

BODY WORN CAMERA POLICY			
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I. PURPOSE

The purpose of this policy is to maintain uniform guidelines for the lawful use and operation of the agency-authorized body worn camera recording system (BWC). The goals and objectives in deploying BWCs are the accurate documentation of interactions between law enforcement and members of the public, arrests, and other critical incidents. Further, this policy establishes protocols for the maintenance, storage and preservation of recordings in order to maintain the lawful chain of custody.

II. DEFINITIONS

- A. **Activate** To actuate the recording mode/function of a body worn camera.
- B. **Body worn camera (“BWC”)** A device worn by a law enforcement officer 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 device when mounted inside a police vehicle (*i.e.*, a 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 electronic recording of station house custodial interrogations.
- C. **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.).
- D. **Force** Shall have the same meaning as defined in the Attorney General’s Use of Force Policy. The term “force” shall include physical, mechanical, enhanced mechanical, and deadly force.
- E. **Investigation of a criminal offense** Any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, 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; or canvassing an area, neighborhood, or premises for potential witnesses to a criminal offense.
- F. **Law enforcement agency, agency, or department** A law enforcement agency operating under

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the authority of the laws of the State of New Jersey.

- G. **Law enforcement 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 this State.
- H. **Mobile video recording system** 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.
- I. **Proactive enforcement team** Includes officers who are typically assigned to target vice, drugs, organized street crime, violent crime 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.
- J. **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.
- K. **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 only incidentally appears on the recording.
- L. **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.
- M. **Youth facility** A facility where children assemble under adult supervision for educational or recreational purposes, such as group homes, residential facilities, day-care centers, day treatment centers, etc.

III. POLICY

- A. The department issued body camera shall be the only body camera authorized for use by Kearny Police Department personnel. BWC equipment and all data, images, video, and metadata

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captured, recorded, or otherwise produced by the equipment is the sole property of the Kearny Police Department.

- B. A BWC shall be used only in performance of official police duties and not for personal purposes
- C. No BWC recording shall be accessed, viewed, copied, disseminated, or otherwise used by a sworn officer or civilian employee of the agency except for an official purpose specified in this Policy or by law; and
- D. Any sworn officer or civilian employee of the agency who knowingly violates the requirements of this policy, the Attorney General’s guidelines and/or applicable laws, shall be subject to discipline.
- E. **Officers Required to Wear BWCs.** The following officers shall be required to be equipped with BWCs and adhere to the provisions of 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.
 2. All officers assigned to tactical teams as defined in this policy. Tactical Teams shall include S.W.A.T. (Special Weapons and Tactics), TAC Team, S.R.T. (Special Response Team), T.E.A.M.S. (Technical Emergency and Mission Specialists), Entry Teams, Rapid Deployment, Fugitive or similar units.
 3. All officers assigned to proactive enforcement teams as defined in this policy (e.g. Street Crimes).
 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.
 8. All uniformed officers assigned to duties at demonstrations or potential civil disturbances.

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F. Officers Not Required to Wear BWCs. Notwithstanding the provisions if III:E, the following officers are not required by this policy to be equipped with BWCs:

1. Officers engaged in undercover assignments.
2. Officers acting as hostage negotiators or crisis negotiators working in conjunction with tactical teams.
3. Officers assigned to administrative positions within the law enforcement agency. This provision shall not exclude officers assigned to “front desk” duty, as defined in section III:E(6), from the requirement to be equipped with BWCs.
4. Officers meeting with confidential sources or recruiting potential confidential sources.
5. Officers engaged in union representation of a member of the collective bargaining unit.
6. Officers assigned to duties within schools or youth facilities as part of the normal daily educational environment, such as School Resource Officers (SROs) and Class III Special Law Enforcement Officers (SLEO IIIs). 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 agency’s law enforcement executive.
8. Officers assigned to “extra duty” or “off duty” assignments that involve strictly traffic direction.
 - a. This exclusion shall not apply to officers working a non-traffic extra duty assignment (e.g. Shoprite)
 - b. Officers may choose to wear BWCs while working an extra-duty traffic assignment. The decision to utilize a BWC during an extra duty assignment rests with the officer. While the officer is afforded discretion on whether they will equip a BWC, the officer has no discretion on when it should be activated and will follow this policy regarding deployment of BWCs.
9. Officers engaged in crime-scene processing duties.

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- G.** Officers who are not issued a BWC may voluntarily request one by submitting a memorandum through the chain of command.
- H. Special Circumstances.** Exemptions from the requirements in section III:E are permitted only when approved by the Director of Division of Criminal Justice or the County Prosecutor, and only under such special circumstances that warrant an exemption. The reasons for the exemption must be documented and demonstrate a special need. Such requests for exemption shall be made in advance and approved in writing.
- I. Placement of BWC.** 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.
1. The BWC camera shall be positioned facing forward and unobstructed on the exterior ballistic vest carrier, utilizing an Axon molle mount, via the top two of three loops of the lower molle webbing on the exterior carrier. The camera shall be mounted on the aforementioned webbing in a location which gives the camera the best viewing angle based on the officer’s natural stance when interacting with the public (e.g. opposite side of the service weapon if you utilize a bladed stance, centered if you do not utilize a bladed stance). The magnetic clip may be used to mount the BWC to a jacket or reflective vest and must be positioned in an upright, forward facing position without any obstruction of view.
 2. If the camera will be covered by a jacket during inclement weather, the Axon magnetic mount shall be used to affix the camera to the jacket. The camera shall be mounted with the same forward facing and unobstructed view as described above. The magnetic mount is only permitted when the BWC would otherwise be covered by a jacket.
 3. The desk officer shall attach the BWC to their uniform using the magnetic mount, the garment mount or the molle mount (if wearing the exterior carrier).
- J. When to Equip.** Officers shall get dressed in uniform before removing the body camera from the dock and attaching it to the uniform. At the completion of the tour, the officer shall return the camera to the charging dock prior to changing out of their uniform. (Note: When a camera is removed from the charging dock, the camera is powered on by default and begins buffering)
1. Officers shall turn the BWC off when using the restroom (public or private) by pressing and holding the power key located on top of the BWC. The officer is responsible for turning the BWC back on upon exiting the restroom by pressing and holding the power key located on top of the BWC.

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- 2. BWC's shall be turned off while inside headquarters, unless the officer is conducting a vehicle inspection, processing an arrestee, taking a walk-in report, or under any other circumstance requiring a law enforcement response such as a medical emergency or the use of force.
 - a. This shall not apply to the desk officer, who must keep the BWC turned on (buffering) at all times when assigned to the desk, except when required to record during an interaction with the public. Extra care should be taken to ensure the BWC does not record the dispatchers CJIS or NCIC monitor, as such recording will require notification to the P
- 3. BWC's are not to be removed from the uniform except to upload video footage, charge the device, at the completion of the shift, or any other time as required such as while using the Alcotest machine.
 - a. This shall not prevent an officer from briefly removing the BWC from its mount to obtain a better viewing angle by holding the camera in hand.
- K. Duty to Inspect and Report Malfunction.** 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 the officer's duty shift and before going into the field. If a malfunction is detected, the officer shall report the malfunction to a supervisor before going into the field. If the BWC malfunctions while out in the field, the malfunction upon its discovery shall be reported to the officer's supervisor as soon as it is safe and practicable to do so.
- L. Applicability of and Compliance with Attorney General Directive No. 2005-1.** The decision to activate or de-activate a BWC is a police action subject to the rule established in Attorney General Law Enforcement Directive ("AG Directive") No. 2005-1, which strictly prohibits any form of racially-influenced policing.
- M. Training.**
 - 1. Officers shall receive complete the BWC familiarization training before using the BWC.
 - 2. The Training Unit is responsible for scheduling BWC training for all newly hired officers during their in-service training.

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3. Periodic refresher training will be provided to ensure continued effective use and operation of the equipment, and to incorporate changes, updates or other general order revisions as necessary or required.
4. Remedial refresher training will be administered to officers as part of a disciplinary process or when otherwise required.

IV. PROCEDURE

A. Notice that BWC's are Deployed and Activated

1. **Public Notice.** Utilizing the Kearny Police Department website, a statement shall be posted that the police department deploys BWC' which includes a picture showing what the device looks like and how it is to be worn by uniformed officers so that citizens will be able to determine whether an officer is equipped with the device. In addition to the statement, the department shall also make the most current BWC SOP available on the website.
2. **Specific Notice to Certain Individuals During an Encounter.** A law enforcement 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. Such notification shall be made as close to the inception of the encounter as is reasonably possible. 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 BWC recording, or both. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence. See AG Directive 2021-5, Section II.A (non-enforceability by third parties).
3. **Truthful Response to Specific Inquiries.** If 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 County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, has expressly authorized the officer to make a covert electronic recording. *Cf.* (Policy does not apply to officers while operating in an undercover capacity, or while conducting/participating in a station house custodial interrogation electronically recorded in accordance with Rule 3:17). Nothing in this Section shall be construed to establish a basis for suppressing a statement or other evidence. See AG Directive 2021-5, Section II.A (non-enforceability by third parties).
4. **Notice When Using BWCs Inside a Private Residence.** 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

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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. A request to discontinue the use of a BWC 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.

5. Notice When Using BWCs with an Apparent Crime Victim. 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 BWC and, if the apparent crime victim requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC. A request to discontinue the use of a BWC 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.

6. Notice When Using BWCs with a Person Seeking to Remain Anonymous. 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 BWC, the officer shall evaluate the circumstances and, if appropriate, discontinue use of the BWC. A request to discontinue the use of a BWC 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.

B. Standards Governing the Activation of BWC’s

1. BWCs Used Only in Performance of Official Duties. A BWC shall be activated only while in 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 policy, or specified in a department’s policy, standing operating procedure, directive, or order promulgated pursuant to this Policy. A BWC shall not be activated while the officer is on break or otherwise is not actively performing law enforcement functions (e.g., while eating meals, while in a restroom, etc.). A BWC shall not be activated or used by an officer for personal purposes, or when engaged in police union business. Nor shall a BWC be used to record conversations involving counseling, guidance sessions, personnel evaluations, or any similar supervisory interaction. Any recordings from a BWC recorded in contravention of this policy or any other applicable law shall be immediately brought to the attention of agency command staff and immediately destroyed by command staff following consultation and approval by the County Prosecutor or Director of the Office of Public Integrity and Accountability. Such footage shall not be admissible as evidence in any

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criminal, civil, or administrative proceeding.

2. Circumstances When BWC Activation is Generally Required. Except as otherwise expressly provided in section IV:D or any other provision in this policy, or by law, an officer equipped with a BWC shall be required to activate the device 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, to include any of the following circumstances, unless there exists an immediate threat to the officer's life or safety that makes such activation impossible or dangerous; in such situations, the officer must activate the camera at the first reasonable opportunity to do so and it shall remain activated until the encounter has fully concluded and the officer leaves the scene:

- 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);
- b. the officer is responding to a call for service and is at or near the location to which the officer has been dispatched;
- c. the officer is conducting a motorist aid or community caretaking check;
- d. the officer is interviewing a witness in the course of investigating a criminal offense;
- e. 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 station house interrogations);
- f. the officer is making an arrest;
- g. the officer is conducting a protective frisk for weapons;
- h. the officer is conducting any kind of search (consensual or otherwise);
- i. 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;
- j. 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 that are documented by narration on the recording and/or in any investigation or incident report;

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- k. the officer is transporting an arrestee to a police station, county jail, or other place of confinement, or a hospital or other medical care or mental health facility; or
 - l. the officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.
- 3. Continuous Recording Pending Completion of Encounter.** To ensure that the entire encounter/event/episode is recorded, in accordance with this Policy and the law, a BWC should be activated before a uniformed officer arrives at the scene of a dispatched call for service or other police activity listed in Section IV:B(2). However, the officer need not begin recording at the moment he or she receives instructions from a dispatcher to respond to a call for service. Rather, the officer may delay activation until they are near the destination.
- a. Except as otherwise expressly provided in section IV:C or any other provision of this policy, when a BWC is required to be activated by an officer pursuant to this policy, the device must remain activated throughout the entire encounter/event/episode and shall not be de-activated until it is concluded (e.g., the BWC-equipped officer has left the scene; all civilians involved in the encounter have left the scene; the officer has informed the dispatcher or a supervisor that the event has concluded; the event is “closed” on the department’s computer-aided dispatch (“CAD”) system, etc.).
 - b. When a BWC is activated pursuant to Section IV:C2(k) (transport of arrestee), whether by an officer in uniform or in plain clothes, 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 holding cell or processing room, 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.
 - 1. The BWC shall be reactivated if transferring an arrestee from the processing room to cell block.
 - 2. Under extenuating circumstances or at the direction of a supervisor, the BWC may remain recording during arrestee processing, with the exception of inside the Alcotest room during breath testing.
- 4. Special Provisions Governing the Use of BWCs when Investigating Underage Alcohol and Marijuana Use.** Consistent with the provisions of N.J.S.A. 2C:33-15a(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

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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.

5. **Special Activation Rules Governing Certain Use-of-Force Incidents, In-Custody Deaths, and Other Exigent Circumstances Where Officers Are in Danger.** Notwithstanding any other provision of this Policy, when an officer equipped with a BWC is dispatched to or otherwise goes to the scene of a “Law Enforcement Incident” as defined in AG Directive 2019-4, the officer shall activate the BWC before arriving at the scene when feasible. Notwithstanding any other provision of this policy, an officer while at the scene of a “Law Enforcement Incident” shall not de-activate the BWC unless instructed to do so by the assistant prosecutor or assistant or deputy attorney general supervising the investigation of the deadly-force incident pursuant to AG Directive 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.

C. Standards Governing the De-activation of BWCs upon the Request of a Civilian, When Discussing Investigation Strategy or Planning, or on Instruction of a Prosecutor

1. **De-Activation at the Request of a Civilian Providing Information/Cooperation.** Notwithstanding section IV:B(3), an officer may de-activate 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. 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. Rather, the request for de-activation must be self-initiated by the civilian. The officer may explain the consequences of de-activation (e.g., evidence relevant to a criminal investigation will not be recorded). 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. **De-Activation at the Request of a Person Seeking Emergency Medical Assistance.** Notwithstanding section IV:B(3), an officer may de-activate 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 de-activated. In deciding whether to de-activate the BWC, the

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officer shall consider the privacy interests of the person requesting de-activation and the person in need of medical assistance.

3. **Procedures for De-Activation Upon a Civilian’s Request.** When an officer de-activates a BWC pursuant to section IV:C(1) or IV:C(2), 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 de-activation 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. *See also* Section VI:C (notations (*i.e.*, “tagging”) to indicate BWC recordings that raise special privacy or other issues).

4. **Decision to Decline a Civilian’s De-Activation Request.** If an officer declines a request to de-activate a BWC pursuant to section IV:C(1) or IV:C(2), the reasons for declining the request (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) must be documented and shall be reported to the officer’s superior as soon as it is safe and practicable to do so, unless the agency’s policy prohibits de-activation authorized by section IV:C(1) or IV:C(2).
 - a. In the event that the officer declines a de-activation request, the officer immediately shall inform the person making the request of that decision. An officer shall be prohibited from misleading the person making the de-activation request pursuant to section IV:C(1) or IV:C(2) into believing that the BWC has been turned off when in fact it is operating unless the County Prosecutor or designee or the Director of the Division of Criminal Justice or designee expressly has authorized covert recording. Note that pursuant to section IV:A(5), an officer may not decline a request from an apparent crime victim to discontinue recording of the encounter via the BWC.

5. **De-Activation During Criminal Investigation Strategy/Planning Discussions.** Notwithstanding section IV:B(3), and subject to the requirements of section IV:B(5), unless the agency adopts a policy that prohibits or restricts de-activation as may be authorized by this Section, a BWC-equipped officer may de-activate a BWC while 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 strategy/planning discussion is not conducted in the immediate presence of a civilian (*i.e.*, under circumstances where a civilian

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might overhear the strategy discussion), and further provided that the BWC-equipped officer is not actively engaged in the collection of physical evidence (i.e., conducting a search). When an officer de-activates a BWC pursuant to this Section, the officer shall narrate the circumstances of the de-activation (e.g., “I am now turning off my BWC to discuss investigative strategy with my supervisor.”).

6. **De-Activation on Instruction from Prosecutor.** Notwithstanding section IV:B(3), an officer may de-activate a BWC when specifically authorized to do so by an assistant prosecutor or 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 de-activates a BWC pursuant to this Section, the officer shall narrate the circumstances of the de-activation indicating the assistant prosecutor or assistant or deputy attorney general who authorized the de-activation (e.g., “I am now turning off my BWC as per the instruction of assistant prosecutor (insert name).”).

7. **Re-activation When Reason for De-Activation No Longer Exists.** In any instance where a BWC was de-activated pursuant to sections IV:C(1), IV:C(2), IV:C(5) or IV:C(6), the device shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances justifying de-activation no longer exist (e.g., the interview of the person requesting de-activation is completed), and the officer would otherwise be required to activate the BWC (e.g., where the officer proceeds to other investigative activities that are required to be recorded pursuant to this policy).

8. **Re-Activation When Actual Law Enforcement Force is Authorized.** Notwithstanding any other provision of this Policy, in any instance where a BWC was de-activated pursuant to sections IV:C(1), IV:C(2), IV:C(5), IV:C(6), or any other provision of this policy, or de-activated pursuant to any policy, standing operating procedure, directive, or order issued by a department, if the circumstances develop so that an officer is authorized to use force, the BWC shall be re-activated as soon as it is safe and practicable to do so.

D. Circumstances When BWC Activation/Use Is Subject to Special Conditions or Restrictions

1. **Special Restrictions When Recording in Schools, Healthcare/Treatment Facilities, and Places of Worship.** Notwithstanding Sections IV:B(2) and IV:B(3) of this policy, and except as otherwise required by section IV:B(5), 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 de-activate a BWC that has been activated, while the officer: 1) is in a school or youth facility or on school or youth facility property under

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circumstances where minor children would be in view of the BWC; 2) is in 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) is in a place of worship under circumstances where worshipers would be in view of the BWC. See also section VI:C (notation (i.e., “tagging”) of certain events/encounters raising privacy or other special issues).

- a. If an officer is required to de-activate the BWC in accordance with the provisions of this Section, the officer shall narrate the reason for de-activation (e.g., “I am entering a school building where children are present.”). The BWC shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances requiring de-activation 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).

2. Special Restrictions When Undercover Officers or Confidential Informants May Be Recorded. Notwithstanding the provisions of sections IV:B(2) and IV:B(3) of this policy, and except as otherwise required by section IV:B(5), an officer shall not activate a BWC, or shall de-activate a BWC that has been activated, if the officer knows or reasonably believes that the BWC would risk revealing the identity of 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 (e.g., active shooter, actual use of police force, officer in distress, etc.) require that the encounter/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. See also section VI:C (notation or “tagging” to indicate a BWC recording that raises special issues); section VI:E (prosecutor’s authority to seek protective order when complying with discovery obligations).

- a. Notwithstanding the foregoing general rule prohibiting the recording of an undercover officer or confidential informant, 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 devices.
- b. The BWC shall be activated/re-activated as soon as it is safe and practicable to do so if and when the risk of capturing the image of an undercover officer or confidential informant no longer exists.

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3. Special Precautions When a BWC Recording May Reveal Tactical Operations Information.

In the event that a BWC worn during the execution of tactical operations (e.g., “Special Operations” or “SWAT” operations, execution of arrest and/or search warrant, etc.) records 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, techniques to convince persons to open doors, etc.), the recording shall be “tagged” in accordance with Section VI:C. See N.J.S.A. 47:1A-1.1 (exempting from disclosure under the Open Public Records Act “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons”); N.J.A.C. 13:1E-3.2 (2) (exempting records that may reveal “surveillance, security, tactical, investigative, or operational techniques”); see also section VI:E (prosecutor’s authority to seek protective orders when complying with discovery obligations).

4. Special Restrictions on Recording in Courtrooms. An officer shall not activate a BWC while in a courtroom during court proceedings, unless the officer is responding to a call for service or is authorized to use constructive force or authority.

5. De-Activation/Removal of BWC From Alcohol Breath Testing Area. In order to eliminate any argument that radio frequency interference from a BWC affected an electronic alcohol breath test, BWCs shall be deactivated, turned off and removed from the area of the breath test instrument before an electronic breath test is conducted. 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. If this provision requires de-activation of a BWC, the officer shall narrate the reasons for de-activation (e.g., “I am de-activating the BWC because the suspect is about to take a breath test.”), and the BWC shall be re-activated when safe and practicable to do so following the completion of the breath testing operation.

6. Restrictions on Using BWCs With Enhanced Audio/Visual Capabilities. Subject to the provisions of section IX of this policy, the activations of enhanced audio/video 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 remote distance), shall not be used without the express approval of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, in accordance with any applicable legal requirements.

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7. Restrictions on Using BWCs Surreptitiously or to Gather Intelligence Information on First Amendment Protected Activity. A BWC shall not be used surreptitiously. Additionally, 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 or a law enforcement or investigative encounter between a law enforcement officer and a member of the public, provided that nothing in this subsection shall be construed to prohibit activation of video and audio recording functions of a BWC as authorized under the law or this policy.

V. RETENTION

- A. Minimum 180-Day Retention Period.** BWC recordings shall be retained by the Kearny Police Department for a retention period consistent with the provisions of this section, after which time the recording shall be permanently deleted. A BWC recording shall be retained for not less than 180 days from the date it was recorded, but shall be subject to additional retention periods in sections V:B-D.
- B. 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.
- C. Three-Year Retention Period Upon Request.** Subject to any applicable retention periods established in section V:D to the extent such retention period is longer, a BWC recording shall be retained for not less than three years if voluntarily requested by:
 - 1. a law enforcement officer whose BWC made the video recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;
 - 2. a law enforcement officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;
 - 3. 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;
 - 4. any law enforcement officer, if the BWC recording is being retained solely and exclusively for police training purposes;
 - 5. any member of the public who is a subject of the BWC recording (see V:7(a));

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- 6. any parent or legal guardian of a minor who is a subject of the BWC recording (see V:7(a); or
- 7. a deceased subject's next of kin or legally authorized designee.
 - a. To effectuate subparagraphs 5, 6 and 7 of this section, the member of the public, parent or legal guardian, or next of kin or designee shall be permitted to review the BWC recording to determine whether to request a three-year retention period, in accordance with the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., to determine whether to request a three-year retention period.

D. Additional Retention Requirements. Notwithstanding the provisions of sections V:A, V:B, or V:C of this policy, a BWC recording shall be subject to the following additional retention requirements:

- 1. 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;
- 2. 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 employing law enforcement agency;
- 3. 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.

VI. Standards to Ensure Secure Storage and Accessibility of BWC Recordings

A. Procedures to Protect Integrity of BWC Recordings. In order to ensure the integrity and proper handling and storage of all BWC recordings:

- 1. Officers shall dock BWC's at the end of their shift in order to ensure all recordings are uploaded to the secure cloud server.
- 2. Officers are not permitted to tamper with or delete recorded data, both before and after downloading from the BWC and uploading to the storage system;
- 3. Officer shall prevent unauthorized access to stored BWC recordings;

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4. The Evidence.com software will electronically document all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted and may be accessed by checking the audit trail
- B. Capacity to Locate Specific BWC Recordings.** A case number shall be generated for all BWC recordings and all BWC footage shall be tagged with its corresponding case number in order to help locate and retrieve all recordings associated with a specific incident/event, investigation, case, or criminal charge. A computerized log will be automatically generated and maintained via the Evidence.com software.
- C. Provisions to Identify (“Tag”) Recordings That Raise Special Privacy or Safety Issues.** To identify BWC recordings that may raise special privacy or safety issues, shall tag each BWC recording with all an appropriate category or categories to determine its retention period and flag restricted footage, including BWC which:
1. captures the image of a victim of a criminal offense;
 2. captures the image of a child;
 3. was made in a residential premises (*e.g.*, a 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;
 4. captures a conversation with a person whose request to de-activate the BWC was declined;
 5. 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;
 6. captures the image of an undercover officer or confidential informant; or
 7. captures the screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information. *See also* section IV:D(1) (requiring notice to the prosecutor when a BWC captures the image of a patient at a substance abuse treatment facility).
- D. Approval for Access to “Tagged” BWC Recordings.** A BWC recording tagged pursuant to section VI:C shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee. The County Prosecutor or Director may authorize the law

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enforcement executive, and one or more superior officers or duty positions (e.g., head of the detective bureau) identified by the law enforcement executive, to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to section VI:C. See also section VI:A (specifying the purposes for which access to a BWC recording is permitted).

- E. Compliance with Discovery Obligations Relating to BWC Recordings That Might Expose Officers or Other Persons to Danger.** 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 County Prosecutor or designee, or Director of the Division of Criminal Justice or designee in cases prosecuted by the Division, 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 order from the court. See Section IV:D(3) (“tagging” of such BWC recordings).

- F. Third-Party Storage and Maintenance.** BWC footage is maintained in encrypted cloud storage which cannot be accessed by anyone outside this organization.

VII. Restrictions on Access to and Use and Dissemination of BWC Recordings

- A. Specified Authorized Purposes for Accessing/Using Stored BWC Recordings.** No law enforcement officer or civilian employee of a law enforcement agency shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in this section and the law. BWC recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose. 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

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process authorized by the agency;

- a. Supervisors shall only review the actions of personnel under their immediate command, with the exception of Internal Affairs, the Chief of Police and the Deputy Chief of Police.
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;
 - a. If an immediate supervisor for the involved officer is no longer on-duty at the time of complaint and Internal Affairs is not available, the supervisor receiving the complaint shall review the BWC with the civilian complainant.
 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;
 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 County Prosecutor or designee, or Director of the Division of Criminal Justice or 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;
 - a. BWC footage may only be approved for training purposes by the Chief of Police, Deputy Chief of Police, or their designee.
 10. to conduct an audit to ensure compliance with this Policy and a department’s policy, standing operating procedure, directive, or order promulgated pursuant to this Policy;
 - a. Supervisors shall only review the actions of personnel under their immediate command, with the exception of Internal Affairs, the Chief of Police and the Deputy Chief of Police.
 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 County Prosecutor or designee, or the

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Director of the Division of Criminal Justice or designee; or

12. any other specified official purpose where the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.

B. Restriction on Access to BWC Recordings Related to Investigations Conducted Pursuant to AG Directive 2019-4. To ensure the integrity of the investigation of “Law Enforcement Incidents” conducted pursuant to AG 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 policy, 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 that term is defined in AG Directive 2019-4.

C. Restriction on Access to BWC Recordings Prior to Creating Reports, Statements, Interviews. A law enforcement officer shall not review or receive an accounting of a BWC recording that is subject to a minimum three-year retention period pursuant to sections V:B. or V:D prior to creating any required initial reports, statements, and interviews regarding the recorded event. Subject to the provisions of section VII:B of this policy, nothing in this paragraph is intended to prevent the officer from considering, reviewing or receiving an accounting of such a BWC recording subsequent to the creation of any required initial reports, statements, and interviews regarding the recorded event.

a. While information culled from the BWC recording may not be considered in creating an initial required report, statement or interview, after the creation of such initial report, statement or interview, in a case not subject to the provisions of section VII:B of this Policy, the officer may review the BWC recording and, if appropriate, create additional reports or make additional statements or documentation that revise or supplement the initial report, statement or interview that incorporate or reflect any information adduced from a review or accounting of the BWC recording.

D. Documenting Access to Stored BWC Recordings. Each department shall maintain a record of all access to stored BWC recordings pursuant to this policy. The department’s record keeping system shall document the following information:

1. the date and time of access;
2. the specific BWC recording(s) that was/were accessed;

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3. the officer or civilian employee who accessed the stored BWC recording;
4. the person who approved access, where applicable; and
5. the reason(s) for access, specifying the purpose or purposes for access authorized pursuant to section VII:A, and specifying the relevant case/investigation number, where applicable.

VIII. Public Disclosure of BWC Recordings

- A. Any agency receiving a subpoena, court order, or request pursuant to the Open Public Records Act, or the common law right to know, for a BWC recording shall, within one business day of receipt of such subpoena, court order, or request, and before complying with it, provide notice to the County Prosecutor, or to the Division of Criminal Justice where the recording was made by a state-level law enforcement agency. Such notice shall state clearly the deadline by which a response must be made.
- B. A BWC recording of an event or encounter that involves an investigation of a criminal offense shall not be shared with, provided, or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the rules of court governing discovery in prosecutions, unless such disclosure is required by law or by a court order, or unless the law enforcement agency in consultation with the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, determines that the person's/entity's/non-law enforcement agency's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.

IX. Authority of County Prosecutor to Impose Additional Requirements

- A. Nothing in this policy shall be construed to in any way limit the authority of a County Prosecutor to issue directives or guidelines to the law enforcement agencies subject to his or her supervisory authority, setting forth additional procedural or substantive requirements or restrictions concerning BWCs and BWC recordings, provided that such directives or guidelines do not conflict with any explicit provision of this policy. For example, a County Prosecutor may: specify additional circumstances when a municipal police department BWC must be activated; impose limits on the authority of a municipal police department to specify additional circumstances when a BWC must be activated; categorically prohibit the use of BWCs with enhanced audio/visual capabilities such as infrared night vision (*cf.* Section IV:D(6) which requires prosecutorial approval to use such features); and specify additional circumstances when a BWC recording will be “tagged,” etc.

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X. Violations

- A.** If a law enforcement officer, employee, or agent fails to adhere to the recording or retention requirements contained in this policy, intentionally interferes with a BWC's ability to accurately capture audio or video recordings, or violates any other provision of this policy, the officer, employee, or agent shall be subject to appropriate disciplinary action, in addition to any judicial consequences outlined in the law.
- B.** Any willful or repetitive violations of this Directive shall be reported promptly to the appropriate County Prosecutor and to the Director of the Division of Criminal Justice. The County Prosecutor and Director are authorized to take such actions as are reasonable and necessary to ensure compliance with this Directive and to prevent future violations.
- C.** Any sworn officer or civilian employee of the Kearny Police Department who knowingly violates the requirements of this policy shall be subject to progressive discipline.