

Body-Worn Camera Model Policy

September 2015



**Municipal Police
Training Council**

New York State Division of Criminal Justice Services
80 South Swan Street, Albany, New York 12210

www.criminaljustice.ny.gov



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STATE OF NEW YORK
Division of Criminal Justice Services
Office of Public Safety

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THE 2015 EDITION IS PUBLISHED BY THE:

New York State Division of Criminal Justice Services
Office of Public Safety
80 South Swan Street
Albany, New York 12210

<http://www.criminaljustice.ny.gov>

VERSION September 2015

PRINTED IN THE UNITED STATES OF AMERICA

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The Body-Worn Camera Model Policy is intended to allow for the individual needs of each of the police departments in New York State regardless of size or resource limitations. Law Enforcement are encouraged to customize these protocols to meet their regional needs, while being mindful of the intent of the policy. As with all model policies adopted by the Municipal Police Training Council (MPTC), this policy is non-binding upon agencies within New York State and is meant to serve as a guide to be used in developing a department's individual policy.

The Municipal Police Training Council (MPTC) approved the model policy in the September 2015 meeting.

Acknowledgements

The New York State Division of Criminal Justice Services (DCJS) acknowledges the extensive work done by the following associations and agencies:

District Attorney's Association of the State of New York

Law Enforcement Training Directors Association of New York State

New York State Association of Chiefs of Police

New York State Police

New York City Police Department

New York State Sheriff's Association

New York State University Police

Body Worn Camera Model Policy

Municipal Police Training Council

I Purpose

The purpose of this policy is to serve as a guideline to be utilized by agencies when developing body worn camera policies and procedures. This policy is intended to allow for the individual needs of each of the police agencies in New York State regardless of size or resource limitations. Law Enforcement agencies are encouraged to customize these protocols to meet their agency's needs, while being mindful of the intent of the policy.

II Policy

It is anticipated that this policy will provide agencies and officers with guidelines on recording, storing, retaining, releasing and maintaining data from a body worn camera which are used to document an officer's enforcement related activities. Body-worn cameras will also assist in gathering evidence, promoting transparency and providing an objective record of an incident. This policy does not govern the use of surreptitious recording devices used in undercover operations.

III Definitions

- A. **"Body-Worn Cameras"** (BWC) - small video cameras, typically attached to an officer's clothing, helmet, or sunglasses that maximizes the camera's ability to capture video and audio data of the officer's law enforcement related activities.
- B. **"Agency Administrator"** - An agency administrator has full access to and user rights within the data storage system. He or she can assign and track equipment, control passwords, oversee needed repairs, delete non-evidentiary recordings, conduct audits and quality control reviews, and act as a liaison with BWC representatives.
- C. **"Enforcement Related Activity"** – Situations during an officers official duties that include, but are not limited to:
 - 1. Calls for service;
 - 2. Traffic stops;
 - 3. Search warrants;
 - 4. Arrests;
 - 5. Investigatory activities; and
 - 6. Confrontational/adversarial citizen contacts.

Body Worn Camera Model Policy

Municipal Police Training Council

IV Devices

- A. Body-worn cameras shall be worn by uniformed officers in a manner that maximizes the camera's ability to capture video footage of the officer's activities.
- B. Police personnel shall only use BWCs issued or approved by the agency.
- C. All agency personnel who will use or otherwise be involved with BWCs shall receive training to include, but not limited to: activation; deactivation; upload procedures; proper maintenance; and the agencies policy and procedures on covered practices of a BWC.

V Recording

- A. When to activate the body-worn camera:
 - 1. Officers should be required to activate their BWC audio and video functions upon engaging in an enforcement related activity that occurs while the officer is on duty, unless:
 - a. There is an immediate threat to the officer's safety;
 - b. Turning on the body worn camera would be impracticable and place the officer in a tactical disadvantage;
 - c. When activating the BWC could delay an officer's response to the safety needs of a citizen during a critical incident; or
 - d. During the course of activation the BWC malfunctions.
 - 2. Officers should document in all reports, the presence of video captured by a BWC during the course of any enforcement related activity.

Body Worn Camera Model Policy

Municipal Police Training Council

B. Discretionary recording

1. Officers shall have the latitude to continue recording in situations where a legitimate law enforcement interest outweighs an individual's privacy. Situations to include, but not limited to:
 - a. Conversations with confidential informants and undercover officers;
 - b. Conversations with all law enforcement personnel that involve case tactics or strategy;
 - c. Places such as, but not limited to, locker rooms and restrooms;
 - d. A potential witness who requests to speak to an officer confidentially or desires anonymity;
 - e. A victim or witness who requests that he or she not be recorded and the situation is not confrontational;
 - f. A victim who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation;
 - g. When explosive devices are present, radio waves of the BWC could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present;
 - h. Agencies should prohibit recording law enforcement personnel during routine, non-enforcement related activities;
 - i. Officers should attempt to avoid recording people who are nude or when sensitive human areas are exposed unless considerations are outweighed by a legitimate law enforcement interest.

C. Deactivation of recording

1. Officers shall have the discretion to terminate the recording when the enforcement related activity has concluded.

Body Worn Camera Model Policy

Municipal Police Training Council

2. If a BWC has been activated and during the course of an enforcement related activity the legitimate law enforcement interest for recording no longer outweighs an individual's privacy, the officer shall document either in writing or verbally on camera the reason for deactivating.

D. Recording Statements

1. Proper documentation shall be made anytime the BWC captures a video statement from a suspect. The video statement shall not take the place of a written statement where applicable.
2. Documentation to include:
 - a. All required agency reports; and
 - b. CPL 710.30 form, when necessary. Failure to notify the prosecutor of the recorded interview could prevent its use in court.

E. Failure to record when legitimate law enforcement interest is present

1. If an officer fails to activate, chooses to terminate the BWC recording or the BWC malfunctions, the officer will articulate in written report:
 - a. Why a recording was not made;
 - b. Why a recording was interrupted;
 - c. Why a recording was terminated.
2. Shift supervisor will review all necessary documentation of an officer's failure to record an incident.

VI Storage & Retention

A. Downloading procedures

1. When practicable, data shall be downloaded in accordance with current procedure for storing digital files. Downloads should occur at the end of the officer's shift, or any time the BWC storage capacity is nearing its limit.

Body Worn Camera Model Policy

Municipal Police Training Council

2. Each agency, in coordination with the district attorney's office, shall establish a system to classify data based upon the type of event or incident captured in the recording.
3. All BWC data relating to a criminal incident should be considered digital evidence and processed in accordance with departmental policy.
4. Each data file will include searchable information including, but not limited to: date and time the video was captured; incident number if applicable; and BWC identifier of assigned officer.
5. Any time an officer reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a confrontational citizen contact), the officer should promptly notify a supervisor of the existence of the recording.

B. Measures to prevent data tampering

1. All video, audio and data captured by the BWC, irrespective of the content, are at all times the property of the individual agency. Officers may not copy, publish, share or disseminate any audio, video, image or data to anyone except as authorized. Furthermore, officers may not edit, delete or alter any video or audio captured by the BWC.
2. An audit system that monitors who accesses recorded data, when and for what purpose shall be instituted.
3. When a law enforcement agency authorizes a third-party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, delete, view or alter any video footage without the express written consent of the agency administrator or agency head.

C. Retention schedule:

1. Agencies retention schedules shall be in compliance with the minimum standards required by the New York State Archives. This shall include the minimum retention dates as follows¹.

¹ New York State Archives local government retention and disposition schedule (CO-2, MU-1 and MI-1) require law enforcement data captured from a mobile recording device be retained for a minimum of six months regardless of whether or not the data is evidentiary or non-evidentiary.

Body Worn Camera Model Policy

Municipal Police Training Council

- a. Evidentiary data shall be retained for a minimum of 6 months.
 - (i) If a determination is made that video data has evidentiary value in an on-going investigation, court proceeding or appeals process, the data shall be retained through the pendency of the case.
 - (ii) The established retention schedule can be extended beyond the 6 month minimum as necessary.
 - b. Non-evidentiary data shall be retained for a minimum of 6 months.
2. Any BWC data determined to have value in long term investigative, administrative or civil proceedings should be appraised for archiving in accordance with applicable statutory timeframes.
 3. If no extension of video data retention is required, the recordings may be destroyed in accordance with the agency's retention procedures and with approval from the agency administrator.
 4. If recording is deemed to be useful as a training tool, the recording may be kept for as long as practicable.

VII Access

- A. Permitted review of footage
 1. Officers will be permitted to review only video footage of an incident in which they were involved for purposes of:
 - a. Conducting a criminal investigation;
 - b. Preparing for courtroom testimony or courtroom presentation;
 - c. Providing testimony pursuant to an administrative inquiry; and

Body Worn Camera Model Policy

Municipal Police Training Council

- d. Assisting the officer in professional development.
 - 2. In addition to the permitted access listed in Section 1, supervisors may also review recordings as it pertains to:
 - a. Investigating alleged misconduct reports or meritorious conduct;
 - b. Whenever such recordings would be beneficial in reviewing an officer's performance; and
 - c. Recordings that are of value as training tools;
 - 3. Prosecutors will be permitted to review video footage as it pertains to their investigations.
- B. Public disclosure of data
- 1. Any and all disclosure of BWC data must be consistent with the agency's record release policy and applicable statutes regarding, but not limited to, evidence discovery and disclosure pursuant to the Freedom of Information Law (FOIL). Any requests for such data should be reviewed by the agency's legal advisor.
 - 2. When BWC data is disseminated outside of the agency, the reason and identity of the authorized requesting person or agency and the rationale used for determining why or why not data is released, shall be documented.
 - 3. Civilians shall not be allowed to review the recordings at any scene.
- C. Unauthorized use:
- 1. Unauthorized access or release of data is prohibited outside the permitted review of footage detailed in Section A.

**Body Worn Camera
Model Policy**
Municipal Police Training Council

VIII Maintenance

- A. Inspection of the equipment at start of shift
 - 1. Officers shall inspect and test the BWC prior to each shift in order to verify proper functioning and shall notify their supervisor of any problems.
 - 2. Officers shall ensure the unit is properly charged before going into service.
- B. Device log and notification procedures
 - 1. Documentation shall be maintained by each agency to identify which BWC is assigned to each officer per shift.
 - 2. Necessary documentation and supervisory notification shall be made if at any time during an officer's shift when a functioning BWC is not available for use.
- C. Equipment malfunction procedures
 - 1. When equipment is inoperable, it should be exchanged for operable equipment at the earliest opportunity.
 - 2. Officer will leave written notification for the agency administrator at the end of his or her shift of any equipment malfunctions.
- D. Agency administrator duties:
 - 1. Agencies shall designate an agency administrator to have oversight of responsibilities to include, but not limited to:
 - a. Ensuring proper procedures are followed in the downloading, review, release and retention of BWC data;
 - b. Conducting periodic reviews of retained video data to ensure it has not been tampered with;
 - c. Coordinating with IT regarding system related issues;
 - d. Coordinating maintenance and repairs for the BWC;

Body Worn Camera Model Policy

Municipal Police Training Council

- e. Conducting annual review of the policy and procedures contained herein and for making recommendations for any necessary amendments thereto; and
- f. Coordinating review of videos scheduled for destruction.