

PASSAIC COUNTY SHERIFF'S OFFICE

POLICIES AND PROCEDURES



SUBJECT: BODY WORN CAMERAS

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BY THE ORDER OF:

A handwritten signature in black ink, appearing to read "Thomas Adamo".

SHERIFF THOMAS ADAMO

PURPOSE The purpose of this standard operating procedure is to establish uniform guidelines for the lawful use and operation of the agency-authorized body worn camera recording system (BWC) and to ensure compliance with New Jersey Attorney General Law Enforcement Directive No. 2022-1 regarding body worn cameras, as well as all Directives issued by the Passaic County Prosecutor's Office related to BWCs. Further, this SOP establishes protocols for the maintenance, storage, retrieval, release and preservation of recordings.

POLICY It is the policy of the Passaic County Sheriff Office to utilize BWCs as required by AG Directive No. 2022-1 and to create an accurate record of the interactions between law enforcement and members of the public. In establishing these policies, the PCSO hopes to assist agency personnel in the performance of their duties by creating clearly defined parameters on when BWCs are to be activated, narrated and de-activated; the limited instances where an Officer is provided with the discretion to de-activate a BWC; and the procedures that must be followed in order to document the rationale of those decisions. The policy also clearly sets forth the procedures regarding retention, storage, retrieval and release of the content recorded by the BWCs.

PROCEDURE

I. DEFINITIONS

A. For purposes of this SOP, the following terms are defined as follows:

1. **Activate** – To actuate (put into operation) the recording mode/function of a BWC¹.
2. **Attorney General (AG)** – The Attorney General of the State of New Jersey.
3. **Body Worn Camera (BWC)** – An Officer worn device that makes an electronic audio and video recording of activities that take place during any law enforcement action. The term does not include a Mobile Video Recording (MVR) device when mounted inside a police vehicle (i.e. dash cam). The term also does not include any form of electronic recording device worn by a law enforcement Officer while acting in an undercover capacity nor does the term include an electronic recording device when used to comply with the requirements of Court Rule 3:17 (electronic recording of station house custodial interrogations).
4. **Constructive Authority** – Shall have the same meaning as defined in the Attorney General's Use of Force Policy, except that the term shall apply only to constructive authority directed against a person who is subject to an investigative detention or arrest (e.g., "show me your hands," "get out of the vehicle," etc.), or directed against a person if the Officer has un-holstered a firearm or a conducted energy device (e.g., "move out of the way," "get down," etc.).
5. **Deactivate** – To shut off the recording mode of a BWC.
6. **Digital Evidence** – Includes photographs, images, audio, and video recordings that are stored digitally.
7. **Equipped with a BWC** – Shall mean that a law enforcement Officer is actually wearing the BWC at the time in question, as opposed to simply receiving BWC equipment from the agency.
8. **Force** – Has the same meanings as defined in this department's SOP on *Use of Force*. As applied in this policy the term shall include physical, mechanical, enhanced mechanical, and deadly force.
9. **Investigation of a Criminal Offense** – Any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, petty disorderly offense, or driving while intoxicated, including but, not limited to responding to a report of a possible criminal offense; an investigative detention based on or leading to reasonable and articulable suspicion to believe that a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness to a criminal offense;

¹ Some BWC models may be turned on and remain in a standby or buffering mode, during which the device does not make a permanent record of images/sounds unless the Officer activates the recording mode/function. With respect to these models, when the Officer activates the recording mode/function, the device automatically preserves an electronic recording of the events that transpired a fixed period of time (e.g. 30 seconds) before the recording mode/function was activated. This time-delay or "buffering" feature allows the device to capture data concerning the event/circumstances that prompted the Officer to activate the BWC. When an Officer does not activate the recording mode/function, data captured while the device is in standby/buffering mode is overwritten automatically.

or canvassing an area, neighborhood, or premises for potential witnesses to a criminal offense.

10. **Law Enforcement Agency or Department** – A law enforcement agency operating under the authority of the State of New Jersey.
11. **Law Enforcement Officer or Officer** – A person whose public duties include the power to act as an Officer for the detection, apprehension, arrest, and conviction of offenders against the laws of the State. This may include sworn Officers employed by the Passaic County Sheriff's Office or those of another law enforcement agency.
12. **Mobile Video Recording System (MVR)** – A device or system installed or used in a police vehicle or worn or otherwise used by an Officer that electronically records visual images depicting activities that take place during a motor vehicle stop or other law enforcement action.
13. **Notification** – A statement made by an Officer at the outset of using a BWC camera to record a communication, conversation or interaction with a civilian for the specific purpose of informing the civilian that the communication or conversation is being recorded.
14. **Proactive Enforcement Team** – Includes Officers who are typically assigned to target vice, drugs, organized street crime, violent crime, fugitives and/or any other targeted enforcement. Unlike Officers who are responsible for responding to traditional calls for service, these Officers are typically assigned the singular responsibility of addressing the aforementioned activities, and they are sometimes referred to as crime suppression units. The nature of their work is varied and may include being dressed in traditional uniform, modified uniform, or plain clothes. These Officers may work alongside undercover Officers, conduct surreptitious surveillance, engage in high intensity enforcement via motor vehicle/pedestrian stops and/or interact with confidential informants or witnesses who wish to remain anonymous.
15. **School** – A public or nonpublic elementary or secondary school within this State offering education in grades kindergarten through 12, or any combination of grades, at which a child may legally fulfill compulsory school attendance requirements.
16. **Serious Bodily Injury** – Means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. Serious body injury and serious bodily harm have the same definition for purposes of this policy. See N.J.S.A. 2C:11-1(b); N.J.S.A. 2C:3-11(d).
17. **Significant Bodily Injury** – Means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five (5) senses. See N.J.S.A. 2C:11-1(d).
18. **Subject of the Video Footage** – Any law enforcement Officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the BWC recording, and shall not include a person who incidentally appears on the recording.
19. **Substantive Report** – A report that includes a detailed accounting of the incident. It does not include a report, for example, which simply refers to other reports or to the existence of BWC or other camera recordings.
20. **Tactical Team** – A group of Officers who are specially selected, trained, and equipped to handle high-risk incidents, including, but not limited to, those involving snipers,

barricaded persons, warrant services, apprehensions, acts of terrorism, and other situations or activities as deemed necessary by command leadership.

21. **Tagging** – An electronic labeling, flagging, or categorization of an electronic file captured by a BWC.
22. **Youth Facility** – A facility where children assemble under adult supervision for educational or recreational purposes, such as group homes, residential facilities, daycare centers, youth camps, etc.

II. **GENERAL**

- A. **Scope of Applicability** – This SOP is intended to provide guidance to sworn members of the Passaic County Sheriff's Office on the use of BWCs and retention, storage and disclosure of the information captured. It should not be construed to create a duty or any rights beyond those granted under the United States or New Jersey Constitution, or Federal and State statutes and regulations.
- B. **BWC Devices** – All BWCs used by any Officer employed by the PCSO must be issued and approved by the department.
- C. **Training** - The Sheriff shall maintain a training program on the lawful and proper use of BWC equipment. Only Officers who have received training in the use of the BWCs, as well as the department's BWC policy, are permitted to use this system and must demonstrate a satisfactory degree of familiarity and efficiency in the use of this system. The proper use of a BWC is considered an essential job function.
 1. The Training Division is responsible for conducting or scheduling:
 - a. Initial training of all newly hired Officers or to Officers who have not been previously trained;
 - b. Annual refresher training will be provided to ensure continued effective use and operation of the equipment, and to incorporate changes, updates or other SOP revisions as necessary or required; and
 - c. Supplemental training as a component of the progressive disciplinary process.
- D. **Placement** – A BWC used by a law enforcement Officer shall be placed so that it maximizes the camera's ability to capture video footage of the Officer's activities. This may include placement on helmets, vests or other such location, so long as the device is secured properly and will maximize the device's recordation function.
- E. **Written Reports** – BWC recordings are not a replacement for written reports. ***Under no circumstances*** shall Officers simply refer to a BWC recording on an investigation or continuation report instead of detailing the facts and circumstances of their investigation/observations. Officers should represent statements in their reports as a summary of what is contained in the BWC recording.
- F. **Officers required to wear BWCs** – The Sheriff or his/her designee shall determine those Officers who will be equipped with BWCs in accordance with N.J.S.A. 40A:14-118.3 and AG Directive No. 2022-1. Accordingly, the following are required to be equipped with BWCs and adhere to this policy when performing their duties:

1. All uniformed patrol Officers while acting in the performance of official duties, as required by N.J.S.A. 40A:14-118.3 (P.L. 2020, c. 128). This shall include uniformed Officers assigned to traffic law enforcement, as well as Class II Special Law Enforcement Officers assigned to patrol or traffic law enforcement duties.
2. All Officers assigned to tactical teams as defined in this policy and in accordance with AG Directive No. 2022-1. Tactical teams include S.W.A.T. (Special Weapons and Tactics), S.R.T. (Special Response Team), T.E.A.M.S. (Technical Emergency Mission Specialists), Entry Teams, Rapid Deployment, fugitive or similar units.
3. All Officers assigned to proactive enforcement teams as defined in this policy and in accordance with AG Directive No. 2022-1.
4. All Officers assigned to canine units.
5. All Officers whose assigned duties include regular interaction with members of the public, which reasonably may give rise to an arrest situation or use of force.
6. All Officers assigned to "Front Desk" duty in law enforcement agencies, whose duties include interaction with members of the public who enter police stations to report incidents or request assistance or information.
7. All Officers assigned to a pre-planned search warrant execution or a pre-planned arrest. This shall include pre-planned searches and arrests performed pursuant to statutory authority, such as parolee searches.
8. All uniformed Officers assigned to duties at demonstrations or potential civil disturbances.
9. When directed by the Sheriff or his designee for a lawful purpose.
10. When authorized by the County Prosecutor or her designee or the Attorney General or his designee.
11. As may be otherwise provided by future guidelines or directives promulgated by the Attorney General.

G. **Officers NOT Required to wear BWCs** – The following Officers are not required to wear BWCs by N.J.S.A. 40A:14-118.3 and AG Directive No. 2022-1.

1. Officers engaged in an undercover assignment.
2. Officers acting as hostage negotiators or crisis negotiators working in conjunction with tactical teams.
3. Officers assigned to administrative positions within the PCSO. This does not include Officers assigned to the "Front Desk" as set forth in Chapter II, Paragraph F, Subsection (6) of this policy.
4. Officers meeting with a confidential source or recruiting a potential confidential source.
5. Officers engaged in union representation of a member of the collective bargaining unit.
6. Officer assigned to duties within school or youth facilities as part of the normal daily educational environment, such as School Resource Officers, and Class III Special Law

Enforcement Officers. Officers assigned to duties at schools or youth facilities working security or crowd-control functions at special events such as athletic competitions, graduations or similar public events shall be equipped with BWCs.

7. Non-uniformed Officers assigned to investigative, non-enforcement duties, when authorized by the Sheriff or his designee.
 8. Officers assigned to “extra duty” or “off-duty” assignments that involve strictly traffic direction.
 9. Officers engaged in crime-scene processing.
 10. Officers engaged in duties as bomb or explosive technicians.
 11. Officers conducting searches of cellphones, tablets, computers or other electronic devices pursuant to a search warrant, when such items have already been seized and the search is performed at a location other than the premises of the initial search and seizure.
 12. Officers conducting searches of cellphones, tablets, computers or other electronic devices that are suspected to contain images of child sexual exploitation.
- H. **Express Authorization to use a BWC is Required** – In addition to any other provisions of this policy governing the use of a BWC Officers shall not wear a BWC unless they have been authorized to do so by the Sheriff or his/her designee or by the Chief Law Enforcement Officer of the agency overseeing a multi-agency task force, team, or unit.
- I. **Use and Ownership** – All BWC equipment, recording media, images, audio and related metadata are the sole intellectual property of the Passaic County Sheriff Office and will not be copied, released or disseminated in any form or manner outside the parameters of this SOP.
- J. **Future Modifications of Policy** – This SOP is subject to change based on any directives or guidelines issued by the Attorney General or the Passaic County Prosecutor subject to his or her Supervisory authority, setting forth additional procedural or substantive requirements or restrictions concerning BWCs and BWC recordings.

III. NOTICE TO THE PUBLIC

- A. **Web Based Notification** – The PCSO website/webpage shall contain a clear statement that this department utilizes body worn cameras. The website/webpage posting shall include an image showing of what the device looks like and how it will be worn by both uniform and plainclothes Officers to aid civilians in their ability to determine whether an Officer is equipped with the device.
- B. **Civilian Notification** – An Officer who is wearing a BWC shall notify the subject of the recording that the subject is being recorded by the BWC unless it is unsafe or infeasible to provide such notification.
1. Such notification shall be made as close to the inception of the encounter as is reasonably possible.
 2. If the Officer does not provide the required notification because it is unsafe or infeasible to do so, the Officer shall document the reasons for that decision in a report or by narrating the reasons on the body worn camera recording, or both.

3. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
- C. **Truthful Response to Inquiries Required** – Any time that a civilian inquires of an Officer whether the Officer is equipped with a BWC or inquires whether the device is activated, the Officer shall answer truthfully unless the Passaic County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, has expressly authorized the Officer to make a covert electronic recording. This does not apply to Officers who are operating in an undercover capacity, or while they are conducting/participating in a station house custodial interrogation electronically recorded in accordance with R. 3:17.
- D. **Private Residences** – Prior to entering a private residence, a law enforcement Officer shall notify the occupant that the occupant is being recorded by the BWC and, if the occupant requests the Officer to discontinue use of the Officer's BWC, the Officer shall immediately discontinue use of the BWC unless the Officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that the Officer will be required to use constructive authority or force.
- E. **Victim Interactions** – When interacting with an apparent crime victim, a law enforcement Officer shall, as soon as practicable, notify the apparent crime victim that he or she is being recorded by the body worn camera and, if the apparent crime victim requests the Officer to discontinue use of the body worn camera, the Officer shall immediately discontinue use of the body worn camera.
- F. **Anonymous Reporting** – When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement Officer shall notify the person that they are wearing a BWC and, if the person requests that the Officer discontinue use of the body worn camera, the Officer shall evaluate the circumstances and, if appropriate, discontinue use of the body worn camera.
- G. **Recording Request for Deactivation** – A request to discontinue the use of a body worn camera made to a law enforcement Officer pursuant to this section and the response to the request shall be recorded by the recording system prior to discontinuing use of the recording system.

IV. INCIDENTS TO RECORD

- A. **Official Use Only** – A BCW shall be activated only while in the performance of official police duties and for the purpose of recording incidents, investigations and police-civilian encounters involving those law enforcement activities specified in this SOP. A BWC shall not be activated while the Officer is on break or not actively performing a law enforcement function. (**See Chapter VII, Paragraph G**)
- B. **Activation Generally Required** – BWCs allow for a clearly documented, first-hand, and objective account of an incident and will produce the maximum amount of information regarding the incident to be captured. Therefore, the video and audio recording functions of a BWC shall be activated whenever the Officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an Officer and a member of the public, in accordance AG Directive No. 2022-1 and the Directives of the County Prosecutor's Office. The body worn camera shall remain activated until the encounter has fully concluded, and the Officer leaves the scene.

1. Officers equipped with BWCs shall activate the device in all of the following circumstances:
 - a. The Officer initiates an investigative detention (e.g., a **Delaware v. Prouse** traffic stop, a **Terry v. Ohio** criminal suspicion stop, or a checkpoint or roadblock stop.), field interviews and field identifications (including face-to-face and motor vehicle related);
 - b. The Officer is responding to any call for service and is at or near the location to which the Officer has been dispatched;
 - c. Anytime an Officer is engaged with a motorist in any capacity (initiating a traffic stop, MV pursuits, assisting a motorist in need, detaining an occupied vehicle for any investigative / community caretaking purpose, sobriety testing, checkpoints (DWI, seatbelt, inspection), investigating a motor vehicle offense, etc.);
 - d. The Officer is conducting a community caretaking check;
 - e. The Officer is making a custodial arrest (practical or actual);
 - f. The Officer is conducting a protective frisk for weapons;
 - g. The Officer is interviewing a witness in the course of investigating a criminal offense or a motor vehicle offense;
 - h. The Officer is performing a search, whether planned or unanticipated (all types, including warrantless searches, the execution of a search warrant, vehicle searches, and consent searches, etc.);
 - i. The Officer is transporting an arrestee/prisoner, whether to a law enforcement facility, county jail or other place of confinement, or to a hospital or other medical care or mental health facility;
 - j. The Officer is assigned to special events or projects, including but not limited to crowd control, unruly crowds, strikes, picket lines, or any incident requiring activation of the any hazard or emergency operations plan;
 - k. The Officer is engaged in a police response to any type of civil disorder in circumstances where the Officer is engaged with or in the presence of civilians and the Officer or any other Officer on the scene may be required to employ constructive authority or force;
 - l. The Officer uses constructive authority or force, or reasonably believes that constructive authority or force may be used in any encounter or situation not otherwise listed in this subsection based on specific and articulable facts warranting heightened caution (must be documented by narration on the recording and/or in any investigation report);
 - m. The Officer is conducting a custodial interrogation of a suspect, unless the interrogation is otherwise being recorded in accordance with Rule 3:17 (*Electronic recordation of stationhouse interrogations*);
 - n. The Officer is participating in an out-of-court identification in the field (i.e., show-ups);
 - o. The Officer reasonably believes that any other Officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities;

- p. Any contact that becomes adversarial when the BWC has not already been activated.
- C. **Officer Safety** – At no time is an Officer expected to jeopardize his/her safety or the safety of another person in order to immediately activate his/her issued BWC into event mode. If a BWC is not immediately activated into event mode due to an immediate threat to the Officer’s life or safety that makes activating the BWC impossible or dangerous, that BWC shall be placed into event mode at the first reasonable opportunity to do so.
 - 1. **Incidents of Constructive Authority or Force** – When circumstances necessitating the use of constructive authority or force arise suddenly during the course of a swiftly developing event, it may not be safe and practicable for an Officer to activate the BWC before employing constructive authority or force. Nothing in this policy should be construed or applied in a manner that jeopardizes Officer safety by distracting the Officer’s attention from the immediate need to use such constructive authority or force. It should be noted that in many circumstances where the need to use constructive authority or force arises, the Officer would already have initiated a police activity, such as a motor vehicle stop, a “Terry” stop, or a response to a call for service. Such an activity would have already triggered the requirement to activate the BWC as the police activities enumerated in paragraph B of this section often will co-occur during the course of a single police-citizen encounter.
- D. **Continuous Recording** – Except as specifically stated in any provision of this policy, once a BWC has been activated in accordance with paragraph B “Activation generally required”, the device must remain activated throughout the entire encounter/event/episode and shall not be deactivated until it is concluded (e.g. the Officer has left the scene; all civilians involved in the encounter have left the scene; the Officer has informed dispatch of a Supervisor that the event has concluded; the event is “closed” in the PCSO computer aided dispatch (“CAD”) system, etc.).
- E. **Special requirements for recording certain incidents** – The use of a BWC has additional requirements unique to the following specific types of events:
 - 1. **Transport of an arrestee/prisoner** - When a BWC is activated to transport an arrestee/prisoner, regardless of whether the Officer is in uniform or in plainclothes, it shall remain activated at all times while the BWC-equipped Officer is in the presence of the arrestee and until the arrestee is secured in the processing room or a cell, or until custody of the arrestee has been transferred to county jail personnel, or until the Arrestee is with hospital/medical/mental health personnel and the Officer is no longer in the presence of the arrestee.
 - 2. **Privacy of Arrestee/Prisoner in Hospital settings** –
 - a. When receiving a request from a healthcare professional or from another patient to deactivate, the Officer should strongly consider deactivating unless the Officer feels that there is a significant potential that the video will serve to protect the Officer and the public.
 - b. A prisoner’s request to deactivate may be an indication that they anticipate exhibiting criminal or dangerous behavior, and the recording should not be deactivated on that request alone. However, the Officer may still deactivate (temporarily) upon a prisoner’s request if the Officer feels that a significant intrusion to privacy presents itself. A significant intrusion of privacy should be

construed to mean some procedure or conversation which would expose the prisoner's private body parts or personal health information. Short of a significant intrusion, the Officer should not deactivate based on a prisoner's request.

- c. Consistent with Chapter V, Paragraph D, Subsection 2, in situations where an Officer reasonably believes that the Officer or another person is likely to use force, the BWC shall be re-activated as soon as it is safe and practicable.
2. **Use of a BWC when investigating underage Alcohol and/or Marijuana use –** Consistent with the provisions of N.J.S.A. 2C:33-15(a)(4), the video and audio recording functions of an Officer's BWC shall be activated whenever the Officer is responding to a call for service related to an underage person who is suspected of violating the law with respect to possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item, or at the initiation of any other law enforcement or investigative encounter between an Officer and a person related to a violation or suspected violation of that provision. The BWC shall remain activated until the encounter has fully concluded and the Officer leaves the scene and shall not be deactivated based on a request by a person who is the subject of the call for service related to a violation of N.J.S.A. 2C:33-15, or for any other reason.
 3. **Use of Force Incidents, In-Custody Deaths and other Exigent Circumstances –** Notwithstanding any other provision of this SOP, or any guidelines or directives issued by the County Prosecutor or Attorney General, when an Officer equipped with a BWC is dispatched to or otherwise goes to the scene of a "Law Enforcement Incident" as defined in Attorney General Law Enforcement Directive No. 2019-4, the Officer shall activate the BWC before arriving at the scene when feasible. While on scene the Officer shall not deactivate the BWC unless instructed to do so by the assistant prosecutor or deputy attorney general supervising the investigation of such an incident pursuant to AG Directive No. 2019-4, or his or her designee. Such instruction may be given telephonically by the assistant prosecutor, assistant or deputy attorney general, or designee supervising the investigation.
- F. **Narrating events when BWC is Recording –** When a BWC is activated, Officers must provide narration where practical and safe in an effort to augment the value of the recording and to provide clarity for the viewer.
1. If possible, narrate the circumstances at the start of the encounter audibly so that the recordings on the BWC will be easier to locate if review of the recording is necessary at a later time (e.g. an Officer arriving upon the scene of a serious motor vehicle collision may narrate the recording by stating as the BWC is activated "...*Officer Smith coming upon the scene of a serious motor vehicle crash at the corner of Main Street and Smith Street*").
 2. Officers can also audibly narrate or mark significant events while recording and provide details of the marked segments.
- G. **Failure to record required event -** If an Officer fails to activate the BWC, fails to record the entire event contact, or interrupts the recording, the Officer shall document in the applicable incident report why a recording was not made, was interrupted, or was terminated, and also must categorize the recording appropriately.

V. **STANDARDS FOR DEACTIVATION OF BWCs BASED ON THE REQUEST OF A CIVILIAN, WHEN DISCUSSING INVESTIGATION STRATEGY OR PLANNING, OR ON THE INSTRUCTION OF THE PROSECUTOR**

- A. The video and audio recording functions of a BWC may be deactivated, consistent with AG Directive No. 2022-1 and those issued by the County Prosecutor, under the following circumstances:
1. **At the Request of a Civilian providing Information/Cooperation** – An Officer may deactivate a BWC when a civilian conversing with the officer requests that the device be turned off under circumstances where it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected.
 - a. The Officer shall not suggest to the person that the BWC should be de-activated; nor shall the officer ask the person whether he or she would prefer that the BWC be de-activated;
 - b. Rather, the request for de-activation must be self-initiated by the civilian. The officer may explain the consequences of deactivation (e.g., evidence relevant to a criminal investigation will not be recorded).
 - c. In deciding whether to de-activate the BWC, the Officer shall consider the privacy and safety interests of the person requesting de-activation, whether the encounter is occurring in the person’s residence, and the need for the information or assistance that the person will provide only if the de-activation request is honored.
 2. **At the Request of a Person seeking Emergency Medical Assistance** – An officer may deactivate a BWC when a person, other than an arrestee, is seeking emergency medical services for him or herself or another and requests that the BWC be deactivated. In deciding whether to deactivate the BWC, the officer shall consider the privacy interests of the person requesting de-activation and the person in need of medical assistance.
 3. **During Criminal Investigation Strategy/Planning Discussions** – While the Officer is participating in a discussion pertaining to criminal investigation strategy and planning (e.g., to consider what investigative techniques to pursue, such as what questions to pose to a suspect or witness, whether to summon a drug/explosives detection canine, whether to apply for a search warrant, whether to request permission to conduct a consent search, or to conduct another type of warrantless search, etc.), provided that the discussion is not conducted in the immediate presence of a civilian and further provided that the Officer is not actively engaged in the collection of physical evidence (i.e., conducting a search). When an Officer deactivates or mutes a BWC pursuant to this section, the Officer shall narrate the circumstances of the deactivation.
 4. **On Instruction from the Prosecutor** – When specifically authorized to do so by an assistant prosecutor or an assistant or deputy attorney general for good and sufficient cause as determined by the Assistant Prosecutor or Assistant or Deputy Attorney General. When an Officer deactivates a BWC pursuant to this section, the Officer shall narrate the circumstances of the deactivation indicating the assistant prosecutor who authorized the deactivation (e.g., “...I am now turning off my BWC as per the instruction of assistant prosecutor (insert name).”).

- B. **Procedures for Deactivation based on Civilian Request** - When an Officer de-activates a BWC pursuant to Section V, the following procedures shall be followed:
1. The discussion between the Officer and the civilian concerning the request for de-activation shall be electronically recorded;
 2. The Officer before de-activating the BWC shall narrate the circumstances of the de-activation (e.g., "I am now turning off my BWC as per the victim's request.");
 3. The Officer shall report the circumstances concerning the deactivation to his or her superior as soon as is practicable; and
 4. The Officer shall document the circumstances of the de-activation in any investigation or incident report concerning the incident under investigation.
- C. **Declining the Request to Deactivate a BWC** – If the Officer chooses not to honor a request to deactivate a BWC made under Section V, Subsection A Paragraph 1 or Section V, Subsection A Paragraph 2, (e.g. the Officer believes that there is a reasonable possibility that it may be necessary to use constructive authority or force during the encounter) the following is required:
1. That Officer must document the reason for declining the request.
 2. The Officer must report it to their immediate Supervisor as soon as it is safe and practical to do so.
 3. When making the decision whether or not to honor (or decline) a request to deactivate the BWC, the Officer should weigh the benefits of full and comfortable cooperation from the member of the public, vs. the potential that the video will serve to protect the Officer and the public, by capturing a controversial event.
 4. In the event that the Officer declines a deactivation request, the Officer immediately shall inform the person making the request of that decision.
 5. Officers are prohibited from misleading the person making the deactivation request into believing that the BWC has been turned off when in fact it is operating, unless the Passaic County Prosecutor or his/her designee or the Director of the Division of Criminal Justice or his/her designee expressly has authorized a covert recording.
 6. **NOTE** – Pursuant to Section III (E) of this SOP and in accordance with AG Directive No. 2022-1, an Officer may not decline a request from an apparent crime victim to discontinue recording of the encounter.
- D. **Reactivating the BWC.**
1. **The reason for Deactivation no longer exists** – In any instance where a BWC was deactivated pursuant to this section, the device shall be reactivated as soon as it is safe and practicable to do so if and when the circumstances justifying deactivation no longer exist (e.g., the interview of the person requesting deactivation is completed, etc.) and the Officer would otherwise be required to activate the BWC.
 2. **Law Enforcement Force is Authorized** – Notwithstanding any other provision of this SOP, in any instance where a BWC was deactivated for any reason, if circumstances develop so that an Officer is authorized to use force, the BWC shall be reactivated as soon as it is safe and practicable to do so.

VI. SPECIAL CIRCUMSTANCES RESTRICTING ACTIVATION OF A BWC

- A. Unless the Officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that he or she will be required to use constructive authority or force, the Officer shall not activate a BWC, or shall deactivate a BWC that has been activated, while the Officer is in:
1. A school or youth facility or on school or youth facility property under circumstances where minor children would be in view of the BWC;
 2. A patient care area of a healthcare facility, medical office, or substance abuse treatment facility under circumstances where patients would be in view of the BWC; or
 3. A place of worship under circumstances where worshipers would be in view of the BWC.
- B. If an Officer is required to deactivate the BWC when entering a school, house of worship, health care facility, substance abuse treatment center, etc., the Officer shall narrate the reason for deactivation (e.g., "*...I am entering a school building where children are present.*"). The BWC shall be reactivated as soon as it is safe and practicable to do so if and when the circumstances requiring deactivation no longer exist (e.g., the Officer is conversing with an adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWC).
- C. In the event that a BWC captures the image of a patient in a substance abuse treatment facility, the Sheriff or his/her designee shall notify the Passaic County Prosecutor or his/her designee to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information (42 USC § 290dd-2, 42 CFR §23.1 to 23.41). The recording shall not be accessed without the permission of the Passaic County Prosecutor or her designee. Note: destruction of the recording would be inappropriate until it has been determined that it had not captured exculpatory information that must be provided to a defendant in discovery. The Special Investigation Division is responsible for ensuring that all recordings categorized as having been taken in a substance abuse treatment facility, are brought to the attention of the Passaic County Prosecutor's Office.
- D. Should the Officer find him/herself in a position where the BWC remained activated in one of the circumstances outlined in this section, that video must be categorized accordingly, as outlined in Section XI, Subsection D of this policy.

VII. Other Restrictions on Recording

- A. **Restrictions on recording when Undercover Officer or Confidential Informant (CI) Present** – Unless specifically required under Section IV, Subsection E Paragraph 3 (Use of Force, In-custody death, other exigent circumstances), the Officer shall not activate the video and audio recording functions of a BWC, or shall deactivate a device that has been activated, if the Officer knows or reasonably believes that the recording would risk revealing the identity of an individual as an undercover Officer or confidential informant or otherwise would pose a risk to the safety of an undercover Officer or confidential informant, unless such activation is expressly authorized by a Supervisor, or unless the exigency of the situation and danger posed to an Officer require that the encounter or incident be recorded, in which event the Officer shall inform his or her Supervisor that the recording risks revealing the identity of an individual as an undercover Officer or confidential informant.

1. **Planned events with Undercover or CI Present** – In the event of a planned arrest/search warrant execution where it is expected that an undercover Officer or confidential informant would be present (e.g., a raid where the undercover operative will be arrested to preserve his or her cover) the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, may provide specific instruction to any BWC equipped Officers participating in the operation on whether to activate their device.

- B. **Special precautions when a BWC recording may reveal tactical operations information** – In the event that a BWC worn during the execution of a tactical operation (e.g. “Special Operations” or “SWAT” operations, execution of arrest and/or search warrant, etc.) records confidential tactical information of which might jeopardize future operations or Officer safety (e.g. verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms, techniques to convince a person to open doors, etc.), the recording shall be tagged in accordance with sections XI(B) and XI(D) of this SOP. See N.J.S.A. 47:1A-1.1 (exempting from disclosure under Open Public Records Act “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of a person”); N.J.A.C. 13:1E-3.2(2) (exempting records that may reveal “surveillance, security, tactical, investigative, or operational techniques”).

- C. **Deactivation/removal of BWC from alcohol breath testing area** – BWCs shall not be worn or brought into the area where an electronic alcohol breath testing device is being used. Nothing herein shall be construed to preclude the use of a BWC to record the behavior of a person arrested for driving while intoxicated other than while the person is in the breath-testing area while the electronic breath testing device is being operated.

- D. **Restrictions on using BWCs with enhanced audio/visual capabilities** – Pursuant to the County Prosecutor’s directive, which became effective July 1, 2021, if the department acquires a BWC with enhanced audio/visual capabilities that allow it to record an image or conversation that could not be seen or heard by the Officer wearing the device (e.g. infrared night vision or thermal imaging, sound amplification that would record conversations occurring at a remove distance) such features shall not be used.

- E. **Secret use of a BWC is Prohibited** - A BWC shall not be used surreptitiously.

- F. **BWCs may not be used to gather intelligence information in First Amendment protected activity** - A BWC shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service, law enforcement encounter and/or an investigative function between a law enforcement Officer and a member of the public. Nothing in this paragraph shall be construed to prohibit activation of a video and audio recording functions of a BWC as authorized under this law and in accordance with any applicable guidelines or directives promulgated by the Attorney General.

- G. **Other general restrictions** - BWCs shall not be used to record:
 1. When on break or otherwise engaged in personal activities;
 2. In any location, or under any circumstances where individuals have a reasonable expectation of privacy, such as a restroom or locker room, unless otherwise authorized by this SOP.
 3. When engaged in police union business;

4. When involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other Supervisor-subordinate interaction.
- H. **Recordings in contravention of this policy.** Any recordings from a BWC recorded in contravention of this policy or any other applicable law, guideline or directive, shall immediately be brought to the attention of command staff and subsequently destroyed by command staff following consultation and approval by the County Prosecutor or Director of the Office of Public Integrity and Accountability. Such approval shall be documented in writing. Any such footage shall not be admissible as evidence in any criminal, civil, or administrative hearing, except as evidence in a proceeding related to unauthorized use of the BWC.
- I. **Narrating the reason for deactivation** - Each time that an Officer deactivates a BWC, no matter the reason, the Officer MUST narrate the reason just prior to deactivation.
- J. **Reactivation required** - In any instance where a BWC was deactivated pursuant to this section, the device shall be reactivated as soon as it is safe and practicable to do so if and when the circumstances justifying deactivation no longer exist (e.g., the interview of the person requesting deactivation is completed, etc.) and the Officer would otherwise be required to activate the BWC.

VIII. RESTRICTIONS ON RECORDINGS IN THE COURTROOM

- A. Officers shall not activate a BWC while in a courtroom or during court proceedings, unless the Officer is responding to a call for service or is authorized to use constructive force.
- B. Each time that an Officer activates a BWC under this section the Officer MUST narrate the reasons for activation.
- C. In any instance where a BWC was activated under this section, the device shall be deactivated as soon as it is safe and practicable to do so if and when the circumstances justifying activation no longer exist.

IX. MAINTENANCE AND USE OF BWCs

- A. **Record Keeping.** Each Officer shall be issued a BWC with authorization from the Sheriff. The Special Investigation Division shall maintain a database of assigned BWCs.
 1. **Assigned equipment** - Each BWC has a unique serial number and has been assigned an internal tracking identification number. Officers assigned BWCs shall use the equipment on a daily basis unless otherwise authorized / directed by a Supervisor.
 2. **Use of other's BWC prohibited** - Officers shall not utilize the BWC of another without the expressed permission of the Shift/Unit Commander, which shall be documented in a report and submitted to the Special Investigations Division.
 3. The Information Technology Division shall ensure that the device number assigned to an Officer appears on the BWC control log or ledger.
- B. **Officer Responsibility** –
 1. BWC equipment is the responsibility of the assigned Officer and shall be used with reasonable care to ensure proper functioning.

2. Officers shall inspect their BWC at the commencement and conclusion of each shift or tour of duty to ensure both video and audio recording readiness of the system. The inspection shall include but, is not be limited to:
 - a. Ensuring that the battery is fully charged;
 - b. Ensuring that the BWC has sufficient memory to complete the tour of duty; and,
 - c. Ensuring the proper positioning of the BWC on his/her uniform or outermost garment facing forward or other approved area in accordance with training.
 - d. To the extent possible, Officers are responsible for ensuring the BWC remains in a position to allow the recording of an encounter or incident.
3. **Inspection Requirements** – When conducting the pre-shift and post-shift inspection, the Officer shall activate the BWC and verbally state the date, time, and whether a preshift or post-shift inspection is being conducted.
4. **Duty to Inspect and Report Malfunctions** –
 - a. **Malfunctions** - An Officer equipped with a BWC shall be responsible for determining that the device is fully functional and that its battery is adequately charged at the start of his/her shift and before going into the field.
 - 1) If a malfunction is detected, the Officer shall report the malfunction to a Supervisor before going into the field.
 - b. **“In the Field” malfunctions** - If there is a malfunction or deficiency of any kind during a call for service, the Officer shall request another Officer to the scene. The responding Officer shall then remain on scene until the call is finished. The malfunction should be reported to a Supervisor as soon as practicable.
 - c. If there is a malfunction or deficiency of any kind, this shall be noted on an official report.
 - 1) Include the BWC serial number, internal tracking number and a description of the malfunction.
 - 2) Copies of the official report shall be forwarded to the Information Technology Division and Special Investigation Division through the chain of command.
5. **Maintenance of BWCs** – The BWC at the end of a tour of duty shall be placed into the Docking Station. BWCs SHALL NOT be brought home, left in a vehicle, or turned over to another Officer; unless for one of the below listed circumstances or assignments.
 - a. Assigned to a Specialized Unit that would require you to respond with your assigned BWC upon being activated for an assignment when “off-duty.” (ie. SWAT, K-9)
 - b. Given verbal or written permission from your immediate Supervisor or Tour Commander for an assignment or special circumstance.
- C. Officers shall document the device number on their Incident report at the end of each report.
- D. **Repairs to BWCs** - Any repairs done to any BWC equipment shall be performed exclusively by the manufacturer. PCSO employees should not attempt any repairs on their own.

E. Supervisor Responsibilities -

1. The Shift/Unit Commander shall ensure that all Officers who are required to be equipped with a BWC for that shift are, and that same has been documented (either for long-term use or by shift if needed).
2. The Supervisor is also responsible to ensure that each Officer has returned his/her BWC to the Docking Station in their respective briefing rooms at the end of each tour.
3. If a malfunction is brought to the attention of a Supervisor, he/she shall attempt to procure a replacement. Units that are not functioning properly shall not be deployed until repaired.
4. The Supervisor signing Officers off at the end of the tour shall ensure that the BWC has been downloaded, that recordings are uniformly and appropriately tagged, categorized and assigned a file number for retention, as required, and that the BWCs are placed in their charging sleeves. Each recording MUST be categorized by checking **every** category that applies to the recording.
5. Tour commanders shall periodically and randomly review their subordinates' BWC events in an effort to ensure that the BWC equipment is operating properly and to assess Officers' performance and adherence to policies, procedures, and established professional standards. Tour commanders shall review at least one BWC recording per assigned subordinate per calendar month.
 - a. Upon completion of these reviews, the tour commander or his/her designee shall prepare a *Supervisory Review of Digital Video/Audio Recordings Report* documenting the file control number Officer involved, date and time, and any positive or negative activities observed. This report shall include recommendations for training and / or discipline resulting from the observations.
 - b. The Special Investigations Division shall retain all such reports generated in accordance with this SOP. Copies of the reports shall be forwarded to the Sheriff or his/her designee for review. These reports are considered consultative, advisory and confidential.
6. The Shift/Unit Commander shall ensure that all BWCs are turned in at the end of the tour of duty.

- F. When applicable, Officers and Shift Commanders shall also ensure that the pertinent RMS record is annotated, via communications, with an entry noting a BWC was used.

X. RETENTION OF BWC RECORDINGS

- A. **Recordings are property of the Passaic County Sheriff's Office** - Recordings are considered records of this Sheriff's Office and shall be maintained on a secure server and shall be retained pursuant to Attorney General Directive No. 2022-1 and N.J.S.A 40A:14118.3 and in accordance with this SOP.

1. All contracts for retention of BWCs recordings executed by or on behalf of this agency on or after June 1, 2021, and shall be subject to the retention periods set forth in this SOP.

- B. **Rules governing the retention of BWC recordings** – It is the obligation of the PCSO to retain BWC recordings pursuant to the following:

1. **Minimum 180 day retention period** – If not explicitly set forth below in paragraphs (2) (3) and (4), a BWC recording shall be retained for **not less than 180 days from the date it was recorded**.
2. **Automatic three-year retention period** - A BWC recording shall automatically be retained for not less than **three years** if it captures images involving an encounter about which a complaint has been registered by a subject of the BWC recording.
3. **Three year retention period upon request** - Unless required by Section X(C)(5) to be maintained longer, a BWC recording shall be retained for not less than **three years** if voluntarily requested by:
 - a. The law enforcement Officer whose BWC made the video recording, if that Officer reasonably asserts the recording has evidentiary or exculpatory value;
 - b. A law enforcement Officer who is a subject of the BWC recording, if that Officer reasonably asserts the recording has evidentiary or exculpatory value;
 - c. Any immediate Supervisor of a law enforcement Officer whose BWC made the recording or who is a subject of the BWC recording, if that immediate Supervisor reasonably asserts the recording has evidentiary or exculpatory value;
 - d. Any Law Enforcement Officer, if the BWC recording is being retained solely and exclusively for police training purposes;
 - e. Any member of the public who is a subject of the BWC recording;
 - f. Any parent or legal guardian of a minor who is a subject of the BWC recording; or
 - g. A deceased subject's next of kin or legally authorized designee.
4. For purposes of paragraphs (e), (f), and (g) of this subsection the member of the public, parent or legal guardian, or next of kin or designee shall be permitted to review the BWC recording in accordance with the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.) to determine whether to request a three-year retention period.
5. **Additional retention requirements** - Notwithstanding the provisions of paragraph (1) (2) or (3) of this subsection, a body worn camera recording shall be subject to the following additional retention requirements:
 - a. When a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution;
 - b. When a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the Officer or the PCSO;
 - c. When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.
 - d. The Office of County Counsel shall be consulted prior to the destruction of any records that would fall under subsection (b) or (c) of this paragraph.

- C. **Deletion of records at the end of the retention period** - A BWC recording shall be retained by this agency for a retention period consistent with the provisions of this section, after which time the recording shall be permanently deleted.
- D. Any BWC recording retained beyond 180 days solely and exclusively pursuant to section X(C)(3)(d) of this policy shall not be admissible as evidence in any criminal or civil legal or administrative proceeding. See N.J.S.A. 40A:14-118.5.

XI. ENSURING THE SECURITY AND ACCESSIBILITY OF BWC RECORDINGS

- A. **Procedures to ensure proper handling and storage of BWC recordings.** The Internal Affairs commander or his/her designee shall maintain a system to ensure the storage and accessibility of all BWC recordings.
 - 1. **Timing for Uploading BWC Recordings** – No later than the end of each shift, Officers shall download the contents of their assigned BWC. Each file downloaded shall contain information related to the date, BWC identifier, and assigned Officer. Prior to download, the Officer shall tag the recordings in accordance with training and this SOP (see Paragraphs (B) and (D) below).
 - 2. Officers and civilian employees shall not reproduce or store any recordings to any device or storage medium. This shall include, but not limited to, cell phones, electronic notebooks, etc.
 - 3. Viewing of BWC events is strictly limited to sworn Officers of this department. Viewing by any other person is prohibited unless authorized by the Sheriff, his/her designee, or consistent with the provisions of this SOP.
 - 4. **Under no circumstances will any member of the department share their login information with, or allow any other person to access their watchguard.com account. Doing so would have significant chain of custody implications and is subject to disciplinary action.**
 - 5. Personnel shall not erase or in any other manner alter, tamper with, destroy or conceal BWC recordings or remove or disable any camera. Any such tampering is a violation of N.J.S.A. 2C: 28-7 and is a 4th degree crime.
 - 6. Recordings that are being held for criminal or civil purposes shall be processed and submitted as evidence or maintained with the case file.
 - a. Nothing in N.J.S.A. 40A:14-118.5 shall be deemed to contravene any laws governing the maintenance and destruction of evidence in a criminal investigation or prosecution.
 - 7. Recordings that are being held for administrative purposes (e.g., internal affairs investigations) shall be maintained with the investigative file.
 - a. Any recordings from a BWC recorded in contravention of N.J.S.A. 40A:14-118.5 or any other applicable law shall be immediately destroyed and shall not be admissible as evidence in any criminal, civil, or administrative proceeding.
- B. **Tagging Incidents or Events** - Any time the BWC is activated, Officers will tag the recording by “labeling” it with the file number and tagging it with all applicable incident categories. If no file number was created, the Officer will simply tag the video with the applicable incident category.

1. At a minimum, all categories identified in paragraph (D) of this section must be tagged.
2. In accordance with paragraph (D) of this section any BWC recording that captures a law enforcement incident subject to investigation under AG Directive 2019-4, or any BWC recording that captures the response or on-scene investigation of the incident shall be tagged.
3. If more than one Officer captures a recording of any event, that recording shall also be downloaded and tagged in the same manner.
4. Supervisors shall ensure that all recordings of such event are tagged properly and uniformly.

C. Officer's obligation to note availability of recording in written documents –

1. Officers shall document the existence of BWC recordings, (including the BWC assigned identifying number) on the last line of the operations/investigations report to signify that video/audio is available for the case.
2. Officers shall document the existence of BWC recordings, (including the BWC assigned identifying number) on the **NOTE** section of any uniform traffic ticket or electronic ticket to signify that video/audio is available for the case.

D. Identifying recordings that raise special privacy concerns² – An Officer has a duty to identify whether his/her BWC recorded any of the following:

1. Captures a law enforcement incident, as defined by *New Jersey Attorney General Directive 2019-4*:
 - a. Any use of force by a law enforcement Officer resulting in death or serious bodily injury;
 - b. Any use of deadly force (including the discharge of a firearm) by a law enforcement Officer, regardless of whether such force resulted in injury;
 - c. The death of any civilian during an encounter with a law enforcement Officer; and
 - d. The death of any civilian while in the custody of law enforcement.
2. Captures the image of a patient in a substance abuse treatment facility;
3. Captures the image of a victim of a criminal offense;
4. Captures the image of a child;
5. Was made in a residential premises (e.g. home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, a healthcare facility or medical office, a substance abuse or mental health treatment facility, or a place of worship;
6. Captures a conversation with a person whose request to deactivate the BWC was declined;
7. Captures the screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information;

² These categories of special privacy concerns correspond to “tagged” recordings in Section 9.3 of AG Directive 2022-1.
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8. Captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information (e.g. verbal codes and hand signals used to give direction to Officers, techniques for interior movements and clearing rooms during execution of a warrant, techniques for convincing persons to open doors during warrant execution, etc.) may have been recorded; or
9. Captures the image of an undercover Officer of confidential informant.

E. Recordings of incidents giving rise to Internal Affairs complaint - If an internal affairs complaint is associated with a recorded event, or an Officer believes an incident may generate an internal affairs complaint, the shift commander shall tag the recording, by labeling it with the appropriate category(ies) The recordings shall be retained in accordance with the retention policies of this SOP.

1. Subject to Section XII and VI.C, The Sheriff and/or Special Investigation Division may review specific BWC footage if circumstances arise that require an investigation to commence.
2. Notwithstanding this provision, for Law Enforcement Incidents under AG Directive 2019-4, no civilian or law enforcement witness to the incident may access, view, or otherwise use a BWC recording of the incident, response to or on-scene investigation of the incident, without the express prior approval of the Independent Investigator as defined by AG Directive 2019-4.
 - a. When the PCPO has been designated the Independent Investigator, any BWC recording that captures the Law Enforcement Incident, or any BWC recording that captures the response or on-scene investigation of the incident, shall not be access or viewed by a member of the PCSO without the express prior approval of the Assistant Prosecutor overseeing the investigation.

F. Monitoring and Documenting Access to BWC Recordings - The PCSO will maintain a record of all instances where BWC recordings are accessed, viewed, copied or deleted.

1. If an Officer is permitted access to a BWC recording the following shall be recorded at a minimum:
 - a. The date and time of access;
 - b. The specific recording(s) that was/were accessed;
 - c. The Officer or civilian employee who accessed the stored recording;
 - d. The person who approved access, where applicable; and
 - e. The reason(s) for access, specifying the purpose or purposes for access pursuant to Section XII(A) and specifying the relevant case/investigation number, where applicable.
2. In the event that a recording is required for use in court or by another law enforcement agency, that recording shall not be released without the prior approval of the Sheriff or his/her designee and only if a duplicate copy is retained by the department.
 - a. Duplicate copies shall be maintained as evidence in accordance with this department's property and evidence guidelines.

- b. The property/evidence custodian shall ensure that any media used for duplicate recordings is properly stored away from magnetic fields (speakers, etc.) or other areas that may facilitate corruption in the property room.
- c. Recorded video of unusual or significant incidents, deemed to be beneficial for departmental training, may be utilized for departmental in-service training purposes only with the approval of the Sheriff.

XII. RESTRICTIONS ON ACCESS TO AND USE / DISSEMINATION

- A. **Authorized Purpose Required** - No Law Enforcement Officer or civilian employee of this department shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose. Subject further to the restrictions set forth below, access to and use of a stored BWC recording is permitted only:
 - 1. When relevant to and in furtherance of a criminal investigation or prosecution;
 - 2. When relevant to and in furtherance of an internal affairs investigation;
 - 3. When relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern or practice of possible misconduct;
 - 4. When relevant to a Supervisor's review of an Officer's actions as part of the Supervisory process;
 - 5. To show to a civilian who intends to file a complaint against an Officer to demonstrate what actually occurred during the encounter so that the person can make an informed decision whether to file the complaint;
 - 6. To comply with the State's discovery obligations in prosecutions pursuant to the Rules of Court;
 - 7. To comply with any other legal obligation to turn over the recording to a person or entity:
 - a. When responding to a subpoena or court order, or a request pursuant to OPRA or the common law right to know, disclosure is only permitted after providing notice to the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee.
 - b. All discovery requests and OPRA requests are to be forwarded to County Counsel for redaction and dissemination.
 - 8. To show or disseminate the recording to a civilian or a non-law enforcement entity or to disseminate it to the public, where the Passaic County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, determines that disclosure to that particular person entity or the public is warranted because the person's/entity's/public's need for access outweighs the law enforcement interest in maintaining confidentiality;
 - 9. For training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording cannot be determined by persons viewing the training video unless the depicted individuals have consented to the recording being used for training purposes;
 - 10. To conduct an audit to ensure compliance with this SOP;

11. To enhance Officer and public safety by providing intelligence information in preparation for a raid/warrant execution (e.g., by providing information about the layout of a premises to be searched), when such use is approved by the Passaic County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee; or
12. Any other specified official purpose where the Passaic County Prosecutor or her designee, or the Director of the Division of Criminal Justice or her designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.

B. Approval required prior to accessing “tagged” BWC recordings – Recordings that have been tagged under paragraph (D) of this section (“*Special Privacy Concerns*”) shall not be access, viewed, copied, disseminated, or otherwise used without first obtaining permission of the County Prosecutor or designee, or the Director of the Division of Criminal Justice of designee. The County Prosecutor may authorize the Sheriff, and one or more superior Officers or duty positions (e.g. head of the detective bureau) identified by the Sheriff, to grant permission to access these recordings in accordance with section X(D)(3) through X(D)(7).

1. **Generally** – For purposes of this policy and unless explicitly set forth in paragraphs XII(E)(2) through XII(E)(4) below, the Sheriff has authorized and the County Prosecutor has approved, any ranking Officer who is directly responsible for the supervision of an Officer who wishes to access, view, copy, disseminate or otherwise use a tagged recording to authorize same.
 - a. Access under this subsection must be done by an Officer through their Supervisor’s portal who must document it. No such access shall be granted verbally.
2. **Confidential Tactical Information** – All BWC recordings capturing a special operations event or execution of an arrest and/or search warrant where confidential tactical information (e.g. verbal codes and hand signals used to give direction to Officers, techniques for interior movements and clearing rooms during execution of a warrant, techniques for convincing persons to open doors during warrant execution, etc.) may have been recorded, shall be tagged and shall not be accessed or viewed without the permission of the Sheriff, or any Officer who is directly responsible for the supervision of an Officer who wishes to view the BWC recording Officers assigned to the Special Investigations Division are also permitted to access and view such recordings.
 - a. Any Officer receiving permission to access and review a BWC recording under this subsection must do so through his/her Supervisor’s portal and must document it. No such access shall be granted verbally.
 - b. These recordings shall not be copied, disseminated, or otherwise used without first obtaining the permission of the County Prosecutor or designee.
3. **Undercover Officers or Confidential Informants** – All BWC recordings capturing the image of an undercover Officer or confidential informant shall be tagged and shall not be accessed or viewed without the permission of the Sheriff, or any Officer who is directly responsible for the supervision of an Officer who wishes to view the BWC recording Officers assigned to the Special Investigations Division are also permitted to access and view such recordings.

- a. Any Officer receiving permission to access and review a BWC recording under this subsection must do so through his/her Supervisor's portal and must document it. No such access shall be granted verbally.
 - b. These recordings shall not be copied, disseminated, or otherwise used without first obtaining the permission of the County Prosecutor or designee.
4. **Restrictions on access to BWC recordings related to investigations conducted pursuant to AG Directive 2019-4** - To ensure the integrity of investigations pursuant to *Attorney General Directive 2019-4* and to avoid possible contamination of a witness's personal recollection of events that could undermine his or her credibility as a witness, notwithstanding any other provision of this SOP, no civilian or law enforcement witness, (including the principals) of the investigation, shall be given access to or view a BWC recording of the incident, or a BWC recording of the response or on-scene investigation of the incident, without the express prior approval of the Independent Investigator as defined by AG Directive 2019-4.
- a. In situations where the PCPO has been designated the "Independent Investigator" as the term is defined in AG Directive 2019-4, any BWC recording that captures the Law Enforcement Incident, or any BWC recording that captures the response or on-scene investigation of the incident, shall not be access or viewed by a member of the PCSO without the express prior approval of the Assistant Prosecutor overseeing the investigation.
5. **Documenting Permission to Access Videos with Special Privacy Concerns--** The name of the Supervisor who granted viewing permission must be documented in writing, whether in report form, through email, through a preserved electronic audit trail, or through other written means within the Sheriff's discretion.
- a. Any Officer who writes a report based on tagged recordings must document in the report the name of the Supervisor who granted viewing permission.
- C. **Restriction on access to BWC recordings prior to creating reports, statements, interviews**
- 1. A Law Enforcement Officer shall be permitted to review or receive an accounting of a BWC recording prior to creating any required Substantive Initial Reports, providing a statement, or submitting to an interview regarding the recorded event, except under the following circumstances.
 - a. The incident involves the use of force by the Officer, where the Officer knows or should know that the use of force resulted in Significant or Serious Bodily Injury or death;
 - b. The incident involves the discharge of a firearm or any other use of deadly force by the law enforcement Officer. These include the use of anything defined in Section 4.2 of the Attorney General Use of Force Policy as deadly force, such as (a) applying a chokehold, carotid artery restraint or similar technique that involves pressure on the neck; (b) sitting, kneeling or standing on a person's check, back, or neck for a prolonged period of time; (c) intentionally driving vehicles at or in the direction of a person with the intent to strike the individual; and (d) using a baton or other weapon to intentionally strike an individual in the head or neck area;
 - c. The incident involves the death of a person while in law enforcement custody;

- d. The incident involves the death of a person during the encounter with a law enforcement Officer;
 - e. An incident that the Officer knows or has been advised is or will be the subject of an internal affairs complaint relating to the Officer's use of force, bias, or dishonesty; or
 - f. An incident that the Officer knows or has been advised is or will be the subject of a citizen complaint related to the Officer's use of force, bias, or dishonesty.
2. Whenever a law enforcement Officer reviews or receives an accounting of a BWC recording prior to the creation of any report, statement, or interview, the law enforcement Officer shall acknowledge that prior review or receipt of an accounting of the BWC recording either verbally or in writing within each such report, statement or interview. The law enforcement Officer shall document each BWC recording that was reviewed and the date of the review. If the law enforcement Officer received an accounting of the BWC recording, the law enforcement Officer shall document the name of each such person who provided an accounting of the BWC recording, the date of the accounting and the specific BWC recording for which the accounting was provided.
 3. Nothing in section XII(C) shall be construed to require a law enforcement Officer to review a BWC recording prior to creating any required initial reports, statements, and interviews regarding the recorded event, nor to prevent a law enforcement Officer from reviewing or receiving an accounting of such a BWC recording subsequent to the creation of any required initial report, statement, or interview regarding the recorded event.
 4. As noted above, the Officer is prohibited from reviewing or receiving an accounting of a BWC recording in certain scenarios specified in Section XII(C)(1)(f) (the "specified scenarios") prior to the Officer documenting or otherwise memorializing the Officer's recollection of the incident, namely, by creating any required Substantive Initial Report, providing a statement, or submitting to an interview regarding the recorded event ("the specified incident memorialization"). Whenever an Officer participates in a Specified Scenario, then the Officer shall only be permitted to review or receive an accounting of a BWC recording once the investigating entity concludes that (a) the Officer has in fact completed the Specified Incident Memorialization and (b) the Officer's review or receipt of an accounting of the BWC recording will not otherwise interfere with the ongoing investigation. In cases subject to Attorney General Directive 2019-4, the investigating entity shall be the chief law enforcement executive or designee. The investigating entity shall document the authorization to review or receive an accounting of a BWC of a Specified Incident.
- D. **BWC recordings not replacing reports** - BWC recordings do not replace the need for accurate police reports summarizing the material facts and circumstances of the subject matter of a BWC recording. Whether in an initial or supplemental report (including Affidavits of Probable Cause for Warrant-Complaints), and in compliance with Paragraph C, Subsection (1) of this Section, Officers shall not merely reference a BWC recording.
 - E. **Limitations on third-party vendor access** - If the PCSO authorizes a third-party to act as its agent in maintaining recordings from a BWC, the agent shall be prohibited from independently accessing, viewing, or altering any recordings, except to delete recordings as required by law or agency retention policies.
 - F. **Seeking protective orders** - If disclosure of a BWC recording as part of the State's discovery obligations in a prosecution might present a danger to any Officer or civilian (e.g., reveal an

undercover Officer, confidential informant, surveillance site, etc.), or might reveal confidential tactical information the disclosure of which might jeopardize future operations or Officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms during execution of warrant, techniques for convincing persons to open doors during warrant execution, etc.), the Passaic County Prosecutor or her designee shall, in the exercise of sound prosecutorial discretion, take such steps as are appropriate and authorized by law and/or court rule to protect the information from disclosure, such as by seeking a protective court order.

XIII. Public Disclosure of BWC Recordings

- A. Non-law enforcement personnel **shall not** be allowed to review the recordings at the scene of contact. Officer complaints shall be handled in accordance with the policies set forth in this department's SOP on *Internal Affairs*. All other requests to view and/or obtain footage by the public shall be handled in accordance with this SOP.
- B. The Sheriff or his/her designee shall notify the Passaic County Prosecutor's Office **within one business day** upon receiving any subpoena, court order or OPRA request for a BWC recording *before complying with it*. Such notice shall state clearly the deadline by which a response must be made.
- C. Any OPRA request for a BWC recording shall be sent to the Office of County Counsel for a determination as to whether the BWC is subject to release.

XIV. Violations

- A. Violations of this SOP must be reported and employees shall be subject to appropriate disciplinary action in addition to any judicial consequences outlined in the law.
 - 1. If a law enforcement Officer, employee, or agent fails to adhere to the recording or retention requirements contained in this act, or intentionally interferes with a BWC's ability to accurately capture audio or video recordings:
 - a. The Officer, employee, or agent shall be subject to appropriate disciplinary action;
 - b. There shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured; and
 - c. There shall be a rebuttable presumption that evidence supporting the plaintiff's claim was destroyed or not captured in favor of a civil plaintiff suing the government, a law enforcement agency, or a law enforcement Officer for damages based on police misconduct if the plaintiff reasonably asserts that evidence supporting the plaintiff's claim was destroyed or not captured.
- B. Any willful or repetitive violations of this SOP or any of the accompanying directives issued by the County Prosecutor or Attorney General, shall be reported promptly to the County Prosecutor. The County Prosecutor may take such actions as are reasonable and necessary to ensure compliance with Attorney General Directive 2022-1 and prevent future violations.