administrative costs—at least in terms of staff resources—involves the process of reviewing and categorizing videos. Although the exact process varies depending on the camera system, officers must typically label, or “tag,” videos as evidentiary or non-evidentiary. Evidentiary videos are further categorized according to the type of incident captured in the footage (e.g., homicide, robbery, or traffic citation). This tagging process is critical for determining how a video will be used and how long it will be retained. 90

“...data storage is the most expensive aspect of a body-worn camera program.” 91

“...there are also significant administrative costs involved with responding to requests from the public or the news media for body-worn camera videos. When an agency receives a disclosure request, often under the Freedom of Information Act, officers or other department personnel must spend time reviewing videos to find the relevant footage, determining whether an exception to the presumption of disclosure applies, identifying portions that by law must be redacted, and performing the redaction process. 92

“Although it is important to keep videos long enough to demonstrate transparency and preserve a record of an encounter, keeping these videos indefinitely would overwhelm an agency’s resources. Some agencies may even decide against adopting body-worn cameras due to the extraordinary costs of data storage.” 93

“As the public becomes more familiar with the existence of police body-worn camera programs, it is reasonable to expect that members of the public and the news media will increasingly want to obtain video recordings. Such public records requests will add to the workload of managing a camera program.” 94

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

VII – A. AUTHORIZED BWC SYSTEM EQUIPMENT:

1. Based on research [and field testing, if applicable] the [AGENCY NAME] has determined that the [MANUFACTURER NAME OF BODY-WORN CAMERA], described below, is the most appropriate body-worn camera for use by the agency:

- i. the values considered in making this decision included **USABILITY, CAPABILITY, DEPLOYABILITY, MAINTAINABILITY, DURABILITY AND AFFORDABILITY** which vary greatly depending on the manufacturer of the BWC device/component equipment: 95

[MANUFACTURER NAME/MODELNAME OF BODY-WORN CAMERA]

Dimensions:

Weight: ____ ounces; Size: ____;

Battery Life:

Fully Charged: ____ hours; Recording Battery Life: ____ hours; Standby Battery Life: ____ hours;

Charging Time: ____ hours;

Low Battery Indicator;

Max Video Resolution: ____ pixels;

Recording Speed: ____ frames per second;

Pre-event Recording: ____ # of seconds;

Cameral Focal Width: ____ wide width or POV;

Horizontal Field of View: ____ degrees of view;

Low-light/Night Recording Capability: ____ low lux rating and/or IR illuminator for recording in low light;

Storage capacity: ____ gb;

Video Recording Indicator;

Time/Date Stamp: embedded/metadata. 96

BWC EQUIPMENT OPTIONS

If a particular body-worn camera comes equipped with OPTIONS they should be listed in the description of the BWC.

Examples of some available options dependent on the BWC manufacturer are:

- ▶ Pre-event buffering;
- ▶ Event Marking;
- ▶ Video safeguards;
- ▶ Audio Mute Capability
- ▶ Play back screen;
- ▶ Radio integration capability [police radio interface];
- ▶ GPS;
- ▶ Still Photo Mode; etc.

VII – B. OFFICIAL USE RESTRICTION:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

G. CONFIDENTIALITY

1. ...only BWC equipment approved by agency policy shall be worn.
2. Leased or purchased BWC equipment and all recordings are the property of the law enforcement agency... 97

COMMENTARY

Because BWC recordings will be the property of the law enforcement agency and the circumstances during which recordings are authorized to be made will be dictated by agency policy and procedure, agencies should consider prohibiting the use of personal recording equipment when personnel are on duty or engaged in authorized law enforcement activities that may include working approved secondary employment or overtime details. If not restricted by agency policy and procedure, agencies may want to consider including a prohibition against agency personnel recording officer-citizen encounters/other on-duty law enforcement activities using personal "smart phones" or other similar devices capable of making a video/audio recording.

REFERENCE MATERIAL

"Agencies should not permit personnel to use privately-owned body-worn cameras while on duty:

Most of the police executives whom PERF interviewed believe that **allowing officers to use their own personal cameras while on duty is problematic**. PERF agrees with this position. Because the agency would not own the recorded data, there would be little or no protection against the officer tampering with the videos or releasing them to the public or online. In addition, chain-of-custody issues would likely prevent the video evidence from being admitted as evidence in court. **This recommendation applies regardless of whether the agency has deployed body-worn cameras.** 98

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

VII – B. OFFICIAL USE RESTRICTION: 99

1. All agency body-worn cameras, equipment and recordings are the property of the **[NAME OF AGENCY]** and are reserved for the official use of the **[NAME OF AGENCY]**:
 - i. under no circumstances will a member of the agency use a body-worn camera or equipment to record any event/situation/incident in which the agency is not officially involved in or participating in as specified in this policy and procedure unless specifically authorized, in writing, by the Head of the agency;
 - ii. under no circumstances shall a member of the agency loan or otherwise give a **[NAME OF AGENCY]** body-worn camera or any other BWC equipment to any non-agency personnel without being specifically authorized to do so, in writing, by the Head of the agency;
2. The **[MANUFACTURER'S NAME AND BODY CAMERA NAME/MODEL]** is the ONLY BODY-WORN CAMERA AND SYSTEM AUTHORIZED FOR ON-DUTY USE BY PERSONNEL OF THIS AGENCY:
 - i. NO OTHER BODY-WORN CAMERA AND/OR SYSTEM SHALL BE USED, ON-DUTY, FOR ANY REASON WITHOUT THE EXPRESSED AUTHORIZATION OF THE HEAD OF THE AGENCY such as:
 - a. as authorized by the Head of the agency during a pilot study of another BWC recording device;
 - b. for authorized demonstration purposes by another BWC vendor;
3. Any violation of these restrictions and/or any other prohibitions in this policy and procedure may subject the violator to the appropriate administrative/disciplinary action.

VIII. BWC ADMINISTRATION and MANAGEMENT:

VIII – A. BWC Program ADMINISTRATOR:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:
(17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 100

COMMENTARY

The scope, administrative complexity and logistical demands of an agency's BWC program, no matter the size of the law enforcement agency, will most likely require, at a minimum, that an individual be designated as the "BWC" PROGRAM ADMINISTRATOR. Depending on the size of the department and the number of BWC users the individual designated as BWC Administrator and Unit Coordinator may be the same person. However, in larger agencies, with a number of decentralized body-worn cameras users and satellite locations with BWC equipment, a number of individual BWC Unit Coordinators may need to be designated at these satellite locations to assist the BWC Administrator.

For purposes of this "BWC Procedural Reference Guide" the duties of the BWC Administrator and the BWC Unit Coordinator will be treated as separate individuals. Agency needs and staffing levels will dictate whether the duties of BWC Administrator and BWC Unit Coordinator can be combined into one position. The list of duties and responsibilities listed in this document for both the BWC Administrator and the BWC Coordinator are suggestive and/or illustrative; the actual duties and responsibilities will depend on each agency's BWC system and program.

REFERENCE MATERIALS

Many agencies appoint at least one full-time officer to manage the camera program. 101

"There is a wide-range of important issues that may be governed by a law enforcement agency's internal administrative BWC policy...including designating a staff member to administer the BWC program:

→ identify who is responsible for maintaining, charging, reporting, documenting malfunctions, and issuing new cameras;" 102

Agencies should ensure that a thorough logistics plan is in place prior to implementation. 103

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

VIII. BWC PROGRAM ADMINISTRATION/MANAGEMENT:

VIII – A. BWC PROGRAM ADMINISTRATOR: 104

1. The "BWC" PROGRAM ADMINISTRATOR shall be designated by the Head of the agency and shall report to the Head of the agency or other Command Official designated by the Head of the agency.
2. The BWC ADMINISTRATOR is authorized to oversee and manage all aspects of the [NAME OF AGENCY] BWC program and shall have full access rights to the [NAME OF AGENCY] BWC program.
3. The BWC ADMINISTRATOR shall be responsible for the following duties:

A. GENERAL DUTIES:

- i. acts as custodian of all BWC recordings;

- ii. provides liaison with the BWC camera/equipment vendor on all operational BWC matters:
 - a. includes the BWC data storage vendor [if separate from camera/equipment vendor];
- iii. establishes/maintains an inventory of all body-worn cameras and BWC equipment;
- iv. reviews/updates BWC policy and procedures as warranted;
- v. ensures that the BWC policy is posted on the agency website;
- vi. assigns available body-worn cameras to agency commands/units as required or to individual members [if no separate BWC UNIT COORDINATOR is designated];
- vii. facilitates BWC maintenance and repairs with BWC vendor/technicians [if no separate BWC UNIT COORDINATOR is designated];
- viii. ensures BWC battery chargers are functioning [if no separate BWC UNIT COORDINATOR has been designated];
- ix. maintains liaison with each BWC UNIT COORDINATOR [if applicable];
- x. coordinates the development of any agency forms to be used for documenting actions taken in the BWC program to include but not be limited to:
 - a. BWC assignment sheet/use log;
 - b. documentation of malfunctioning/non-operable BWC equipment;
 - c. request to view a BWC recording;
 - d. request to delete/edit a BWC recording;
 - e. request to copy a BWC recording;
- xi. troubleshoots BWC problems identified by BWC UNIT COORDINATORS/members/supervisors/command officials [if no separate BWC UNIT COORDINATOR is designated];
- xii. replaces BWCs as required; [if no separate BWC UNIT COORDINATOR designated];
- xiii. acts as liaison with field supervisors regarding BWC concerns and problems [if no separate BWC UNIT COORDINATOR is designated];
- xiv. provides periodic status reports of BWC program to Head of the agency to include, but not limited to:
 - a. number of BWC recordings stored;
 - b. number of BWC recordings viewed/reasons viewed;
 - c. number of MPIA requests processed and recordings released;
 - d. number of BWC recordings requested by prosecutor for trial use and/or court requests;
 - e. dates of/results of BWC system audits;
 - f. specific BWC vendor/equipment problems and solutions;
 - g. any BWC security issues; etc.

B. TRAINING:

- xv. coordinates training to agency BWC users/supervisors/command officials:
 - a. ensures all agency BWC training programs are conducted according to manufacturer's specifications/instructions;
 - b. ensures a copy of the manufacturer's BWC operating manual is posted on the agency's intra-net and/or is **available for review at every location that body-worn cameras and equipment are available for use;**
 - c. attends roll-call/other briefings to provide information about the agency's BWC program;
- xvi. coordinates training to ancillary BWC users:
 - a. investigators;
 - b. command officials/supervisor;
 - c. prosecutors;
 - d. judges;
 - e. others as determined by Head of the agency;
- xvii. coordinates BWC program education to the public including the media:
 - a. program goals;
 - b. expectations;
 - c. opportunities and challenges;
 - d. public information access/release of recordings;

xviii. coordinates review of recordings by agency training staff to locate appropriate training footage;

C. AUDIT/INSPECTIONS:

- xix. ensures that periodic, random audits of calls-for-service/other incidents are conducted to ensure that BWC recordings are being made, “tagged,” downloaded and stored in compliance with policy and procedure;
- xx. conducts random checks of video/audio recordings for quality assurance;
- xxi. audits compliance with existing BWC policy and procedures by each command/unit;
- xxii. audits downloaded BWC recordings to ensure that they are downloaded per established procedure;
- xxiii. audits downloaded BWC recordings to ensure that they are stored/retained per established procedure;
- xxiv. ensures that any 3rd party vendor that stores BWC footage is CJIS compliant;
- xxv. reviews all requests to delete INADVERTENT/UNINTENTIONAL/ACCIDENTAL recordings:
 - a. determines if the recording should remain in the BWC recording file for the minimum retention period or longer or be deleted;
 - b. if the recording should be deleted, makes that recommendation to the Head of the agency for final approval;
 - c. upon final approval of the Head of the agency/Designee documents the reason and the final approved action in the BWC recording file;
 - d. notifies, in writing, the BWC user of the final action taken;

D. DISSEMINATION OF RECORDINGS/PUBLIC INFORMATION REQUESTS:

- xxvi. coordinates with agency’s Public Information Officer to respond to any MPIA request from the media or public:
 - a. consults with the agency’s Legal Advisor when necessary;
 - b. ensures that all public information requests for BWC recordings are documented/maintained in file;
- xxvii. tracks all requests for, release/sharing/holding of all videos, including but not limited to those from subpoenas, prosecution requests, MPIA requests, and potential criminal and/or civil litigation holds;
- xxviii. ensures released BWC recordings are redacted as necessary;

E. STORAGE/RETENTION/DELETION OF RECORDINGS:

- xxix. monitors and, if appropriate, re-categorizes videos that have been in the “Hold for Further Review” status longer than 90 days;
- xxx. ensures all videos categorized as “RETAINED” are reviewed every 60 calendar days to ensure compliance with the retention policy outlined in Section X – H. Retention of BWC Recordings in this policy and procedure;
- xxxi. ensures that the chain of custody is observed when retaining all evidentiary recordings;
- xxxii. ensures non-evidentiary BWC recordings are deleted from the recording file as per established procedure;
- xxxiv. ensures maintenance in the file of an unedited original version of each stored body-worn camera recording; 105
- xxxv. maintains a secure log of all BWC recordings that have been deleted including:
 - a. date original BWC recording made;
 - b. date original BWC recording deleted;
 - c. reason BWC recording was deleted;
- xxxvi. monitors videos that are about to reach the end of their retention period;
- xxxvii. coordinates with the agency’s Property Officer to ensure all videos classified as “Evidence” are stored in the agency’s property and evidence system;
- xxxviii. ensures that the agency maintains a secure back-up system for storing BWC recordings;

F. REVIEW OF BWC RECORDINGS:

- xxxix. reviews and approves as per policy all internal requests for reviews of BWC recordings;
- xl. coordinates all internal viewings of BWC recordings;
- xli. maintains a secure log of any internally viewed BWC recording/footage to include: 106
 - a. date and time BWC recording viewed;
 - b. person(s) viewing the BWC recording;
 - c. reason for/purpose of viewing the BWC recording;
 - d. length of time BWC recording was viewed;
 - e. whether any copying or editing of the BWC recording occurred including the reason; 107

VIII – B. BWC UNIT COORDINATOR:

COMMENTARY

In agencies, in which BWC-users are decentralized, agencies may determine that it is necessary to designate a BWC UNIT COORDINATOR for each separate command/unit/facility that will be using BWCs. In certain cases, a unit supervisor may be designated as the BWC UNIT COORDINATOR for that unit; in other cases, a command composed of multiple squads or units should consider assigning one individual to function as BWC UNIT COORDINATOR for the entire command.

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

VIII – B. BWC UNIT COORDINATOR [if applicable]: 108

1. A BWC UNIT COORDINATOR will be designated by the Command Official in charge of each unit. While BWC Unit Coordinators will continue to report to their unit's command official they will also report all BWC problems/issues/concerns/matters to the BWC ADMINISTRATOR.
2. A BWC UNIT COORDINATOR shall be responsible for the following duties:
 - i. provide assistance and technical support to members who use BWCs in their assigned units;
 - ii. maintain liaison with the agency's BWC ADMINISTRATOR;
 - iii. ensure functional body-worn cameras and BWC equipment are available to unit members as required:
 - a. document BWC equipment malfunctions/failures and forward documentation to BWC ADMINISTRATOR;
 - iv. ensure a current copy of the BWC manufacturer's operational manual is available for on-site review;
 - v. facilitate/coordinate with the BWC ADMINISTRATOR preventive maintenance and repairs to unit BWC equipment;
 - vi. conduct periodic inspections to ensure BWC recordings are being "tagged" as required;
 - vii. report any prohibited BWC recordings to the BWC user's supervisor and to the BWC ADMINISTRATOR;
 - viii. act as liaison with field supervisors regarding BWC concerns and problems;
 - ix. review all unit requests to delete INADVERTENT/UNINTENTIONAL/ACCIDENTAL BWC recordings made by unit members, make a recommendation to the BWC ADMINISTRATOR whether to delete or retain the BWC recording and forward the recommendation to the BWC ADMINISTRATOR for action;
 - x. assist Command Official in conducting periodic reviews of recorded video to ensure that the members are recording mandatory events as outlined in this policy and procedure;
 - xi. provide BWC status reports to BWC ADMINISTRATOR as required;
 - xii. randomly inspect incident reports to ensure that the use of a body-worn camera is included in the report as required:
 - a. notify the individual's supervisor when such notation is not included in the incident report;
 - xiii. complete BWC related work tasks assigned by BWC ADMINISTRATOR when required;
 - xiv. maintain copies of all unit reports and documentation pertaining to its participation in the BWC program;

IX. BWC OPERATING PROCEDURES:

IX – A. GENERAL FIRST-LINE SUPERVISOR RESPONSIBILITIES:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

O. INCIDENT REPORTS:

Incident reports should note any use of BWC. 109

E. ENDING A RECORDING

Once recording with a BWC has been initiated, officers shall not end the recording until:

3. A **SUPERVISOR** or agency policy has authorized that a recording may cease because the officer is no longer engaged in a related enforcement or investigative activity; 110

COMMENTARY

First-line supervisors play a pivotal role in the success of a BWC program. They ensure that eligible personnel are equipped with functioning body-worn cameras; that BWC equipped personnel record events according to agency policy and procedure; that they promptly report any malfunctioning/inoperable/damaged BWC equipment; that they document recordings in agency incident reports; that they "tag"/categorize recordings according to agency policy and procedure; that they submit evidentiary recordings via chain of custody protocol; that they appropriately download recordings; and that they recharge body-worn cameras.

As with previous sections of this "BWC Procedural Reference Guide," the duties listed in this section are suggestive and illustrative only and may be changed to accommodate an agency's operating procedures.

REFERENCE MATERIAL

Written policies should clearly describe the circumstances in which supervisors will be authorized to review an officer's body-worn camera footage. **PERF recommends that supervisors be authorized to review footage in the following circumstances:**

- when a supervisor needs to investigate a complaint against an officer or a specific incident in which the officer was involved;
- when a supervisor needs to identify videos for training purposes and for instructional use;
- when officers are still in a probationary period or are with a field training officer;
- when officers have had a pattern of allegations of abuse or misconduct;
- when officers have agreed to a more intensive review as a condition of being put back on the street;
- when an officer has been identified through an early intervention system; 111

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IX. BWC OPERATING PROCEDURES:

IX – A. GENERAL FIRST-LINE SUPERVISOR RESPONSIBILITIES:

1. The first-line supervisor of a member who is assigned to wear a BWC shall:

- i. inspect the body-worn camera prior to issuing it to his/her personnel to ensure that data recorded during a previous shift has been downloaded to the agency's recording retention file:
 - a. in the event recording(s) from a previous shift have not been appropriately downloaded the supervisor shall document the particular facts including the BWC serial number and the name of the officer previously assigned the BWC and forward the report to the BWC UNIT COORDINATOR for appropriate action;
 - b. ensure that the BWC is not deployed until the previous footage is downloaded as appropriate;

- ii. issue a body-worn camera to all eligible personnel under his/her command documenting the BWC serial number on the agency's BWC ASSIGNMENT SHEET/USE LOG;
- iii. require personnel equipped with a BWC to conduct a pre-shift inspection/function test of the assigned BWC according to the manufacturer's specifications/agency training to ensure that:
 - a. the BWC is fully charged;
 - b. the BWC is functioning according to the manufacturer's specifications;
 - c. sufficient recording media is available on the BWC;
- iv. ensure personnel equipped with a BWC sign the BWC ASSIGNMENT SHEET/USE LOG after completing the BWC inspection and function test;
- v. after testing any reported inoperable/malfunctioning BWC or component, document the malfunction/inoperability and forward that report to the BWC UNIT COORDINATOR;
- vi. ensure officers equipped with BWC devices use them in accordance with agency policy and procedures;
- vii. authorize a BWC user to stop or interrupt recording when the BWC user requests to do so as permitted in Section IX – B – 4 – f. CONTINUOUS BWC RECORDING OF AN EVENT of this policy and procedure;
- viii. ensure that all recordings to be downloaded are appropriately "tagged"/categorized prior to downloading;
- ix. ensure that all incident/offense reports contain the proper notation if a BWC recording was made;
- x. thoroughly review those events/incidents/encounters during which a BWC recording was NOT made and ensure that the reason for the failure to record is in keeping with agency policy and procedure and make recommendations for remedial training, disciplinary or administrative action as appropriate;
- xi. immediately impound and secure a body-worn camera that captures any recording of an event/incident/encounter that involves a:
 - a. line-of-duty officer death or serious injury;
 - b. officer-involved shooting/use of deadly force/other use of force;
 - c. in-custody death/suspect injury/suspect complaint of injury;
 - d. allegation of officer criminal conduct;
 - e. officer involved traffic pursuit/traffic accident;
 - f. complaint from the public of officer misconduct/inappropriate behavior or action;
 - g. a recording that a supervisor believes may provide inculpatory/exculpatory evidence/information for an investigation into the behavior/conduct of a member of the agency;
- x. footage from BWCs impounded for one of the above reasons will be "tagged" and downloaded by the supervisor as EVIDENTIARY pending review by the appropriate command official and/or investigation;
- xi. thoroughly review BWC recordings of officers under their command in the following situations:
 - a. when an allegation/complaint of inappropriate behavior/misconduct/violation of policy and/or procedure is made against a member of the agency during an event/incident/encounter that may have been recorded by a BWC:
 - a-i. any subsequent investigation that stems from review of an officer's recorded behavior shall be conducted in accordance with established internal investigation policy and the Law Enforcement Officers' Bill of Rights [Public Safety Article – PS § 3 -101 - 109];
 - b. when any use of force is reported by either an officer or member of the public;
 - b-i. such review of a BWC recording is only one step in a supervisory review/investigation into the use of force by a member of this agency; it shall not comprise a supervisor's complete investigation into a use of force by a member of this agency;
 - b-ii. all use of force investigations will be conducted according to established agency policy and procedure;
 - c. to debrief/critique a particular event/incident/encounter with personnel;
 - d. to evaluate the performance of a probationary officer either during a period of field training or prior to release from a probationary status;

- e. to observe an officer who has a pattern of allegations of misconduct or poor performance;
- f. to obtain recordings for training/instructional purposes;
- g. at the direction of an agency command official;
- h. nothing in this section precludes a supervisor from reviewing any BWC user's recordings for any other official agency business;
- xii. ensure that all evidentiary recordings are submitted to evidence storage using as per agency chain of custody protocols;
- xiii. ensure officers equipped with BWCs turn them in prior to the end of their shift and store the BWCs in designated recharging stations in their unit;
- xiv. review and either approve/disapprove a request from a BWC user to review a BWC recording as permitted in this policy and procedure;
- xv. "tag" and download any BWC recording(s) if a body-worn camera has been taken from a BWC user because of a use of force incident, citizen complaint, injury to an officer or arrestee, or other circumstance as outlined in this policy and procedure;

SUPERVISOR TO WEAR BWC

As per its BWC program, an agency may determine that its first-line supervisors will/will not normally/routinely wear a body-worn camera when on-duty. For instance, by policy an agency may determine that a supervisor will only wear a BWC when supervising a specific type of operation, e.g. execution of a search and seizure warrant/arrest warrant/special tactical operation or it may decide that a first-line supervisor who has regular contact with the public will regularly wear a BWC when on duty.

If an agency determines that a first-line supervisor will routinely wear a BWC while on-duty the agency's policy and procedure clearly indicate if there are BWC user procedures that do not apply to a supervisor such as:

- if and when a supervisor is required to activate his/her BWC when responding to a call for service etc.;
- in what situations a supervisor may use discretion to de-activate his/her BWC such as when counseling an officer, discussing personnel issues, discussing specific tactical operations/strategies that may have an impact the safety of officers or the public; etc.;
- what BWC recordings should be "tagged" and downloaded, if different from general BWC users;
- any other guidelines specific to supervisor use of BWCs

IX – B. BWC USER RESPONSIBILITIES:

COMMENTARY

CP § 10 – 402 (c) (11) (II) 1 authorizes a law enforcement officer who is "in uniform or prominently displaying the officer's badge or other insignia" to "intercept an oral communication with a body-worn digital recording device or an electronic control device capable of recording video and oral communications."

As a best practice a law enforcement agency may want to consider clearly identifying those agency personnel who are required to wear and use BWCs or who may wear BWCs under law eligible circumstances. In most agencies operational personnel who are involved in "high public contact" assignments such as patrol, traffic enforcement, etc. will ordinarily be equipped with BWCs.

REFERENCE MATERIAL

The decision about which officers should wear body-worn cameras will depend on an agency's resources, law enforcement needs, and other factors:

- some agencies find it useful to begin deployment with units that have the most frequent contacts with the public (e.g., traffic or patrol officers); 112

"Funding for acquiring body-worn cameras is not limitless. So agencies will have to establish policy for which officers are to wear them. Uniformed field officers are usually the first priority. But many agencies may also want to provide detectives, [plainclothes officers] and internal affairs investigators with cameras [under certain circumstances]...which officers get the cameras should be based on each agency's individual needs." 113

Additionally, personnel who operate in plainclothes, such as narcotic enforcement officers or detectives, or those who become involved in "high-risk" tactical situations such as serving arrest or search and seizure warrants or make tactical entries, etc. may be required by the agency to wear and use BWCs on those occasions during which the agency determines that a digital recording may be beneficial for prosecution purposes or to forestall and/or resolve allegations of inappropriate conduct. In as much as personnel who participate in these "high risk" activities ordinarily wear items of clothing that clearly designates them as law enforcement officers or they prominently display a badge or law enforcement insignia for officer safety purposes they, thus, become law eligible to wear a BWC during these activities.

Officers who are not otherwise assigned body-worn cameras may be required to wear one in certain circumstances, such as the following:

→ when participating in a certain type of activity, such as SWAT operations; 114

Before determining agency policy regarding BWC use by non-uniformed personnel during certain "high-risk" activities agency executives may want to explore whether the use of BWCs will impair personnel's ability to gather useful law enforcement intelligence/information from individuals who may be on the scene during those activities/incidents. Recommendations submitted by the Commission Regarding the Implementation and Use of Body-worn Cameras By Law Enforcement Officers state: "Once recording with a BWC has been initiated, officers shall not end the recording until (1) the event or encounter has fully concluded..." 115

Those plainclothes personnel who may be required to wear a BWC and record the event/activity that they are involved in are required to follow the agency's BWC operating protocols set out in the agency's BWC policy and procedure.

IX – B. BWC USER RESPONSIBILITIES:

IX – B – 1. PRE-DEPLOYMENT/USE TEST:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

A. TESTING:

Prior to beginning each shift, the assigned agency member shall perform a function test of the BWC in accordance with the manufacturer's recommendations and agency policy." 116

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (1) the testing of body-worn cameras to ensure adequate functioning;" 117

COMMENTARY

Because of the expense involved in purchasing BWCs and their component equipment many agencies may not be able to afford enough cameras to assign one BWC camera to each law-eligible agency individual in the agency. Most agencies will choose to rotate/float the use of BWCs through on-duty, law-eligible personnel. This type of BWC deployment protocol places increased importance on pre-deployment testing of the devices.

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B. BWC USER RESPONSIBILITIES:

IX – B – 1. PRE-DEPLOYMENT/USE TESTING:

1. **PRIOR TO DEPLOYING** on his/her tour of duty/shift/assignment each BWC USER shall:
 - i. inspect and test his/her assigned BWC in accordance with the BWC's manufacturer's recommendations as taught by the agency in its pre-operation training to include ensuring that the assigned BWC:
 - a. has a **FULL** battery charge;
 - b. does **NOT** CONTAIN any recordings from a previous shift;
 - c. has a recording medium with a full capacity;
 - d. has **NO VISIBLE** damage;
 - e. is **OPERATIONAL AND PROPERLY FUNCTIONING**;
 - ii. report any inoperable or malfunctioning BWC or BWC that fails to pass pre-deployment inspection and testing **immediately** or as soon as possible to the BWC user's supervisor:
 - a. under no circumstances is an inoperable/malfunctioning BWC or one that does not pass pre-deployment inspection and testing to be deployed and used without the problem being corrected;
 - iii. complete the agency's BWC ASSIGNMENT SHEET/USE LOG;

IX – B - 2. INOPERABLE/MALFUNCTIONING/LOST BWCs:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

B. MALFUNCTIONS

Upon discovering a BWC malfunction, agency members shall promptly report the malfunction to a supervisor or other appropriate authority in accordance with agency policy regarding malfunctions. **118**

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:
(2) the procedure for the law enforcement officer to follow if the camera fails to properly operate at the beginning of or during the law enforcement officer's shift; **119**

COMMENTARY

Like other law enforcement equipment, BWCs are not indestructible. BWCs can be damaged during the course of various law enforcement activities such as when a BWC falls from a user during a foot pursuit, becomes dislodged from a user during a struggle with a suspect or gets struck by flying debris or a thrown object. It may also be inadvertently lost during a foot pursuit, search of a crime scene or other search scene, etc. Likewise, a BWC may become inoperable or may malfunction because of a technological failure or malfunction.

Notwithstanding the cause of the inoperability or malfunction of the BWC the user is responsible for notifying his/her first line supervisor as soon as possible after the loss, damage or malfunction is noticed.

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B - 2. INOPERABLE/MALFUNCTIONING/LOST BWCs:

1. Each member who is assigned to wear and use a BWC shall:
 - i. be responsible for the use and physical condition of the BWC assigned to his/her use;
 - ii. immediately/as soon as possible report any lost, damaged, malfunctioning, inoperable BWC to his/her supervisor:
 - a. if required by the supervisor, document the circumstances which led to the loss or inoperability/malfunction the BWC;
2. BWC loss, damage or misuse so as to cause inoperability or malfunction may be subject to discipline.

IX – B – 3. PROPER WEARING OF BWC:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATION

COMMENTARY

BWCs are designed to be head-mounted or to be worn at various locations on the body, depending on the model. How the BWC is to be attached to the user should be considered when deciding which BWC to purchase as its placement on the user may limit or enhance its effectiveness.

Policies should specify the location on the body on which cameras should be worn:

- factors to consider when determining camera placement include field of vision, comfort, functionality, ease of use, and the type of camera system used; **120**

"Police executives have provided feedback regarding their experiences with different camera placements:

- **Chest:** According to the results of PERF's survey, the chest was the most popular placement location among agencies;
- **Head/sunglasses:** This is a very popular location because the camera "sees what the officer sees." The downside, however, is that an officer cannot always wear sunglasses. Some officers have also reported that the headband cameras are uncomfortably tight, and some expressed concern about the potential of injury when wearing a camera so close to the eye area;
- **Shoulder/collar:** Although some officers like the perspective that this placement offers, others have found the camera can too easily be blocked when officers raise their arms. One agency, for example, lost valuable footage of an active shooter incident because the officer's firearm knocked the camera from his shoulder;
- **Shooting side:** Some agencies specify that officers should wear cameras on the gun/shooting side of the body, which they believe affords a clearer view of events during shooting incidents." **121**

To maximize operability a BWC should be worn according to the manufacturer's specifications. Attempts to modify/change the place where an officer should wear a particular BWC may significantly limit its benefits. It is suggested that agency policy and procedure require personnel to wear the BWC according to the manufacturer's specifications/recommendations.

"Policies should specify the location on the body on which cameras should be worn. The most appropriate camera placement will depend on several factors, such as the type of camera system used. Agencies should test various camera locations to see what works for their officers in terms of field of vision, comfort, functionality, and ease of use." **122**

Regarding the use of BWCs on Tactical/SWAT member's person, several questions need to be answered:

- Is the body worn camera system such that it can be properly mounted to an officer's eye gear, chest, or helmet? How difficult is the mounting process?
- **What is the best position for the camera:** helmet mount, weapon mount, chest mount, eyeglass mount? **123**

Mounting considerations are important for the effective usage of the camera system. Insecure mounting leads to lost or damaged systems, as well as video angles that are unhelpful. For example, if a camera system is mounted improperly and the field of view is the ground or ceiling, there is significant decline in usefulness. **124**

[SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 3. PROPER WEARING OF BWC:

1. BWC users shall wear the agency's BWC as recommended by the manufacturer and demonstrated during this agency's pre-operation BWC training.

IX – B – 4. RECORDING PROCEDURES:

The Maryland Police Training Commission's "*Body-worn Camera Policy*" [Ad Hoc Commission recommendation]:

C. MANDATORY ACTIVATION

Subject to paragraph three of this recommendation below, officers shall begin recording with their BWCs in the below circumstances unless doing so would be unsafe, impossible, or impractical. If officers are unable to begin recording with the BWC due to circumstances making it unsafe, impossible, or impractical to do so, officers shall begin recording with the BWC at the first reasonable opportunity to do so.

1. At the initiation of a call for service or other activity that is investigative or enforcement in nature, or an encounter between the officer and a member of the public that is investigative or enforcement in nature; and
2. Any encounter that becomes confrontational after the initial contact.
3. When victims, witnesses or other individuals wish to make a statement or share information, but refuse to do so while being recorded, or request that the camera be turned off, officers may turn off the BWC in order to obtain the statement or information. If the encounter begins when the BWC is not actively recording, the law enforcement officer may, but is not required to, temporarily activate the BWC for the sole purpose of documenting the person's refusal to be recorded. **125**

PS §3–511reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (3) when recording is mandatory; **126**

COMMENTARY

Determining when to record encounters between officers and the public is a major issue facing not only law enforcement executives who are crafting agency policy but also officers who will use body-worn cameras and whose actions may be recorded by their peers, community groups who may be working together with officers to safeguard their neighborhood and civil rights activists who are working to protect individuals' privacy rights. There are a variety of points of view on this question, and it is critical that [agency] policy address such concerns as when do officers turn the cameras on? It's a relatively easy call to require officers to activate their body-worn cameras when responding to a radio call, when making a traffic or pedestrian stop, or when becoming involved in a tactical situation. Other policy calls are trickier and require more thought. For example, what should officers do with their cameras when interviewing victims of sexual assault? Victims of

child abuse? Victims of domestic violence? Should they record when inside a person's home or office or other places that would normally not be public, but where arrests, officer-citizen confrontations and uses of force sometimes occur? In order for an agency's BWC program to be effective and respect the privacy rights of everyone involved the decision to record or not to record is one that requires considerable thought and insight into/consideration about the community's beliefs and concerns about being recorded by law enforcement officers.

REFERENCE MATERIALS

Policies requiring officers to record every encounter with the public sometimes undermine community members' privacy rights and damage important police-community relationships. **127** The more common approach is to require officers to activate their cameras when responding to calls for service and during law enforcement-related encounters and activities, such as traffic stops, arrests, searches, interrogations, and pursuits. In many cases, the department's written policy defines what constitutes a law enforcement-related encounter or activity, and some policies also provide a specific list of which activities are included.

Many policies generally indicate that when in doubt, officers should record. **128**

Most policies also give officers the discretion to **not** record when doing so would be unsafe, impossible, or impractical [and] most require officers to articulate in writing their reasons for not activating the camera or to say on camera why they are turning the camera off. **129**

Recommendations from the Police Executive Research Forum include:

→ **GENERAL POLICY:**

Officers should be required to activate their body-worn cameras when responding to all calls for service and during all law enforcement-related encounters and activities that occur while the officer is on duty:

- officers have discretion whether to record informal, non-law enforcement-related interactions with the public;
- officers should have clear guidance about which specific types of activities, events, and encounters they are required to record:

- **IMPLEMENTATION TIP:**

- ◆ some agencies have found it useful to provide a list of specific examples in their policies, such as traffic stops, arrests, searches, interrogations or interviews, and pursuits:
 - ♣ policies should note that these types of lists are not exhaustive;
- ◆ recording policies should be reinforced in training;

Officers should also be required to activate the camera during the course of any encounter with the public that becomes adversarial after the initial contact:

- If officers are given discretion to not record informal, non-law enforcement-related encounters with the public, they should nonetheless be instructed to activate their cameras if the encounter becomes adversarial:
 - provides documentation of the encounter in the event that a complaint later arises
 - may help to defuse tense situations and prevent further escalation; **130**

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4. RECORDING PROCEDURES:

IX – B – 4 – A. MANDATORY ACTIVATION:

1. BWC users shall **ACTIVATE** their body-worn cameras when:

- i. notified of a call-for-service by dispatch;

- ii. responding to a request for assistance by another law enforcement unit/officer or other first responder;
- iii. initiating a law enforcement response due to a request/summons from a citizen;
- iv. observing or otherwise noticing firsthand an incident requiring a law enforcement response;
- v. initiating any law enforcement activity that is INVESTIGATIVE in nature such as:
 - a. field stop;
 - b. traffic stop;
 - c. premise check;
- vi. initiating any law enforcement activity that is ENFORCEMENT in nature such as:
 - a. an arrest;
 - b. traffic enforcement activity;
 - c. issuance of a criminal citation;
- vii. engaging in any law enforcement encounter with a member of the public that is investigative or enforcement in nature;
- viii. initiating a pursuit [foot or vehicle] or “follow” [vehicle] even if the BWC user’s vehicle is equipped with a mobile video recorder/camera;
- ix. any encounter with a member of the public that appears to be becoming or becomes CONFRONTATIONAL after the initial contact has occurred;
- x. acting as a back-up unit during any of the above enumerated encounters.

IX – B – 4 – b. INABILITY TO IMMEDIATELY ACTIVATE BWC:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [*Ad Hoc* Commission recommendation]:

C. MANDATORY ACTIVATION

If officers are unable to begin recording with the BWC due to circumstances making it unsafe, impossible, or impractical to do so, officers shall begin recording with the BWC at the first reasonable opportunity to do so. **131**

COMMENTARY

It is recognized that certain situations/circumstances may arise when safety or practical factors preclude officers from immediately activating their BWCs such as when an officer on patrol comes upon a medical emergency, serious vehicular accident, crime in progress or other situation that requires immediate intervention/response by a BWC user. Under these circumstances it has been recommended as a best practice that BWC users activate their body-worn camera as soon as practical and note, either on the recording or in an incident report the fact that they delayed activation of the BWC and the reason that they did so.

REFERENCE MATERIAL

“Most policies give officers the discretion to not record when doing so would be unsafe, impossible, or impractical...[however] most [agencies’ policies] require officers to articulate in writing their reasons for not activating the camera or to say on camera why they are turning the camera off.” **132**

“Officers may happen upon a situation requiring immediate action to prevent injury [render first aid], destruction of evidence, or escape. In these situations, officers should activate the recorder if doing so does not place them or others in danger. Otherwise they shall activate the camera at the first available opportunity when the immediate threat has been addressed. The officer will document the reasons for the delayed activation in a supplement or after action report.” **133**

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – b. INABILITY TO IMMEDIATELY ACTIVATE BWC:

1. Exigent circumstances may occur which make it unsafe, impossible or impractical to begin BWC recording at the outset of a BWC user's response to an incident such as:
 - i. when an officer on patrol comes upon/observes a:
 - a. medical emergency;
 - b. serious vehicular/pedestrian accident with apparent injuries;
 - c. a crime in progress;
 - d. any other situation that requires an officer's IMMEDIATE intervention/response;
2. When one of the above described or similar situations occurs and a BWC user is unable to immediately activate his/her BWC, the BWC user shall:
 - i. activate the BWC and begin to record at the first REASONABLE opportunity to do so;
 - ii. once the BWC is activated, record the reason why the incident was not immediately activated at the beginning of the incident and document that reason in an Incident Report;

IX – B – 4 – c. DISCRETIONARY BWC ACTIVATION:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

M. DISCRETIONARY ACTIVATION:

When not otherwise prohibited by law or agency policy, officers may begin recording with their BWC in circumstances when they determine that doing so would be beneficial to the public interest. 134

C. MANDATORY ACTIVATION:

3. When victims, witnesses, or other individuals wish to make a statement or share information, but refuse to do so while being recorded, or request that the camera be turned off, officers may turn off the BWC in order to obtain the statement or information. If the encounter begins when the BWC is not actively recording, the law enforcement officer may, but is not required to, temporarily activate the BWC for the sole purpose of documenting the person's refusal to be recorded. 135

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:

(5) when recording is discretionary; 136

(6) when recording may require consent of a subject being recorded; 137

COMMENTARY

Situations, not specifically enumerated in an agency's BWC policy, may occur in which BWC users believe that a recording may be beneficial to the public interest. One example of such an incident may occur when an officer engages in a casual, informal conversation with a neighborhood resident who points out some condition in the neighborhood that requires corrective action by another governmental unit or another unit within the department. The officer may decide to record either the individual's comments [with the person's consent] and/or the conditions themselves for referral to the other governmental entity. Likewise, while on patrol an officer may observe conditions that warrant action that he/she is unable to take and decides to record the circumstances in order to correct the problem. In either case, agencies may want to give the BWC user the flexibility and discretion, by way of agency policy, to record the circumstances that he/she believes require attention for the good of the public.

REFERENCE MATERIAL

When engaged in a casual or informal conversation with a member of the community in which he/she obtains criminal intelligence/information, an officer equipped with a BWC should have the discretion whether or not to record that conversation. "...officers must weigh the evidentiary value of recording the statement with the reality that some people who share information may not want to talk on camera. If officers encounter an informant or witness who isn't comfortable being recorded, they have to decide whether obtaining the information outweighs recording the statement. If so...officers can either turn the camera off or position the camera so that they capture audio but not video. People usually feel more comfortable with just the audio." 138

"When determining whether to record interviews with witnesses and members of the community who wish to share information, officers should always consider both the evidentiary value of recording and the subject's comfort with speaking on camera. To better capture evidence, PERF recommends that officers record statements made by witnesses and people sharing information. However, if a person will not talk unless the camera is turned off, officers may decide that obtaining the information is more important than recording. PERF recommends allowing officers that discretion. Recorded statements made by crime victims and members of the community can provide valuable evidence for investigations and prosecutions. Therefore, it is always preferable to capture these statements on camera when possible. Many agencies instruct officers to keep the camera activated when speaking with witnesses or informants unless the person actively requests otherwise. Agencies should work with prosecutors to determine how best to weigh the importance of having a recorded statement versus the importance of gathering information when a witness refuses to speak on camera." 139

Many policies generally indicate that when in doubt, officers should record. 140

COMMENTARY

Notwithstanding an agency's commitment to record the majority of officer-community member encounters, there are a limited number of situations during which BWC recording may be inappropriate. Incidents that involve nudity, partial nudity, medical treatment, incidents in which infants and/or young children are present but are not involved as victims of a crime and/or their presence is of no evidentiary value to an officer's case, are some examples of incidents that BWC users may consider of such a sensitive nature that they may be reluctant to activate or continue to use their BWCs. Agency executives, after consultation with their Legal Advisor, may want to consider adding these encounters to the list of situations in which an officer may use discretion, with supervisory approval, to begin or continue to record an event. Law enforcement executives may want to consider providing their BWC users with procedural options, such as obtaining supervisory permission before suspending/terminating such a recording and documenting the circumstances which led to that decision on the body-worn camera or incident report. While there are advocates of BWC recording who suggest that BWC users, while recording an event, be told not to focus on individuals whom they do not believe should be videoed, placing such a demand on officers while handling what may be a "confused" event is often unrealistic.

Agencies may want to consider wording their BWC policy and procedure in such a manner that discretionary recording for these events is an option for the BWC user.

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – c. DISCRETIONARY BWC ACTIVATION:

1. BWC users are authorized by [NAME OF AGENCY] BWC policy to:
 - i. record any incident/event/encounter/circumstance as allowed by law that they believe would be beneficial to the public interest:
 - a. BWC recordings made under these circumstances do not have to be law enforcement related but can and should be related to the general health/welfare/safety of the public such as:
 - a-i. situation which requires referral to another governmental agency for action;

2. If such a BWC recording is made, the officer shall bring this recording to the attention of his/her supervisor at the end of his/her tour of duty/shift in order to determine how this recording is to be “tagged” for future reference/action:
 - i. the BWC recording shall be “tagged,” downloaded and retained as set forth in this policy;
3. If the BWC HAS BEEN ACTIVATED [IS RECORDING], an officer may cease recording/turn the BWC off:
 - i. when a victim, witness or other individual wishes to make a statement or share information but refuses to do so:
 - a. while being recorded; or
 - b. requests that the camera be turned off;
 - ii. the BWC user may, but is NOT REQUIRED TO, temporarily continue to record in order to document the person’s refusal to be recorded;
4. If the BWC HAS NOT BEEN ACTIVATED [IS NOT RECORDING] and a victim, witness or other individual wishes to make a statement or share information but refuses to do so while being recorded or requests that the camera not be activated;
 - i. the BWC user may, but is NOT REQUIRED TO, temporarily activate the BWC to document the person’s refusal to be recorded or request not to be recorded;
5. A BWC user may also inform the victim/witness/other individual that he/she will not be videoed during his/her statement but that the audio function of the BWC will continue to capture their statement to ensure its accuracy, etc.:
 - i. if the individual still requests that no recording be made or still refuses to give a statement to the officer, the BWC user may stop recording;

XI – B – 4 – d. PROHIBITED BWC ACTIVATION:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [*Ad Hoc* Commission recommendation]:

D. PROHIBITED ACTIVATION

A law enforcement officer shall not activate a camera to record:

1. Agency personnel during routine administrative activities; or
2. Non-work related personal activity. **141**

PS §3–511 reference: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:

- (4) when recording is prohibited; **142**
- (16) specific protections for individuals when there is an expectation of privacy in private or public places; **143**

COMMENTARY

The personal privacy concerns of law enforcement officers are as pressing as the personal privacy concerns of community members in the body-worn camera era. While most officers understand that their personal privacy while on duty is limited, most believe that there are occasions, when they are not engaged in activities that directly affect community members, that they should be afforded some respite from the scrutiny afforded by recording their activities. Agencies should consider including this best practice in their BWC policies and procedures.

REFERENCE MATERIAL

“There are situations in which not recording is a reasonable decision. An agency’s body-worn camera policy should expressly describe these situations...” **144**

"Agencies should prohibit recording other agency personnel during routine, non-enforcement-related activities unless recording is required by a court order or is authorized as part of an administrative or criminal investigation. Under this policy, for example, officers may not record their partner while they are patrolling in their vehicle (unless they are responding to a call for service), are having lunch at their desks, are on breaks, are in the locker room, etc.

"This policy supports officer privacy and ensures officers feel safe to engage in routine, informal, non-law enforcement-related conversations with their colleagues." 145

"Restrictions on Using the BWC:

BWCs shall be used only in conjunction with official law enforcement duties. The BWC shall not generally be used to record:

- when on break or otherwise engaged in personal activities; or
- in any location where individuals have a reasonable expectation of privacy such as restroom/locker-room." 146

"Body-worn cameras have significant implications for the public's privacy rights, particularly when it comes to recording victim interviews, nudity, and other sensitive subjects and when recording inside people's homes. Agencies must factor these privacy considerations into decisions about when to record, where and how long to store data, and how to respond to public requests for video footage." 147

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

XI – B – 4 – d. PROHIBITED BWC ACTIVATION:

1. ALL agency personnel are prohibited from activating/using an agency BWC to record other sworn or civilian members of the agency or allied law enforcement agencies during routine, non-enforcement related activities unless the recording is:
 - i. required by a valid court order;
 - ii. authorized, in writing by a command official, as part of criminal or administrative investigation; or
 - iii. in response to observed criminal behavior or an observed, serious infraction of agency policies/procedures or rules/regulations;
2. This prohibition from BWC recording includes, but is not limited to, activities such as those that occur:
 - i. in locker rooms/rest rooms/break rooms/lunch rooms;
 - ii. in work rooms where normal administrative duties occur;
 - iii. in agency vehicles during casual, non-law enforcement/policing conversation between law enforcement personnel;
 - iv. during operational briefings/roll call/agency meetings unless the authorized prior to the briefing by the supervisor/command official conducting the briefing/meeting;
3. The agency's BWC shall NOT BE USED TO SURREPTITIOUSLY RECORD CONVERSATIONS WITH CITIZENS AND/OR AGENCY EMPLOYEES unless a crime is occurring or about to occur;
4. A body-worn camera shall not be used for the purpose of intimidating an individual or to discourage an individual from observing police activity, making appropriate inquiries of an officer, or making a complaint;
5. A body-worn camera shall not be used to record any court/judicial proceeding/hearing or any conversation, conference or meeting between a prosecuting/defense attorney and officer unless criminal activity is taking place or suspected:
 - i. if made, such BWC recordings will be reported immediately to the officer's supervisor/command official;

6. Any INADVERTENT/UNINTENTIONAL/ACCIDENTAL BWC recording made under this section shall be reported to the user's supervisor as soon as possible after the recording has been noticed; the supervisor will resolve the situation as outlined in Section IX – B – 4 –k. Inadvertent/Unintentional/Accidental BWC Recording of this policy and procedure;

7. Any violation of the above listed prohibitions may result in disciplinary action.

IX – B – 4 – e. NOTIFICATION OF RECORDING:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

F. NOTIFICATION

1. Except as otherwise exempted by law, a law enforcement officer shall notify, as soon as is practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so.
2. The notice provision is satisfied even if another individual becomes a party to the communication after the initial notice has been provided. 149

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:

- (6) when recording may require consent of a subject being recorded; 150
- (8) providing notice of recording; 151
- (15) notification requirements when another individual becomes a party to the communication following the initial notification; 152

COMMENTARY

There are various legal and practical reasons to notify individuals that they are being recorded:

- CP § 10-402 (c) (11)(II) 4 requires it:
 - Law enforcement NOTIFIES, as soon as is practicable, the individual that the individual is being recorded, unless it unsafe, impractical or impossible to do so.
- community members may have privacy concerns which can be answered by an officer who explains the agency's BWC program [policy and procedure] after notifying an individual that the encounter is being recorded;
- some agencies have found that announcing the camera is running promotes better behavior and defuses potentially confrontational encounters. 153

REFERENCE MATERIAL

"Officers should be required to inform subjects when they are being recorded unless doing so would be unsafe, impractical or impossible." 154

"The mere knowledge that one is being recorded can help promote civility during police encounters with the public. Many police executives have found that officers can avoid adversarial situations if they inform people that they are being recorded." 155

"[While] it is good practice for officers to inform people when they are recording, even if such disclosures are not required by law, the Police Executive Research Forum's recommendation that officers inform a person that he or she is being recorded does not mean that officers must also obtain the person's consent to record." 156

"Officers should be required, wherever practicable, to notify people that they are being recorded...One possibility departments might consider is for officers to wear an easily visible pin or sticker saying "lapel camera in operation" or words to that effect." 157

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – e. NOTIFICATION OF RECORDING:

1. BWC users shall:

- i. notify, as soon as practicable, an individual that he/she is being recorded by a body-worn camera unless it is unsafe, impractical or impossible to do so:
 - a. the notice provision is satisfied even if another individual becomes a party to the communication after the initial notice has been provided;
 - b. multiple individuals at the scene of an incident do NOT REQUIRE INDIVIDUAL NOTIFICATION;
- ii. when multiple BWC users are on the scene of an incident which requires recording under this policy and procedure, it is the responsibility of the FIRST OFFICER ON THE SCENE WHO IS EQUIPPED WITH A BWC TO PROVIDE THE NOTIFICATION:
 - a. the BWC user providing notification, if different from the officer handling the incident, shall ensure that:
 - a-i. the officer assigned/handling the incident is informed that notification was given;
 - a-ii. the recording of the notification is “tagged,” downloaded and retained with the BWC recording of the incident;

IX – B – 4 – f. CONTINUOUS BWC RECORDING OF AN EVENT:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [Ad Hoc Commission recommendation]:

E. ENDING A RECORDING

Once recording with a BWC has been initiated, officers shall not end the recording until:

1. the event or encounter has fully concluded; **158**

PS §3–511 reference: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (7) when a recording may be ended; **159**

REFERENCE MATERIAL

“Once activated, the body-worn camera should remain in recording mode until the conclusion of the incident or encounter, the officer has left the scene, or a supervisor has authorized (on camera) that a recording may cease. Prior to deactivating the camera, officers should announce that the incident has concluded and that recording will cease. “ **160**

COMMENTARY

Notwithstanding an agency’s commitment to record the majority of officer-community member encounters, there are a limited number of situations during which BWC recording may be inappropriate. Incidents that involve nudity, partial nudity, medical treatment, incidents in which infants and/or young children are present but are not involved as victims of a crime and/or their presence is of no evidentiary value to an officer’s case, are some examples of incidents that BWC users may consider of such a sensitive nature that they may be reluctant to activate or continue to use their BWCs. Agency executives, after consultation with their Legal Advisor, may want to consider adding these encounters to the list of situations in which an officer may use discretion, with supervisory approval, to begin or continue to record an event. Law enforcement executives may want to consider providing their BWC users with procedural options, such as obtaining supervisory permission before suspending/terminating such a recording and documenting the circumstances which led to that decision on the body-worn camera or incident report. While there are advocates of BWC recording who suggest that

BWC users, while recording an event, be told not to focus on individuals whom they do not believe should be videoed, placing such a demand on officers while handling what may be a “confused” event is often unrealistic. It is suggested that consideration be given to wording agency BWC policy and procedure in such a manner that discretionary recording for these events is an option for BWC users.

Policies should provide clear guidance regarding the circumstances under which officers will be allowed to exercise discretion to record, the factors that officers should consider when deciding whether to record, and the process for documenting whether to record. 161

“Significant privacy concerns can arise when interviewing crime victims, particularly in situations involving rape, abuse, or other sensitive matters. Some agencies prefer to give officers discretion regarding whether to record in these circumstances. In such cases, officers should take into account the evidentiary value of recording and the willingness of the victim to speak on camera. Some agencies go a step further and require officers to obtain the victim’s consent prior to recording the interview. → To promote officer accountability, most policies require officers to document, on camera or in writing, the reasons why the officer deactivated the camera in situations that are otherwise required to be recorded. 162

Patient Privacy:

- a. Members shall not record patients during medical or psychological treatment or evaluations by a clinician or similar medical professional unless they are engaged in official police action (e.g., transports or questioning in an ambulance or medical facility).
- b. When recording in hospitals or other medical or psychiatric facilities, members shall [attempt to] be careful to avoid, when possible, recording persons other than the suspect, complainant, and witnesses. 163

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – f. CONTINUOUS BWC RECORDING OF AN EVENT:

1. Once BWC users activate their body-worn cameras they shall:
 - i. CONTINUE TO RECORD the event/incident/encounter until the event is ended as set forth in this policy and procedure;
2. The [NAME OF AGENCY] recognizes that certain situations may create extremely sensitive scenes or encounters that warrant personal privacy for the person being recorded such as:
 - i. instances of nudity/partial nudity;
 - ii. medical consultation with a medical professional/treatment by a medical professional, including psychiatric/mental health treatment;
 - iii. scenes in which infants or young children who are bystanders are being recorded, etc.

3. Current State law places BWC recordings in the realm of “public records” which are subject to production to members of the public who request them under the Maryland Public Information Act unless the recording fits one of the law eligible exemptions:

i. considering this, unless a BWC user determines, at the time that a recording is being made, that a BWC recording may contain EVIDENTIARY material or will likely contain otherwise immediately recognizable evidence with probative value such as an inculpatory or exculpatory statements or photographic evidence of injury/damage or lack of injury or damage that supports/fails to support a crime, a BWC user has the discretion to suspend/interrupt the BWC recording until the community member’s individual reasonable privacy concern is resolved:

a. It is the policy of the [NAME OF AGENCY] that BWC users are permitted to take the following action under the circumstances described in the above paragraph:

a-i. seek supervisory approval to TEMPORARILY suspend/interrupt recording until the privacy concern(s) is resolved with recording to resume once the privacy concern(s) is resolved;

a-ii. in the event a supervisor is unavailable, the BWC user may TEMPORARILY suspend/interrupt recording until the privacy concern(s) is resolved PROVIDED THE BWC USER RECORDS THE REASON FOR THE TEMPORARY SUSPENSION PRIOR TO INTERRUPTING THE RECORDING with recording to resume once the privacy concern(s) is resolved; or

a-iii. the BWC user may record only the audio portion of the event unless the audio portion of the event contributes to the privacy concern with recording to resume once the privacy concern(s) is resolved;

a-iv. the BWC user includes a complete explanation of the temporary suspension of recording in the incident report or supplement to the incident report.

IX – B – 4 – g. TERMINATING A BWC RECORDING:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [*Ad Hoc* Commission recommendation]:

E. ENDING A RECORDING

Once recording with a BWC has been initiated, officers shall not end the recording until:

1. The event or encounter has fully concluded; or
2. The officer leaves the scene and anticipates no further involvement in the event; or
3. A supervisor or agency policy has authorized that a recording may cease because the officer is no longer engaged in a related enforcement or investigative activity; or
4. When victims, witnesses or other individuals wish to make a statement or share information but refuse to do so while being recorded, or request that the camera be turned off, officers may turn off the BWC in order to obtain the statement or information. 164

PS §3–511 reference: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (7) when a recording may be ended; 165

COMMENTARY

Research has shown that most law enforcement agencies believe it is a best practice that a BWC user stop recording only when he/she is certain that the incident/event/encounter has completely ended. An agency’s BWC policy and procedure should include provisions that cover the termination of recording including whether an officer should announce that recording has stopped.

REFERENCE MATERIAL

“Once activated, the body-worn camera should remain in recording mode until the conclusion of an incident/encounter, the officer has left the scene, or a supervisor has authorized (on camera) that a recording may cease.

→ Officers should also announce while the camera is recording that the incident has concluded and the recording will now cease. “ 166

“Once the BWC system is activated it shall remain on and shall not be turned off until an investigative or enforcement contact or incident has concluded. For purposes of this section, conclusion of an incident has occurred when an officer has terminated contact with an individual, cleared the scene of a reported incident, or has completed transport of a civilian or an arrestee. In any instance in which cessation of the recording prior to the conclusion of the incident may be permitted, the officer should seek and obtain supervisory approval prior to deactivating the BWC, whenever possible. If supervisory approval cannot be reasonably obtained, officers must document on the BWC the reason for termination of the recording prior to deactivation of the BWC by noting the date, time, and the reason for the deactivation on the recording and in subsequent written reports as applicable.” 167

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – g. TERMINATING A BWC RECORDING:

1. BWC users shall deactivate their BWC after they:

- i. notify the dispatcher of their assignment’s disposition and clear the assignment or otherwise return to service;
- ii. in case of arrest, have completely transferred custody of an arrestee to another member of the agency or booking personnel:
 - a. BWC users shall resume recording if they accompany the arrestee to the booking facility, stationhouse or other location [e.g. medical facility] where they have contact with the arrestee AND THERE IS NO SEPARATE SECURITY CAMERA SYSTEM THAT MAKES BOTH AUDIO AND VIDEO RECORDINGS OF EVENTS:
 - a-i. if BWC recording continues/resumes the BWC user shall make a reasonable attempt to notify the individuals present that a recording is being made;
- iii. have concluded their involvement in an investigative or enforcement contact with an individual and the individual and/or officer has left the scene:
 - a. if there is a reasonable potential that either the individual and/or officer may resume contact at the scene or near the scene of the original encounter [the individual continues to remain at the scene of the contact or close by] the BWC user shall allow the recording to continue until either the individual and/or the officer leaves the scene;
- iv. receive an order from a higher-ranking member to cease recording:
 - a. members shall document the order and the name of the official on the BWC and in any associated Incident Report noting the date/time and reason for the termination of the recording.

IX – B – 4 – h. DOCUMENTATION OF A BWC RECORDING:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

O. INCIDENT REPORTS

Incident reports should note any use of BWC. 168

COMMENTARY

Research has shown that most agencies that use BWCs require that officers include the notation that a BWC recording of an incident has been made in the agency's Incident Report. While including this notation in an agency Incident Report does not present a problem when agency policy requires that a report be written for a call for service or other officer-citizen encounter, agencies that allow their personnel to "code" certain calls for service or citizen encounters without completing an agency report may decide to document that a BWC recording was made by capturing this information on dispatch tapes when an officer calls back in service from such an encounter. In as much as most agencies already retain dispatch tapes for a minimum period of time, it may be beneficial to marry the retention periods for the dispatch tapes for coded calls for service with the retention periods for non-evidentiary BWC recordings.

Agencies may want to remind officers that a BWC recording is NOT a substitute for a complete, accurate report of the recorded incident/encounter.

REFERENCE MATERIAL

"Officers who activate a body-worn camera while on duty should be required to **note the existence of a recording in an official incident report**. This ensures that the presence of video footage is accurately documented in the case file so that investigators, prosecutors, oversight boards, and courts are aware of its existence." 169

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – h. DOCUMENTATION OF A BWC RECORDING:

1. BWC users shall:

- i. note in the FIRST LINE of an Incident Report whether a BWC recording was made;
- ii. if no recording was made, explain in detail in the Incident Report why a BWC recording was not made when otherwise required by this agency's BWC policy and procedure;
- iii. if a call for service is "CODED" and NO INCIDENT REPORT IS REQUIRED TO BE WRITTEN per agency policy, the dispatcher shall be notified, via radio, that a BWC recording was made;
- iv. a call for service that is normally eligible for "coding" will not be coded if a BWC recording was not made:
 - a. an Incident Report will be completed explaining the reason why a BWC recording was not made;

2. A BWC recording is NOT a replacement/substitution for an agency:

- i. Incident Report/other offense report;
- ii. investigative report such as a crime scene diagram/sketch; or
- iii. written property or evidence inventory etc.;

IX – B – 4 – i. FAILURE TO RECORD/INTERRUPTING A RECORDING:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

B. MALFUNCTIONS

Upon discovering a BWC malfunction, agency members shall promptly report the malfunction to a supervisor or other appropriate authority in accordance with agency policy regarding malfunctions. 170

COMMENTARY

There will undoubtedly be times when officers fail to record an event/incident/encounter as specified in an agency's policy and procedure. An equipment malfunction may occur; it may be unsafe, impractical or impossible to record; an officer may simply forget to activate his/her camera for some reason. In as much as one of the primary reasons for adopting a body-worn camera program is to create transparency about the agency's actions and to reinforce a sense of accountability for officers' actions, any failure to record an event as per agency policy should lead to the documentation of the circumstances/reason for that failure to record and should be reviewed by supervisors to ensure that agency policy and procedure are not being circumvented.

REFERENCE MATERIAL

"There may be times when an officer fails to record an event or activity otherwise required by agency policy:

- when conditions make it unsafe or impossible to activate the camera;
- when an officer exercises discretion, per agency policy, to not record because doing so would be detrimental to other agency priorities (e.g., protecting privacy rights, preserving community relations, or facilitating intelligence gathering);
- when the camera malfunctions or otherwise fails to capture the event/activity. In these situations, officers should document in writing and/or on camera their reasons for not recording:
 - this holds officers accountable, allows supervisors to investigate recording irregularities, and documents the absence of video footage for investigations and court proceedings;

"If no BWC recording takes place as per agency policy then that failure to record should be noted in the officer's written report. If the officer deactivates the camera in the middle of recording, the officer should state on camera the reasons why." 171

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – i. FAILURE TO RECORD/INTERRUPTING A RECORDING:

1. Whenever an officer who is equipped with a BWC fails to record an event/incident/encounter or interrupts the recording of an event/incident/encounter as required by this policy and procedure the officer shall:
 - i. document in an Incident Report the reason why a BWC recording was not made such as:
 - a. equipment malfunction;
 - b. unsafe/impractical/impossible circumstances surrounding the event/incident/encounter:
(b-i. DETAILED explanation required;)
 - c. discretionary reason as explained in this policy and procedure:
(c-i. DETAILED explanation required;)
 - d. at the request of a victim/witness/individual sharing information with an officer;
 - e. any other unforeseen reason:
(e-i. DETAILED explanation required;)

- ii. ensure that the supervisor is notified as soon as practical that a BWC recording was not made as required by this policy and procedure:
 - a. submission of an Incident Report for supervisory review is NOT CONSIDERED NOTIFICATION of the supervisor;

IX – B – 4 – j. MULTIPLE BWC USERS:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.” 172

COMMENTARY

With the increasing use of body-worn cameras the likelihood that multiple officers at a given event/incident/encounter will be equipped with a BWC increases. Officers from the same agency will most likely be recording the same incident but the possibility exists that officers from allied agencies who may be on-scene will also be recording the same event.

Multiple recordings of the same incident will undoubtedly capture images of the same event from different vantage points. These images may add clarity to a confused situation or, just as well, further confuse what occurred during an incident.

Notwithstanding these possibilities, all of the recordings of the same incident should be gathered together and “tagged”/categorized to ensure that when the incident is reviewed that all of the images can be observed together in an attempt to develop a clear picture of what occurred.

Likewise, for criminal investigation purposes, multiple recordings of crime scenes, statements and like activities can provide investigators with valuable investigative information. Prosecutors too may be able to use multiple recordings to piece together a case.

Therefore, agencies may want to consider that their BWC policy and procedures contain a section that sets forth a process to gather together multiple recordings of an incident and to ensure that these recordings are accounted for, downloaded and stored according to agency policy.

REFERENCE MATERIAL

“Members equipped with BWCs who are on the scene of an incident and are not the primary reporting member shall inform the reporting member of their BWC recording(s) so that the primary member may record this information in his or her report.” 173

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – j. MULTIPLE BWC USERS:

1. In the event there are MULTIPLE BWC users at an incident/encounter EACH BWC USER SHALL:
 - i. record the incident until he/she is permitted by this policy to terminate recording the event;
 - ii. at the conclusion of the event, the secondary/back-up officer(s) shall notify the PRIMARY officer, as soon as practical, that he/she has recorded all or a part of the incident;
 - iii. the PRIMARY officer will document the secondary/back-up officers’ names and information provided in his/her Incident Report;

- iv. any secondary/back-up officer who made a BWC recording at the incident will complete a Supplemental Report to the PRIMARY officer's Incident Report and document his/her recording in that report:
 - a. the secondary/back-up officer will "tag"/categorize his/her recording according as per policy;
 - b. depending on the incident, it may be necessary for the secondary/back up officer to review his/her recording with the PRIMARY officer to ensure that a complete Incident Report or Offense Report is submitted;
 - c. the secondary/back-up officer's BWC recording will be downloaded and stored in keeping with this policy and procedure;
- v. if the secondary/back-up officer is a member of an ALLIED AGENCY, the PRIMARY officer shall obtain his/her name and request that the allied member also submit a Supplemental Report that a BWC recording was made as per the allied agency's policy;
- vi. the PRIMARY officer shall request to view the BWC recording of the ALLIED officer to ensure that the PRIMARY officer's Incident Report or Offense Report is complete and to determine if the recording made by the allied agency's officer is EVIDENTIARY:
 - a. if the recording is determined to be EVIDENTIARY the PRIMARY officer shall request:
 - a-i. the allied agency's officer to download his/her BWC recording into the [NAME OF AGENCY] BWC recording retention file if the allied officer's BWC equipment is compatible to this agency's BWC equipment;
 - a-ii. if the allied agency's BWC recording equipment is not compatible to the [NAME OF AGENCY] BWC equipment, the PRIMARY officer shall request that an unedited copy of the allied officer's recording be made and forwarded to the PRIMARY officer for retention as evidence until the recorded incident is adjudicated or otherwise ended:
 - A. upon receipt of the recording the PRIMARY officer will handle and store the allied agency's BWC recording according to [NAME OF AGENCY] established evidence policy and procedure;
 - a-iii. if necessary, the PRIMARY officer's supervisor will intervene to ensure that a copy of the recording is made available;
 - b. if the recording is determined NON-EVIDENTIARY the primary officer shall:
 - b-i. request that the recording be downloaded and retained by the allied agency according to its recording retention schedule unless the recording is later determined to be needed for court in which case the PRIMARY officer will request a copy as evidence ensuring the chain of custody is maintained;
 - b-ii. a request for an extension of the recording's retention will be sent to the allied agency in writing;

IX – B – 4 – k. INADVERTENT/UNINTENTIONAL/ACCIDENTAL BWC RECORDING:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATION

COMMENTARY

Notwithstanding training given to personnel on the operation of body-worn cameras, occasionally a recording will be inadvertently/unintentionally/accidentally made. Because of limited BWC recording storage capacity it may be more efficient for agencies to delete such non-evidentiary/no investigative value recordings. If agencies decide to allow for the deletion of these types of BWC recordings they may want to consider establishing a clear cut procedure to ensure that those recordings are accounted for.

REFERENCE MATERIAL

Accidental Recordings:

1. In the event of an **accidental activation** of their BWC where the **resulting recording has no investigative or evidentiary value**, members may submit a deletion request to their watch commander, who will forward the same to the MPD BWC Coordinator for review and tracking.
2. Members shall ensure the request contains sufficient information (e.g. date, time, BWC number) to locate the recording.
3. The MPD BWC Coordinator shall review accidental recordings and determine whether or not the recording had an official purpose. If the recording had no official purpose, it may be deleted. **An audit log on the history of every recording will be maintained in the storage system.** 174

"In the event of an **unintentional activation of BWC equipment during non-enforcement or non-investigative activities** (e.g., in the restroom, during a meal break, or in other areas where reasonable expectation of employee privacy exists), a **Department member may request a recording deletion**. An interoffice correspondence detailing the circumstances of the unintentional recording will be forwarded via the chain of command to the member's appropriate supervisor. If approved, the actual deletion requires two-party authorization. One of those parties will be the member's Commander; the other will be the MSA. **Only the MSA shall facilitate the actual removal of any record approved for deletion. Records related to any request for the deletion of records shall be maintained by the MSA.**" 175

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – k. INADVERTENT/UNINTENTIONAL/ACCIDENTAL BWC RECORDING:

1. In the event that a BWC user believes that he/she as inadvertently/unintentionally/accidentally made a BWC recording, the BWC user shall:
 - i. **notify his/her supervisor** who will review the BWC recording with the recording officer;
 - ii. **together with the supervisor determine if the recording has any EVIDENTIARY or investigative value;**
 - iii. if the supervisor agrees that no EVIDENTIARY or investigative value exists, the BWC user will:
 - a. **"tag" the recording as INADVERTENT/UNINTENTIONAL/ACCIDENTAL;**
 - b. **document the reason it was INADVERTENTLY/UNINTENTIONALLY/ACCIDENTALLY recorded in an Incident Report;**
 - c. **download the recording as per BWC policy/procedure;**
 - d. **submit a written request, via his/her supervisor, to the Unit BWC Unit Coordinator to review the recording and make a recommendation to the BWC ADMINISTRATOR whether the recording should be deleted from the recording files or retained for the minimum retention period set forth in the BWC policy and procedure;**
 - e. **the BWC Unit Coordinator will review the recording and make a written recommendation for action to the BWC ADMINISTRATOR as outlined in this policy/procedure;**
 - f. **the BWC ADMINISTRATOR will take action as outlined in this policy/procedure and notify the BWC user, in writing, of the final action taken.**

IX – B – 4 – I. BWC RECORDING – SPECIAL EVENTS/SECONDARY EMPLOYMENT/OVERTIME DETAILS:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 176

COMMENTARY

Maryland law, in Courts and Judicial Proceedings - § 10-402 (c) (11) (II) states, in part:

It is lawful, under this subtitle for a law enforcement officer in the course of the officer's REGULAR DUTIES to intercept an oral communication with a body-worn digital recording device or electronic control device capable of recording video and oral communications if:

1. The law enforcement officer is IN UNIFORM or prominently displaying the officer's badge or other insignia; etc. 177

The decision about whether to allow the use of body-worn cameras during authorized secondary employment and/or special events or overtime assignments can pose questions for law enforcement administrators, especially when an agency has enough resources to assign a BWC to individual officers as part of their equipment. In this case, lack of equipment does not settle the issue. Usually, however, the availability of enough BWCs to equip both officers working regular duty assignments such as patrol as well as officers working secondary employment and/or special events is problematic for many agencies.

The dilemma about whether to authorize or require officers to use BWCs when engaged in off-duty assignments is further compounded when the secondary employment/special event is sponsored and paid for by the local jurisdiction. Research has shown that some agencies have decided to allow officers to use them for any agency authorized secondary employment assignment; others have decided not to allow officers to use them for any secondary employment assignments; while still others have authorized the use of BWCs only when the special event or secondary employment assignment is sponsored by the local jurisdiction. The purpose for including this section in the "BWC Procedural Reference Guide" is to alert law enforcement executives to the issue and to suggest that they include either their authorization for or prohibition against the use of BWCs for authorized, uniformed secondary employment in their agency's policy/procedure.

REFERENCE MATERIAL

EXAMPLES of BWC procedures – secondary employment/overtime assignments/special events:

"All officers issued a BWC are required to wear and use their BWC while working in any uniformed assignment. This applies to overtime assignments, out of class assignments and special details. 178

"Officers shall only use PGPD-issued BWCs while on-duty, working in an official law enforcement capacity, and during secondary employment assignments." 179

"Officers are not authorized to use a BWCs during secondary employment." 180

"The use of the WVS for recording official activities at special events shall be at the discretion of the Support Bureau Commander, Special Operations Division Commander or the commander of the special event. The commander shall instruct officers on the types of activities that shall be recorded.

"Officers who are issued a WVS and wear an official departmental uniform while working secondary employment shall record official activities with the WVS pursuant to this SOP." 181

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – I. BWC RECORDING – SPECIAL EVENTS/SECONDARY EMPLOYMENT/OVERTIME DETAILS:

TO BE DETERMINED BY ISSUING AGENCY

1. In the event agency body-worn cameras are authorized for use during a special event/authorized secondary employment/overtime assignments all BWC users shall:
 - i. use/operate the BWC in accordance with this agency's BWC policy/procedures;
 - ii. if a special event/secondary employment/overtime assignment does not have a supervisor assigned to oversee the event then an on-duty supervisor will respond to any request for assistance or support from a BWC user including pre-deployment inspection of the BWC;
 - iii. all recordings made during a special event/secondary employment/overtime assignment will be reviewed, "tagged" and downloaded as per BWC policy/procedure;

IX – B – 4 – m. BWC USER'S REVIEW PRIOR TO DOWNLOADING TO RETENTION FILES:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

I. REVIEW OF RECORDINGS

1. Agencies' written policies shall include when members may view BWC recordings. Reasons to view and use recordings may include, but are not limited to:
 - a. report writing or preparation of other official documents;
 - b. court preparation;
 - c. review of prosecution evidence
 - d. victim/witness/suspect statements;
 - e. crime scenes;
 - f. statement of charges;
 - g. administrative investigations;
 - h. training;
 - i. performance review;
 - j. incident critique;
 - k. Maryland Public Information Act (MPIA) requests;'
 - l. policy compliance; and
 - m. disclosures required by law;
2. Additional considerations:
 - a. a BWC recording of constitutionally protected activity may NOT be used to identify persons present at the activity who are not suspected of being engaged in illegal activity or in need of assistance.
 - b. The stored video and audio data from a body-worn camera may not:
 - i. be used to create database or pool of mug shots;
 - ii. be used as fillers in photo arrays; or
 - iii. be searched using facial or voice recognition software.
3. This subsection does not prohibit an agency from using recognition software to analyze the recording of a particular incident when a supervisory law enforcement officer has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording. 182

PS §3–511 reference: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (11) the review and use of recordings; 183

COMMENTARY

“Given the impact that body-worn cameras can have in criminal and administrative proceedings, there is some question as to whether officers should be allowed to review camera footage prior to making a statement about an incident in which they were involved. According to many police executives, the primary benefit to allowing officer review is that it allows officers to recall events more clearly, which helps get to the truth of what really happened. Some police executives, on the other hand, have maintained that it is better for an officer’s statement to reflect what he or she perceived during the event, rather than what the camera footage revealed.”

“The majority of police executives consulted by PERF are in favor of allowing officers to review body-worn camera footage prior to making a statement about an incident in which they were involved. They believe that this approach provides the best evidence of what actually took place.” 184

Some body-worn cameras are equipped with a “playback” feature which allows officers to view previously recorded video/audio recordings prior to downloading the recording into the BWC recording retention file. Where that camera option exists an agency should consider including its use in its BWC policy and procedure.

REFERENCE MATERIAL

“Officers should be permitted to review video footage of an incident in which they were involved, prior to making a statement about the incident. Most agencies that PERF consulted permit officers to review video footage of an incident in which they were involved, such as a shooting, prior to making a statement that might be used in an administrative review or court proceeding. **The reasons for this policy include the following:**

- reviewing footage will help lead to the truth of the incident by helping officers to remember an incident more clearly;
- real-time recording is considered best evidence and provides a more accurate record than the officer’s recollection;
- research into eyewitness testimony has demonstrated that stressful situations with many distractions are difficult for even trained observers to recall correctly;
- officers will have to explain and account for their actions, regardless of what the video shows.” 185

“As part of the incident investigation, we recommend that an officer be permitted to see what his body camera and other cameras recorded. He should be cautioned, however, to regard the footage only as informational. He should not allow it to supplant his first-hand memory of the incident. Justification for a shooting or other use of force will come from what an officer reasonably perceived, not necessarily from what a camera saw.” 186

“...body-worn cameras have significantly improved how officers capture evidence for investigations and court proceedings. Along with documenting encounters with members of the public, body-worn cameras can provide a record of interrogations and arrests, as well as what officers witness at crime scenes...body-worn cameras capture everything that happens as officers travel around the scene and interview multiple people. The body-worn cameras have been incredibly useful in accurately preserving information...body-worn cameras capture more reliable evidence for court, particularly in matters like domestic violence cases that can be difficult to prosecute...officers can now use body-worn cameras to videotape victim statements. The footage shows first-hand the victim’s injuries, demeanor, and immediate reactions...” 187

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – m. BWC USER’S REVIEW PRIOR TO DOWNLOADING TO RETENTION FILES:

1. The **[NAME OF AGENCY]** recognizes that there may be a number of valid reasons for various personnel to review a BWC recording before it is downloaded into the agency’s BWC recording retention files:
 - i. BWC users may need to review their own recordings in order to **complete an Incident/Offense report or statement of charges, etc.;**
 - ii. an investigator may need to review a recording in order **to begin or continue an investigation;**
 - iii. a supervisor or command official may need to review a recording in response to allegations of inappropriate conduct, etc.;
 - iv. victim/witness/suspect statements/claims may need to be verified by officers/investigators;
2. It is the policy of **[NAME OF AGENCY]** to allow personnel to review BWC recordings PRIOR to downloading a recording for retention in the agency’s BWC recording file; however, review of ALL BWC recordings under this section will be for OFFICIAL agency business only;
3. The following procedures will be followed when accessing BWC recordings for review PRIOR TO DOWNLOADING to the agency’s BWC recording file:

IX – B – 4 – m – 1. BWC USER:

- i. A BWC user:
 - a. may review a BWC recording he/she has made in the course of his/her shift/tour of duty in order to:
 - a-i. prepare and/or complete an Incident/Offense report or other official agency document;
 - a-ii. conduct an agency-authorized/official investigation into a recorded incident/event;
 - b. may request to review any other BWC user’s recording of the same incident or partial recording of the same incident;
 - c. shall document in his/her Incident Report/Offense Report the fact that a BWC recording was reviewed and which BWC recording(s) was reviewed;
- ii. AFTER DOWNLOADING to the agency’s BWC recordings retention file, all requests for reviewing BWC recordings will be approved and facilitated by the BWC *ADMINISTRATOR* as set forth in this policy and procedure.

IX – B – 4 – m – 2. OTHER AGENCY PERSONNEL REVIEW PRIOR TO DOWNLOADING:

- i. Any other agency personnel who need to review a BWC user’s recording for OFFICIAL business before it is downloaded shall:
 - a. notify the BWC user and request that the BWC recording be made available and the reason for the viewing;
 - b. document the fact that he/she has viewed the BWC recording and the reason for viewing it in a Supplement Report/Offense Report;

IX – B – 4 – m – 3. SUPERVISOR/COMMAND OFFICIAL REVIEW PRIOR TO DOWNLOADING:

- i. A supervisor/command official may review any BWC recording prior to downloading into the agency's BWC recordings' retention file to:
 - a. evaluate an allegation/complaint of inappropriate behavior/misconduct/violation of policy and/or procedure during an event/incident/encounter that may have been recorded by a BWC:
 - a-i. any subsequent investigation that stems from review of an officer's recorded behavior shall be conducted in accordance with established internal investigation policy and the Law Enforcement Officer's Bill of Rights [Public Safety Article – PS § 3 -101 - 109];
 - b. debrief/critique a particular event/incident/encounter with personnel:
 - b-i. to obtain recordings for training/instructional purposes;
 - c. when any use of force is reported to have occurred during a recorded event by either an officer or member of the public;
 - c-i. a review of a BWC recording(s) shall only comprise one step in a complete use of force examination and evaluation by a supervisor and/or command official:
 - A. digital evidence captured by the BWC is NOT ALL INCLUSIVE:
 - A-1. the system captures a less broad and less detailed image than the totality of the human senses;
 - A-2. an officer's recollection of specific details or perception at the time may be different than what is captured in digital evidence;
 - B. all use of force investigations will be conducted according to established agency policy and procedure;

POTENTIAL LIMITATIONS OF BWC RECORDINGS

BWCs normally have a field of vision of between 75 degrees to 130 degrees. While human beings have a field of vision of 180 degrees, the human brain has a field of attention of approximately 50 to 60 degrees. Under stress, this field can narrow down to a ½ degree. Stress also induces auditory exclusion and prevents the brain from analyzing and remembering all the stimuli that it takes in through the senses. Officers make decisions based on the totality of the human senses. An officer's recollection of specific details may be different than what is captured in digital evidence since BWCs only capture audio and video. Officers should review digital evidence prior to completing reports to assist in priming their recollection. Officers shall write their reports to what they remember and notate any discrepancies from what the recording shows. Officers shall not write their reports based solely on what they viewed from the BWC recording. **188**

- d. to evaluate the performance of a probationary officer either during a period of field training or prior to release from a probationary status;
- e. to observe an officer who has a pattern of allegations of misconduct or poor performance;
- f. to audit the use of body-worn cameras to ensure compliance with established policy and procedure;
- g. Nothing in this section precludes a supervisor/command official from reviewing any BWC user's recordings for any other official agency business except that a BWC recording shall

NOT be used to ROUTINELY EVALUATE AN INDIVIDUAL'S PERFORMANCE OR TO ROUTINELY LOOK FOR VIOLATIONS OF POLICY/PROCEDURE and/or RULES/REGULATIONS IN ORDER TO INSTITUTE DISCIPLINARY ACTION: 189

- g-i. it is **NOT** the intent of the Department to review digital evidence for the purpose of general performance review, for routine preparation of performance reports, or to discover policy violations in order to initiate disciplinary action;
- g-ii. notwithstanding the intent of the supervisor/command official reviewing a BWC recording, violations that are discovered during a supervisor's/command official's audit of the BWC system shall be addressed as the supervisor/command official deems appropriate;
- ii. for purposes of BWC recording review, Field Training Officers [FTOs] may use footage captured via a BWC to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR); 190

IX – B – 4 – m – 4. MEMBERS OF ALLIED PUBLIC SAFETY AGENCIES/STATE'S ATTORNEY:

- i. Members of allied law enforcement/public safety agencies, including the State's Attorney's Office, with an official business need to view a BWC recording may, at the discretion of the on-duty supervisor, be allowed to view a BWC recording prior to downloading into the BWC retention files.

IX – B – 4 – n. GENERAL "PRIOR TO DOWNLOAD" REVIEW PROVISIONS:

1. If BWC hardware is available to "tag" and download BWC recordings in the field, BWC users are authorized to "tag" and download recordings in the field; such "tagging" may require a brief review of the recording:
 - i. BWC recordings shall **not** be routinely reviewed in the field except to "tag" and download them:
EXCEPTION:
Under exigent circumstances, such as to immediately describe/identify/help apprehend a criminal suspect or to protect life and/or property;
 - ii. under ordinary circumstances, BWC recordings should only be reviewed at an agency facility equipped for such purposes;
2. A victim/witness/suspect or any other unauthorized person shall **NOT** ordinarily be permitted to view a BWC recording of an incident in which they were involved or a statement that they have given and recorded by a BWC:
EXCEPTION:
An on-duty supervisor/command official is authorized to review a BWC recording of an incident with a member of the community prior to downloading the recording to the BWC recording retention file if, in the supervisor's judgment, viewing the BWC recording of the incident and receiving an explanation of an officer's actions from the supervisor/command official will most likely satisfy/resolve his/her concerns about the officer's actions and/or withdraw a complaint. 191

3. Stored video and audio data from a body-worn camera shall NOT:

- i. be used to create a database or pool of mug shots;
- ii. be used as fillers in photo arrays; or
- iii. be searched using facial or voice recognition software:

EXCEPTION:

An agency may use recognition software to analyze a recording of a particular incident when a supervisory law enforcement officer has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording. 192

4. Under no circumstances are members with access to BWC recordings permitted to use, show, reproduce or release recordings for the purpose of ridicule or embarrassment of any officer or individual or for other non-law enforcement related purposes. 193

5. AFTER DOWNLOADING to the agency's BWC recordings retention file, all requests for reviewing BWC recordings will be approved and facilitated by the BWC ADMINISTRATOR as set forth in this policy and procedure.

IX – B – 4 – o. DOWNLOADING BWC RECORDINGS:

IX – B – 4 – o – i. "TAGGING" RECORDINGS:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 194

COMMENTARY

Downloading procedures for recordings made by body-worn cameras will vary depending on the body-worn camera system being used by each agency. Generally, DOWNLOADING a BWC recording refers to the process by which BWC users transfer BWC recordings and attendant metadata from a body-worn camera to an agency's BWC recording retention/storage system.

Along with downloading the BWC recordings, BWC users are generally required to "tag"/categorize/annotate each recording according to a BWC recording retention list created by each agency, often selecting a category from a pre-established drop down menu. While some body-worn camera systems allow for remote "tagging" and downloading using a "smart phone"/"tablet"/mobile data terminal, others require that a BWC user place the BWC into a docking station to "tag" and download recordings.

Basically, once a BWC is connected to docking station or remotely to downloading software by use of a "smartphone"/"tablet"/mobile data terminal, each recording to be downloaded is identified according to the BWC device that was used to make the recording and the date and time of the recording was made. To complete the "tagging" process, a BWC user then manually enters the incident number/complaint number /CAD number/arrest number, selects one of several pre-established incident categories and enters the location of the incident/event/encounter. Some systems may require that a BWC user's ID/Badge number also be entered at the time of "tagging" or that additional information be provided such as whether the recording is evidentiary or non-evidentiary.

"It is important that videos be properly categorized according to the type of event contained in the footage. How the videos are categorized will determine how long they are retained, who has access to them, and whether they can be disclosed to the public." 195 Additionally, proper "tagging" is part of the process of establishing a "chain of custody" for recordings that are EVIDENTIARY in nature and may be necessary for trial.

Because “tagging”/categorizing each recording determines how long that recording will be retained in the BWC recording files, each law enforcement agency will have different retention philosophies and priorities. Each agency should carefully consider the EVIDENTIARY VALUE of each recording as it determines in what category to place a recording. Agencies should consider conducting practical “tagging” exercises/examples as part of their required BWC training.

“Tagging” BWC recordings should not affect BWC recordings as the actual recordings should be protected by multiple layers of encryption.

*PROPER downloading and tagging procedures should be an ESSENTIAL part of an agency’s BWC orientation/training program and **MUST CONFORM TO ALL MANUFACTURER’S SPECIFICATIONS.***

REFERENCE MATERIAL

“Officers should properly categorize and tag body-worn camera videos at the time they are downloaded. Videos should be classified according to the type of event or incident captured in the footage. If video contains footage that can be used in an investigation or captures a confrontational encounter between an officer and a member of the public, it should be deemed “evidentiary” and categorized and tagged according to the type of incident. If the video does not contain evidence or it captures a routine, non-confrontational encounter, it should be considered “non-evidentiary” or a “non-event.”

“Proper labeling of recorded data is critical for two reasons. First, the retention time for recorded data typically depends on the category of the event captured in the video. Thus, **proper tagging is critical for determining how long the data will be retained in the agency’s system.** Second, **accurate tagging helps supervisors, prosecutors, and other authorized personnel to readily identify and access the data they need for investigations or court proceedings.**

“Some agencies report that reviewing and tagging recorded data can be a time-consuming process that is prone to human error. One agency addressed this issue by **working with the camera manufacturer to develop an automated process that links the recorded data to the agency’s records management system.** Some camera systems can also be linked to electronic tablets that officers can use to review and tag recorded data while still in the field.” 196

“Properly categorizing and labeling/tagging recorded video is important for the following reasons:

- type of event/incident on the video will typically **dictate data retention times;**
- enables supervisors, investigators, and prosecutors to **more easily identify/access the data they need;”** 197

“Some camera systems can be linked to an agency’s records management system to allow for automated tagging and documentation. Some camera systems can be linked to electronic tablets that officers can use to review and tag recorded data while in the field. This saves the officer time spent tagging data at the end of his or her shift.” 198

“Most agencies that PERF consulted require officers to download and tag videos by the end of each shift. 199

SAMPLE:

The San Diego Police Department states in its BWC policy and procedure:

L. Entering Metadata:

Each recorded segment requires metadata be entered, even if the segments are of the same event. All officers are required to add metadata at the conclusion of the event. The only exception is for officer safety reasons, at which time metadata should be added as soon as possible. Metadata consists of an identification field, retention category, and recording title. If an incident number exists, the complete incident number shall be input into the identification field. Absent an incident number, a citation number or field interview number may be used. Officers shall select the retention category that most accurately fits the recording. Recording titles may vary and include the location, crime type, or suspect name. Viewing or adding metadata will not alter the video recording as it is protected with multiple layers of encryption on the aforementioned devices, the BWC itself and at Evidence.com. 200

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – o – i. “TAGGING” RECORDINGS:

1. As part of DOWNLOADING PROCESS for BWC recordings BWC users shall “TAG”/LABEL/CATEGORIZE a recording as follows:

i. select and assign the MOST APPROPRIATE category for each individual BWC recording utilizing ONLY ONE of the categories listed below for each event recorded:

A. TRAFFIC STOP:

a. includes ALL traffic stops:

a-i. resulting in enforcement action such as:

- arrest – operator/passenger;
- traffic citations;
- warnings;
- repair orders;

a-ii. those that did not lead to enforcement action:

- assist motorist;

a-iii. vehicle searches:

- consent searches;
- K-9 scans;
- Carroll searches;
- vehicle inventories;

B. TRAFFIC ACCIDENT:

- a. personal injury as required by agency policy;
- b. property damage as required by agency policy;
- c. multi-passenger commercial vehicle – bus/school bus/van;
- d. emergency vehicle/government vehicle as required by agency policy;

C. POLICE-CITIZEN FIELD CONTACT/STOP/ENCOUNTERS:

a. includes ALL FIELD CONTACTS/STOP OF ANY DURATION:

- a-i. investigative stops;
- a-ii. stop and frisk;

b. does NOT INCLUDE:

- b-i. CASUAL ENCOUNTERS;
- b-ii. requests for general information/directions;

D. VIOLENT - CALL FOR SERVICE:

a. includes SELF-INITIATED and DISPATCHED calls for service;

b. with-without arrest;

c. considered to have HIGH EVIDENTIARY/INVESTIGATIVE VALUE:

d. includes, but is not limited to:

- d-i. homicide/attempt homicide;
- d-ii. aggravated assault;
- d-iii. common assault with arrest;
- d-iv. assault on police with/without weapon;
- d-v. sexual assault/offense – any type;
- d-vi. assault and robbery – with/without weapon;

- d-vii. burglary;
- d-viii. domestic abuse with/without arrest;
- d-ix. child abuse with/without arrest;
- d-x. elder abuse with/without arrest;
- d-xi. any weapon-involved call for service;
- d-xii. hate crime; or
- d-xiii. any other crime involving force/violence;

E. OTHER CALL FOR SERVICE – WITH ARREST:

- a. includes SELF-INITIATED and DISPATCHED calls for service;
- b. considered to HAVE EVIDENTIARY VALUE for court appearance/further investigation;
- c. includes any non-violent call for service WITH ARREST:
 - c-i. property crime without violence/weapon;
 - c-ii. vandalism/malicious destruction of property;
 - c-iii. disorderly conduct;
 - c-iv. unauthorized use of a vehicle;
 - c-v. emergency detention;

F. OTHER CALL FOR SERVICE – WITHOUT ARREST:

- a. includes SELF-INITIATED and DISPATCHED calls for service /with-without arrest;
- b. considered to have LIMITED/NO EVIDENTIARY VALUE;
- c. includes any non-violent call for service WITHOUT ARREST:
 - c-i. incident - No Official Police Action Taken/Caller Advised;
 - c-ii. coded call;

G. ARREST/ENFORCEMENT ACTION:

- a. includes **ALL other arrests not previously mentioned in this policy/procedure**:
 - a-i. during execution of search and seizure warrants;
 - a-ii. surrender on arrest warrant; etc.
- b. **issuance of criminal or civil citations**;
- c. **violations of local ordinances**;

H. REQUIRES FURTHER/LATER SUPERVISOR/COMMAND REVIEW:

- a. a supervisor/command official may designate a BWC recording for **FURTHER/LATER review**;
- b. this category normally applies, but is not limited to, a **BWC recording of a incident that may require review by a SUPERVISOR and/or COMMAND OFFICIAL and may require possible extended retention** such as:
 - b-i. member of the agency or an allied agency is injured or killed during the performance of their duties;
 - b-ii. member of the agency or an allied agency is involved in an incident that results in serious injury or fatality including, but not limited to, in-custody deaths, vehicle accidents, vehicular pursuits resulting in serious personal injury or death, etc.;
 - b-iii. **ANY use of force** by a member of the agency/allied agency;
 - b-iv. member of the agency has reason to believe that the event may result in a complaint or the recording may be of use in a future court proceeding;
 - b-v. member of the agency is involved in any criminal or suspected criminal behavior;
 - b-vi. vehicle or foot pursuit;

- b-vii. CRITICAL INCIDENT;
- b-viii. potential TRAINING recording;
- b-ix. officer performance critique/personalized training;
- b-x. any recording of an arrest of a person as a result of apparent First Amendment activity;
- c. when a BWC user categorizes a recording as “REQUIRES SUPERVISOR/COMMAND REVIEW”, the BWC user shall notify his/her supervisor prior to downloading the recording or end of his/her shift, whichever comes first;
 - ci. the supervisor and/or command official shall review the recording within 24 hours or next business day;
 - c-ii. in the event that the supervisor and/or command official is likely to be absent beyond this time period the BWC user shall notify, in writing, the Unit BWC COORDINATOR or the BWC *ADMINISTRATOR* who will ensure that a member of higher command is notified of the recording and reviews it;

I. CRIME SCENE/EVIDENCE or INVESTIGATIVE RECORDING:

- a. any crime scene recording made with a BWC;
- b. any victim/witness statement recorded using a BWC;
- c. any other BWC recording associated with an active or open investigation without an arrest or citation having investigative/evidentiary value;

J. OTHER:

- a. recording files of contacts/encounters with the public:
 - a-i. having **NO IMMEDIATE EVIDENTIARY VALUE** at the time of the recording;
 - a-ii. not tagged into another category by a member;
 - a-iii. accidental BWC recordings;

K. PENDING REVIEW BY BWC *ADMINISTRATOR*:

- a. includes a **BWC recording in which there is a TECHNICAL ISSUE**:
 - a-i. will be reviewed by the BWC *ADMINISTRATOR* OR BWC VENDOR REPRESENTATIVE;

2. select only ONE BWC “tagging” category:
 - i. if a BWC user believes that a specific BWC recording requires “tagging” in more than one category he/she will notify his/her **supervisor who will decide into which category to place the recording**;
3. include the following identifying information when “tagging” of a BWC recording:
 - i. the COMPLAINT or INCIDENT NUMBER/CAD NUMBER/ARREST NUMBER;
 - ii. LOCATION OF THE INCIDENT/EVENT/ENCOUNTER;
 - iii. the ID # or BADGE # OF THE BWC USER;
4. the BWC user must “tag” and download ALL BWC RECORDINGS by the end of the BWC user’s shift/tour of duty:
 - i. includes BWC recordings of the same incident/event/encounter by multiple BWC users;
 - ii. if equipped with the appropriate BWC hardware to “tag” BWC recordings in the field, BWC users should “tag” and download BWC recordings immediately following an incident/event/encounter unless more intensive review of the recording is necessary for investigative or report writing purposes;
5. FOLLOW ALL “TAGGING” PROCEDURES AS DESCRIBED IN THIS POLICY AND PROCEDURE AND EXPLAINED DURING AGENCY BWC TRAINING;
6. ALL downloaded BWC recordings will be retained in the recording retention file as set forth in Section X – H. RETENTION OF BWC RECORDINGS of this policy.

IX – B – 4 – o – ii. DOWNLOADING A BWC RECORDING:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATIONS

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 201

COMMENTARY

"Tagging" and DOWNLOADING a BWC recording are virtually, though not always, part of the same process. Both require that the BWC user's body-worn camera be "docked" to equipment that allows a BWC recording to be transferred from the body-worn camera to the agency's recording retention files. Once downloaded the BWC recorded is "impounded"/stored in the agency's BWC recording files for retention according to the agency's BWC recording retention schedule. In some BWC systems the docking station by which BWC recordings are downloaded to the agency's BWC recordings retention files also function as battery recharging stations.

"Tagging"/DOWNLOADING a BWC recording is an integral step in establishing the "chain of custody" of recordings for later use in court.

While the DOWNLOADING process is relatively straightforward, agencies should consider conducting practical "tagging" and downloading training exercises with BWC users during agency training to ensure familiarity with the process.

REFERENCE MATERIAL

"Specify when videos will be downloaded from the camera to the storage system and who will download them: The majority of existing policies require the camera operator to download the footage by the end of each shift. In the case of an officer-involved shooting or other serious incident, some policies require supervisors to step in and physically take possession of the camera and assume downloading responsibilities." 202

"Policies should designate the officer as the person responsible for downloading recorded data from his or her body-worn camera.

"Data should be downloaded from the body-worn camera by the end of each shift in which the camera was used. However, in certain clearly identified circumstances (e.g., officer-involved shootings, in-custody deaths, or other incidents involving the officer that result in a person's bodily harm or death), the officer's supervisor should immediately take physical custody of the camera and should be responsible for downloading the data." 203

"Uploading video files can take quite a bit of time, which means officers may have to sit at the end of their shifts connecting the camera unit to a computer via USB and waiting for the files to transfer. Some agencies use non-sworn personnel to transfer the files. An even better option is to acquire an automated upload cradle from the cameras' manufacturer. These devices allow officers to deposit their cameras at the end of the shift into a device that both charges the cameras and transfers the evidence to the agency's server or cloud service for storage. 204

"...As mentioned, many BWC units can allow for manipulation of video data by anyone in contact with the device. One of the disadvantages of these BWCs is that the officers may be responsible for uploading video to the agency systems themselves, as opposed to an automated or third-party process. As a result, ensuring that this is done properly becomes an important training issue." 205

“Police executives noted a number of strategies that can help agencies protect the integrity and privacy of their recorded data, regardless of which storage method is used. These lessons learned regarding data storage include the following:

→ consult with prosecutors and legal advisors:

- legal experts can advise whether data storage policies and practices are in compliance with all relevant laws and adequately preserve evidentiary chain of custody;

→ explicitly prohibit data tampering, editing, and copying;

→ include protections against tampering with the data prior to downloading:

■ this helps to mitigate concerns that officers will be able to alter or delete recordings prior to downloading them; some body-worn camera systems are sold with technological safeguards that make it impossible for an officer to access the data prior to downloading. 206

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – o – ii. DOWNLOADING A BWC RECORDING:

1. All BWC users shall:

i. DOWNLOAD and “TAG” BWC recordings NO LATER than by the end of his/her shift/tour of duty:

a. includes BWC recordings of the same incident/event/encounter by multiple BWC users;

b. if equipped with the appropriate BWC hardware, BWC users should “tag” and download BWC recordings immediately following an incident/event/encounter unless viewing the recording is necessary for investigative or report writing purposes;

ii. IMMEDIATELY NOTIFY his/her supervisor:

a. if any problem arises during the “tagging”/DOWNLOADING process;

b. if a particular BWC recording has been “tagged” as “Requires Supervisor/Command Review;”

iii. ENSURE that all Incident Reports/Offense Reports contain documentation as to the use of a BWC to record an event;

2. ALL AGENCY PERSONNEL ARE STRICTLY PROHIBITED FROM ERASING, ALTERING, COPYING, RE-USING, MODIFYING, TAMPERING WITH ANY BWC RECORDING.

3. in the event a supervisor has taken possession of a BWC user’s body-worn camera, such as for a use of force investigation, citizen complaint, officer injury, etc. **the SUPERVISOR IS RESPONSIBLE FOR ENSURING THAT ALL BWC RECORDINGS ARE “TAGGED” AND DOWNLOADED** as appropriate before the end of his/her shift;

4. once downloaded ALL BWC recordings are considered “impounded” in the agency’s BWC recordings files and will remain in those files according to Section H. Retention of BWC Recordings of this policy and procedure;

5. A BWC recording is NOT a replacement/substitution for an agency Incident Report/other offense report/investigative report such as a crime scene diagram/sketch or written property or evidence inventory.

IX – B – 4 – p. CHAIN OF CUSTODY – BWC RECORDINGS:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 207

COMMENTARY

A number of BWC recordings will capture images that are of EVIDENTIARY VALUE whether in the form of suspect actions, victim/witness/suspect statements, crime scene images and/or recordings of evidence. If these recordings are to be of use to the prosecution and are to be introduced at trial they must be treated as any other physical evidence with a clear chain of custody. "Tagging" and downloading a BWC recording is the first critical step in ensuring that the chain of custody is established. This section of the "BWC Procedural Reference Guide" addresses this issue. Chain of custody issues will be repeated in a later section of this document in the section that deals with the retention of BWC recordings.

REFERENCE MATERIAL

"The best policy, as with any physical evidence, is to always guard the integrity of the evidence, and ensure policies and procedures maintaining a strict chain-of-custody are followed (IACP, 2004). This would include being sure that recordings include information necessary to be admissible in court. Specifically, time and date stamp/identifiers must be imprinted on the media, either in the video images directly or in the underlying metadata information of the data files. 208

Consult with prosecutors and legal advisors: Legal experts can advise whether data storage policies and practices are in compliance with all relevant laws and adequately preserve evidentiary chain of custody. 209

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

IX – B – 4 – p. CHAIN OF CUSTODY – BWC RECORDINGS:

1. BWC recordings determined to have EVIDENTIARY VALUE shall be considered to be and treated as evidence according to this agency's evidence retention policy and procedures. 210
2. RETREIVAL/COPYING OF BWC RECORDINGS FOR PROSECUTION REVIEW AND/OR FOR TRIAL SHALL BE COORDINATED BY THE BWC ADMINISTRATOR AS SET FORTH IN SECTION X – G – 2 – BWC FILE SHARING – STATE'S ATTORNEY'S OFFICE OF THIS POLICY AND PROCEDURE;

IX – B – 4 – q. BWC DOCKING - END OF SHIFT:

1. At the end of his/her shift/tour of duty each BWC user shall:
 - i. INSPECT his/her assigned BWC to ensure the device is not damaged and is operable:
 - a. report any damage/operability problem immediately to his/her supervisor;
 - ii. INSERT the BWC into the battery charging docking station as demonstrated during BWC training:
 - a. depending on the BWC system being used, the docking station used for transferring BWC recordings to the BWC recording retention files and the battery recharging station may be the same station;
 - iii. ENSURE the battery charging docking station is operating and that the BWC is charging as demonstrated during BWC training;

X. STORAGE/RETENTION/MAINTENANCE OF RECORDINGS:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

H. REQUIRED STORAGE AND MAINTENANCE OF RECORDINGS

1. All files shall be securely saved and stored in accordance with agency policy.
2. Each agency's written policy shall include standards and procedures that address:
 - a. security and access control;
 - b. creation of audit trails and access logs.
3. Each agency shall retain an unedited original version of stored body-worn camera footage, and should log anytime the footage is viewed, for what length of time and by whom, as well as any copying or editing. **211**

PS §3-511 states: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:
(10) the secure storage of data from a body-worn camera; **212**

COMMENTARY

This section of the "BWC Procedural Reference Guide" addresses the storage and maintenance of BWC recordings. As the Ad Hoc Commission clearly noted in its recommendations SECURITY is one of the critical issues to be addressed in creating a BWC recordings' retention file. Some law enforcement agencies have opted to store BWC recordings using their own agency server(s) or other digital medium while other agencies have chosen to store their recordings in the "cloud," using a third party vendor. Consideration of BWC recording files SECURITY should also include any applicable CJIS standards for the storage of criminal information if a third party vendor is used. Agencies may want to consider that SECURITY commitments from a third party BWC recordings storage vendor be documented in writing to ensure accountability if there is a breach of the system.

While cost is normally the first major factor that agencies consider in determining which option to select, the ability for ready access and SECURITY are two other issues that need consideration. Just as no one BWC policy and procedure fits all law enforcement agencies, no one BWC recording retention system fits all departments. Agencies should examine their recordings storage needs in light of their recordings retention schedule and the amount of BWC recordings that they anticipate will be made when making the decision to adopt one BWC recording retention over another.

REFERENCE MATERIAL

"Although the initial costs of purchasing the cameras can be steep, many police executives said that **data storage is the most expensive aspect of a body-worn camera program...**The cost of data storage will depend on how many videos are produced, how long videos are kept, and where the videos are stored. If the videos are stored on an online 'cloud' database, the costs typically go toward paying a third-party vendor to manage the data and to provide other services, such as technical assistance and forensic auditing. If videos are stored on an in-house server, agencies must often purchase additional computer equipment and spend money on technical staff and systems to ensure the data are secure." **213**

"Among police executives interviewed by PERF, **security, reliability, cost, and technical capacity** were the primary factors cited for choosing a particular method for storing video files from body-worn cameras. Among the more than 40 departments that PERF consulted, all stored body-worn camera video [either] on an in-house server (managed internally) or on an online 'cloud' database (managed by a third party vendor)." **214**

"Body-worn cameras record their video files internally onto flash memory. This **data must be uploaded or 'offloaded'** into an agency's evidence management and storage system, which means your body-worn camera policy must cover how the video evidence will be uploaded and stored, by whom, and for how long." **215**

"This leads to **one of the more important items for an agency to consider before purchasing BWC units: data storage and retention.** Storage issues such as how long and who has access to the recordings must also be considered. Furthermore, states have different laws on how long recordings must be stored based on the type of content and how or whether it is used in court. This is one of the most important things for an agency to consider as this can have a significant cost to a department. Not only must the data be protected and backed up regularly, but it must be accessible to all parties involved.

Some data needs to be retained forever; other data can be deleted quickly. Crime recordings must be managed by law and through policies. Even video of standard officer interaction may be retained for a default period of time to cover potential performance complaints. Policies should control the period of time this data is maintained. As recordings become more or less important to your agency, adjustments need to be made. The length of storage time can cost numerous man-hours in addition to the actual cost of the storage device. There are services available that provide end-to-end data management of the exact items mentioned above.” 216

“Once recordings are made, agencies will have to consider all aspects of storage and handling, including chain-of-custody issues...More expensive BWCs often have various safeguards to control data handling and thus assist in chain-of-custody control. They can require a party other than the officer to upload the data. These measures can often support chain-of-custody issues.” 217

“Policies should clearly state where body-worn camera videos are to be stored. The decision of where to store recorded data will depend on each agency’s needs and resources. PERF does not recommend any particular storage method. Agencies should consult with their department’s legal counsel and with prosecutors to ensure the method for data storage meets any legal requirements and chain-of-custody needs. Common storage locations include in-house servers (managed internally) and online cloud databases (managed by a third-party vendor). Some agencies burn recorded data to discs as part of the evidence file folder. Factors that agency leaders should consider when determining storage location include the following:

- security concerns;
- reliable methods for backing up data;
- chain-of-custody issues;
- capacity for data storage. 218

“Police executives noted a number of strategies that can help agencies protect the integrity and privacy of their recorded data, regardless of which storage method is used. Lessons learned regarding data storage include:

- consult with prosecutors and legal advisors:
 - legal experts can advise whether data storage policies and practices are in compliance with all relevant laws and adequately preserve evidentiary chain of custody;
- explicitly prohibit data tampering, editing, and copying;
- include protections against tampering with the data prior to downloading:
 - this helps to mitigate concerns that officers will be able to alter or delete recordings prior to downloading them; some body-worn camera systems are sold with technological safeguards that make it impossible for an officer to access the data prior to downloading;
- create an auditing system; it is important to have a record of who accesses video data, when, and for what purpose; some storage systems include a built-in audit trail;
- explicitly state who will be authorized to access data:
 - many written policies outline who will have access to the data (e.g., supervisors, Internal Affairs, certain other officers and department personnel, and prosecutors) and for what purpose (e.g., administrative review, training, and investigations);
- ensure there is a reliable back-up system:
 - some systems have a built-in backup system that preserves recorded data;
 - some departments copy recordings to disc and store them as evidence;
- consider third-party vendors carefully:
 - overwhelmingly, the police executives whom PERF interviewed reported that their legal advisors and prosecutors were comfortable using a third party vendor to manage the storage system;
 - when deciding whether to use a third-party vendor, departments consider the vendor’s technical assistance capabilities and whether the system includes protections such as an audit trail, backup system, etc.
 - executives stressed the importance of entering into a legal contract with the vendor that protects the agency’s data.

These strategies are important not only for protecting the privacy rights of the people recorded but also for preserving evidence and resolving allegations of data tampering. 219

“What you need from your evidence management system is ease of use and security. Evidence management software must help you track your files and recover them for authorized viewing. It also has to preserve the chain of custody. If you have in-car video systems, you may want to use the same make of camera so that you can use the same evidence management software. However, some body camera evidence management software can handle in-car video from other makes of camera. Whichever way you choose to go, make sure it suits your needs for sending files to other officers, to attorneys and prosecutors, and for honoring public records requests.

Once you start a body-worn camera program, you will be inundated with data. So storage is likely to be your body camera program's greatest ongoing expense. You will either need to store your data on in-house servers or on the cloud through a service provided by your camera maker or a third party. Be sure that you know the security concerns for both and make sure you are aware of all the costs that each might entail. 220

The Scientific Working Group On Digital Evidence [a group of law enforcement professionals engaged in the field of digital and multimedia evidence to foster communication and cooperation as well as to ensure quality and consistency within the forensic community @ www.swgde.org] offers the following direction regarding the archiving/storage of digital data to law enforcement agencies:

“It is essential that agencies using digital data store that data in such a way and under conditions that will permit access when it is needed. Archiving is the process of storing data in a manner suitable for long term availability and retrieval. In cases where archiving is desired, there should be an archiving plan from the moment the digital evidence is processed...It further suggests that industry accepted best practices for establishing and/or maintaining the available digital data archiving media should be used.

Why Archiving is Needed:

“Archiving is needed to ensure stored data is available for future use. The techniques employed should be chosen to ensure data can be located and accessed. Archiving may also involve the long term storage of data as required per statutory requirement and or departmental policies/regulations.

What Should be Archived:

“Any data that may be required for future access should be archived. Keep in mind that it may be necessary to retain original software and/or hardware in order to access the archived data at a later time.

Archive Maintenance:

“At the time an archive is created it should be verified against its original (i.e. hash verification). As new versions of hardware and software are released, backwards compatibility is not always ensured. Newer versions of software/hardware will not always be able to access the older data. It might be necessary over time to ensure that the newer versions of software/hardware will be able to access the older data. Archivists should be aware that software providers occasionally cease support for their proprietary file formats. Be aware that hardware/media generally has a specific lifespan as defined by the manufacturer. Utilize media recommended for long term storage when archiving data; if you archive to a server, it may be necessary to have a backup solution. Media should be handled and stored in a manner consistent with the manufacturers’ recommendations. Under optimum conditions, facilities where archives are maintained should be climate controlled according to recommended specifications.

Archive Management:

The following issues should be considered when dealing with archive management:

- **Archives should be securely stored.**
- **Storage facilities should be adequate in size for the data to be maintained as well as allow for growth.**
- **Media in which archived data is to be stored should be of adequate capacity.**
- **Archived data should be readily accessible via cataloging and/or indexing.**
- **Chain of custody documentation may be needed as dictated by agency policy and/or legal statutes.**
- **Data should be disposed of in accordance with statutory requirements and/or departmental policies/regulations.**

Standard Operating Procedures:

Agencies should develop, maintain and adhere to standard operating procedures (SOPs) governing the archiving of data, maintenance and management of those archives. 221

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

X – A. STORAGE AND MAINTENANCE OF BWC RECORDINGS:

Because each agency will determine how it will store and manage its BWC recordings, this model policy and procedure will only provide general guidance and direction on BWC recording file retention and maintenance issues including security concerns.

1. ALL BWC RECORDINGS SHALL ONLY BE DOWNLOADED AND STORED ON STORAGE DEVICES/MEDIUM, SERVERS, OR REMOTE INTERNET SITES [“CLOUD”] THAT HAVE BEEN SPECIFICALLY APPROVED BY THE **[NAME OF AGENCY]**.
2. The BWC ADMINISTRATOR [or individual designated by the Head of the agency to oversee the BWC program] shall serve as the designated custodian of records for all BWC recordings.
3. Once “tagged” and downloaded into the agency’s BWC recording files, the original, UNEDITED BWC recording shall be considered to be IMPOUNDED, i.e. under direct control of the **[NAME OF THE AGENCY]**:
 - i. the original, UNEDITED BWC recording will be retained in the agency’s BWC recording file according to Section X – H. Retention of BWC Recordings of this policy and procedure;
4. ALL BWC recordings are the SOLE property of the **[NAME OF AGENCY]**. No BWC recording may be accessed, reviewed, erased, destroyed/deleted, edited/modified/changed/altere, tampered with, copied, or disseminated without the expressed authorization of the Head of the agency or designee [the BWC ADMINISTRATOR].

REVIEW OF IMPOUNDED BWC RECORDINGS

Depending on the BWC recording retention system used by an agency each BWC user may be able to access his/her BWC recordings “impounded” in the agency’s BWC retention files. It is suggested that agencies ensure that such access is always password protected, be “view only” [except for the BWC Administrator] and track any access or viewing of each BWC recording. Agency policy and procedure should reflect how access to impounded BWC recordings is granted and tracked.

Any request to view any other BWC user’s recordings by any other member should be made in writing to the BWC ADMINISTRATOR on a form developed to request the inspection, review, copying or dissemination of any BWC recording.

5. BWC recordings shall normally be used only for official law enforcement purposes:
 - i. exceptions may be authorized, in writing, by the Head of **[NAME OF AGENCY]**.
6. ALL stored/“impounded” BWC recordings shall only be copied/shared/disseminated after a member has received the WRITTEN approval of his/her supervisor or command official and the BWC ADMINISTRATOR acting as the designee of the Head of the agency;
 - i. the BWC ADMINISTRATOR shall coordinate the copying of ALL BWC recordings.

7. It is strictly prohibited for any member of the [NAME OF AGENCY] to:
 - i. view BWC recordings for anything other than official law enforcement purposes;
 - ii. download or convert any BWC recording for personal use;
 - iii. post any BWC recording on any social media site;
 - iv. share/disseminate/release any BWC recording except as permitted in this policy and procedure.
8. BWC recordings shall be retained by the [NAME OF AGENCY] according to the retention schedule set forth in this policy and procedure unless ordered otherwise by a court of competent jurisdiction or by the Head of [NAME OF AGENCY].

BWC RECORDING STORAGE/MAINTENANCE POLICY

Each agency should set forth its BWC recording STORAGE/MAINTENANCE protocol in this section of its policy and procedure. It is suggested that agencies include, at a minimum, the following information:

A. SYSTEM DESCRIPTION:

1. "cloud" based/third party vendor:
 - a. third party vendor responsibilities/liabilities:
 - i. system access/maintenance;
 - ii. technical assistance;
 - iii. security:
 - iii-a. CJIS compliance [if applicable];
 - iii-b. response to data breach/compromise;
 - iv. system back-up;
 - b. dedicated agency server/other digital storage medium:
2. security measures;
3. recordings retention back-up;

B. BWC ADMINISTRATOR RESPONSIBILITIES;

C. SYSTEM OPERATION:

1. downloading BWC recordings;
2. accessing stored/"impounded" BWC recordings:
 - a. to view [only];
3. copying stored/"impounded" BWC recordings;

D. CHAIN OF CUSTODY;

E. SHARING WITH ALLIED LAW ENFORCEMENT AGENCIES/CRIMINAL JUSTICE AGENCIES;

F. DATA RETENTION SCHEDULE:

1. EVIDENTIARY recordings;
2. NON-EVIDENTIARY recordings;

X – B. BWC RECORDING RETENTION FILES SECURITY/CONFIDENTIALITY/PRIVACY:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

H. Required Storage and Maintenance of Recording

1. All files shall be SECURELY SAVED and STORED in accordance with agency policy.
2. Each agency's written policy shall include standards and procedures that address:
 - a. SECURITY and access control;
 - b. creation of audit trails and access logs. **222**

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (9) access to and confidentiality of recordings; **223**

COMMENTARY

The use of body-worn cameras to record a variety of law enforcement related events/incidents/encounters and the technology to store those images, sometimes indefinitely, have raised a number of questions about the SECURITY of such recordings and created a dilemma for law enforcement executives adopting a BWC program for their agency. On one hand, they understand that BWC recordings are considered, by law, as a public record/document subject to release to the public upon request, with some exceptions. On the other hand, they may view BWC recordings as criminal justice information/data that should be subject to strict levels of security and control as set forth in the FBI's Criminal Justice Information Services (CJIS) Security Policy. These two "realities" appear to be at cross-purposes to one another, i.e. one calls for public access while another calls for strict security of that information. Add the availability of third party vendors who store BWC recordings in the "cloud" to this mix and law enforcement executives need to give careful consideration to what type of security measures will surround their agencies' BWC recording retention files. Likewise, agencies which choose to store their own BWC recordings should consider having in place security measures that reflect professional and legal standards if those files are determined to be criminal information files.

It also needs to be pointed out that, although treated separately in this "BWC Best Practices Procedural Development Guide/Toolkit," the issues of BWC RECORDINGS SECURITY, CONFIDENTIALITY AND PRIVACY ARE INTERCONNECTED.

Because each agency will determine how it will store and manage its BWC recordings, this document only provides general guidance and direction on BWC recording file retention and maintenance issues including security concerns.

REFERENCE MATERIAL

"Agencies should develop and implement technical, operational, and policy tools and resources to establish and ensure appropriate security of the technology (including networks and infrastructure) and the data it provides to safeguard against risks of loss, unauthorized access or use, destruction, modification, or unintended or inappropriate disclosure. This principle includes meeting state and federal security mandates (e.g., the FBI's CJIS Security Policy), and having procedures in place to respond if a data breach, loss, compromise, or unauthorized disclosure occurs, including whether, how, and when affected persons will be notified, and remedial and corrective actions to be taken. **224**

The following excerpt from an IACP publication entitled "Technology Policy Framework – January 2014" provides some guidance for developing SECURITY procedures for dealing with digital data, including BWC recordings:

- Define information systems security requirements of the technology and access to the data to ensure the integrity of the systems and confidentiality of the data. **The security policy should address all state and federal mandated security policies, and clearly address procedures to be followed in the event of a loss, compromise, unauthorized access or use, destruction, modification, or unintended or inappropriate disclosure of data, including how and when affected persons will be notified, and remedial and corrective actions to be taken.** **225**

X – B. CONFIDENTIALITY/PRIVACY:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

G. CONFIDENTIALITY

2. Except as authorized by agency policy, copying, releasing, altering, erasing or allowing unauthorized viewing of an agency video recording (or portion thereof) is prohibited and may be subject an officer to disciplinary action. 226

COMMENTARY

Privacy or the potential lack thereof is one of the greatest concerns associated with the use of body-worn cameras by law enforcement agencies. While it can be argued that an individual's expectation of privacy has significantly decreased in a society in which it seems that everyone is equipped with a "smart" phone or other digital device capable of recording any public activity, many individuals still have mixed feelings about being recorded by law enforcement officers even in a public setting. The fact that body-worn cameras can record the reactions of crime victims and witnesses during traumatic events or during other events when victims and witnesses may be at their most vulnerable, even when those incidents occur in public, creates concerns for many individuals. Coupled with the likelihood that law enforcement officers will record calls for service when they respond to a person's residence or other "private" setting such as a hospital, the public's privacy concerns are further magnified. And finally, add to the privacy mix the ability of a law enforcement agency to indefinitely store/retain, reproduce and possibly release those recordings to others and there can be little doubt that confidentiality and privacy are seen by many as just another governmental intrusion into an individual's life. Concerns about confidentiality and privacy may be further complicated if and when direct access to BWC recording files is granted to allied law enforcement agencies or other criminal justice agencies such as the State's Attorney's Office.

*Likewise, agency executives need to consider the question as to whether the agency will **PROACTIVELY** release certain BWC recordings and include this in its BWC policy and procedure.*

Notwithstanding a law enforcement agency's noble motivation to present itself as being transparent and accountable for the actions of its personnel, agencies must be able to balance those motives with the concerns of the public for privacy. That quest for confidentiality and privacy appears through much of literature detailing the use of body-worn cameras and is reflected by the following excerpts from some of that literature.

REFERENCE MATERIAL

"New technologies in policing raise numerous policy issues that must be considered. This is especially true with body-worn cameras, which can have significant implications in terms of privacy, community relationships, and internal departmental affairs. As agencies develop body-worn camera programs, it is crucial that they thoughtfully examine how their policies and practices intersect with these larger questions. Policy issues to look at include the effect these cameras have on privacy and community relationships, the concerns raised by frontline officers, the expectations that cameras create in terms of court proceedings and officer credibility, and the financial considerations that cameras present." 227

"The proliferation of camera phones, advances in surveillance technology, and the emergence of social media have changed the way people view privacy, contributing to the sense that, as Police Commissioner Charles Ramsey of Philadelphia said, it sometimes feels as though 'everyone is filming everybody.' As technology advances and expectations of privacy evolve, it is critical that law enforcement agencies carefully consider how the technology they use affects the public's privacy rights, especially when courts have not yet provided guidance on these issues. Body-worn cameras raise many privacy issues that have not been considered before.

Unlike many traditional surveillance methods, body-worn cameras can simultaneously record both audio and video and capture close-up images that allow for the potential use of facial recognition technology. In addition, while stationary surveillance cameras generally cover only public spaces, body-worn cameras give officers the ability to record inside private homes and to film sensitive situations that might emerge during calls for service." 228

“There is also concern about how the footage from body-worn cameras might be stored and used. For example, will a person be able to obtain video that was recorded inside a neighbor’s home? Will agencies keep videos indefinitely? Is it possible that the body-worn camera footage might be improperly posted online? When implementing body-worn cameras, law enforcement agencies must balance these privacy considerations with the need for transparency of police operations, accurate documentation of events, and evidence collection. This means making careful decisions about when officers will be required to activate cameras, how long recorded data should be retained, who has access to the footage, who owns the recorded data, and how to handle internal and external requests for disclosure.” 229

“Privacy is an important consideration in the implementation of a BWC program that is related to some of the issues referenced when discussing the MPIA. The privacy issue involves both policy and legal aspects. Although cameras may provide valuable evidence for complaint resolution and litigation, very sensitive information may also be recorded during police/citizen interactions or as police respond to emergencies. For example, some individuals may be afraid to report criminal information to the police if they believe their identity will be preserved and/or possibly made known during civil or criminal litigation. Officers also have privacy concerns. Even while on duty, officers sometimes discuss personal matters when not taking police action, and may have legitimate concerns regarding the potential of reprisal for protected speech. Moreover, police officers often enter people’s homes and encounter bystanders and victims in a wide variety of sometimes stressful and embarrassing situations. Under some circumstances, officers may incidentally record people who have no involvement in the matter at hand. A law enforcement agency’s policy regarding continuous versus discretionary recording will play a significant role in this area. The Workgroup believes that agencies using BWC should have a clear policy in place addressing privacy issues to include how to handle inadvertent recordings and private conversations that have no relevance to enforcement activities.” 230

“It is also important for systems be architected to ensure that video is only accessed when permitted according to the polic[y]...and that rogue copies cannot be made. Officers should not be able to, for example, pass around video of a drunk city council member, or video generated by an officer responding to a call in a topless bar, or video of a citizen providing information on a local street gang. It is vital that public confidence in the integrity of body camera privacy protections be maintained. We don’t want crime victims to be afraid to call for help because of fears that video of their officer interactions will become public or reach the wrong party. Confidence can only be created if good policies are put in place and backed up by good technology.”

“Privacy is a counterpoint to access: increasing transparency necessarily means more people will view body-camera footage, which will frequently feature civilians who may not want the recordings of themselves shared. This type of access raises the issue of whether officers must affirmatively warn all citizens that they are being recorded. The ACLU, for one, has called for notice to citizens ‘wherever practicable,’ potentially in the form of ‘an easily visible pin or sticker saying ‘lapel camera in operation’ or words to that effect.’ 231

BWC recording in a RESIDENCE:

“There is a concern that footage taken inside a private home may be subject to public disclosure...this can be particularly problematic in states with broad public disclosure laws. ‘Here in Albuquerque, everything is open to public record unless it is part of an ongoing investigation. So if police come into your house and it is captured on video, and if the video isn’t being used in an investigation, your neighbor can request the footage under the open records act, and we must give it to them.’ ”

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“Scott Greenwood of the ACLU has expressed similar concerns:

‘An officer might be allowed to go into the residence and record, but that does not mean that everything inside ought to be public record. The warrant is an exception to the Fourth Amendment, not a waiver. We do not want this to show up on YouTube. My next-door neighbor should never be able to view something that happened inside my house without my permission.’ ” 233

“Because of the uniquely intrusive nature of police recordings made inside private homes, officers should be required to be especially sure to provide clear notice of a camera when entering a home, except in circumstances such as an emergency or a raid. Departments might also consider a policy under which officers ask residents whether they wish for a camera to be turned off before they enter a home in non-exigent circumstances. (Citizen requests for cameras to be turned off should themselves be recorded to document such requests.) Cameras should never be turned off in SWAT raids and similar police actions.” 234

“...questions remain, especially about the appropriateness of ‘police recordings made inside private homes’ given the footage’s ‘uniquely intrusive nature.’ Officers’ ability to review tapes, slow them down, and enhance images means that a recorded search of a home or a vehicle can lead to the discovery of evidence that would otherwise have gone unnoticed. Beyond initial police-citizen encounters, the long-term digital storage of those interactions, especially intimate interactions (such as recordings of domestic disputes), also raises privacy concerns...Footage taken inside the home could, for instance, be requested by other citizens (like neighbors), even though the privacy implications of these sorts of requests remain largely unexplored. Contextual policies thus need to be developed about when cameras should stop rolling...and when footage should cease to be stored. Without further guidance on these issues, civilians’ privacy may be violated or, equally problematic, police may raise privacy concerns as an excuse to curtail public oversight.” 235

“Police body cameras mean that many instances of entirely innocent behavior (on the part of both officers and the public) will be recorded, with significant privacy implications. Perhaps most troubling is that some recordings will be made inside people’s homes, whenever police enter — including in instances of consensual entry (e.g., responding to a burglary call, voluntarily participating in an investigation) and such things as domestic violence calls. In the case of dash-cams, we have also seen video of particular incidents released for no important public reason, and instead serving only to embarrass individuals. Examples have included DUI stops of celebrities and ordinary individuals whose troubled and/or intoxicated behavior has been widely circulated and now immortalized online. The potential for such merely embarrassing and titillating releases of video is significantly increased by body cams. Therefore it is vital that any deployment of these cameras be accompanied by good privacy policies so that the benefits of the technology are not outweighed by invasions of privacy.” 236

However, Chris Burbank, Chief of Police – Salt Lake City (Utah) Police Department counters this privacy concern:

“One of the things we are forgetting is that we already send officers into people’s homes and have them document all these bits of information that we’re worried about recording. If an officer enters someone’s home, they document the condition of the home, especially if it’s a case about a child or involves domestic violence or physical injury. So videos are just a technologically advanced type of police report that should be treated no differently from an initial contact form that we currently fill out every day. The advantage of a camera is now you have a factual representation as opposed to an interpretation by an officer.” 237

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

X – B. BWC RECORDING RETENTION FILES SECURITY/CONFIDENTIALITY/PRIVACY:

1. **ALL** BWC recordings are the **SOLE** property of the **[NAME OF AGENCY]**:
 - i. No member of the agency may access, review, erase, destroy/delete, edit/modify/change/alter, tamper with, copy, or disseminate a BWC recording without the **expressed** authorization of the BWC **ADMINISTRATOR** [or individual designated by the Head of the agency to oversee the agency’s BWC program] or as otherwise identified in this policy and procedure.

X – C. BWC RECORDINGS AS EVIDENCE:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 238

COMMENTARY

It is an understatement to say that BWC recordings can have significant EVIDENTIARY value. BWCs may record suspects actually committing a criminal offense whether against a community member or an officer; they can be used to capture victim, witness and/or suspect statements; they can record crime scenes and other forms of physical evidence as well as capture the environment in which such evidence is found; they can capture footage of personal injuries to victims or damage to personal property to support a victim's claim of a crime or, conversely, they can record the lack of injury or property damage so as to support an alleged suspect's claim that he/she did not commit a certain crime. The EVIDENTIARY value of each BWC recording will often be dependent on the BWC user's training and experience in using the device to the best of his/her investigative ability. Because BWC recordings may present significant EVIDENTIARY value, agencies should consider how they need to be handled and secured as related to other physical evidence.

When considering the evidentiary value of BWC recordings agency executives should consider that BWC recordings may contain not only inculpatory evidence that may help investigators and prosecutors in developing a case against an individual but also may contain potentially exculpatory evidence that may be subject to the Brady rules. It is suggested that agency Legal Advisors and/or representatives of the local State's Attorney's Office be consulted about how these BWC recordings should be handled and released.

Additionally, procedures by which to access to and review of EVIDENTIARY BWC recordings for legally permissible investigative purposes should be developed by an agency as part of its BWC policy and procedure. In as much as the Ad Hoc Commission recommended as a best practice "Each agency's written policy shall include standards and procedures that address:

a. security and access control;

b. creation of audit trails and access logs;

and "Each agency...should log anytime the footage is viewed, for what length of time and by whom, as well as any copying or editing" 239 agencies should consider developing a procedure, dependent on its storage and maintenance method, by which personnel can view and use BWC recordings in criminal investigations.

REFERENCE MATERIAL

"Expectations about body-worn cameras can also affect how cases are prosecuted in criminal courts. Some police executives said that judges and juries have come to rely heavily on camera footage as evidence, and some judges have even dismissed a case when video did not exist. 'Juries no longer want to hear just officer testimony—they want to see the video,' said Detective Cherry of Baltimore. 'But the video only gives a small snapshot of events. It does not capture the entire scene, or show the officer's thought process, or show an officer's investigative efforts. This technology shouldn't replace an officer's testimony. I'm concerned that if juries rely only on the video, it reduces the important role that our profession plays in criminal court.' 240

"Videos of officers' encounters with the public are digital media captured by high-tech devices but in some ways they are no different than the evidence stored in your agency's evidence lockers. Which means the chain of custody must be preserved, documented, and organized. Many of the manufacturers of body-worn camera systems supply their customers with evidence management software designed to maintain the chain of custody. But even if you use evidence management software, your policy needs to cover how the chain of custody for the files will be maintained. Be sure to include how the files will be accessed by non-agency personnel such as prosecutors, defense attorneys, and attorneys working civil suits and administrative hearings." 241

“The best policy, as with any physical evidence, is to always guard the integrity of the evidence, and ensure policies and procedures maintaining a strict chain-of-custody are followed (IACP, 2004). This would include being sure that recordings include information necessary to be admissible in court. Specifically, time and date stamp/identifiers must be imprinted on the media, either in the video images directly or in the underlying metadata information of the data files.” 242

→ Consult with prosecutors and legal advisors; legal experts can advise whether data storage policies and practices are in compliance with all relevant laws and adequately preserve evidentiary chain of custody. 243

“Once an audio/video recording is admitted as evidence in a court of law, the question of admissibility can be linked to whether an officer can authenticate the audio/video recording as a true and accurate depiction of the events. The defense, in order to prevent incriminating evidence from being presented at trial, may challenge the recording’s admissibility based on the chain of custody. The best policy, as with any physical evidence, is to always guard the integrity of the evidence, and ensure policies and procedures maintaining a strict chain-of-custody are followed (IACP, 2004). This would include being sure that recordings include information necessary to be admissible in court. Specifically, time and date stamp/identifiers must be imprinted on the media, either in the video images directly or in the underlying metadata information of the data files.” 244

“...body-worn cameras have significantly improved how officers capture evidence for investigations and court proceedings. Along with documenting encounters with members of the public, body-worn cameras can provide a record of interrogations and arrests, as well as what officers witness at crime scenes...Some prosecutors have started encouraging police departments to use body-worn cameras to capture more reliable evidence for court, particularly in matters like domestic violence cases that can be difficult to prosecute...body worn cameras have changed how domestic violence cases are handled. Oftentimes...the suspect is repeatedly abusing the victim, but either the victim refuses to press charges, or there is simply not enough evidence to go to trial...With the victim’s consent, Daytona Beach officers can now use body-worn cameras to videotape victim statements...footage shows first-hand the victim’s injuries, demeanor, and immediate reactions...In some cases, officers capture the assault itself on video if they arrive on the scene while the incident is still on-going...mean[ing] that [there is enough evidence to move forward with the case, even if the victim ultimately declines to prosecute...when suspects in domestic violence cases [are shown] footage from the body-worn cameras, often they plead guilty without even having to go to trial. 245

General principles for seizing and maintaining video evidence should be followed by law enforcement agencies:

1. Rules of Evidence:

The same general rules of evidence should be applied to all video evidence just as it would to any other type of exhibit such as a knife at a homicide or fingerprints at a break-in..

2. Chain of Custody:

Proper documentation of the chain of custody should be used and preserved to ensure the video evidence can be tendered in court as an exhibit.

3. Evidence Preservation:

Upon seizing the video evidence, action should be taken to ensure the evidence is not changed:

- a. For analog video evidence, the record tab needs to be removed or moved to a saved position.
- b. For digital video evidence, write protection needs to be in place.

4. Evidence Storage:

A climate-controlled room should be used to store video evidence.

5. Custodian Responsibility:

Maintaining the evidentiary value of video evidence is the responsibility of the individual who has seized or signed for receipt of the evidence. The individual is responsible for all actions taken in respect to that item until it is formally transferred to another individual. 246

“Footage from body cameras may help both prosecutors and defense attorneys by providing ‘objective evidence relating to whether a confession was voluntary, a search was consented to or justified, or a physical description matched a ‘lookout.’ A recent survey of prosecutors confirms this: ninety-six percent of prosecutors said that video evidence improved their ability to prosecute cases. In particular, video evidence has the advantage of ‘refresh[ing] the officer’s memory’ and ‘verify[ing] the accuracy of written reports and statements surrounding [an] incident.’ Still, overreliance on video evidence raises several concerns: For one, as discussed below, film is not inherently objective. It is also inevitable that video footage will not be available in every case, so creating such an expectation may be dangerous as juries could come to discount ‘other types of evidence, such as statements from police officers or other eyewitnesses.’” 247

“A final, fundamental concern regarding body cameras goes to the heart of their functionality: the reliability of the video footage they produce. This footage is, undoubtedly, the main advantage of the cameras in that it allows for review of officer conduct in the field. But the perceived “objectivity” of video evidence also creates a danger of overreliance. ‘Video purports to be an objective, unbiased, transparent observer of events that evenhandedly reproduces reality for the viewer,’ and ‘[f]rom an evidentiary standpoint, video evidence often will be overwhelming proof at trial.’ Even with body cameras rolling at all times, though, the picture may not capture either ‘what happened outside the camera’s view or the causation for actions shown . . . depend[ing] on the camera’s perspective (angles) and breadth of view (wide shots and focus).’ Perspective may have an outsized influence on a factfinder’s impression of the video: for instance, mock juries shown a first-person interrogation tape without the officer on screen are ‘significantly less likely to find an interrogation coercive, and more likely to believe in the truth and accuracy of the confession,’ than are jurors who are shown the identical interrogation but from a wider angle that includes the officer. This sort of distortion is especially concerning given that body-camera footage will always be filmed from the perspective of the officer, making it easier for a jury to credit this perspective.” 248

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

X – C. BWC RECORDINGS AS EVIDENCE:

1. BWC recordings determined to have EVIDENTIARY VALUE shall be considered to be and treated as evidence according to the [NAME OF AGENCY] evidence handling and retention policy and procedures.
2. RETREIVAL/COPYING OF BWC RECORDINGS FOR PROSECUTION REVIEW AND/OR FOR TRIAL SHALL BE COORDINATED BY THE BWC ADMINISTRATOR as set forth in Section X – G – 2. BWC File Sharing – State’s Attorney’s Office of this policy:
 - i. access to EVIDENTIARY BWC recordings by members of the [NAME OF AGENCY] for investigative purposes will be dependent on the type of method used to store and manage BWC recordings:

X – C - 1. INTERNAL STORAGE:

- i. if stored internally on a dedicated agency server, access to the BWC recording files will be controlled by the agency’s BWC ADMINISTRATOR unless a secure/individual password protected BWC recording access and recording review documentation protocol is developed;
- ii. if stored internally on other digital data storage medium such as a compact disc, blue-tooth, thumb drive, etc., access to BWC recordings will be controlled/documented by the procedure used when accessing or otherwise handling other physical evidence stored/retained by the agency;

X – C – 2. EXTERNAL STORAGE:

- i. If stored externally, in the “CLOUD” by a third party vendor, access to BWC recording files will be controlled by the protocols set up by the vendor with the concurrence of the [NAME OF AGENCY], including access and recording-review documentation protocols:
 - a. this access will be for review only;
 - b. is individual password protected;
 - c. is limited to BWC EVIDENTIARY recordings made by the officer whose password is used to access the recording files.
 - d. third parties who have a legitimate reason to access/review BWC recordings made by other officers will either have to be given unique password to access the files or coordinate their review of the BWC recording with the BWC ADMINISTRATOR;
3. notwithstanding the method used to store and manage BWC recordings, ALL EVIDENTIARY BWC RECORDINGS ARE CONSIDERED AND WILL BE HANDLED IN THE SAME MANNER AS ANY OTHER ITEM OF PHYSICAL EVIDENCE as set forth in [NAME OF AGENCY] evidence policy and procedures;
4. All agency personnel are reminded that BWC recordings may contain not only inculpatory evidence but may also contain exculpatory evidence which may be subject to the Brady discovery rules/motions:
 - i. personnel shall alert the Assistant State’s Attorney handling their case if they believe that an impounded BWC recording contains potential exculpatory material and document notification in the case file;

X – E. CHAIN OF CUSTODY:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.” 249

COMMENTARY

Because some BWC recordings may have investigative/EVIDENTIARY/probative value the chain of custody must be ensured. As pointed out earlier in this document that is one reason that BWC recordings are “tagged” during the downloading process.

The chain of custody is generally electronically maintained for BWC recordings that are downloaded onto the “CLOUD” or other third party vendor site. However, downloading BWC recordings to internal agency servers and or portable storage devices/media may require agencies to develop a chain of custody record if the recordings are removed from storage for review, case preparation or copying for the State’s Attorney or other reason.

It is suggested that depending on an agency’s BWC recording storage and maintenance protocols that they include “chain of custody” measures in the agency’s BWC policy and procedure.

REFERENCE MATERIAL

Once an audio/visual recording is admitted as evidence in a court of law, **the test for admissibility becomes whether an officer can authenticate the audio/video recording as a true and accurate depiction of what transpired during the incident.** However, to prevent incriminating evidence from being presented at trial, **the defense may challenge the recording's admissibility based on the chain of custody.** Although prosecutors across the country are split on whether video recordings fall into this category, **the best policy, as with any physical evidence, is to always guard the integrity of the evidence and ensure policies and procedures maintain a strict chain of custody and are followed.** 250

Camera metadata:

Camera metadata was automatically generated by the camera technology. These data included the camera serial number, the officer to whom it was assigned, date/time stamps of activation and deactivation, length of recordings, and freeform data entered by users that briefly described the nature or important details of the recording (e.g. departmental report number, accidental activation, relevant information about the recording). 251

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

X – E. CHAIN OF CUSTODY:

1. ACCESS to a “tagged” and downloaded, UNEDITED, original BWC recording will be permitted only as described in this policy and procedure:
 - i. this procedure will be strictly adhered to by ALL personnel in order to ensure that a proper CHAIN OF CUSTODY for any BWC recording deemed to have EVIDENTIARY value is maintained;
2. Any BWC recording which has been redacted, edited, or altered for any reason and in any way in accordance with the procedures described in this policy and procedure shall be:
 - i. clearly labelled as having been altered; and
 - ii a copy of the altered/redacted recording shall be maintained in the BWC recording file along with the original, UNEDITED version.

X – F. BWC FILE SHARING – ALLIED LAW ENFORCEMENT AGENCIES – SECURITY CONSIDERATIONS:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:
(17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.” 252

COMMENTARY

In today’s digital age, sharing information with allied law enforcement agencies is no longer simply confined to passing along lookouts, BOLOs or sharing written crime or intelligence reports. With the use of body-worn cameras, victim/witness/suspect statements may be recorded and made available to other law enforcement agencies as investigative tools. Likewise, BWC recordings of critical incidents may be beneficial for debriefing or training purposes and shared with allied agencies. Because of the confidentiality, privacy and security issues that are involved in sharing BWC recordings it is suggested that agencies include, in their written policy and procedure, clear directions that address how the sharing of BWC recordings with allied law enforcement agencies will be handled.

REFERENCE MATERIAL

The following from an IACP publication entitled “**Technology Policy Framework – January 2014**” summarizes guidance for developing procedures for dealing with digital data, including BWC recordings:

- Define what constitutes authorized use of data captured, stored, generated, or otherwise produced by a technology.
- Define who is authorized to approve access and use of the data, for what purposes and under what circumstances.
- Specify whether data captured, stored, generated, or otherwise produced by a technology can be shared with other agencies, under what circumstances, how authorization is provided, how information that is shared is tracked/logged, how use is monitored, and how policy provisions (including privacy) will be managed and enforced.
- Any agency contributing and/or accessing shared information should be a signatory of a data sharing Memorandum of Understanding (MOU).
- Dissemination of any shared information should be governed by compliance with applicable state and federal laws, standards, agency privacy policies, and procedures as agreed in the MOU. **253**

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

X – F. BWC FILE SHARING – ALLIED LAW ENFORCEMENT AGENCIES – SECURITY CONSIDERATIONS:

X – F – 1. BWC FILE SHARING – ALLIED LAW ENFORCEMENT AGENCIES:

1. It is the general policy of the **[NAME OF AGENCY]** to share investigative information/criminal intelligence with allied law enforcement agencies as permitted by law:
 - i. certain EVIDENTIARY BWC recordings may have either criminal investigative or intelligence value and may be shared with allied law enforcement agencies;
 - ii. requests for sharing BWC recordings with allied law enforcement officers/agents shall have supervisory approval and shall be made, in writing, to the BWC **ADMINISTRATOR** on the appropriate agency form:
 - a. the BWC **ADMINISTRATOR** shall maintain a copy of that form in file for as long as the BWC recording is retained by the agency;
 - iii. **BEFORE** a BWC recording is shared, allied law enforcement officers/agents with whom EVIDENTIARY BWC recordings are shared shall be asked to sign the **[NAME OF AGENCY]** BWC RECORDINGS LIMITATIONS OF USE AGREEMENT which shall include provisions concerning:
 - a. limitations of use for lawful law enforcement purposes;
 - b. confidentiality/privacy restrictions;
 - c. non-copying restrictions;
 - d. non-dissemination restrictions:
 - d-i. retention of ownership by the recording agency;

X – F – 2. BWC FILE SHARING – STATE’S ATTORNEY’S OFFICE – SECURITY CONSIDERATIONS:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.” 254

COMMENTARY

It is suggested that agencies develop a clear, working agreement/memorandum of understanding with the local State’s Attorney’s Office regarding how EVIDENTIARY BWC recordings that may be needed for prosecutorial review, discovery motions, or for trial presentation will be handled. This type of data sharing is becoming more common with the expansion of the use of body-worn cameras and can have real implications for the security of an agency’s BWC recordings files.

BWC recording files that are retained solely by the agency in its server(s) or on other data storage media will require one set of procedures. Because some “CLOUD” based storage files may allow access/provide a portal for prosecuting attorneys to access an agency’s BWC recordings that are EVIDENTIARY, BWC recording files maintained by a third party vendor will require a different set of procedures.

In either case, it is suggested that a working agreement/MOU include how access to an agency’s BWC recording retention files will be handled; responsibility for reproduction of any necessary BWC recordings; responsibility for redaction in BWC recordings; chain of custody issues; confidentiality and privacy restrictions; third party dissemination of the recordings; the BWC recording medium to be used to share the files, i.e. discs, thumb drives, direct access to BWC recording files, etc.; and any other BWC recording issues deemed appropriate by the agency and the State’s Attorney’s Office. This type of agreement will provide some level of consistency and accountability for EVIDENTIARY BWC recordings shared with the State’s Attorney’s Office.

REFERENCE MATERIAL

“Our analysis suggested that the city’s prosecutor office does not have the necessary resources to receive and review video files from officer worn body cameras. Currently the Maryvale precinct allocates specially assigned personnel to work alongside the prosecutor’s office to ensure the proper chain of custody of evidence and attend to logi[sti]cal issues pertaining to the camera data. While this strategy is effective in the short term, it is necessary to revisit the issue in the near future to ensure that resources are allocated appropriately. Aside from the citywide strategic plan, the police, prosecutors and city manager’s office should discuss associated issues and identify a short, medium and long term sustainability strategy for addressing logistical issues associated with BWC video files.” 255

Included in this section is an example of a working agreement from the San Diego County District Attorney’s Office. It is provided for informational purposes only.

***San Diego County District Attorney - Body Worn Camera Evidence Protocol
April 2, 2015***

1. For those agencies that have cloud based storage of their body worn camera videos we will accept the videos from their cloud storage. If permitted for the short term we will access, view and share the evidence from that platform.
2. Discovery of the video evidence will occur only after DDA review of the video(s) and then either upon request or within the statutory discovery requirements.
3. It is up to the assigned DDA to make the redaction decisions and it is presumed that DDA will do the redaction unless special redaction is needed for trial. (This applies to the evidence.com videos since they have a redaction upon viewing option.)

4. For public defense lawyers we are going to provide BWC discovery via the cloud-after they establish a my.evidence.com account. Shortly we will include all private lawyers who use E-discovery to open my.evidence.com accounts. The remaining lawyers will get discs. Upon deployment of cameras not using my.evidence.com discs will be burned for discovery until a cloud solution is developed.
5. The discovery link to my.evidence.com can be provided by the DDA after editing or as the Division/Branch Chief decides. Disc discovery will track Branch/Division protocol.
6. Protocols relating to retention and storage of the videos are being evaluated and will be disseminated later this year. For now all the videos are stored on our agency account at evidence.com.
7. Protective orders or restrictions for public dissemination are being evaluated.
8. If a viewing DDA has concerns about misconduct or Brady material- they will alert their division chief. If it is determined to be misconduct or Brady material the Chief will forward the information to Special Operation. Special Operations will be the only conduit to the police department's internal affairs relating to BWC videos. 256

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLe sections of this document are ADVISORY ONLY]

X – F – 2. BWC FILE SHARING – STATE’S ATTORNEY’S OFFICE:

1. It is the policy of the [NAME OF AGENCY] that all of its members assist and cooperate with the appropriate representatives of the State’s Attorney’s Office and/or the United States Attorney’s Office (if applicable) during any criminal investigation undertaken by the [NAME OF AGENCY].
2. This cooperation includes the disclosure and sharing of any relevant evidence discovered or otherwise collected during a criminal investigation that must be shared with prosecutors in order for them to:
 - i. develop sufficient factual information to enable the prosecutor to make a fair and objective determination of whether and what charges should be brought and to guard against prosecution of the innocent, and
 - ii. develop legally admissible evidence sufficient to obtain and sustain a conviction of those who are guilty and warrant prosecution.
3. In as much as BWC recordings may be or contain items of relevant evidence that should be shared with prosecutors, it is the policy of the [NAME OF AGENCY] to make any relevant EVIDENTIARY BWC recording retained in the [NAME OF AGENCY] BWC recording retention files available to prosecutors according to the Memorandum of Understanding/Working Agreement developed and entered into by [NAME OF AGENCY] and the State’s Attorney’s Office and/or United States Attorney’s Office.
4. The member of the [NAME OF AGENCY] who is the PRIMARY investigating officer in the case shall be responsible for personally notifying the Assistant State’s Attorney of record or Assistant United States’ Attorney of record that a potential EVIDENTIARY BWC recording exists regarding the matter under investigation or for which an individual has been charged:
 - i. the PRIMARY investigating officer may be either:
 - a. the BWC user who made the recording if he/she maintains responsibility for continuing the investigation into the matter; or
 - b. the lead detective/investigator assigned to conduct an investigation into the matter;
 - ii. notification shall take place according the Memorandum of Understanding/Working Agreement entered into by the [NAME OF AGENCY] and Office of the State’s Attorney and/or U.S. Attorney’s Office;

- iii. notification of the appropriate prosecutor of record shall be documented by the PRIMARY investigating officer in a supplemental report maintained in the case file and shall include:
 - a. the name of the prosecutor of record [assigned to the case] who is notified;
 - b. the date and time notified;
 - c. any particular/special instructions regarding the BWC recording;
- iv. if requested to do so, make arrangements for the prosecutor of record to view a BWC recording to determine if there is any probative/evidentiary value to the BWC recording;
- v. if instructed to do so by the prosecutor of record, the PRIMARY investigating officer shall be responsible for:
 - a. obtaining a copy of the BWC recording from the BWC ADMINISTRATOR;
 - b. ensuring that the proper chain of custody form accompanies the BWC recording copy;
 - c. deliver the BWC recording to the prosecutor of record;
 - d. obtain a copy of the chain of custody form and maintain it in the case file;

5. It shall NEVER BE ASSUMED that the Assistant State's Attorney or the Assistant United States' Attorney has been notified simply because the BWC user has included the appropriate notation that a BWC recording was made in the Incident Report that may have been forwarded to the prosecutor's office.

6. The Memorandum of Understanding/Working Agreement shall include, but not be limited to:
- i. when a member of the [NAME OF AGENCY] shall notify the prosecutor of record that an EVIDENTIARY BWC recording exists;
 - ii. when and how the prosecutor of record may view a potential EVIDENTIARY BWC recording to determine if it has probative value and/or is subject to Brady or discovery rules/motions;
 - iii. how BWC recordings will be provided to the prosecutor of record;
 - iv. any requirements/restrictions regarding an EVIDENTIARY BWC recording's public release;
 - v. whether an EVIDENTIARY BWC recording is subject to redaction and who will redact the recording;
 - vi. how "discoverable" BWC recordings will be disclosed/distributed to the defense attorney;
 - vii. how any prosecutorial concerns about the contents of an EVIDENTIARY BWC recording will be communicated to the [NAME OF AGENCY];
 - viii. restrictions on viewing of any EVIDENTIARY BWC recording in the possession of the prosecutor of record;
 - ix. how EVIDENTIARY recordings will be returned to the [NAME OF AGENCY] after a case has been concluded;
 - x. how modifications/changes to this agreement will be made;

X – G. RETENTION OF BWC RECORDINGS:

The Maryland Police Training Commission's "*Body-worn Camera Policy*" [*Ad Hoc* Commission recommendation]:

J. RETENTION OF RECORDS

An agency's written policy shall include retention period(s) for BWC recordings. **257**

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (12) retention of recordings; **258**

COMMENTARY

As most law enforcement executives who decide to implement a body-worn camera program in their agency will come to appreciate, developing a data retention schedule can be a challenge. Unfortunately, there is no simple matrix that can be used to develop a BWC recording schedule. While there are some general rules that can guide each law enforcement agency as it develops its own BWC recordings retention schedule, the final retention schedule rests with each agency and the types of incidents/events/encounters recorded by the BWC. The reference material that is presented in this section indicates that there is a wide variety of philosophies regarding the retention of BWC recordings, especially those determined to have potential EVIDENTIARY VALUE.

Research has shown that BWC recordings that have been determined to be of NON-EVIDENTIARY value can be purged in a relatively short period of time. However, BWC recordings deemed to have EVIDENTIARY value may have to be retained for years, if not indefinitely. The costs associated with the storage and maintenance of BWC recordings will increase as the number of recordings rises. Additionally, the length that BWC recordings are retained will have an impact on security and privacy concerns as the longer BWC files are retained the greater the potential for a security and/or privacy breach even when stored in a “secure” environment. Also, the longer BWC recordings are in file the more susceptible they are to public information requests. These are several issues that a law enforcement executive must consider when developing his/her agency’s BWC retention schedule.

Agency executives may want to ensure that the agency’s retention schedule for retaining non-evidentiary BWC recordings is married to those time periods during which it will accept complaints from the public about officer misconduct. In any event, the BWC recording retention schedule should be part of the agency’s BWC policy and procedure and available to the public.

REFERENCE MATERIAL

“Policies should specifically state the length of time that recorded data must be retained. For example, many agencies provide 60-day or 90-day retention times for non-evidentiary data. Agencies should clearly state all retention times in the policy and make the retention times public by posting them on their websites to ensure community members are aware of the amount of time they have to request copies of video footage. Retention times for recorded data are typically subject to state laws and regulations that govern other types of evidence. Agencies should consult with legal counsel to ensure retention policies are in compliance with these laws.

- For evidentiary data, most state laws provide specific retention times depending on the type of incident. Agencies should set retention times for recorded data to meet the minimum time required by law but may decide to keep recorded data longer.
- For non-evidentiary data, policies should follow state law requirements when applicable. However, if the law does not provide specific requirements for non-evidentiary data, the agency should set a retention time that takes into account the following:
 - Departmental policies governing retention of other types of electronic records;
 - Openness of the state’s public disclosure laws;
 - Need to preserve footage to promote transparency and investigate citizen complaints;
 - Capacity for data storage.

Agencies should obtain written approval for retention schedules from their legal counsel and prosecutors.” **259**

“To help protect privacy rights, it is generally preferable to set shorter retention times for non-evidentiary data. The most common retention time for this video is between 60 and 90 days. When setting retention times, agencies should consider:

- privacy concerns;
- the scope of the state’s public disclosure laws;
- the amount of time the public needs to file complaints;
- data storage capacity and costs. **260**

“The length of time that departments retain body-worn camera footage plays a key role for privacy. The longer that recorded videos are retained, the longer they are subject to public disclosure, which can be problematic if the video contains footage associated with privacy concerns. And community members’ concerns about police departments collecting data about them in the first place are lessened if the videos are not retained for long periods of time. The retention times are generally dictated by the type of encounter or incident that the footage captures. Although protocols vary by department, footage is typically categorized as either ‘evidentiary’ or ‘non-evidentiary.’

“Evidentiary video involves footage of an incident or encounter that could prove useful for investigative purposes, such as a crime, an arrest or citation, a search, a use of force incident, or a confrontational encounter with a member of the public. Evidentiary footage is usually further categorized by specific incident type, and the retention period is governed by state evidentiary rules for that incident. For example, many state laws require that footage involving a homicide be retained indefinitely, but video of a traffic citation must be kept for only a matter of months. Departments often purge evidentiary videos at the conclusion of the investigation, court proceeding, or administrative hearing for which they were used. 261

“Policies should specifically state the length of time that recorded data must be retained. For example, many agencies provide 60-day or 90-day retention times for NON-EVIDENTIARY data. Most state laws provide specific retention times for videos that contain EVIDENTIARY footage that may be used for investigations and court proceedings. These retention times will depend on the type of incident captured in the footage. Agencies typically have more discretion when setting retention times for videos that do not contain evidentiary footage. When setting retention times, agencies should consider the following:

- State laws governing evidence retention;
- Departmental policies governing retention of other types of electronic records. 262

“Non-evidentiary video involves footage that does necessarily have value to aid in an investigation or prosecution, such as footage of an incident or encounter that does not lead to an arrest or citation or of general activities that an officer might perform while on duty (e.g., assisting a motorist or clearing a roadway). Agencies often have more leeway in setting retention times for non-evidentiary videos, which are generally not subject to state evidentiary laws.

“Of the departments that PERF consulted, the most common retention time for non-evidentiary video was between 60 and 90 days. Some departments retain non-evidentiary video for an even shorter period. Fort Collins, Colorado, for example, discards footage after seven days if there is no citizen contact recorded and after 30 days if contact is made but no enforcement action is taken. On the other end of the spectrum, some departments, such as Albuquerque, retain non-evidentiary video for a full year.” 263

“Many police executives express a preference for shorter retention times for non-evidentiary video. Shorter retention periods not only address privacy concerns but also reduce the costs associated with data storage. On the other hand, police executives noted that they must keep videos long enough to demonstrate transparency and to have footage of an encounter in case a complaint arises about an officer’s actions. For example, departments in Rialto, Fort Collins, Albuquerque, Daytona Beach, and Toronto base retention times in part on how long it generally takes for complaints to be filed.” 264

“The length of time that BWC recordings are retained must be carefully considered because this may have a significant impact on the privacy of officers and citizens alike. At the same time, for the recordings to provide the greatest value to police and citizens, they must be kept for some reasonable period of time. The data retention period for BWC could be driven by a variety of factors, including but not limited to the following:

- length of time allotted for a citizen to file a complaint against an officer;
- time it typically takes to resolve complaints and complete investigations;
- statute of limitations in criminal cases;
- period of time permitted for the filing of civil litigation.

One factor that cannot be overlooked when deciding on a retention period is cost. Storing audio and video recordings for extended periods requires large storage capacity, and increased storage capacity requirements add to the overall cost of a BWC program. Members of the Workgroup were unable to agree on an ideal retention period for images recorded by BWC. In the final analysis, data retention periods for BWC data may need to be established by either legislation or individual agency policy.” 265

Many states have laws specifying how long evidence and other records must be maintained. Recordings should be maintained in a secure manner for the period of time required by state law or as otherwise designated by the law enforcement agency. Retention schedules for recordings should take into consideration the possibility of a civilian complaint against an officer sometime after the encounter. Recordings in these situations can prove invaluable in resolution of the complaint. However, storage costs can become prohibitive, so agencies must balance the need for retaining unspecified recordings with the desire to have this information available. 266

“Digital Recordings shall be preserved in accordance with state law, for at least two years, or if a case is under investigation or litigation longer than two years, at least three years after the final disposition of the matter (including appeals) unless a written request is made to store them for a longer period of time for a legitimate law enforcement purpose. 267

“Agencies should have a policy that clearly articulates data collection, retention, access, and use practices are aligned with their strategic and tactical objectives, and that data are retained in conformance with local, state, and/or federal statute/law or retention policies, and only as long as it has a demonstrable, practical value.

→ Data Retention and Use:

Establish data retention schedules in accordance with state or federal law or policy, access privileges, purge, and deletion criteria for all data captured, stored, generated, or otherwise produced by a technology. Agencies should consider differentiating between data that are part of an ongoing or continuing investigation and information that is gathered and retained without specific suspicion or direct investigative focus. Agencies may wish to limit the retention of general surveillance data. 268

“Data should be retained no longer than necessary for the purpose for which it was collected. For the vast majority of police encounters with the public, there is no reason to preserve video evidence, and those recordings therefore should be deleted relatively quickly.

→ Retention periods should be measured in weeks not years, and video should be deleted after that period unless a recording has been flagged. Once a recording has been flagged, it would then switch to a longer retention schedule.

→ These policies should be posted online on the department’s website, so that people who have encounters with police know how long they have to file a complaint or request access to footage.

→ Flagging should occur automatically for any incident: o involving a use of force:

■ that leads to detention or arrest; or

■ where either a formal or informal complaint has been registered.

→ Any subject of a recording should be able to flag a recording, even if not filing a complaint or opening an investigation.

→ The police department (including internal investigations and supervisors) and third parties should also be able to flag an incident if they have some basis to believe police misconduct has occurred or have reasonable suspicion that the video contains evidence of a crime. We do not want the police or gadflies to be able to routinely flag all recordings in order to circumvent the retention limit.

→ If any useful evidence is obtained during an authorized use of a recording (see below), the recording would then be retained in the same manner as any other evidence gathered during an investigation.

Back-end systems to manage video data must be configured to retain the data, delete it after the retention period expires, prevent deletion by individual officers, and provide an unimpeachable audit trail to protect chain of custody, just as with any evidence. “ 269

Sample RETENTION SCHEDULES:

Laurel, Maryland Police Department:

F. VIDEO PURGE:

1. The video will be purged from the server after 181 days from the date of download.

2. Video may be purged at the discretion of those responsible of video retention and management.

a. The only exception will be that video which has been flagged for indefinite retention. 270

Washington D.C. Metropolitan Police Department:

E. RETENTION:

1. BWC recordings shall be retained and accessible on the BWC database for a period of 90 calendar days unless they are categorized as “Retain”.
2. “Retain” is a secondary category for use by officials, the MPD BWC Coordinator, the Internal Affairs Bureau, and the Court Liaison Division (CLD) and shall be applied to:
 - a. Any recording that has been reviewed and flagged for retention beyond 90 calendar days; or
 - b. Any BWC recording of a papered case that has been flagged by the CLD.
3. Digital evidence captured by BWCs shall be treated as official records and handled pursuant to existing Department policies and procedures including, but not limited to, SO-06-03 [Records Retention and Evidence Preservation (Millicent Allewelt Act of 2004)].
4. BWC recordings categorized as “Retain” shall be retained until all related criminal proceedings, claims, litigation, litigation holds, complaints, administrative investigations or related incidents are resolved. **271**

San Diego Police Department:

O. RETENTION OF DIGITAL EVIDENCE:

All recordings related to any criminal proceeding, claim filed, pending litigation, or a personnel complaint, shall be preserved until that matter is resolved and/or in accordance with the law. **272**

Louisville Metro Police Department

4.31.14 RETENTION/DISTRIBUTION:

WVS recordings shall be retained for a minimum of 30 days (non-evidentiary recordings), with the exception of those recordings which need to be retained longer (evidentiary recordings) due to an investigation (including criminal, administrative, Administrative Incident Report (AIR), etc.), litigation or open records request. These recordings shall be maintained until all investigative or legal activity is completed, pursuant to KRS or applicable records retention schedules. Recordings containing DUI video evidence shall be maintained and destroyed pursuant to KRS 189A.100. **273**

Milwaukee Police Department

I. DATA PRIVACY / RETENTION OF RECORDINGS / RECORDS REQUESTS:

1. All digital media that is captured with a BWC is the property of and will be retained by the Milwaukee Police Department for a minimum of 120 days following the date it is recorded. Captured video may be retained for longer periods in the event the video is the subject of a litigation hold, a criminal case, part of discovery, etc... **274**

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLe sections of this document are ADVISORY ONLY]

X – G. RETENTION OF BWC RECORDINGS:

Because each agency will determine how it will RETAIN its BWC recordings, this model policy and procedure will only provide general guidance and direction on BWC recording RETENTION.

1. **ALL** BWC recordings made by BWC users will be retained for a **MINIMUM PERIOD OF ____ DAYS:**

EXCEPTION:

A BWC recording that is determined to be accidentally/unintentionally/inadvertently made and/or is of one of the prohibited activities as specified in this procedure may be deleted by the BWC **ADMINISTRATOR** as set forth in Section X – H. Deletion of BWC Recordings of this policy and procedure;

2. BWC recordings “tagged” as NON-EVIDENTIARY SHALL BE RETAINED IN THE BWC RECORDING FILES FOR
A **MINIMUM PERIOD OF ____ DAYS:**

i. Supervisors/command officials have the authority to “flag” any NON-EVIDENTIARY BWC recording for extended retention for cause:

a. requests to extend retention of a particular BWC recording shall be submitted in writing to the BWC ADMINISTRATOR and include:

a-i. the identifying information about the specific BWC recording to be retained;

a-ii. the reason for the retention request;

a-iii. the anticipated length of the extension;

b. the BWC ADMINISTRATOR shall:

b-i. evaluate the request and respond to the requesting individual as appropriate;

b-ii. notify the **[NAME OF THE THIRD PARTY VENDOR]** TO “FLAG” THE BWC RECORDING TO PREVENT DELETION UNTIL FURTHER NOTICE;

ii. OTHER MEMBERS of the agency may request, in writing, that a specific NON-EVIDENTIARY BWC recording for extended retention for investigative or other criminal justice purposes in the manner described above;

3. BWC recordings “tagged” as EVIDENTIARY SHALL BE RETAINED IN THE BWC RECORDING FILES UNTIL FINAL RESOLUTION OF ALL RELATED:

i. CRIMINAL PROCEEDINGS;

ii. CLAIMS, LITIGATION;

iii. LITIGATION HOLDS;

iv. COMPLAINTS;

v. ADMINISTRATIVE INVESTIGATIONS; OR

vi. RELATED MATTERS/INCIDENTS.

4. IN ANY MATTERS BEFORE THE COURT OR WITH THE POTENTIAL OF GOING TO COURT, FINAL RESOLUTION SHALL INCLUDE “UNTIL AVAILABLE APPELLATE ACTION HAS TAKEN PLACE.”

X – H. DELETION of BWC recordings:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 states: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:
(17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.” **275**

COMMENTARY

DELETING unnecessary BWC recordings stored in an agency's BWC recordings storage and maintenance system is an important step in keeping an agency's BWC recordings' file viable. Law enforcement agencies which have already adopted body-worn camera programs and have gathered a significant number of recordings have realized that storing and maintaining the amount of recorded data generated by BWCs is costly. Likewise, they realize that unnecessarily warehousing BWC recordings increases the potential that an individual's privacy can be compromised even if security measures are in place. Thus, the deletion of unnecessary BWC recordings is a critical step in BWC recording storage and maintenance.

Notwithstanding the need to regularly/routinely delete unnecessary BWC recordings, it is suggested that the process by which those files are deleted should be set out in an agency's BWC policy and procedure so that no necessary BWC files are mistakenly or inadvertently deleted. Clear-cut instructions as to who has the authority to delete those recordings and how those recordings are to be deleted should ensure that an agency is not embarrassed because of either BWC retention files that contain unnecessary recordings or BWC retention files that are unable to produce necessary recordings.

REFERENCE MATERIAL

"Some data needs to be retained forever; other data can be deleted quickly. Crime recordings must be managed by law and through policies. Even video of standard officer interaction may be retained for a default period of time to cover potential performance complaints. Policies should control the period of time this data is maintained. As recordings become more or less important to your agency, adjustments need to be made. The length of storage time can cost numerous man-hours in addition to the actual cost of the storage device. 276

"Data should be retained no longer than necessary for the purpose for which it was collected. For the vast majority of police encounters with the public, there is no reason to preserve video evidence, and those recordings therefore should be deleted relatively quickly. Retention periods should be measured in weeks not years, and video should be deleted after that period unless a recording has been flagged. 277

"[Retention] policies should be posted online on the department's website, so that people who have encounters with police know how long they have to file a complaint or request access to footage." 278

"Systems should ensure that data retention and destruction schedules are properly maintained." 279

"To protect privacy, videos should be deleted after the elapse of a specified period of time. Policies should clearly state the length of time data is to be retained.

→ Non-evidentiary footage:

- The retention period of non-evidentiary footage should be measured in weeks, not years. Most existing policies retain such footage between 60-90 days.

→ Evidentiary footage:

- Videos which are part of an investigation should be maintained until the investigation and any ensuing litigation is concluded. In serious felony cases resulting in the conviction and sentence of a number of years or imposition of a death sentence, the footage should be retained indefinitely. 280

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

X – H. DELETION of BWC recordings:

1. The [NAME OF AGENCY] permits the DELETION/ERASURE of BWC recordings under the following conditions:
 - i. a PROHIBITED ACTIVITY, as described in Section XI – B – 4 – d. Prohibited BWC Activation of this policy and procedure, has been recorded and there is no legitimate reason for the recording of that activity;
 - ii. an accidental/unintentional/inadvertent BWC recording, as set forth in this policy, has been made;

- iii. a NON-EVIDENTIARY BWC recording has been retained beyond the minimum ____ day period set forth in Section X – H. Retention of BWC Recordings of this policy and procedure:

EXCEPTION:

A request to “flag” and retain a specific BWC recording has been submitted and approved by the BWC ADMINISTRATOR;

- iv. an EVIDENTIARY BWC recording after all criminal, civil, or administrative litigation has been adjudicated/concluded including any appellate hearings;

2. The BWC ADMINISTRATOR is the ONLY INDIVIDUAL PERMITTED TO DELETE OR AUTHORIZE A THIRD PARTY VENDOR TO DELETE ANY [NAME OF AGENCY] BWC RECORDING;

3. ALL OTHER AGENCY PERSONNEL ARE STRICTLY PROHIBITED FROM ERASING or OTHERWISE DELETING, altering, copying, reusing, modifying, tampering with ANY BWC recording whether that recording has been “tagged” and downloaded into the [NAME OF THE AGENCY] BWC recording retention files or not.

4. Unless requested not to delete a NON-EVIDENTIARY BWC recording for cause, the BWC ADMINISTRATOR SHALL:

- i. AUTHORIZE THE [NAME OF THE THIRD PARTY VENDOR] RESPONSIBLE FOR STORING AND MAINTAINING THE [NAME OF THE AGENCY] BWC RECORDINGS TO DELETE NON-EVIDENTIARY BWC RECORDINGS that have been retained beyond the minimum ____ day retention period AS SOON AS PRACTICAL AFTER THE MINIMUM ____ DAY retention period has expired:
- a. as part of its contract with the [NAME OF THE THIRD PARTY VENDOR] the [NAME OF THE AGENCY] may develop a regular schedule for the deletion of NON-EVIDENTIARY BWC recordings;
 - b. electronic documentation that specific NON-EVIDENTIARY BWC recordings have been deleted will be made by the [NAME OF THE THIRD PARTY VENDOR] and incorporated into the BWC recording retention files for reference and audit purposes.

- ii. In the event that a NON-EVIDENTIARY BWC recording is stored on a dedicated agency server or on portable digital data storage medium such as a compact disc, thumb drive, memory card, etc. as set forth in this policy and procedure the BWC ADMINISTRATOR SHALL ENSURE THAT THE BWC RECORDING IS DELETED FROM THAT INTERNAL STORAGE DEVICE AS SOON AS PRACTICAL AFTER THE MINIMUM ____ DAY retention period has expired:
- a. documentation that specific NON-EVIDENTIARY BWC recordings have been deleted will be made by the BWC ADMINISTRATOR and retained in the BWC recording retention files.

5. In the case of EVIDENTIARY BWC recordings that are no longer required to be stored and maintained as set forth in this policy and procedure, the BWC ADMINISTRATOR shall:

- i. AUTHORIZE THE [NAME OF THE THIRD PARTY VENDOR] to delete a specific EVIDENTIARY BWC recording;
- ii. ensure that a record of the deletion of that specific BWC recording is retained in the BWC recording file for audit and accountability purposes;

XI. VIEW DOWNLOADED/"IMPOUNDED"/RETAINED RECORDINGS:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

I. Review of Recordings

1. Agencies written policies shall include when members may view BWC recordings.

Reasons to view and use recordings may include, but not be limited to:

- a. Report writing or preparation of other official documents;
- b. Court preparation;
- c. Review of prosecution evidence;
- d. Victim/witness/suspect statements;
- e. Crime scenes;
- f. Statement of charges;
- g. Administrative investigations;
- h. Training;
- i. Performance review;
- j. Incident critique;
- k. Maryland Public Information Act (MPIA) requests;
- l. Policy compliance;
- m. Disclosures required by law;

2. Additional considerations:

- a. A BWC recording of a constitutionally protected activity may not be used to identify persons present at the activity who are not suspected of being engaged in illegal activity or in need of assistance.
- b. The stored video and audio data from a body worn camera may not:
 - i. be used to create a database or pool of mug shots;
 - ii. be used as fillers in photo arrays; or
 - iii. be searched using facial or voice recognition software.
- c. This subsection does not prohibit an agency from using recognition software to analyze the recording of a particular incident when a supervisory law enforcement officer has reason to believe that a specific suspect or person in need of assistance may be subject of a particular recording.

H. Required Storage and Maintenance of Recordings

3. Each agency shall retain an unedited original version of stored body-worn camera footage, and should log anytime the footage is viewed, for what length of time and by whom, as well as any copying or editing. 281

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (11) the review and use of recordings; 282

COMMENTARY

As can be seen from the above, there are a variety of reasons why a stored/impounded BWC recording may need to be reviewed by different members of a law enforcement agency; from command officials to supervisors who are viewing a BWC recording of a particular incident to ensure that agency policy and procedure were followed; to patrol officers looking to complete an accurate Incident Report or who are preparing for a court appearance; to investigators who are conducting a criminal investigation; to crime scene technicians who are making sure that all physical evidence from an incident has been accounted for, etc. Additionally, on certain other occasions, personnel from allied law enforcement agencies and other criminal justice professionals may benefit from being able to view a particular stored/impounded BWC recording.

As has been mentioned previously, BWC recordings can prove to be a worthwhile investigative tool running the gamut from recordings of crime scenes to recordings of suspects actually committing a crime or providing inculpatory statements when being interviewed by officers investigating a particular call for service. While their probative value in court is still being measured and evaluated by prosecutors and the courts, the potential for BWC recordings to have a positive impact on the adjudication of criminal charges appears to be significant as BWC recordings capture criminal acts in progress or record inculpatory statements after a crime has occurred.

While there is still on-going debate about whether officers involved in use of force incidents or other incidents in which alleged inappropriate action was taken should be allowed to view BWC recordings of the event, the prevailing view is that under most circumstances officers should be given the opportunity to view the incident in order to document the incident in the most accurate manner.

However, the benefits of stored BWC recordings can only be realized if they are properly “tagged” and downloaded, stored and maintained securely with access carefully controlled and recorded, handled under a clearly identified chain of custody and free from any indication of tampering or unauthorized editing. Certain procedural steps should be taken to ensure that the full investigative and probative benefits of BWC recordings can be recognized and preserved.

The “BWC Procedural Guide/Toolkit” has already addressed the review of BWC recordings by agency personnel PRIOR to “tagging” and downloading in IX – B – 4 – M - BWC USER’S REVIEW PRIOR TO DOWNLOADING TO RETENTION FILES, M-1 – BWC USER and M-2 – OTHER AGENCY PERSONNEL. This section of the “BWC Procedural Reference Guide” outlines the steps that agencies may want to consider taking when allowing review of STORED BWC recordings.

REFERENCE MATERIAL

“...body-worn cameras have significantly improved how officers capture evidence for investigations and court proceedings. Along with documenting encounters with members of the public, body-worn cameras can provide a record of interrogations and arrests, as well as what officers witness at crime scenes... officers are often focused on securing the scene and performing life-saving measures and that witnesses and victims may not always remember what they had told officers in the confusion. This can lead to conflicting reports when victims and witnesses are asked to repeat their accounts in later statements... body-worn cameras capture everything that happens as officers travel around the scene and interview multiple people. The body-worn cameras have been incredibly useful in accurately preserving information.” 283

“Some prosecutors have started encouraging police departments to use body-worn cameras to capture more reliable evidence for court, particularly in matters like domestic violence cases that can be difficult to prosecute.” 284

“Many police agencies are discovering that body-worn cameras can serve as a useful training tool to help improve officer performance. For example, agencies are using footage from body-worn cameras to provide scenario-based training, to evaluate the performance of new officers in the field, and to identify new areas in which training is needed. By using body-worn cameras in this way, agencies have the opportunity to raise standards of performance when it comes to tactics, communication, and customer service. This can help increase the perceived legitimacy and sense of procedural justice that communities have about their police departments.” 285

“Given the impact that body-worn cameras can have in criminal and administrative proceedings, there is some question as to whether officers should be allowed to review camera footage prior to making a statement about an incident in which they were involved. According to many police executives, the primary benefit to officer review is that it allows officers to recall events more clearly, which helps get to the truth of what really happened. Some police executives, on the other hand, said that it is better for an officer’s statement to reflect what he or she perceived during the event, rather than what the camera footage revealed.

“The majority of police executives consulted by PERF are in favor of allowing officers to review body-worn camera footage prior to making a statement about an incident in which they were involved. They believe that this approach provides the best evidence of what actually took place. PERF agrees with this position.

“When you’re involved in a tense situation, you don’t necessarily see everything that is going on around you, and it can later be difficult to remember exactly what happened,” said Police Commissioner Ramsey of Philadelphia. “So I wouldn’t have a problem with allowing an officer to review a video prior to making a statement.” ...Police executives who favor review said that officers will be held accountable for their actions regardless of whether they are allowed to watch the video recordings prior to making a statement.

“Other police executives, however, said that the truth—and the officer’s credibility—are better served if an officer is not permitted to review footage of an incident prior to making a statement. ‘In terms of the officer’s statement, what matters is the officer’s perspective at the time of the event, not what is in the video,’ said Major Mark Person of the Prince George’s County (Maryland) Police Department. ‘That perspective is what they are going to have to testify to. If officers watch the video before making a statement, they might tailor the statement to what they see. It can cause them to second-guess themselves, which makes them seem less credible.’

“Police executives report that when questions arise following an encounter or a major event such as an officer-involved shooting, having video from a body-worn camera can help resolve the questions. Agencies are also reporting that, in most of these cases, the resolution is in support of the officer’s account of events.” 286

Officers should be permitted to review video footage of an incident in which they were involved, prior to making a statement about the incident. This can occur, for example, if an officer is involved in a shooting and has to give a statement about the shooting that may be used in an administrative review or a criminal or civil court proceeding.

- Reviewing footage will help officers remember the incident more clearly, which leads to more accurate documentation of events. The goal is to find the truth, which is facilitated by letting officers have all possible evidence of the event.
- Real-time recording of the event is considered best evidence. It often provides a more accurate record than an officer’s recollection, which can be affected by stress and other factors. Research into eyewitness testimony demonstrates that stressful situations with many distractions are difficult even for trained observers to recall correctly.
- If a jury or administrative review body sees that the report says one thing and the video indicates another, this can create inconsistencies in the evidence that might damage a case or unfairly undermine the officer’s credibility. 287

The IACP model Body worn Camera policy expresses a more restrictive view about officers viewing BWC recordings of events that they are involved in:

- “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.” 288

“Written policies should clearly describe the circumstances in which supervisors will be authorized to review an officer’s body-worn camera footage. PERF recommends that supervisors be authorized to review footage in the following circumstances:

- When a supervisor needs to investigate a complaint against an officer or a specific incident in which the officer was involved;
- When a supervisor needs to identify videos for training purposes and for instructional use;
- When officers are still in a probationary period or are with a field training officer;
- When officers have had a pattern of allegations of abuse or misconduct;
- When officers have agreed to a more intensive review as a condition of being put back on the street;
- When an officer has been identified through an early intervention system; 289

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

XI. VIEW DOWNLOADED/“IMPOUNDED”/RETAINED BWC RECORDINGS:

XI – A. REVIEW OF BWC RECORDINGS:

1. Access to any original BWC recording STORED/“IMPOUNDED” in the [NAME OF AGENCY] BWC recording retention files shall be covered by this section of the [NAME OF AGENCY] BWC policy and procedure.

2. ALL BWC RECORDINGS ARE THE PROPERTY OF THE [NAME OF AGENCY] AND SHALL ONLY BE ACCESSED FOR REVIEW AND/OR COPYING IN ACCORDANCE WITH THIS POLICY:
- i. a record [digital or other] shall be made each time a BWC recording is accessed and retained as long as a BWC is stored by the [NAME OF AGENCY].
3. The [NAME OF AGENCY] will allow, subject to authorization by the Head of the agency or designee [BWC ADMINISTRATOR], the VIEWING of a specific STORED/"IMPOUNDED" BWC recording(s) for LEGITIMATE LAW ENFORCEMENT PURPOSES by:
- i. agency personnel;
 - ii. personnel of an allied law enforcement agency;
 - iii. a representative from the State's Attorney's Office or U.S. Attorney's Office;
 - iv. an official from a bona fide criminal justice agency;
 - v. any other individual authorized by the Head of the agency.
4. LEGITIMATE LAW ENFORCEMENT PURPOSES shall include, but not be limited to:
- i. a criminal investigation;
 - ii. an internal and/or administrative investigation;
 - iii. a civil investigation;
 - iv. incident debriefing/critique;
 - v. review of a use of force;
 - vi. review of an on-duty discharge of firearm [except training];
 - vii. line-of-duty injury/death;
 - viii. in-custody suspect injury/death;
 - ix. pursuits;
 - x. review of a departmental traffic accident;
 - xi. deposition or trial preparation;
 - xii. performance review;
 - xiii. policy and procedure compliance;
 - xiv. training;
5. ALL requests to view or obtain a copy of any STORED/"IMPOUNDED" BWC recording, by a member of the [NAME OF AGENCY], a member of an allied law enforcement agency or a representative of another criminal justice agency shall be made IN WRITING on the REQUEST TO VIEW BWC RECORDING form developed by the BWC ADMINISTRATOR:
- i. This form shall include, at a minimum, the following information:
 - a. name/rank/agency identification number of the individual requesting to view the BWC recording;
 - b. the date request submitted;
 - c. the date viewing must occur by;
 - d. the date/time/location of the incident/event/encounter recorded;
 - e. the name of the officer(s) involved, if known;
 - f. if known, the name of the individual(s) involved in the recording;
 - g. the purpose for which the review is necessary;

BWC “USER” ACCESS TO STORED/IMPOUNDED BWC RECORDINGS

DEPENDING ON THE TYPE OF BODY-WORN CAMERA SYSTEM AN AGENCY ADOPTS ACCESS TO STORED BWC RECORDINGS FOR VIEWING MAY BE AVAILABLE TO INDIVIDUAL OFFICERS [PASSWORD PROTECTED], E.G. EVIDENCE.COM.

IN THESE CASES, BWC USERS ARE ABLE TO VIEW AND, IN SOME CASES, COPY THEIR OWN BWC RECORDINGS WITHOUT THE INTERVENTION OF THE BWC ADMINISTRATOR OR SIMILAR OFFICIAL. SUCH SYSTEMS GENERALLY AUTOMATICALLY RECORD EACH TIME A BWC RECORDING IS ACCESSED AND/OR OTHERWISE MANIPULATED, LOGGING THE DATE/TIME/PASSWORD OF THE INDIVIDUAL WHO HAS GAINED ACCESS TO THE RECORDING.

WHILE SOME SYSTEMS ALLOW BWC USERS TO COPY THEIR OWN RECORDINGS, OTHERS PREVENT EDITING, DELETING, COPYING OR ANY OTHER TYPE OF MANIPULATION OF THE STORED RECORDING. AGENCY EXECUTIVES SHOULD CAREFULLY CONSIDER WHAT CONTROLS ARE NECESSARY FOR THEIR BWC PROGRAM AND COORDINATE THEIR AGENCY’S NEEDS WITH THEIR BWC VENDOR.

IF AN AGENCY HAS DETERMINED TO ADOPT A “NO BWC RECORDING COPY WITHOUT PRIOR AUTHORIZATION POLICY” THEN IT IS SUGGESTED THAT THIS DECISION BE SPECIFICALLY COMMUNICATED TO THE BWC VENDOR.

IN CASES WHERE PERSONNEL CAN ACCESS AND COPY THEIR OWN BWC RECORDINGS IT IS SUGGESTED THAT AGENCY POLICY AND PROCEDURE EXPLICITLY DEFINE UNDER WHAT CIRCUMSTANCES THEY CAN MAKE A COPY OF THAT RECORDING; HOW THEY CAN USE THAT RECORDING; SECURITY SAFEGUARDS FOR RETAINING THAT RECORDING; AND ENSURE THAT THE BWC VENDOR CAN TRACK THE COPYING OF ANY BWC RECORDING.

IN OTHER SYSTEMS, SUCH AS SYSTEMS IN WHICH THE AGENCY STORES BWC RECORDINGS ON A DEDICATED SERVER OR OTHER DIGITAL MEDIUM, ACCESS TO VIEW STORED BWC RECORDINGS MAY REQUIRE THE INTERVENTION OF THE AGENCY’S BWC ADMINISTRATOR OR OTHER AGENCY OFFICIAL. IN THESE CASES ACCESS MAY NOT BE AUTOMATICALLY DOCUMENTED. LIKEWISE, COPYING A BWC RECORDING MAY HAVE TO BE RESTRICTED/CONTROLLED BY THE AGENCY AND REQUIRE THE ASSISTANCE OF THE BWC ADMINISTRATOR OR OTHER AGENCY OFFICIAL.

THE FOLLOWING SECTION OF THE MODEL POLICY AND PROCEDURE ATTEMPTS TO ADDRESS THE LATTER TYPE OF SYSTEM IN WHICH COPIES OF BWC RECORDINGS MUST BE AUTHORIZED AND MADE BY THE AGENCY. EACH AGENCY SHOULD DESCRIBE ITS OWN SYSTEM BY WHICH INDIVIDUALS WITHIN THE AGENCY CAN ACCESS AND VIEW RECORDINGS.

6. The BWC ADMINISTRATOR shall review the REQUEST form and reason for the viewing and:
 - i. authorize the request and make arrangements to view the recording if appropriate;
 - ii. deny the request, informing the individual making the request of the reason for the denial:
 - a. the individual denied access to the recording may request administrative review of that decision to the Head of the **[NAME OF AGENCY]**;

7. AFTER viewing the BWC recording, if a copy of the recording is needed for LEGITIMATE law enforcement purposes the individual requesting the copy of the recording shall complete the “BWC COPY REQUESTED” portion of the REQUEST TO VIEW BWC RECORDING form indicating:

- i. if a copy of the BWC recording is needed;
- ii. the purpose for which the copy of the recording will be used;
- iii. the individual responsible for the security of the copy of the BWC recording;
- iv. any redaction of the BWC recording that is necessary;
- v. adherence to the [NAME OF THE AGENCY] BWC policy that NO BWC RECORDING WILL BE DISTRIBUTED, COPIED, POSTED ON SOCIAL MEDIA, SHOWN TO UNAUTHORIZED PERSONS OR OTHERWISE DISSEMINATED WITHOUT THE APPROVAL OF THE HEAD OF THE AGENCY OR DESIGNEE [BWC ADMINISTRATOR];
- vi. copies of BWC recording made pursuant to this section of the BWC policy and procedure shall be considered as “potential” evidence and will be handled/maintained/stored according to the [NAME OF THE AGENCY] evidence handling and storage policy and procedures;

8. The BWC ADMINISTRATOR shall retain, in file, all completed REQUESTS TO VIEW BWC RECORDINGS forms as long as the BWC recording remains in the [NAME OF AGENCY] BWC recording retention files.

9. Members may view BWC recordings when they are the subject of a criminal or administrative investigation when that criminal/administrative investigation is the result of official law enforcement action taken/not taken by the officer:

- i. prior to writing an official agency report about the incident/event that they were involved in;
- ii. prior to providing a statement about the incident/event that they were involved in.

10. Requests by individuals not affiliated with an allied law enforcement/criminal justice agency to view or obtain copies of BWC recordings by way of the Maryland Public Information Act (MPIA) will be handled separately as outlined in this policy and procedure:

EXCEPTION:

A citizen/community member can be allowed to view a BWC recording when accompanied by a command official/supervisor/investigator conducting an internal investigation of a member of this agency who has been authorized to view a BWC recording of an incident, if the community member indicates that viewing the BWC recording of the incident and receiving an explanation of an officer’s actions from the supervisor/command official may:

- i. clarify the complaint; and/or
- ii. satisfy/resolve his/her concerns about the officer’s actions and/or withdraw a complaint.

XI – B. DISCOVERY OF MEMBER MISCONDUCT:

The Maryland Police Training Commission’s “Body-worn Camera Policy” [Ad Hoc Commission recommendation]:

NO SPECIFIC RECOMMENDATION

PS §3–511 reference: “...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.” 290

COMMENTARY

During research in preparation to complete this “BWC Procedural Reference Guide” one of the most frequently voiced concerns about the use of body-worn cameras from law enforcement officers was that supervisors and command officials would ROUTINELY review BWC recordings in search of policy/procedure violations and infractions of rules and regulations with which to discipline officers. While there are situations when a particular BWC recording will need to be reviewed for evidence of policy/procedure violations, rule infractions or failure to follow agency training, the wholesale, routine review of BWC recordings for this purpose is strongly discouraged by advocates of BWC use. It is suggested that agencies consider including a note to that effect in their BWC policy and procedure.

REFERENCE MATERIAL

“For a body-worn camera program to be effective, it needs the support not only of the community but also of the frontline officers who will be wearing the cameras. Securing this support can help ensure the legitimacy of a camera program and make its implementation more successful. Agency leaders should engage in ongoing communication with officers about the program’s goals, the benefits and challenges of using cameras, and the agency’s expectations of the officers.” 291

“One of the primary concerns for police executives is the fear that body-worn cameras will erode the trust between officers and the chief and top managers of the department. Some officers may view the cameras as a signal that their supervisors and managers do not trust them, and they worry that supervisors would use the cameras to track and scrutinize their every move...This is especially true with the first-level response officers, who already feel they are under an extraordinary amount of pressure to get everything right.” 292

“Most agencies permit supervisors to review videos so they can investigate a specific incident or complaint, identify videos for training purposes, ensure the system is working, and monitor overall compliance with the camera program.” 293

“...there is some debate over whether supervisors should also periodically and randomly review videos to monitor officer performance. Some agencies allow periodic monitoring to help proactively identify problems and hold officers accountable for their performance. Other agencies permit periodic monitoring only in certain circumstances, such as when an officer is still in a probationary period or after an officer has received a certain number of complaints. Some agencies prohibit random monitoring altogether because they believe doing so is unnecessary if supervisors conduct reviews when an incident occurs.” 294

“The Topeka Police Department generally prohibits random monitoring, though supervisors can periodically review videos if officers have received numerous complaints. Chief Miller of Topeka said that this policy strikes a balance between showing trust in the officers and holding them accountable. ‘If an officer does something wrong, you do not want to be accused of deliberate indifference because you had the videos but ignored them,’ he said. ‘You have to show that you reviewed the footage once you had a reason to do so.’ ” 295

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

XI – B. DISCOVERY OF MEMBER MISCONDUCT:

1. It is NOT the intent of the [NAME OF THE AGENCY] to review digital evidence for the purpose of general performance review, for normal preparation of performance reports, or to discover policy violations:
 - i. Command Officials and supervisors will NOT ROUTINELY review BWC recordings for violations of existing policy and procedure and/or rules and regulations;
 - ii. Notwithstanding this stated intent, command officials or supervisors [including Field Training Officers who are acting in their capacity as FTOs] shall appropriately address any violation of existing policies and procedures and/or rules or regulations or other observed performance issue that is noted while reviewing any BWC recording:
 - a. Nothing in this agency’s BWC procedure prohibits command officials/supervisors from addressing policy violations as warranted;

2. Command Officials and supervisors shall PERIODICALLY review random BWC recordings to ensure BWC policy and procedures are being followed:

- i. Command or supervisory audits of BWC recordings should be **primarily** used for maintenance and training purposes and not for discipline, based on the seriousness of any observed policy and procedure violation and the absence of any additional corroborating evidence or civilian complaint;

3. A command official and/or supervisor may review SPECIFIC BWC recordings for the purpose of:

- i. training;
- ii. performance review of a specific incident;
- iii. incident critique/debriefing;
- iv. early intervention inquiries;
- v. supervisor complaints as permitted by agency policy and procedure.

4. Field Training Officers may use BWC recordings to provide immediate training to recruits and to assist with the completion of a recruit's Daily Observation Report (DOR);

5. Members reviewing BWC recordings should remain focused on the incident or incidents in question and review only those recordings relevant to their investigation:

- i. if improper conduct is suspected during the review of any BWC recording the person who discovered the conduct in question shall immediately notify a supervisor who will take the appropriate action.

6. Under no circumstances shall members with access to BWC recordings be allowed to review, use, show, reproduce or release recordings to ridicule, harass, intimidate or otherwise intentionally embarrass, any officer or individual or for any other non-law enforcement related purposes:

- i. this includes submission of any portion of a BWC recording to a media organization unless release has been approved in advance by the Head of the agency or his designee as set forth in this policy and procedure;

7. For administrative/internal investigations, when digital evidence is used by the [NAME OF THE AGENCY] for the purpose of proving or disproving allegations of misconduct, only digital evidence relevant to the investigative scope shall be viewed and retained by investigators:

- i. information relevant to the recordings viewed and seized as evidence by investigators shall be included as part of the administrative investigative file;

XI – C. RESTRICTED INVESTIGATIVE USES OF BWC RECORDINGS:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

I. REVIEW OF RECORDINGS

2. Additional considerations:

- a. A BWC recording of a CONSTITUTIONALLY PROTECTED ACTIVITY may not be used to identify persons present at the activity who are not:
 - suspected of being engaged in illegal activity; or
 - in need of assistance.
- b. The stored video and audio data from a body-worn camera may NOT:
 - i. be used to create a database or pool of mug shots;
 - ii. be used as fillers in photo arrays; or
 - iii. be searched using facial or voice recognition software.
- c. This subsection does NOT prohibit an agency from using recognition software to analyze the recording of a PARTICULAR INCIDENT when a SUPERVISORY law enforcement OFFICER has reason to BELIEVE that a SPECIFIC SUSPECT or PERSON IN NEED OF ASSISTANCE MAY BE SUBJECT OF A PARTICULAR RECORDING. 296

COMMENTARY

Investigative uses for stored BWC recordings are increasing as software technology advances. Facial and voice recognition software improvements increase the probability that law enforcement agencies will be able to use digital data produced by body-worn cameras to generate the identification of unidentified individuals shown on BWC recordings. Members of the [Ad Hoc Commission Regarding the Implementation and Use of Body-worn Cameras by Law Enforcement Officers](#) recognized this likelihood and included the above listed recommendations in its report on the use of images and audio captured by BWCs. While the recommendations do not prohibit the use of the data generated by the BWC, these restrictions should be noted in an agency's BWC policy and procedure.

REFERENCE MATERIAL

The following excerpt from a working paper about body-worn cameras entitled "Police Body-worn Cameras" published by the Data and Society Research Institute in February, 2015 provides some clarity to this issue:

"The use of body-worn cameras has already begun to intersect with other technologies such as facial recognition systems. Serious concerns for privacy may arise if police use of body-worn cameras to scan public spaces to identify individuals with outstanding arrest warrants...

"The Federal Bureau of Investigation defines biometrics as the 'measurable biological (anatomical and physiological) or behavioral characteristics used for identification of an individual.' Distinctive markers such as fingerprints, facial features, DNA, voice, and iris scans can be used to identify individuals, usually by matching them against a pre-existing database...

"Today, some law enforcement and intelligence agencies rely on computer-based recognition software. Facial recognition technology can scan videos or still images on a mass scale and in real time (or in retrospect) without the subject being aware or granting consent. For example, during the 2001 Super Bowl held in Tampa Florida, Tampa police used mass surveillance cameras and facial recognition technology to scan the faces of people in attendance and compare them to criminal and terrorist databases...Outside of a controlled environment, facial recognition is prone to inaccuracy and a high false-positive rate.

"Some U.S. police departments have already begun using facial recognition to scan CCTV surveillance footage against mug shot databases. Both Seattle and Chicago have begun implementing facial recognition on CCTV footage. In Seattle, the ACLU has expressed concern over the collection of information on people not suspected of criminal activity, a practice that will likely become a major privacy concern as the technology spreads. Disparities between image databases in use across police departments will also present obstacles in the efficacy of facial recognition, as individual records may exist in one database but not another. While body-worn cameras facilitate surveillance on a smaller scale than CCTV footage, many of the same privacy risks will become salient for both.

"Recent advances in technology are also making possible increasingly invasive extraction of biometric information from video footage. In 2014, a security expert was able to replicate a German politician's fingerprint based on a high-resolution photograph of her hand. Researchers have also found a way to identify the person wearing a body-worn camera by comparing biometric markers such as camera motion (like shakes) and stride length, meaning that a person filming will not necessarily remain anonymous.

"These advances in technology may have both positive and negative implications. The dominant concern is that legal rights to privacy are struggling to keep up with these changes. Although the fourth amendment likely protects biometric information such as DNA or fingerprints from collection without due cause, in 2013 the Supreme Court ruled that police could take DNA samples from individuals arrested in connection to serious crimes. Laws are even less clear on when, if ever, something as publicly visible as the human face can be protected from automatic identification. Moreover, there is an increasingly blurred line between collection of criminal and non-criminal biometric data. Law enforcement bodies such as the NYPD's Facial Recognition Unit have begun combing photos on social media platforms to identify suspects. The FBI is also in the process of building the Next Generation Identification program (NGI), a large-scale biometric database covering faces, fingerprints, and other identifiers. This database will store both criminal and non-criminal information, such as photos and fingerprints submitted to employers. One concern raised by the Center for Democracy and Technology is that police departments could draw body-worn camera footage from databases and use facial recognition to catalogue attendees of protests or political rallies.

“According to PERF, ‘Body-worn cameras raise many privacy issues that have not been considered before. Unlike many traditional surveillance methods, body-worn cameras can simultaneously record both audio and video and capture close-up images that allow for the potential use of facial recognition technology.’ Given these privacy risks ‘biometric evaluation of footage must be strictly limited to narrow, well-defined uses, and subject to judicial authorization...the civil rights community will have to pay particular attention to the growing privacy risks that may be created as the use of body-worn cameras becomes tied to other advanced technologies.” 297

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

XI – C. RESTRICTED INVESTIGATIVE USES OF BWC RECORDINGS:

1. Members of the **[NAME OF AGENCY]** shall NOT use a BWC recording to:
 - i. identify any person present at a CONSTITUTIONALLY PROTECTED [First Amendment] activity who is NOT:
 - a. suspected of being engaged in illegal activity; or
 - b. in need of assistance; 298
2. Members of the **[NAME OF AGENCY]** shall NOT use a STORED BWC recording to:
 - i. create a database or pool of mug shots;
 - ii. be used as fillers in photo arrays; or
 - iii. be searched using facial or voice recognition software:

EXCEPTION:

The above does NOT prohibit a member from using recognition software to analyze a recording of a PARTICULAR INCIDENT WHEN A SUPERVISOR/COMMAND OFFICIAL HAS REASON TO BELIEVE THAT A SPECIFIC SUSPECT OR PERSON IN NEED OF ASSISTANCE MAY BE A SUBJECT OF A PARTICULAR RECORDING; 299

XII. COPYING/DISSEMINATION/RELEASE OF BWC RECORDINGS:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

K. DISSEMINATION AND RELEASE OF RECORDINGS

BWC video/audio recordings from body cameras will be released as required by the MPIA or other governing law. 300

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (13) dissemination and release of recordings; 301

COMMENTARY

Under the Maryland Public Information Act [Title 4 of the General Provisions Article ("GP")] individuals are entitled to review and receive copies of BWC recordings except under limited circumstances. Similar to the public information laws in many other states, the broad reach of this law has caused many law enforcement executives concern regarding the copying, dissemination and release of BWC recordings to the general public. While intending to foster transparency and accountability about the actions of their officers, law enforcement executives also aim to protect the privacy of innocent persons whose images may be recorded during an incident/event/encounter. Victims, witnesses, innocent bystanders, children and even individuals who may be suspected of committing a crime but have not been arrested or charged are individuals whose desire, and in some cases need, for privacy may be compromised when BWC recordings are released to the public. While redaction of certain images in the recordings can somewhat mitigate privacy concerns, redaction itself cannot totally guarantee that individuals in a particular BWC recording will not be identified by persons familiar with the incident. Creating a policy and procedure that adheres to the spirit as well as the letter of the law AND attempts to protect the privacy and confidentiality of innocent persons who are recorded by a body-worn camera is one of several challenges that face every law enforcement executive who plans to implement a body-worn camera program.

While space limitations prevent a detailed review of Maryland's Public Information Act in this document, the basic tenets of the law are presented below for information and reference purposes only.

Further detail and explanation of the law can be found in the "Maryland Public Information Act Manual," (14th ed., October 2015) which can be located at www.oag.state.md.us/Opengov/pia

REFERENCE MATERIAL

GENERAL:

"Maryland's Public Information Act ("PIA"), Title 4 of the General Provisions Article ("GP"), grants the public a broad right of access to records that are in the possession of State and local government agencies. It has been a part of the Annotated Code of Maryland since its enactment as Chapter 698 of the Laws of Maryland 1970 and is similar in purpose to the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the public information and open records acts of other states. The basic mandate of the PIA is to enable people to have access to government records without unnecessary cost or delay. Custodians of records are to provide such access unless the requested records fall within one of the exceptions in the

statute...In passing the PIA, the Legislature sought to accord wide-ranging access to public information concerning the operation of government...The PIA covers virtually all public agencies or officials in the State. It includes all branches of State government – legislative, judicial, and executive. On the local level, the PIA covers all counties, cities, towns, school districts, and special districts. 302

"All 'public records' are covered by the PIA. The term 'public record' is defined in GP § 4-101(j) and includes not only written material but also photographs, photo-stats, films, microfilms, recordings, tapes, computerized records, maps, drawings, and any copy of a public record...Public records are any records that are made or received by a covered public agency in connection with the transaction of public business. The scope is broad, and all "records" possessed by an agency generally fall within the definition of 'public records.'" 303

CUSTODIAN OF RECORDS:

“Central to the structure of the PIA are the roles played by the “custodian” and “official custodian” of the agency records. They are the public officials who must take actions under the statute...A custodian is any “authorized” person who has physical custody and control of the agency’s public records. The “custodian” is the person who has the responsibility to allow inspection of a record and to determine, in the first instance, whether inspection can or should be denied. The custodian is also responsible for preparing written denials when inspection is not allowed...The “official custodian” is the officer or employee of the agency who has the overall legal responsibility for the care and keeping of public records. Often, the “official custodian” will be the head of the agency. The official custodian is to consider designating specific types of public records of the unit that can be made available immediately on request and maintaining a list of such records. The official custodian is authorized to decide whether to seek court action to protect records from disclosure;...is also the person who must establish “reasonable fee” schedules;...can also be the “custodian” of the records, depending upon who has physical custody and control of the records.” 304

GENERAL ACCESS:

“GP § 4-103(a) provides that ‘[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.’ The right is made clear in GP § 4-201(a)(1), which states that, ‘[e]xcept as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time.’ Inspection or copying of a public record may be denied only to the extent permitted under the PIA. GP § 4-201(a)(2).” 305

“The PIA grants a broad right of inspection to “any person.” The term ‘person’ extends to entities as well as individuals. A person need not show that he or she is ‘aggrieved’ or a ‘person in interest.’ Nor is access restricted to citizens or residents of Maryland. In most cases, a person need not justify or otherwise explain a request to inspect records, and a custodian of records may not require a person to say who they are or why they want the records as a prerequisite to responding to a request. Nor may a custodian ignore a request on the grounds that it was made for the purpose of harassment.” 306

“In some instances, the PIA provides a “person in interest” with a greater right of access to a particular type of record than that available to other requesters. In these instances, the custodian must determine whether the requester is a “person in interest.” Such special rights of access apply to the following types of records or information...records pertaining to investigations...The term “person in interest” is defined generally by GP § 4-101(g) as the subject of the record or, in some cases, that person’s representative. Cases construing the term “person in interest” within the investigatory records context have limited it to the person that is being investigated and have not extended it to either the complainant or the person performing the investigation. The term “person in interest” includes the “designee” of the person who is the subject of the record.” 307

“While a custodian cannot require a requester to explain the purpose for which the requester wants the records as a prerequisite to responding to a PIA request, the requester’s intended use may be an appropriate subject of discussion in certain circumstances. For example, a requester who wishes to convince a custodian that it is “in the public interest” for the requester to waive a fee... or to release records covered by one of the discretionary exceptions...may choose to explain the purpose underlying the request.” 308

“...records no longer retained by an agency cannot be examined. However, a custodian should not destroy records to avoid compliance with a pending request or in a manner contrary to the agency’s record retention schedule.” 309

EXCEPTIONS TO ACCESS:

“The general right of access to records granted by the PIA is limited by numerous exceptions to the disclosure requirement. Given the PIA’s policy in favor of public access, and the requirement that the PIA ‘be construed in favor of permitting inspection of a record,’ these exceptions should be construed narrowly.” 310

"PIA exceptions fall into three basic categories:

- 1. if a source of law outside the Public Information Act prevents disclosure;**
- 2. the mandatory exceptions in Parts II and III impose an affirmative obligation on the custodian to deny inspection for specific classes of records and information;**
- 3. the exceptions in Part IV allow the custodian to exercise discretion as to whether the specified records are to be disclosed.**

More than one exception may apply to a public record, and the exceptions are not mutually exclusive. Many of the exceptions are an attempt by the Legislature to balance individual privacy interests against the public right of access. In addition, Part V contains a "last resort" provision, which allows a custodian to deny inspection temporarily and seek court approval to continue to withhold a record that otherwise would be subject to inspection. Unless an agency obtains a special court order under the statute to justify withholding a record, there is no basis for withholding a record other than an exception in the PIA. (There is no discrete "public interest," "personal information," or "unwarranted invasion of privacy" exemption to PIA)." 311

"Many State statutes bar disclosure of specified records. Examples include:

- Courts and Judicial Proceedings Article, § 3-8A-27 (protection of police records pertaining to minors):**
 - (protection under statute only applies to records concerning matter that could bring minor within jurisdiction of the juvenile court);" 312**

"Under Subtitle 3, Part IV, a custodian may deny the right of inspection to certain records or parts of records, but only if disclosure would be contrary to the "public interest." These records are:

- Records of investigation, intelligence information, security procedures, or investigatory files (GP § 4-351)." 313**

"Whether disclosure would be "contrary to the public interest" under these exceptions is in the custodian's 'sound discretion,' to be exercised 'only after careful consideration is given to the public interest involved.' In making this determination, the custodian must carefully balance the possible consequences of disclosure against the public interest in favor of disclosure. If the custodian denies access under one of the discretionary exemptions, the custodian must provide 'a brief explanation of why the denial is necessary.'" 314

INVESTIGATORY RECORDS:

"GP § 4-351 permits the withholding of certain investigatory records and records that contain intelligence information and security procedures. The determinations required of the custodian vary depending on the particular records at issue. For certain named agencies, the custodian may deny the right of inspection of records of investigations conducted by the agency, intelligence information, or security procedures. The listed agencies are: any sheriff or police department, any county or city attorney, State's Attorney, or the Attorney General's office. This exception also applies to intelligence information and security procedures of these agencies, as well as of State and local correctional facilities. Many records received or created by law enforcement agencies may fall within this category. [See, e.g., 92 Opinions of the Attorney General 26 (2007) (mug shot considered an investigatory record)]." 315

"Not every record in the possession of the law enforcement agency constitutes a record of an investigation. [See Opinions of the Attorney General 288 (1986) (recordings of 911 calls generally not investigatory records); Opinions of the Attorney General 543 (1978) (arrest logs not investigatory records) etc.]" 316

"When the records in question are investigatory, and when they come from one of these enumerated agencies, the exception applies without need for an actual showing that the records were compiled for law enforcement or prosecution purposes. The Court of Appeals has held that the investigatory records of one of the seven enumerated agencies are presumed to be for law enforcement purposes. Thus, an enumerated agency need not make a particularized showing of a law enforcement purpose to justify the withholding of a record relating to a criminal investigation. However, once an investigation is closed, disclosure is less likely to be "contrary to the public interest" and courts will require a more particularized factual basis for a "public interest" denial... 317 determines that disclosure would be "contrary to the public interest" or unless other law would prevent disclosure. For example, the Court of Appeals held that it would be contrary to the public interest to disclose the Baltimore City Police Department's report of its internal investigation of a police officer. Disclosure of an internal report would discourage witnesses or other persons with information from cooperating [Mayor and

City Council of Baltimore v. Maryland Committee Against the Gun Ban, 329 Md. 78 (1993)]; see also *Opinions of the Attorney General* 183 (1992) (custodian of an investigatory record containing the name and address of a crime victim would be required under the PIA to consider the assertions of the public interest made by the requester, as well as the privacy interests of the victim); *Opinions of the Attorney General* 236 (1979) (police department need not disclose police investigative report to the extent that disclosure would be contrary to the public interest).” 318

“In justifying the denial of a request for an investigatory record under GP § 4-351, the courts have recognized a distinction based on whether an investigation is ongoing or closed. While an investigation is ongoing or the defendant is awaiting trial, the public interest justification is obvious. Under GP § 4-351(b), however, the ‘person in interest’ is entitled to inspect investigatory records of which he or she is the subject unless production would:

- (1) interfere with a valid and proper law enforcement proceeding;
- (2) deprive another person of a right to a fair trial or an impartial adjudication;
- (3) constitute an unwarranted invasion of personal privacy;
- (4) disclose the identity of a confidential source;
- (5) disclose an investigative technique or procedure;
- (6) prejudice an investigation; or
- (7) endanger the life or physical safety of an individual.

Because a person in interest enjoys a favored status, a custodian must point out precisely which of the seven grounds enumerated in GP § 4-351(b) justifies the withholding of an investigatory record and explain precisely why it would do so.” 319

“The number and wide scope of these factors will often lead to a denial of disclosure by the law enforcement agency, especially where records have been recently obtained and are in active use in investigations. The seven factors listed above may also be considered as part of the “public interest” determination in deciding whether to deny access to a person who is not a person in interest. [See National Archives and Records Administration v. Favish, 541 U.S. 157 (2004) (request for death-scene photographs of White House Counsel properly denied under FOIA investigatory records exception in light of privacy interest of the decedent’s family)] Indeed, under limited circumstances, one of these factors might even justify an agency’s refusal to confirm or deny that a record exists – something often referred to as a ‘Glomar response’ (a “Glomar response” is a response that neither confirms nor denies the existence of documents responsive to the request, and is permissible where to answer the FOIA inquiry by confirming or denying the existence of responsive documents would cause harm cognizable under a FOIA exception)…” 320

“The focus of the provision that protects the identity of a confidential source is not on the motivation of the requestor or the potential harm to the informant. ‘Rather, the purpose of the exception is to assist law enforcement officials in gathering information by ensuring reluctant sources that their identities would not be disclosed.’ The Supreme Court has held that a law enforcement agency is not entitled to a presumption that all sources supplying information to that agency in the course of a criminal investigation are ‘confidential sources’ within the FOIA exception for investigatory records. Rather, only some narrowly defined circumstances provide a basis for inferring confidentiality, as when paid informants expect their information to remain confidential. Thus, there must be an express or implied assurance of confidentiality to the informant.” 321

“Although a ‘person in interest’ is entitled to inspect certain investigatory records that may be denied to third parties, that person’s rights under GP § 4-351(b) do not override other exemptions under the PIA that might justify withholding the records.” 322

GENERAL BWC REFERENCE COMMENTS:

“A police department that deploys body-worn cameras is making a statement that it believes the actions of its officers are a matter of public record.” 323

“Agencies should have clear and consistent protocols for releasing recorded data externally to the public and the news media (a.k.a. Public Disclosure Policies). Each agency’s policy must be in compliance with the state’s public disclosure laws (often known as Freedom of Information Acts). PERF generally recommends a broad public disclosure policy for body-worn camera videos. By implementing a body-worn camera program, agencies are demonstrating that they are committed to transparency and accountability, and their disclosure policies should reflect this commitment. However, there are some situations when an agency may determine that publicly releasing body-worn camera footage is not appropriate. These include the following:

- Videos that contain evidentiary footage being used in an ongoing investigation or court proceeding are typically exempted from disclosure by state public disclosure laws.
- When the videos raise privacy concerns, such as recordings of crime victims or witnesses or footage taken inside a private home, agencies must balance privacy concerns against the need for transparency while complying with relevant state public disclosure laws.

Implementation Tips:

- Policies should **state who is allowed to authorize the release of videos.**
- When **determining whether to proactively release videos to the public** (rather than in response to a public disclosure request), agencies should **consider whether the footage will be used in a criminal court case and the potential effects that releasing the data may have on the case.**
 - some agencies have released footage to share what the officer’s video camera showed regarding controversial incidents. In some cases, the video may support a contention that an officer was in compliance with the law. In other cases, the video may show that the department is taking appropriate action against an officer. Policies should specify the circumstances in which this type of public release is allowed. When determining whether to proactively release data to the public, agencies should consider whether the footage will be used in a criminal court case, and the potential effects that releasing the data might have on the case. **324**
- Policies should **clearly state the process for responding to public disclosure requests, including the review and redaction process.**
- Agencies should always **communicate their public disclosure policies to the public.”** **325**

“Policies should include specific measures for preventing unauthorized access or release of recorded data. Some systems have built-in audit trails. All video recordings should be considered the agency’s property and be subject to any evidentiary laws and regulations.

Lessons learned:

- While agencies that have implemented body-worn cameras report that **responding to public disclosure requests can be administratively complicated, departments must implement systems that ensure responses to these requests are timely, efficient, and fully transparent. This process should include reviewing footage to locate the requested video, determining which portions are subject to public release under state disclosure laws, and redacting any portions that state law prohibits from disclosure (e.g., images of juveniles’ faces).**
- **The most important element of an agency’s policy is to communicate it clearly and consistently within the community.”** **326**

“Policies should explicitly forbid agency personnel from accessing recorded data for personal use and from uploading recorded data onto public and social media websites. Agencies must take every possible precaution to ensure that camera footage is not used, accessed, or released for any unauthorized purposes.

Implementation tips:

- **written policies should describe the sanctions for violating this prohibition.”** **327**

In a paper entitled **“Police Body-Mounted Cameras: With Right Policies in Place, a Win For All”** Jay Stanley, an ACLU Senior Policy Analyst, urged that **“people recorded by cop cams should have access to, and the right to make copies of, those recordings,** for however long the government maintains copies of them. That should also apply to disclosure to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence. “ **328**

However, when addressing the public disclosure of BWC recordings, Stanley recognized the dilemma that law enforcement executives face when considering the issue of public release of body-worn camera recordings “**public disclosure of government records can be a tricky issue pitting two important values against each other: the need for government oversight and openness, and privacy. Those values must be carefully balanced by policymakers. One way to do that is to attempt to minimize invasiveness when possible:**

- **Public disclosure of any recording should be allowed with the consent of the subjects;**
- **Redaction of video records should be used when feasible** — blurring or blacking out of portions of video and/or distortion of audio to obscure the identity of subjects. If recordings are redacted, they should be discloseable;
- **Un-redacted, un-flagged recordings should not be publicly disclosed without consent of the subject.** These are recordings where there is no indication of police misconduct or evidence of a crime, so the public oversight value is low. States may need to examine how such a policy interacts with their state open records laws;
- **Flagged recordings are those for which there is the highest likelihood of misconduct, and thus the ones where public oversight is most needed. Redaction of disclosed recordings is preferred, but when that is not feasible, un-redacted flagged recordings should be publicly discloseable, because in such cases the need for oversight generally outweighs the privacy interests at stake;**” 329

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

XII. COPYING/DISSEMINATION/RELEASE OF BWC RECORDINGS:

XII – A. GENERAL:

1. As has been previously stated in this policy “ALL BWC recordings are the SOLE property of the [NAME OF AGENCY]:
 - i. No BWC recording may be accessed, reviewed, erased, destroyed/deleted, edited/ modified/changed/ altered/tampered with/ copied, or disseminated/released without the expressed authorization of the Head of the agency or designee [BWC ADMINISTRATOR].

XII – B. REQUESTS FOR COPIES OF RECORDINGS BY LAW ENFORCEMENT/CRIMINAL JUSTICE AGENCY PERSONNEL:

1. ALL requests for copies of BWC recordings from members of [NAME OF AGENCY], allied law enforcement agency or a representative of a criminal justice agency for a LEGITIMATE LAW ENFORCEMENT PURPOSE shall be processed as described in Section XI – A. REVIEW OF DOWNLOADED/“IMPOUNDED”/RETAINED RECORDINGS of this policy and procedure.

XII – C. RELEASE OF BWC RECORDINGS PURSUANT TO COURT ORDERS [SUBPOENAS]:

1. ALL court orders [subpoenas] for copies of BWC recordings shall be processed by the BWC ADMINISTRATOR who shall:
 - i. verify the authenticity of the court order;
 - ii. identify the BWC recording to be copied;
 - iii. determine if any portion of the BWC recording is to be redacted;
 - iv. copy [and redact, if appropriate] the BWC recording;
 - v. as with other evidence, have the officer sign a receipt for the copy of the BWC recording;
 - vi. maintain a copy of the court order [subpoena] and the BWC receipt in file;

XII – D. MARYLAND PUBLIC INFORMATION ACT [MPIA] REQUESTS:

1. Requests by individuals not affiliated with an allied law enforcement/criminal justice agency who request to view or obtain copies of BWC recordings by way of the Maryland Public Information Act (MPIA) will be handled separately as outlined below:

EXCEPTION:

A citizen/community member may be allowed to view a BWC recording when accompanied by a command official/supervisor/investigator conducting an internal investigation of a member of this agency who has been authorized to view a BWC recording of an incident, if the community member indicates that viewing the BWC recording of the incident and receiving an explanation of an officer's actions from the supervisor/command official may:

- i. clarify the complaint; and/or
- ii. satisfy/resolve his/her concerns about the officer's actions and/or withdraw a complaint;

2. Currently, under Maryland Law [Maryland Public Information Act -MPIA] BWC recordings are "public records" and, as such, may be subject to MPIA requests:

- i. such requests may come from individuals who have been recorded by a member of the [NAME OF AGENCY] or from members of the general public or members of the media.
- ii. the [NAME OF AGENCY] will handle those MPIA requests in accordance with existing law and existing [NAME OF AGENCY] Public Information Policy and Procedures except that the AUTHORIZED CUSTODIAN OF THE RECORDS FOR BWC RECORDINGS SHALL BE THE BWC ADMINISTRATOR;

3. EVIDENTIARY RECORDINGS:

- i. BWC recordings that contain EVIDENTIARY footage being used in an ongoing investigation or court proceeding may be, by law, exempted from disclosure to the public by way of MPIA requests;
- ii. EVIDENTIARY BWC recordings may remain exempt from disclosure until the criminal/civil matter is adjudicated unless a court of competent jurisdiction orders the recording's release;
- iii. the BWC ADMINISTRATOR shall respond, in writing, to all public requests for EVIDENTIARY BWC recordings:
 - a. if appropriate, deny release of all EVIDENTIARY BWC recordings after consulting with available competent legal authority including the agency legal advisor and, if necessary, the Assistant State's Attorney of record or Assistant U.S. Attorney of record;
 - b. retain a copy of the BWC recording request and a copy of the denial response in the BWC file until the requested BWC recording is purged from the files or the request for copy is honored;

4. NON-EVIDENTIARY RECORDINGS:

- i. BWC recordings that have been determined to have no evidentiary or probative value are subject to disclosure by way of an MPIA request and shall be handled by the BWC ADMINISTRATOR as follows:
 - a. before processing the BWC recording request ensure that the copy fee has been paid;
 - b. identify whether the requested BWC recording is NON-EVIDENTIARY;
 - c. have the requested BWC recording copied to the appropriate digital media:
 - c-i. REDACT any portion of the BWC recording that requires redaction as per BWC policy and procedure;
 - d. forward the copy of the BWC recording to the requesting individual as appropriate;
 - e. maintain a copy of the MPIA request and agency response in file;

5. Only the BWC recording that has been requested shall be reproduced.

6. The unauthorized duplication of a BWC recording is prohibited.

7. BWC recordings provided to persons or agencies outside of the [NAME OF AGENCY] shall be duplicated on new compact discs or other digital media as appropriate and shall be provided by the department at a reasonable fee.
8. Normal and customary fees for copies of BWC recordings, if able to be reasonably determined, shall be posted on the [NAME OF AGENCY] website.

XII – E. BWC RECORDING REDACTION:

1. Prior to releasing a BWC recording to a member of the public, it may be necessary to redact certain portions of the recording:
 - i. It is the policy of [NAME OF AGENCY] to, as far as legally possible, respect and safeguard the privacy and confidentiality of any victim and/or witness or any non-involved bystander who has been recorded by a BWC user during an incident:
 - a. Any parts of a BWC recording that may compromise an investigation or unnecessarily infringe on an individual's privacy rights shall be redacted;
 - ii. images of MINOR CHILDREN/JUVENILE SUSPECTS, VICTIMS, WITNESSES AND NON-INVOLVED BY-STANDERS, UNDERCOVER OFFICERS, CONFIDENTIAL INFORMANTS SHALL ORDINARILY BE REDACTED in a released BWC recording;
 - iii. Any BWC recording involving nudity/partial nudity, a recorded individual's medical/mental health care or treatment, bodily injury/death that would shock a reasonable person or other BWC recording images that the BWC ADMINISTRATOR determines to be appropriate for redaction shall be redacted and an explanation of the redaction shall accompany the released recording:
 - a. if a BWC recording is later determined to be inappropriately redacted it may be recopied and released, if still available, at the direction of the Head of the agency;

XII – F. PRO-ACTIVE RELEASE OF BWC RECORDINGS:

1. On a case by case basis, the Head of the agency may determine whether to PROACTIVELY release a BWC recording to the media or other individuals:
 - i. this decision will be made after considering:
 - a. whether the footage to be released will be used in a criminal court case and the potential effect(s) that releasing that recording may have on that case; and
 - b. the potential public good that the release would have;
 - ii. No BWC recording will be released for the sole purpose of ridiculing, embarrassing, harassing or intimidating any law enforcement officer or other individual or for any other non-law enforcement related purposes;

XII – G. RELEASE OF BWC RECORDINGS - COMMERCIAL GAIN:

1. No BWC recording will be released by the [NAME OF AGENCY] for commercial gain:
EXCEPTION:
 - i. The Head of the agency may authorize a third party BWC vendor to use a specific BWC recording as a demonstration recording as part of its BWC promotional campaign and such authorization will be done in writing;

XII – H. THIRD PARTY VENDOR RELEASE OF RECORDINGS:

1. The third party BWC vendor is not authorized to release any BWC recording made by a member of the [NAME OF AGENCY] or stored in the [NAME OF AGENCY] BWC recording retention file for any purpose without the explicit, written authorization of the Head of the agency.
 - i. This restriction will be made part of the contract between [NAME OF AGENCY] and BWC VENDOR;
2. NO MEMBER OF THE [NAME OF AGENCY] OTHER THAN THE HEAD OF THE AGENCY OR DESIGNEE [BWC ADMINISTRATOR] IS AUTHORIZED TO COPY OR RELEASE A BWC RECORDING FOR ANY PURPOSE:
 - i. the appropriate administrative/disciplinary action will be taken against a member of the [NAME OF AGENCY] who releases a BWC recording without the direct approval of the Head of the agency or designee [BWC ADMINISTRATOR].

XII – I. COMMUNICATION OF BWC RECORDING RELEASE POLICY TO THE PUBLIC:

1. The BWC ADMINISTRATOR shall ensure that a current copy of the [NAME OF AGENCY] BWC recording release policy is posted on the [NAME OF AGENCY] website including the normal and customary fees for such recordings if they are able to be reasonably determined;

XII – J. BWC RECORDINGS – TRAINING PURPOSES:

1. BWC recordings may be used for the purposes of training.
2. Members aware of BWC recordings that may serve as a training aid for other members should be reported to a supervisor and supervisors will review the recording to determine its feasibility as a training aid.
 - i. Members involved in a recording that has been deemed a training aid will be notified by a supervisor of the agency's intent to use the recording for training purposes;
 - ii. Members objecting to the display of a recording for training purposes shall submit their objection in writing, via their chain of command, to their commanding officer who will then determine if the training value outweighs the member's objection and decide if the BWC recording should be used for training.
 - iii. Once a supervisor has either received the involved member's permission to use a video for training or when a member's objection for use has been overruled by the Commanding Officer, a supervisor shall categorize the video as Training video and notify the BWC ADMINISTRATOR to make a copy for the supervisor's use or the use of the [NAME OF AGENCY] training staff as an instructional video.
 - iv. NOTHING IN THIS BWC POLICY AND PROCEDURE PRECLUDES THE USE OF A BWC TO DEBRIEF OR CRITIQUE A RECORDED EVENT.

XIII. BWC TRAINING REQUIREMENTS:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

L. TRAINING [and discipline]:

1. Agencies shall ensure that officers are trained on agency policy and the operation of the BWC equipment prior to use in the field.

Training shall also include alternative methods for effective notification of recording to persons with special needs or limited English proficiency. 330

COMMENTARY

Research has shown that there is a great deal of misunderstanding about the use of body-worn cameras both within the ranks of law enforcement officers and also by the community at large. TRAINING and debriefing sessions for all agency employees and members of other criminal justice agencies/components [prosecutors, judges and defense attorneys] as well as public information campaigns directed at members of the community, including representatives of the media, can go a long way to mediate some of these concerns.

REFERENCE MATERIAL

"For a body-worn camera program to be effective, it needs the support not only of the community but also of the frontline officers who will be wearing the cameras. Securing this support can help ensure the legitimacy of a camera program and make its implementation more successful. Agency leaders should engage in ongoing communication with officers about the program's goals, the benefits and challenges of using cameras, and the agency's expectations of the officers." 331

"One of the primary concerns for police executives is the fear that body-worn cameras will erode the trust between officers and the chief and top managers of the department. Some officers may view the cameras as a signal that their supervisors and managers do not trust them, and they worry that supervisors would use the cameras to track and scrutinize their every move." 332

"...one of the most important decisions an agency must make is how it will use camera footage to monitor officer performance. Most agencies permit supervisors to review videos so they can investigate a specific incident or complaint, identify videos for training purposes, ensure the system is working, and monitor overall compliance with the camera program...there is some debate over whether supervisors should also periodically and randomly review videos to monitor officer performance. Some agencies allow periodic monitoring to help proactively identify problems and hold officers accountable for their performance. Other agencies permit periodic monitoring only in certain circumstances, such as when an officer is still in a probationary period or after an officer has received a certain number of complaints. Some agencies prohibit random monitoring altogether because they believe doing so is unnecessary if supervisors conduct reviews when an incident occurs." 333

"Training should not only be for use of the BWCs but also for the officer's perceptions of the camera. Officers should understand the primary purpose of cameras is for evidence collection and officer safety. Officers will need to understand that monitoring officer performance and improving public relations also come with the camera use. One of the most challenging issues an agency may face is officer acceptance. If officers feel that the video cameras are being used as a tool to monitor officer behavior, as several officers felt in the IACP study, they may be resistant to using the cameras (IACP, 2004)." 334

As with any new piece of equipment, agency personnel who will use the equipment on a regular basis need to be thoroughly trained in its appropriate and correct use. Additionally, even personnel who may not be routinely equipped with a BWC but who may use the recordings made by other officers such as investigators must also be familiar with the agency's BWC program if they are to make the best use of the recordings. Likewise, supervisors and command staff who may have to review use of force incidents, citizen complaints, or the performance of specific officers will have to understand the benefits and limitations of the recordings made by BWCs. And finally, all agency personnel should be in a position to answer general questions from the public about the agency's BWC program.

"In addition to concerns about trust and supervisor scrutiny, police executives said that some officers worried about the difficulty of operating the cameras and learning a new technology...Some officers also said that cameras can be cumbersome and challenging to operate, and agencies often have to test several different camera models and camera placement on the body to determine what works best." 335

"Agencies have taken various steps to address officer concerns about body-worn cameras. One of the most important steps, according to many police executives, is for agency leaders to engage in open communication with officers about what body-worn cameras will mean for them." 336

In addition to law enforcement officers who will be using the cameras, other members of the criminal justice system, including members of the State's Attorney's Office, District and Circuit Court judges and even defense lawyers must be exposed to the practical benefits and limitations of the body worn cameras. Law enforcement agencies that are adopting BWC technology may find it beneficial to suggest/offer specialized training and/or familiarization opportunities of their BWC systems to their local State's Attorney's Office, Public Defender's Office and judges. Representatives of the agency's BWC vendor may be able to provide the appropriate level of training and indoctrination to these individuals who will be required to interpret the recordings captured by BWC users.

"Expectations about body-worn cameras can also affect how cases are prosecuted in criminal courts. Some police executives said that judges and juries have come to rely heavily on camera footage as evidence, and some judges have even dismissed a case when video did not exist. "Juries no longer want to hear just officer testimony—they want to see the video," said Detective Cherry of Baltimore. "But the video only gives a small snapshot of events. It does not capture the entire scene, or show the officer's thought process, or show an officer's investigative efforts. This technology shouldn't replace an officer's testimony. I'm concerned that if juries rely only on the video, it reduces the important role that our profession plays in criminal court." 337

"Body-worn cameras not only have the potential to increase transparency in police interactions, but also may provide important evidence in civil and criminal matters. However, the idea that cameras are able to capture the full story should be taken with caution. Video recordings are often treated 'as if they are transparent windows onto reality rather than curated, edited, visual arguments.' In the courtroom, there is often 'a strong belief that video is a singularly powerful and unambiguous source of proof.' Yet footage sometimes fails to provide important context, and can be subject to biases and varying interpretations. In some cases, it may require SPECIAL TRAINING to interpret the content of what is captured in recording." 338

"...some studies have shown that viewers tend to have an exaggerated confidence in their ability to understand visual evidence. The fact that judges may not be as adept at interpreting video footage as they believe may create difficulty as judges are called upon to interpret video at trial. 'Legal reasoning is ... based on linear, deep analysis.' Attorneys and judges spend years learning to read the law -- they learn to pay attention to the way that 'a particular word or subtle shift in a sentence's emphasis can influence or even alter a reader's understanding.' However, many attorneys and judges have no training in understanding the subtleties of video evidence. Thus, they may assume that they can reasonably interpret video, when they are actually oversimplifying. In the context of granting summary judgment, 'when judges evaluate a summary judgment record, they should be mindful that what might initially appear to be a weak case of pretext is not the same as no case.'" 339

"While some body-worn camera models provide wide-angle shots and high-resolution imaging, there is a limit to how much can be captured on video. Evaluators will need to 'overcome the inherent limits of the video's frame,' as angle, focus, or the width of the shot may impact what is captured. Moreover, body-worn cameras present footage from an officer's perspective, which itself varies depending on the camera's mount and vantage point, and may not capture what other witnesses are seeing. Even the way in which the officer moves his body will affect what is visible on the footage...video cannot capture the full circumstances of what happens outside the camera's view or what events prompted the events being recorded. With cell phones being used to photograph or record police, other witnesses may capture different perspectives and different context from other vantage points. Thus, it is important to recognize that the interpretations of events captured by the cameras can be both challenged and supported by other forms of testimony, such as civilians' eyewitness accounts, or civilian camera footage." 340

"In 2004, a report on *In-Car Cameras* (dash cams) by the International Association of Chiefs of Police concluded that there was a major gap between the capabilities of the cameras, and what the public expected they could achieve; it recommended that the limitations of the cameras be addressed in trial proceedings so that 'the jury does not have unreasonable expectations of what the video evidence can provide.' Similarly, there is a gap between expectations about what video footage represents – an unbiased, third-party viewpoint – and the biases inherent to video interpretation. The *In-Car Camera* report also asserted that the "the greatest single value of the in-car camera is that it is more and more frequently called upon to speak for the officer when they cannot speak for themselves." However, video evidence cannot necessarily speak for itself." 341

And of course, the public, including members of the media, must be made aware of both the benefits and limitations of the BWCs. All too often the expectations that the public may have about a new technology far exceed the realities that the new technology can produce. They definitely need to understand that body-worn cameras and the recordings that they produce are themselves not a panacea for some of the police-community problems that exist in some jurisdictions. They need to realize that BWCs are only tools that can be used to help law enforcement executives address some of these conflicts. The community must also be reassured that the recordings that are being made are being securely stored and maintained and will not be used to intimidate, harass, or invade the privacy of innocent persons.

"...people often expect that officers using body-worn cameras will record video of everything that happens while they are on duty. But most police departments do not require officers to record every encounter. Many agencies have policies against recording when it is unsafe or impossible, and some agencies give officers discretion to deactivate their cameras in certain sensitive situations, such as during interviews with victims or witnesses. Camera malfunctions may also occur. Some agencies have taken steps to inform judges, oversight bodies, and the public about these realities of using body-worn cameras." 342

"...these expectations can undermine an officer's credibility if questions arise about an incident that was not captured on video. This is one reason why many agencies require officers to articulate, either on camera or in writing, their reasons for turning a camera off in the middle of an incident or for not turning it on in the first place. These issues of credibility are also why it is important to provide rigorous ongoing officer training on body-worn camera policies and practices." 343

"Body-worn camera training should be required for all agency personnel who may use or otherwise be involved with body-worn cameras. This should include supervisors whose officers wear cameras, records/evidence management personnel, training personnel, Internal Affairs, etc. Agencies may also wish to offer training as a courtesy to prosecutors to help them better understand how to access the data (if authorized), what the limitations of the technology are, and how the data may be used in court.

"Before agency personnel are equipped with body-worn cameras, they must receive all mandated training.

"Officers may be called upon to activate their cameras quickly and in high-stress situations. Therefore, training programs should strive to ensure that camera activation becomes second-nature to officers. Situational training is particularly useful to achieve this goal.

"Body-worn camera training should include the following:

- All practices and protocols covered by the agency's body-worn camera policy (which should be distributed to all personnel during training);
- An overview of relevant state laws governing consent, evidence, privacy, and public disclosure;
- Procedures for operating the equipment safely and effectively;
- Scenario-based exercises that replicate situations that officers might encounter in the field;
- Procedures for downloading and tagging recorded data;
- Procedures for accessing and reviewing recorded data (only for personnel authorized to access the data);
- Procedures for preparing and presenting digital evidence for court;
- Procedures for documenting and reporting any malfunctioning device or supporting system;

"A body-worn camera training manual should be created in both digital and hard-copy form and should be readily available at all times to agency personnel. The training manual should be posted on the agency's intranet.

"Agencies should require refresher courses on body-worn camera usage and protocols at least once per year. Agencies should also require ongoing monitoring of body-worn camera technology for updates on equipment, data storage options, court proceedings, liability issues, etc. 344

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

XIII. BWC TRAINING REQUIREMENTS:

XIII – A. GENERAL:

1. The BWC ADMINISTRATOR, together with the [NAME OF AGENCY] training staff, shall develop and conduct BWC training as outlined in this policy and procedure:
 - i. all technical and camera function training will be according to the BWC manufacturer's specifications;
2. ALL [NAME OF AGENCY] personnel shall receive, at a minimum, FAMILIARIZATION training with the agency's body-worn camera program to include:
 - i. an overview of the agency's BWC program including the benefits and limitations of BWC recordings;
 - ii. a review of the agency's BWC policy and procedures;
 - iii. a demonstration of the operation of a BWC;
 - iv. a viewing of an actual BWC recording;
3. BWC FAMILIARIZATION training may be appropriate for agency personnel who will not regularly be equipped with and use a BWC but who may use BWC recordings in the course of their duties, such as command officials, supervisors, criminal investigators, internal affairs investigators, crime scene technicians, etc.
4. Nothing in this policy and procedure will preclude any sworn member of the agency from participating in the USER/ADVANCED training with the authorization of his/her supervisor;

XIII. BWC TRAINING REQUIREMENTS:

XIII – A. GENERAL:

1. The BWC ADMINISTRATOR, together with the [NAME OF AGENCY] training staff, shall develop and conduct BWC training as outlined in this policy and procedure:
 - i. all technical and camera function training will be according to the BWC manufacturer's specifications;
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 - i. an overview of the agency's BWC program including the benefits and limitations of BWC recordings;
 - ii. a review of the agency's BWC policy and procedures;
 - iii. a demonstration of the operation of a BWC;
 - iv. a viewing of an actual BWC recording;
3. BWC FAMILIARIZATION training may be appropriate for agency personnel who will not regularly be equipped with and use a BWC but who may use BWC recordings in the course of their duties, such as command officials, supervisors, criminal investigators, internal affairs investigators, crime scene technicians, etc.
4. Nothing in this policy and procedure will preclude any sworn member of the agency from participating in the USER/ADVANCED training with the authorization of his/her supervisor;

XIV. DISCIPLINE:

The Maryland Police Training Commission's "Body-worn Camera Policy" [Ad Hoc Commission recommendation]:

L. TRAINING AND DISCIPLINE:

Agencies' written policies shall state that violations of the agency BWC policy may result in discipline. 345

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses: (14) consequences for violations of the agency's body-worn camera policy; 346

COMMENTARY

Body-worn cameras have been touted by a number of law enforcement executives as a way to re-inforce and, in some cases, re-create the bond of trust that should exist between community members and the law enforcement agencies which serve and protect them. Officer-accountability and agency-transparency are the two most anticipated benefits cited in the professional literature that supports and encourages the use of BWC technology. And while officer-accountability and agency-transparency can, in all likelihood, be enhanced by a body-worn camera program that is guided and directed by a carefully drawn BWC policy and procedure, any inappropriate use of recordings made by body-worn cameras will only serve to undo that sense of trust with the community that agencies are intent on developing.

Notwithstanding the professionalism of most law enforcement officers, it is suggested that agencies clearly state in their policy and procedure that any intentional inappropriate use of any BWC equipment or recordings or intentional violation of the agency's policy and procedure will be subject to administrative and/or disciplinary action.

Agencies may decide to include a broad disciplinary/administrative action caveat in their BWC policy and procedure and/or may include a summary of prohibited/restricted actions that are enumerated throughout their BWC policy and procedure.

REFERENCE MATERIAL

"Policies should explicitly forbid agency personnel from accessing recorded data for personal use and from uploading recorded data onto public and social media websites...Agencies must take every possible precaution to ensure that camera footage is not used, accessed, or released for any unauthorized purposes:

→ Written policies should describe the sanctions for violating this prohibition." 347

Policies should include specific measures for preventing unauthorized access or release of recorded data. All video recordings should be considered the agency's property and be subject to any evidentiary laws and regulations. 348

SAMPLE PROCEDURAL TOPICS AND WORDING]

[The SAMPLE sections of this document are ADVISORY ONLY]

XIV. DISCIPLINE:

XIV – A. GENERAL:

1. Based on the circumstances, a violation of the [NAME OF AGENCY] Body-worn Camera Policy and Procedure may be subject to administrative/disciplinary action;
2. ALL AGENCY BODY-WORN CAMERAS, EQUIPMENT AND RECORDINGS ARE THE PROPERTY OF THE [NAME OF AGENCY] AND ARE RESERVED FOR THE OFFICIAL USE OF THE [NAME OF AGENCY];

3. Notwithstanding the various operating requirements set forth in the [NAME OF THE AGENCY] BWC policy and procedure, the following is a summary of GENERAL prohibited activities as relate to the [NAME OF AGENCY] BWC program:

i. members shall **NOT**:

- a. use any unauthorized, personal body-worn camera equipment while on duty or while working agency-approved secondary employment and/or authorized overtime assignment or detail unless approved, in writing, by the Head of the agency;
- b. remove, dismantle, or tamper with any hardware or software component/part associated with the [NAME OF AGENCY] BWC program;
- c. edit, alter, or otherwise change/modify any BWC recording except as permitted in the [NAME OF AGENCY] BWC policy and procedure;
- d. destroy, erase, delete, tamper with any BWC recording or BWC digital data except as authorized in the [NAME OF AGENCY] BWC policy and procedure;
- e. copy, record, share or disseminate, any BWC recording except as permitted in the [NAME OF AGENCY] BWC policy and procedure; BWC recordings are only to be shared with allied law enforcement/criminal justice agencies for official law enforcement and/or authorized [NAME OF AGENCY] purposes.
- f. download or convert any BWC recording for personal use;
- g. view BWC recordings for any reasons other than official law enforcement purposes;
- h. post recordings to any social media site or Internet site except as authorized by the [NAME OF AGENCY] BWC policy and procedure;
- i. use any [NAME OF AGENCY] issued BWCs while off-duty;
- j. surreptitiously, or otherwise without their knowledge, record any conversation of another member of the [NAME OF AGENCY] unless in the lawful performance of official law enforcement duties;
- k. record in places where a reasonable expectation of privacy exists, such as locker rooms or restrooms, unless the activation is required for the performance of official duties.
- l. record personal activity;
- m. record gratuitous or obscene images, such as the effects of extreme violence or injury, unless necessary for evidentiary documentation.
- n. record a particular person based solely on the person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness status, physical disability status, matriculation, or political affiliation.
- o. use a BWC for the purpose of intimidating an individual or discouraging an individual from observing police activity, making appropriate inquiries of an officer, or making a complaint;
- p. use, show, reproduce or release BWC recordings for the purpose of ridiculing or belittling any officer or individual or for other non-law enforcement related purposes;
- q. Intentionally or willingly record confidential informants or undercover members;
- r. record any trial, court hearing, administrative hearing or other court matter without the expressed approval of the presiding judge and/or magistrate;
- s. use a BWC to record any court/judicial proceeding/hearing or any conversation, conference, meeting between a prosecuting/defense attorney and officer unless criminal activity is taking place or suspected;

XV. BWC PROGRAM AUDITS/POLICY & PROGRAM EVALUATION:

The Maryland Police Training Commission's "Body-worn Camera Policy" [*Ad Hoc* Commission recommendation]:

NO SPECIFIC RECOMMENDATIONS

PS §3–511 reference: "...a policy for the issuance and use of a body-worn camera by a law enforcement officer addresses:
(17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers." 349

COMMENTARY

Adopting a body-worn camera program represents a considerable financial and philosophical commitment for many law enforcement agencies. The money expended initially to purchase a body-worn camera system is only the "tip of the iceberg" when it comes to a BWC program; the costs associated with training personnel to use the system, the time and cost of developing policies and procedures to manage the program and developing a technology base in which to store and maintain BWC recordings and creating protocols to process recordings when required can be extensive and may far outstrip the front-end costs of a BWC program. Law enforcement executives are, therefore, often pressed to justify in their own minds and the minds of local political leaders the financial cost of the program. Likewise, once the program starts, law enforcement executives also find themselves considering whether the return in the form of greater officer accountability and better performance, an increase in agency transparency and fewer officer complaints and lawsuits offsets the monetary cost of the program. Thus, they are faced with the need to evaluate their agencies' BWC programs.

Their first challenge is to ensure that the BWC program is running according to the policy and procedures that the agency has set out by conducting compliance audits. Secondly, they must evaluate whether the goals of fewer officer complaints, fewer law suits and better community relations have been met. The only way to determine these objectives is to conduct periodic BWC program evaluations. Because they may be questioned about the objectivity of own internal evaluation of their program they may want to enlist the assistance of a local college/university that is willing to conduct independent research, in conjunction with them, on the BWC program such as the evaluation that Arizona State University conducted on the Phoenix Police Department BWC program in December, 2014. 350

REFERENCE MATERIAL

"This evaluation was conducted to examine the effect of implementing police worn body cameras on complaints against the police and domestic violence case processing and outcomes." 351

The Present Study

"The camera technology for the project, as initially proposed, was primarily intended for two purposes:

- 1) to increase police accountability; and
- 2) increase the effectiveness of the police in their response to domestic violence.

The present study sought to assess each of these originally intended goals, but also sought to examine the potential impact on:

- officer performance, both in the adoption of, and adaptation to the body worn camera technology, and
- officer job performance and satisfaction.

The present study thus examined the effect of the body worn camera technology in six principal areas:

- 1) officer camera activation compliance;
- 2) utility and use of body worn cameras;
- 3) impact on officers' job performance;
- 4) impact on public compliance and cooperation;
- 5) impact on officer accountability; and 6) impact on domestic violence case processing and outcomes; and
- 6) impact on domestic violence case processing and outcomes. 352

The researchers used data from the following sources:

1. key stakeholder interviews;
2. project planning documents;
3. CAD/RMS data;
4. camera activation metadata;
5. official agency officer-complaint data;
6. officer self-report survey;
7. domestic violence pocket card data;
8. case prosecution data from the Phoenix Police Department and Prosecutor's Office;
9. official Phoenix City court data; 353

Despite some limitations to the research performed in this study the researchers reached the following conclusions:

"While in general the technology was found to be comfortable and easy to use, officers were dissatisfied with long download times, increased amount of time that it took to complete reports, and the possibility that video recordings might be used against them by the department. We also found that video submitted to the court was difficult to process because of logistical problems associated with chain of custody and the length of time that it took the prosecutors to review video files. While many of the problems were addressed by the precinct commander by assigning a police officer to serve as a court liaison officer, prosecutors still maintained that they did not have enough time to review video footage." 354

"Regardless, the officer worn body cameras were found to be beneficial to the officers and the court in a number of ways. First, officer productivity as measured through the number of arrests increased significantly. For instance, the number of arrests increased by about 17% among the target group compared to 9% in the comparison group. Second, complaints against the police declined significantly. Complaints against officers who wore the cameras declined by 23%, compared to a 10.6% increase among comparison officers and 45.1% increase among patrol officers in other precincts. Third, our data showed that those officers who wore cameras and received a complaint were significantly less likely to have the complaint sustained when compared to the comparison group and other patrol officers throughout the PPD. This suggests that even if a complaint was made against a camera wearing officer the video file was likely to provide support to the officer. Fourth, and related, the officer self-report data suggested that a significant number of complaints were not pursued because of video recordings. BWC did not appear, however, to have an impact on suspect behavior as measured through resisting arrest charges.

"Last, we examined the impact of body worn cameras on domestic violence case processing. Analysis of the data indicated that following the implementation of body cameras, cases were significantly more likely to be initiated, result in charges filed, and result in a guilty plea or guilty verdict. The analysis also determined that cases were completed faster following the implementation of body cameras, however, we believe that this finding was largely a product of the addition of a court liaison officer who facilitated case processing between the PPD and city prosecutor's office. In fact, when we examined the number of days it took to process a case, and compared our post-test comparison group to our post-test camera group our findings suggested that body cameras resulted in an increase in the amount of time that it takes to process a case to completion by about 80 percent."

"Our findings suggest that officer worn body cameras may increase officer productivity, reduce the number of complaints against officers, decrease the number of founded complaints against them, and increase the effectiveness in which criminal cases are processed in the courts. While our findings also suggested that there are a number of problems associated with the implementation of body cameras such as increased amount of time spent on paper work, increased IT needs, officer concerns about video files being used against them, and increased amount of time it takes to process criminal cases, our results combined with prior research suggest that the benefits of officer worn body cameras outweigh their weaknesses and limitations. This does not imply that police agencies in general and the Phoenix Police Department in particular should implement the technology throughout the department immediately; but that they should move forward purposely with the anticipation that police worn body cameras will be increasingly used in policing." 355

“Agencies should conduct periodic reviews of their body-worn camera policies and protocols. Evaluations should be based on a set standard of criteria, such as the following:

- Recording policies;
- Data storage, retention, and disclosure policies;
- Training programs;
- Community feedback;
- Officer feedback;
- Internal audit review discoveries;
- Any other policies that govern body-worn camera usage.

An initial evaluation should be conducted at the conclusion of the body-worn camera pilot program or at a set period of time (e.g., six months) after the cameras were first implemented. **Subsequent evaluations should be performed on a regular basis as determined by the agency:**

Rationale: Body-worn camera technology is new and evolving. In addition, the policy issues associated with body-worn cameras are just recently being fully considered and understood. Agencies must continue to examine whether their policies and protocols take into account new technologies, are in compliance with new laws, and reflect the most up-to-date research and best practices. Evaluations will also help agencies determine whether their policies and practices are effective and appropriate for their departments.” 356

“Agencies should collect statistical data concerning body-worn camera usage, including when video footage is used in criminal prosecutions and internal affairs matters. Statistics should be publicly released at various specified points throughout the year or as part of the agency’s year-end report. Collecting and releasing statistical information about body-worn camera footage helps to promote transparency and trust within the community. It also allows agencies to evaluate the effectiveness of their body-worn camera programs and to identify areas for improvement.

“Agencies should conduct evaluations to analyze the financial impact of implementing a body-worn camera program. These studies should analyze the following:

- the anticipated or actual cost of purchasing equipment, storing recorded data, and responding to public disclosure requests;
- the anticipated or actual cost savings, including legal fees and other costs associated with defending lawsuits and complaints against officers;
- potential funding sources for a body-worn camera program; 357

Agencies should conduct periodic reviews of their body-worn camera policies and protocols. Body-worn camera technology is new and evolving, and the policy issues associated with body-worn cameras are just recently being fully considered. Agencies must continue to examine whether their policies and protocols take into account new technologies, are in compliance with new laws, and reflect the most up-to-date research and best practices. Evaluations will also help agencies determine whether their policies and practices are effective and appropriate for their departments.

- evaluations should be based on a set of standard criteria and outcome measures;
- evaluations should be conducted on a regular basis as determined by the agency. 358

SAMPLE PROCEDURAL TOPICS AND WORDING

[The SAMPLE sections of this document are ADVISORY ONLY]

XV. BWC PROGRAM AUDITS/POLICY & PROGRAM EVALUATION:

XV – A. GENERAL:

1. The **[NAME OF AGENCY]** shall conduct an annual INTERNAL inspection/audit of its BWC program to ensure:
 - i. user compliance with existing agency BWC policy and procedure:
 - a. pre-deployment inspection;
 - b. recording procedures;
 - c. “tagging” and downloading procedures;
 - d. BWC recording review procedures;
 - e. malfunction reporting;
 - ii. BWC recording retention files security;
 - iii. BWC recording investigative use;
 - iv. BWC recording court use;
 - v. BWC recording public request procedures;
 - vi. BWC training;
 - vii. equipment durability and maintenance/replacement needs;
 - viii. vendor compliance;
 - ix. random semi-annual supervisor inspections/audits;
2. Yearly BWC system inspections/audits shall be conducted by the BWC ADMINISTRATOR unless relieved of that duty by the Head of the agency:
 - i. the BWC ADMINISTRATOR shall submit a report of his/her inspection to the Head of the agency when the annual BWC system inspection/audit is completed;
3. Unit Commanders and first-line supervisors shall conduct semi-annual inspections of their commands/units to ensure:
 - i. user compliance with existing agency BWC policy and procedure:
 - a. pre-deployment inspection;
 - b. recording procedures;
 - c. “tagging” and downloading procedures;
 - d. BWC recording review procedures;
 - e. malfunction reporting;
 - ii. semi-annual inspections shall be documented in writing with a copy forwarded to the BWC ADMINISTRATOR;
4. Notwithstanding the requirement to conduct semi-annual inspections of BWC use by their personnel, nothing precludes a command official or first-line supervisor from conducting more frequent random inspections to ensure compliance with the **[NAME OF AGENCY]** BWC policy and procedures;
5. The **[NAME OF AGENCY]** shall conduct an evaluation of the effectiveness of its BWC program as directed by the Head of the agency. The BWC ADMINISTRATOR shall coordinate the conduct of the evaluation with other agency entities as required to complete the evaluation. The evaluation will include, but not be limited to:
 - i. community feedback;
 - ii. CAD/RMS data and BWC meta-data;
 - iii. complaints against BWC users;
 - iv. use of force data - BWC user;
 - v. prosecution/conviction data – BWC users;
 - vi. officer-user surveys;
6. The **[NAME OF AGENCY]** shall make its completed BWC evaluation report available to the public:
 - i. upon written request;
 - ii. posted on agency website;

ENDNOTES

1. **Final Report – Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers**, September 16, 2015, p. 10.
“**Body worn Camera Policy**,” Maryland Police Training Commission.
2. **Public Safety Article, §3–511 [2015], Maryland Annotated Code.**
3. **“Final Report - Workgroup on the Implementation and Use of Body Worn Cameras by Law Enforcement”** staffed by the Governor’s Office of Crime Control & Prevention, December 2014, pp. 16-17.
4. **“Implementing a Body-worn Camera Program: Recommendations and Lessons Learned”** by Lindsay Miller, Jessica Toliver and the Police Executive Research Forum [PERF], Office of Community Policing Services, 2014, pp. 37-38.
5. **“Police Officer Body-worn Cameras: Assessing the Evidence,”** by Michael D. White, Ph.D. Office of Community Oriented Policing Services, 2014, pp. 30-31.
6. **Public Safety Article, §3–511 (17), Maryland Annotated Code.**
7. **“Police Officer Body-worn Cameras: Assessing the Evidence,”** by Michael D. White, PhD., Department of Justice, Office of Justice Programs, Diagnostic Center, 2014, pp. 11-12.
8. **“Analysis for the Implementation of Body Worn Camera Program,”** produced by Office of Inspector General, Prince George’s County Police Department, April 8, 2015, p.7.
9. **White**, p. 12.
10. **Ibid.**
11. **Miller and Toliver**, p. 5.
12. **“Analysis for the Implementation of Body Worn Camera Program,”** p. 8.
13. **Ibid.**
14. **Miller and Toliver**, p. 11.
15. **Ibid.**
16. **Ibid.**
17. **Miller and Toliver**, p. 15.
18. **Miller and Toliver**, p. 16.
19. **Miller and Toliver**, p.17.
20. **Ibid.**
21. **Miller and Toliver**, pp. 28-29.
22. **“Media Release – Force Science Institute, Executive Director Testifies Before U. S. Presidential Task Force on Policing,”** Force Science Institute, February 2, 2015, www.forcescience.org pp. 1-7.
23. **PS § 3-511(17) – Annotated Code of Maryland.**
24. **Miller and Toliver**, p. 5.
25. **“Police Officer Body-worn Cameras: Assessing the Evidence,”** by Michael D. White, PhD., Department of Justice, Office of Justice Programs, Diagnostic Center, 2014, p. 10.
26. **White**, p. 37.
27. **Miller and Toliver**, p. 5.
28. **Miller and Toliver**, p. 6.
White, p. 6
29. **Miller and Toliver**, pp. 6-8.
30. **Miller and Toliver**, p. 9.
31. **White**, p. 10.
32. **Miller and Toliver**, p. vii.
33. **IACP Model Policy – “Body-worn Cameras,”** International Association of Chiefs of Police, April, 2014.
34. **Policy – “Body Cameras – 703,”** Spokane Police Department, Spokane, Washington, Revised 11/01/14, p. 1.
35. **Policy – “Body-worn Cameras - Recommended Best Practices,”** Fraternal Order of Police, p. 1.
Miller and Toliver, pp. 5-9.
36. **PS § 3-511(17) – Annotated Code of Maryland.**
37. **Ibid.**
38. **Senate Bill 482 – Emergency Bill**, signed into law, May 12, 2015 [CJ § 10-402 (c) (11) (I) 2].

39. Miller and Toliver, pp 37-38.
Policy – “Body-worn Cameras: Recommended Best Practices,” Fraternal Order of Police, p. 2.
40. Miller and Toliver, p. 37.
General Order 302 – 13 “Body-worn Camera Program” Metropolitan Police Department, Washington D.C., June 29, 2015, pp. 21-22.
41. Policy – “Body Cameras – 703,” Spokane Washington Police Department, revised 11/1/14, p. 1.
42. “Final Report,” p. 9.
42. “Final Report,” p. 10.
44. Maryland Annotated Code, Criminal Law Article, § 4 – 109 (a) (3).
45. Miller and Toliver, p. 16.
46. “Police Body-mounted Cameras: With Right Policies in Place, a Win for All” Version 2.0 by Jay Stanley, ACLU Senior Policy Analyst, Originally published: October 2013 ---Last Updated: March 2015, p. 4.
47. “Final Report,” p. 8.
48. Code of Maryland Statutes, General Provisions, GP § 4-205 (a) (1).
49. Miller and Toliver, p. 17.
50. “Final Report,” p. 8.
51. Miller and Toliver, pp. 19, 40.
Stanley, p. 5.
52. “Final Report,” p. 8.
53. Ibid.
54. Miller and Toliver, p. 62.
55. Code of Maryland Statutes, General Provisions Article, GP § 4 – 101 (j) (1) (i) (ii).
56. Code of Maryland Statutes, General Provisions Article, GP § 4 – 101 (h) (1) (2) (i – vii).
57. “Final Report,” p. 9.
58. “BJA National Body-worn Camera Toolkit – Policy” www.bja.gov/bwc/Topics-Policy p. 18 of 24.
“Cloud Computing in Law Enforcement: Survey Results and Guiding Principles,” David J. Roberts, Senior Program Manager, IACP Technology Center, www.policechiefmagazine.org p. 5/5.
59. Miller and Toliver, pp. 43, 59.
60. “Final Report,” p. 1.
61. “Final Report,” p. 10.
“Body worn Camera Policy,” Maryland Police Training Commission.
62. “Final Report - Workgroup on the Implementation and Use of Body Worn Cameras by Law Enforcement” staffed by the Governor’s Office of Crime Control & Prevention, December, 2014, p. 12.
63. Miller and Toliver, pp. 37-38.
64. www.bja.gov/bwc/pdfs
 - 64-a. Laurel Police Department: General Order Chapter V, Section 400, Order 402 – Wearable Video Recorder March 17, 2013.
 - 64-b. Duluth (Minnesota) Police Department: Mobile Video Recorder - Policy 419.1.
 - 64-c. Grand Forks (North Dakota) Police Department: BODY-WORN CAMERA RECORDING EQUIPMENT - POLICY NUMBER 41.13: EFFECTIVE DATE 09-09-14: CALEA STANDARDS: 41.3.8 - REVISED 11-26-14.
 - 64-d. Louisville (Kentucky) Metro Police Department: Standard Operating Procedures SOP Number: 4.31 – Wearable Video System: Effective Date - 04/30/15: Accreditation Standard - CALEA: 83.2.2 4.31.
 - 64-e. Orlando (Florida) Police Department: Policy and Procedure 1140.0, MOBILE VIDEO RECORDING SYSTEMS: Effective: 2/03/14.
65. “Final Report,” p. 10.
“Body worn Camera Policy,” Maryland Police Training Commission.
66. “Analysis for the Implementation of Body Worn Camera Program,” produced by Office of Inspector General, Prince George’s County Police Department, April 8, 2015, p.16.
67. Miller and Toliver, p. 22.
68. Miller and Toliver, p. 24.
69. Miller and Toliver, p. 67.
70. Miller and Toliver, p. 44.

71. Miller and Toliver, p. 64.
72. Miller and Toliver, p. 66.
73. PS § 3-511(17) – Annotated Code of Maryland.
74. Miller and Toliver, p. 49.
75. Miller and Toliver, p. 2.
76. Miller and Toliver, p. 49.
77. “Final Report,” p. 10.
“Body worn Camera Policy,” Maryland Police Training Commission.
78. Miller and Toliver, p. v.
79. Miller and Toliver, p. 31.
80. Miller and Toliver, p. 34.
81. Miller and Toliver, p. 32.
82. Ibid.
83. Ibid.
84. Miller and Toliver, p.1.
85. “A Primer on Body-worn Cameras for Law Enforcement” National Institute of Justice, National Law Enforcement and Corrections Technology Center, September 2012, p. 1.
86. “Body-worn Camera Systems for Tactical Operations Technical Report,” Department of Homeland Security, October, 2013, p. 1.
87. “A Primer on Body-worn Cameras for Law Enforcement,” pp. 5-6.
88. “A Primer on Body-worn Cameras for Law Enforcement,” p. 6.
89. Ibid.
90. Miller and Toliver, p.32.
91. Ibid.
92. Miller and Toliver, p. 33.
93. Ibid.
94. Ibid.
95. “Body-Worn Video Cameras for Law Enforcement Assessment Report,” U. S. Department of Homeland Security, Division of Science and Technology, April 2015, pp. vi & 3.
96. “A Primer on Body-worn Cameras for Law Enforcement,” p. 15.
97. “Final Report” p. 10.
“Body worn Camera Policy,” Maryland Police Training Commission.
98. Miller and Toliver, p. 38.
99. “Final Report,” p. 9.
“Body worn Camera Policy,” Maryland Police Training Commission.
100. Miller and Toliver, p. 32.
101. “National Body-worn Camera Toolkit,” Bureau of Justice Administration, www.Bja.gov/bwc/topics-policy p.2/24.
102. “A Primer on Body-worn Cameras for Law Enforcement” National Institute of Justice, National Law Enforcement and Corrections Technology Center, September 2012, p. 9.
104. Miller and Toliver, pp. 37-49.
105. “Final Report,” p. 9.
106. Ibid.
107. Ibid.
108. Miller and Toliver, pp. 37-49.
109. “Final Report,” p. 10.
“Body worn Camera Policy,” Maryland Police Training Commission.
110. “Final Report,” p. 10.
“Body worn Camera Policy,” Maryland Police Training Commission.
111. Miller and Toliver, p. 62.
112. Miller and Toliver, p. 53.
113. “Drafting Your Agency’s Body Worn Camera Policy,” by Greg Meyer, POLICE Special Report: Body-worn Cameras, www.Policemag.com 2015, p. 4.
114. Ibid.
115. “Final Report,” p. 8.

116. "Final Report," p. 8.
"Body worn Camera Policy," Maryland Police Training Commission.
117. PS § 3-511(1) – Annotated Code of Maryland.
118. "Final Report," p. 8.
"Body worn Camera Policy," Maryland Police Training Commission.
119. PS § 3-511(2) – Annotated Code of Maryland.
120. Miller and Toliver, p. 53.
121. Miller and Toliver, p. 39.
122. Ibid.
123. "Body Worn Camera Systems for Tactical Operations Technical Report," Department of Homeland Security, October, 2013, p. 2.
124. "Body Worn Camera Systems for Tactical Operations Technical Report," Department of Homeland Security, p.3.
125. "Final Report," p. 8.
"Body worn Camera Policy," Maryland Police Training Commission.
126. PS § 3-511(3) – Annotated Code of Maryland.
127. Miller and Toliver, p. 12.
128. Ibid.
129. Miller and Toliver, p. 8.
130. Miller and Toliver, p. 54.
131. "Final Report," p. 8.
"Body worn Camera Policy," Maryland Police Training Commission.
132. Miller and Toliver, p. 12.
133. "Policy – "Body-worn Cameras: Recommended Best Practices," Fraternal Order of Police, p. 3.
134. "Final Report," p. 10.
"Body worn Camera Policy," Maryland Police Training Commission.
135. "Final Report," p. 8.
"Body worn Camera Policy," Maryland Police Training Commission.
136. PS § 3-511(5) – Annotated Code of Maryland.
137. PS § 3-511 (6), Annotated Code of Maryland.
138. Miller and Toliver, p. 23.
139. Miller and Toliver, p. 57.
140. Miller and Toliver, p. 13.
141. "Final Report," p. 8.
"Body worn Camera Policy," Maryland Police Training Commission.
142. PS § 3-511(4) – Annotated Code of Maryland.
143. PS § 3-511(16) – Annotated Code of Maryland.
144. Miller and Toliver, p. 12.
145. Miller and Toliver, p. 58.
146. IACP Model Policy – "Body-worn Cameras," International Association of Chiefs of Police, April, 2014. p.2.
147. Miller and Toliver, p.18.
148. Policy – "Body-worn Cameras: Recommended Best Practices," Fraternal Order of Police, p. 3.
149. "Final Report," p.8.
"Body worn Camera Policy," Maryland Police Training Commission.
150. PS § 3-511(6) – Annotated Code of Maryland.
151. PS § 3-511(8) – Annotated Code of Maryland.
152. PS § 3-511(15) – Annotated Code of Maryland.
153. Miller and Toliver, pp. 14 & 19.
154. Miller and Toliver, p. 56.
155. Ibid.
156. Ibid.
157. Stanley, p. 4.
158. "Final Report," p. 8.
"Body worn Camera Policy," Maryland Police Training Commission.
159. PS § 3-511(7) – Annotated Code of Maryland.
160. Miller and Toliver, p. 56.

161. Miller and Toliver, p. 57.
162. Miller and Toliver, p. 18.
163. Policy – “Body-worn Camera Program,” Metropolitan Police Department, Washington, D.C., December, 2014, p. 9/19.
164. “Final Report,” p.8.
“Body worn Camera Policy,” Maryland Police Training Commission.
165. PS § 3-511(7) – Annotated Code of Maryland.
166. Miller and Toliver, p.41.
167. Policy – “Body-worn Cameras: Recommended Best Practices,” Fraternal Order of Police, p.4.
168. “Final Report,” p.10.
“Body worn Camera Policy,” Maryland Police Training Commission.
169. Miller and Toliver, p. 54.
170. “Final Report,” p. 8.
“Body worn Camera Policy,” Maryland Police Training Commission.
171. Miller and Toliver, p.54.
172. Policy – “Body-worn Camera Program,” Metropolitan Police Department, Washington, D.C., p. 8/19.
173. Policy – “Body-worn Camera Program,” Metropolitan Police Department, Washington, D.C., p. 12/19.
174. Policy – “Body-worn Camera Program,” Metropolitan Police Department, Washington, D.C., p. 12-13/19.
175. Policy – “Body-worn Cameras: Recommended Best Practices,” Fraternal Order of Police, p. 9.
176. PS § 3-511(17) – Annotated Code of Maryland.
177. Courts and Judicial Proceedings - § 10-402 (c) (11) (II) 1.
178. “AXON BODY WORN CAMERAS,” – Procedures - San Diego Police Department, July 8, 2015, p. 3/15.
179. “Analysis for the Implementation of a Body-worn Camera Program,” Prince George’s County Police Department – Inspector General, April 8, 2015, p. 30.
180. “Body-worn Camera System – Pilot Program,” Montgomery County Police Department, [FC No. 430], June 8, 2015, p. 2/5.
181. “Wearable Video System,” Standard Operating Procedures - Uniforms and Equipment, Louisville Metro Police Department, April 30, 2015, p. 1/1.
182. “Final Report,” pp. 9-10/13.
“Body worn Camera Policy,” Maryland Police Training Commission.
183. PS § 3-511(11) – Annotated Code of Maryland.
184. Miller and Toliver, p 29.
185. Miller and Toliver, p 62.
186. “Force Institute Executive Director Testifies before Presidential Task Force on Policing” – Media Release, February 2, 2015 p. 6/7.
187. Miller and Toliver, p. 9.
188. “Axon Body Worn Cameras,” [revised/updated 7-8-2015] San Diego Police Department Policy and Procedure, p. 11/15.
189. Policy – “Body-worn Cameras: Recommended Best Practices,” Fraternal Order of Police, p. 8.
190. Ibid.
191. Policy – “AXON Body-worn Cameras” San Diego Police Department, July 8, 2015, p. 13/15.
192. “Final Report,” p. 10/13.
193. Policy – “Body-worn Cameras: Recommended Best Practices,” Fraternal Order of Police, p. 9.
194. PS § 3-511(17) – Annotated Code of Maryland.
195. Miller and Toliver, p. 19.
196. Miller and Toliver, p. 43.
197. Miller and Toliver, p. 59.
198. Ibid.
199. Miller and Toliver, p. 32.
200. “Axon Body-worn Cameras,” Policy and Procedure – San Diego Police Department, June, 2014, p. 9/15.
201. PS § 3-511(17) – Annotated Code of Maryland.
202. Miller and Toliver, p. 16.
203. Ibid.
204. “Drafting Your Agency’s Body Worn Camera Policy,” by Greg Meyer, POLICE Special Report: Body-worn Cameras, www.Policemag.com 2015, p. 8.
205. “A Primer on Body-worn Cameras for Law Enforcement,” National Institute of Justice, NECTC, September, 2012, p. 8.
206. Miller and Toliver, p. 16.
207. PS § 3-511(17) – Annotated Code of Maryland.
208. “A Primer on Body-worn Cameras for Law Enforcement,” p. 10.

209. Miller and Toliver, p. 15.
210. "The Use of Body-worn Cameras by Law Enforcement: Guidelines for Use and Background Paper," The Constitution Project, January 28, 2015, p. 4.
211. "Final Report," p. 9.
"Body worn Camera Policy," Maryland Police Training Commission.
212. PS § 3-511(10) – Annotated Code of Maryland.
213. Miller and Toliver, p. 32.
214. Miller and Toliver, p. 15.
215. Meyer, www.Policemag.com p. 7.
216. "A Primer on Body-worn Cameras for Law Enforcement," p. 9.
217. "A Primer on Body-worn Cameras for Law Enforcement," p. 10.
218. Miller and Toliver, pp. 44-45.
219. Miller and Toliver, pp. 15-16.
220. "What to Look for in Body Cameras and Storage Solutions," by David Griffith, POLICE Special Report: Body-worn Cameras, www.Policemag.com 2015, p. 23.
221. "Information Technology: *Care and Handling of CDs and DVDs – A Guide for Librarians and Archivists*" SWGDE Data Archiving (April 12, 2006) www.swdge.org pp.3-4/5.
222. "Final Report," p. 9.
"Body worn Camera Policy," Maryland Police Training Commission.
223. PS § 3-511(9) – Annotated Code of Maryland.
224. "IACP Technology Policy Framework," p. 4.
225. "IACP Technology Policy Framework," p. 6.
226. "Final Report," p. 9.
"Body worn Camera Policy," Maryland Police Training Commission.
227. Miller and Toliver, p. 11.
228. Ibid.
229. Ibid.
230. "Workgroup on the Implementation & Use of Body Worn Cameras by Law Enforcement - *Final Report*," pp.15-16.
231. Stanley, p. 6.
232. Miller and Toliver, p. 15.
233. Ibid.
234. Stanley, p.4.
235. "Harvard Law Review," [Vol. 128:1706 - DEVELOPMENTS — POLICING] p 1809.
236. Stanley, p. 3.
237. Miller and Toliver, p. 15.
238. PS § 3-511(17) – Annotated Code of Maryland.
239. "Final Report," p. 9.
240. Miller and Toliver, pp. 28-29.
241. Meyer, p. 8.
242. "A Primer on Body-worn Cameras for Law Enforcement," p. 10.
243. Miller and Toliver, p. 15.
244. "A Primer on Body-worn Cameras for Law Enforcement," p. 10.
245. Miller and Toliver, p. 9.
246. "Guidelines for the Best Practice in the Forensic Analysis of Video Evidence, Law Enforcement and Emergency Services Video Association – International [LEVA] www.leva.org/images/Best_Practices_FVA
247. "Harvard Review," p. 1803.
248. "Harvard Law Review," p. 1812-14.
249. PS § 3-511(17) – Annotated Code of Maryland.
250. "The Impact of Video Evidence on Modern Policing," IACP & COPS, 2004, p. 36.
251. "IACP Technology Policy Framework January 2014," p. 4.
252. PS § 3-511(17) – Annotated Code of Maryland.
253. "IACP Technology Policy Framework January 2014," pp. 1-7.
254. PS § 3-511(17) – Annotated Code of Maryland.

255. **"Evaluating the Impact of Officer Body Worn Cameras in the Phoenix Police Department,"** by Charles M. Katz, Ph.D. David E. Choate, M.A. Justin R. Ready, Ph.D. Lidia Nuño, M.S. Arizona State University with Commander Mike Kurtenbach, Sergeant Kevin "K.J." Johnson Phoenix Police Department, February, 2015 p. 10-11.
256. **"San Diego County District Attorney - Body Worn Camera Evidence Protocol,"** April 2, 2015.
257. **"Final Report,"** p. 10.
"Body worn Camera Policy," Maryland Police Training Commission.
258. **PS § 3-511(12)** – Annotated Code of Maryland.
259. **Miller and Toliver,** p. 44.
260. **Miller and Toliver,** p. 19.
261. **Miller and Toliver,** pp. 16-17.
262. **Miller and Toliver,** p. 60.
263. **Miller and Toliver,** p. 17.
264. **Miller and Toliver,** pp. 16-17.
265. **"Workgroup on the Implementation & Use of Body Worn Cameras by Law Enforcement - Final Report,"** p.15.
266. **"Body-worn Cameras,"** Concepts and Issues Paper IACP National Law Enforcement Policy Center, April, 2014, p. 5.
267. **"Body Worn Camera (BWC) Recommended Best Practices,"** Fraternal Order of Police, p.8
268. **"IACP TECHNOLOGY POLICY FRAMEWORK,"** International Association of Chiefs of Police, January 2014 pp. 6-7.
269. **Stanley,** pp. 4-5.
270. **"Laurel Police Department – General Order Chapter V, Section 400, Order 402 – Wearable Video Recorder"** March 17, 2013, p. 3.
271. **"Body-worn Camera Program, Special Order – 14-14,"** Metropolitan Police Department, Washington, D.C. December 9, 2014, p. 14/19.
272. **"Axon Body-worn Cameras,"** Policy and Procedure – San Diego Police Department, June, 2014, p.9/11.
273. **"Wearable Video Systems – Standard Operating Procedures – 4.31,"** Louisville Metro Police Department, April 30, 2015, p. 7/7.
274. **"Body Worn Cameras,"** Standard Operating Procedure [draft] – Milwaukee Police Department, 2014, p.9/10.
275. **PS § 3-511(12)** – Annotated Code of Maryland.
276. **"A Primer on Body-worn Cameras for Law Enforcement,"** p. 9.
277. **Stanley,** p. 6.
278. **Ibid.**
279. **Stanley,** p. 8.
280. **"The Use of Body-worn Cameras by Law Enforcement: Guidelines for Use & Background Paper,"** The Constitution Project, January 28, 2015, p. 4.
281. **"Final Report,"** p. 9.
"Body worn Camera Policy," Maryland Police Training Commission.
282. **PS § 3-511(11)** – Annotated Code of Maryland.
283. **Miller and Toliver,** p. 62.
284. **Ibid.**
285. **Miller and Toliver,** p. 7.
286. **Miller and Toliver,** pp. 29-30.
287. **Miller and Toliver,** pp. 6-7.
288. **"IACP Model Body Worn Camera Policy,"** p. 2.
289. **Miller and Toliver,** p. 62.
290. **PS § 3-511(17)** – Annotated Code of Maryland.
291. **Miller and Toliver,** p. 62.
292. **Miller and Toliver,** p. 24.
293. **Ibid.**
294. **Miller and Toliver,** p. 25.
295. **Ibid.**
296. **"Final Report,"** pp. 9-10.
"Body worn Camera Policy," Maryland Police Training Commission.
297. **"Police Body-Worn Cameras,"** by Alexandra Mateescu, Alex Rosenblat and Danah Boyd, published by Data & Society Research Institute, *Working Paper 2*, February 2015 p. 22-24.
298. **"Final Report,"** p. 9.
299. **Ibid.**

300. "Final Report," p. 10.
"Body worn Camera Policy," Maryland Police Training Commission.
301. PS § 3-511(13) – Annotated Code of Maryland.
302. "Maryland Public Information Act Manual," (14th ed., October 2015) pp. 1-1 & 1-2.
303. "Maryland Public Information Act Manual," p. 1-4.
304. "Maryland Public Information Act Manual," p. 1-7.
305. "Maryland Public Information Act Manual," p. 2-1.
306. Ibid.
307. "Maryland Public Information Act Manual," p. 2-2.
308. Ibid.
309. "Maryland Public Information Act Manual," p. 2-4.
310. "Maryland Public Information Act Manual," p. 3-1.
311. Ibid.
312. "Maryland Public Information Act Manual," p. 3-2.
313. "Maryland Public Information Act Manual," p. 3-27.
314. "Maryland Public Information Act Manual," p. 3-28.
315. "Maryland Public Information Act Manual," p. 3-33.
316. "Maryland Public Information Act Manual," p. 3-34.
317. Ibid.
318. "Maryland Public Information Act Manual," p. 3-35.
319. "Maryland Public Information Act Manual," p. 3-36.
320. "Maryland Public Information Act Manual," pp. 36-37.
321. "Maryland Public Information Act Manual," p. 37.
322. Ibid.
323. Miller and Toliver, p. v.
324. Miller and Toliver, pp. 46-47.
325. Miller and Toliver, p. 64.
326. Miller and Toliver, pp. 46-47.
327. Miller and Toliver, p. 63.
328. Stanley, p. 7.
329. Ibid.
330. "Final Report," p. 10.
"Body worn Camera Policy," Maryland Police Training Commission.
331. Miller and Toliver, p. 24.
332. Ibid.
333. Miller and Toliver, p. 25
334. "A Primer on Body-worn Cameras for Law Enforcement," p. 9.
335. Miller and Toliver, pp. 25-26.
336. Ibid.
337. Miller and Toliver, pp. 28-29.
338. "Police Body-Worn Cameras," by Alexandra Mateescu, Alex Rosenblat and Danah Boyd, published by Data & Society Research Institute, with support from Robinson & Yu, February 2015 www.datasociety.net p. 24.
339. Mateescu, Rosenblat and Boyd, p. 27.
340. Mateescu, Rosenblat and Boyd, pp. 24-25.
341. Mateescu, Rosenblat and Boyd, p.25.
342. Miller and Toliver, p. 28.
343. Ibid.
344. Miller and Toliver, pp. 47-48.
345. "Final Report," p. 10.
"Body worn Camera Policy," Maryland Police Training Commission.
346. PS § 3-511(14) – Annotated Code of Maryland.
347. Miller and Toliver, p. 63.
348. Ibid.
349. PS § 3-511(17) – Annotated Code of Maryland.

- 350.** "Evaluating the Impact of Officer Worn Body Cameras in the Phoenix Police Department," Katz, Choate, Ready, Nuño, Kurtenbach and Johnson.
- 351.** Katz, Choate, Ready, Nuno, Kurtenback and Johnson, p. 3.
- 352.** Katz, Choate, Ready, Nuno, Kurtenback and Johnson, p.40.
- 353.** Katz, Choate, Ready, Nuno, Kurtenback and Johnson, pp. 9-12.
- 354.** Katz, Choate, Ready, Nuno, Kurtenback and Johnson, p. 3.
- 355.** Katz, Choate, Ready, Nuno, Kurtenback and Johnson, pp. 40-41.
- 356.** Miller and Toliver, p. 49.
- 357.** Miller and Toliver, p. 48.
- 358.** Miller and Toliver, p. 66.