

DENVILLE TOWNSHIP POLICE DEPARTMENT POLICY & PROCEDURES



VOLUME:
5

CHAPTER:
14

NUMBER OF PAGES:
33

SUBJECT: BODY WORN CAMERAS AND MOBILE VIDEO RECORDERS

BY THE ORDER OF:
Chief of Police Frank Perna

ACCREDITATION STANDARDS:
3.5.5

EFFECTIVE DATE:
06/13/2022

PURPOSE The purpose of this policy is to maintain guidelines for the use, management, storage, and release of audio-visual media recorded by body worn cameras (BWC) and patrol vehicle mobile video recorders (MVR). BWCs and MVRs are intended to enhance officer safety, produce effective materials for training and to produce an additional method of collecting evidence to prosecute those who violate the law.

POLICY It is the policy of the Denville Police Department to utilize BWCs and MVRs to assist agency personnel in the performance of their duties by providing an accurate and unbiased recorded account of an incident.

BWCs and MVRs shall be deployed and utilized by all personnel in a manner consistent with manufacturer's guidelines, the provisions of this policy, and those directives or guidelines issued by the New Jersey Attorney General, *specifically New Jersey Attorney General Directive 2021-5*, and the Morris County Prosecutor's Office. Failure to use this technology in accordance with this policy and those directives or guidelines set forth in *New Jersey Attorney General Directive 2021-5* and the Morris County Prosecutor's Office shall be subject to discipline.

The Denville Police Department webpage shall publicize the official deployment of BWCs to the public. It shall contain a clear statement that this department utilizes body worn video/audio recorders and maintain a clearly identifiable link to this policy. The website posting shall include an image showing what the device looks like and how it is to be worn by officers so that the public will be able to determine whether an officer is equipped with the device. The Chief of Police shall provide certification to the Morris County Prosecutor's Office of this general notification to the public.

Any willful or repetitive violations of this policy shall be reported to the internal affairs officer, who shall report such directly to the Chief of Police and/or Morris County Prosecutor's Office. The Chief of Police and/or Morris County Prosecutor's Office is authorized to take such actions as are reasonable and necessary to ensure compliance with this policy and to prevent future violations.

PROCEDURES

I. DEFINITIONS

- A. For purposes of this policy, the following terms are defined:
1. Activate – means to actuate (put into operation) the recording mode/function of a BWC or MVR.
 2. Advisement – a statement made by an officer at the outset of using a BWC 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.
 3. Body Worn Camera (BWC) – is an officer worn device that makes an electronic audio/video recording of activities that take place during any law enforcement action. The term 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 R. 3:17* (electronic recording of station house custodial interrogations).
 4. Constructive Authority – involves the use of an officer's authority to exert control over a subject (see this department's policy on *Use of Force – Volume 3, Chapter 2*), 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 any person if the officer has unholstered a firearm (e.g., "...move out of the way", "...get down", etc.).
 5. Daily Tour of Duty – an officer's single workday.
 6. Deactivate – means to shut off the recording mode of a BWC.
 7. Digital Evidence – includes photographs, audio and video recordings that are stored electronically.
 8. Equipped with a BWC – means that an officer is wearing a BWC at the time in question, as opposed to simply receiving BWC equipment from the agency.
 9. Force – has the same meanings as defined in this department's policy on *Use of Force – Volume 3, Chapter 2*. The term force shall include physical, mechanical, enhanced mechanical and deadly force.
 10. Investigation of a Criminal Offense – means any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, petty disorderly offense, or operating while intoxicated 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.

11. Mobile Video Recorder (MVR): digital video / audio recording equipment installed in a police vehicle that electronically records visual images depicting activities that take place during a motor vehicle stop or other law enforcement action.
12. 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 such 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.
13. School – means 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.
14. 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. For purposes of this policy, serious bodily injury and serious bodily harm have the same meaning.
15. 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 senses.
16. Significant Event: refers to any non-criminal event recorded on a BWC or MVR that could have administrative or evidentiary value and should be reviewed and/or saved. This would include alleged complaints against members of the department.
17. Subject of the Video Footage – means any law enforcement officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body worn camera recording and shall not include a person who only incidentally appears on the recording.
18. Substantive report – means a report that includes a detailed accounting of the incident. It does not include a report which simply refers to other reports or to the existence of BWC/MVR or other camera recordings.
19. 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.
20. Triggering Event – any action that causes the BWC or MVR to create, record and save a recording. Triggering events can include activating emergency lights, manually pressing the record button on the front panel, or activating

the transmitter/wireless microphone.

21. Undercover Officer – is a law enforcement officer operating with an assumed identity and/or disguise for the purposes of gaining the trust of an individual or organization to learn or confirm confidential information or to gain the trust of targeted individuals to gather information or evidence. Plain-clothed officers and detectives are not considered undercover officers unless working with an assumed identity and/or disguise.
22. Youth Facility – means a facility where children assemble under adult supervision for educational or recreational purposes, such as group homes, residential facilities, day care centers, and day treatment centers.

II. GENERAL

- A. BWC and MVR recordings are invaluable to law enforcement for evidential purposes. BWCs and MVRs have consistently demonstrated their value in the prosecution of criminal, traffic, and other related offenses and to protect personnel from false claims of misconduct. Additionally, this equipment will provide valuable instructional material that can be utilized for in-service training programs.
- B. There is no intent to utilize the BWC or MVR as a management tool to punish officers for minor departmental rule infractions.
 1. Personnel shall not be subject to criticism for the proper exercise of lawful discretion in enforcement matters.
 2. BWCs and MVRs shall only be utilized for legitimate law enforcement duties and not for personal purposes.
- C. These recordings will serve the following purposes:
 1. Recordings serve as protection for police officers when there are complaints about their conduct or professionalism during encounters with the public.
 2. The recordings can be introduced into evidence in criminal and motor vehicle prosecutions, as well as in civil litigation.
 3. The recordings can resolve disputes concerning what occurred during particular incidents, thereby protecting both the public and the officers involved.
 4. When complete recall is not possible, such as when multiple events are happening simultaneously or out of an officer's line of sight, an audio/visual recording can provide an accurate record of events.
 5. Subject to the viewing restrictions in this policy, supervisors will be able to view the recordings and select portions to use to train officers in safety, field training, interpersonal skills, proper police procedures, and legal doctrines.
 6. Recordings can permit supervisors to undertake more meaningful performance evaluations.
 7. Recordings augment management's ability to evaluate its basic police practices and interactions between its personnel and the general public.

8. Recordings enhance management's ability to train personnel in proper police procedures.
- D. When properly used, this equipment will have the following capabilities:
1. Creation of accurate documentation of motorist contacts and other patrol related activities, including, but not limited to, arrests, other police-public contacts and other critical incidents.
 2. Preservation of an audio and video record of events, actions and conditions during arrests, critical incidents, and prisoner transports. These recordings enhance the department's ability to review probable cause determination, police-public interactions and evidence for investigatory purposes.
 3. This agency shall not utilize any biometric technology, such as facial recognition, to conduct searches of video files or passive searches of the public.
- E. Adequate safeguards are necessary to ensure that this technology is:
1. Used in a non-discriminating way; and
 2. Used to preserve visual evidence; and
 3. Used to safeguard against potential violations of N.J.S.A. 2A:156A-1, et seq., *New Jersey Wiretapping and Electronic Surveillance Control Act* (applicable to MVR only).
- F. While visual and audio evidence may be captured on the recordings, the use of a BWC and MVR cannot always depict the full story of an encounter. It is also not intended to document all evidentiary material relevant to court or administrative proceedings, but it can serve to supplement an officer's senses and eyewitness account. The use of a BWC or MVR does not diminish the requirement to provide a thorough text documentation of an incident. The BWC and MVR recordings are only one piece of evidence that provides only one perspective regarding the situation that has been recorded.
- G. Personnel shall use only those BWCs and MVRs issued and approved by the department. The use of BWCs and MVRs with electronically enhanced audio/visual capabilities, such as infrared vision features, are not approved or authorized.
- H. BWC and MVR equipment and all data, images, video, audio, and metadata captured, recorded, or otherwise produced by the equipment is the sole intellectual property of this department. Under no circumstances will any employee of the Denville Police Department make a personal copy of any recorded event or direct someone to make a personal copy, except as authorized in this policy.
- I. The captain or his/her designee shall maintain a training program on the lawful and proper use of BWC/MVR equipment. Responsibilities include but, are not limited to:
1. Provide initial training during a new officer's field training program or for all officers not previously trained.
 2. Providing initial and refresher training to non-sworn personnel whose responsibilities include accessing, copying, or distributing BWC/MVR records.

3. Provide additional training as required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration, and performance, and to incorporate changes, updates, or other revisions in procedures and equipment.
 4. If any officer is unclear with this policy or the operation of a BWC or MVR, they should contact their supervisor to arrange for additional training.
- J. Only officers who are authorized by the Chief of Police and have received training in the use of BWC/MVR are permitted to use these systems and must demonstrate a satisfactory degree of familiarity and efficiency in the use of these systems. Proper use of a BWC/MVR is considered an essential job requirement.
- K. The support services division commander or his/her designee shall manage and coordinate the BWC/MVR equipment. His/her duties shall include maintaining the system and procedures to ensure the integrity and proper handling and storage of all BWC/MVR recordings. This system shall include provisions to:
1. Maintain a record of all BWC/MVR serial numbers and assignments.
 2. Set permission, authority levels, and retention categories in the Digital Evidence System.
 3. Repairs to any BWC/MVR equipment shall only be performed by the manufacturer or under the direction of the administrative specialist or his/her designee.
 4. Ensure that all recordings are uploaded to a secure data storage system in a timely fashion.
 5. Prevent tampering with or deletion of recorded data both before and after uploading from the BWC/MVR and uploading to the storage system.
 6. Restrict unauthorized access to stored BWC/MVR recordings.
 7. Document all instances where BWC/MVR recordings are accessed, viewed, copied, disseminated, or deleted (this is generated by the Digital Evidence System).
 8. Permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.
 9. Review BWC/MVR internal audit to ensure compliance on the utilization of these devices in accordance with departmental policy. The Chief of Police shall be notified immediately if the system or audio/video recordings are compromised or accessed without proper authorization.
 10. Prior to the destruction, erasing or deletion of any BWC/MVR recording other than by automated retention, the support services division commander or his/her designee shall review the specific recording, as well as any relevant department investigation and supplemental reports, or any other reports in the case file, to confirm proper retention schedule compliance.

III. BODY WORN CAMERAS

- A. Each BWC has a unique serial number and all officers, to include special law enforcement officers (SLEO), will be assigned an individual BWC. When on duty, the following personnel shall wear and use the BWC as an authorized component of the uniform of the day.
 - 1. All uniformed police officers, including School Resource Officers and Class III Special Police Officers.
 - a. This includes all overtime details such as traffic control details and school security details.
 - 2. All detectives when conducting arrests or engaging in field activities (e.g. suspect/witness interviews, prisoner transports, motor vehicle stops, etc.).
 - 3. All officers assigned to a pre-planned search warrant execution or pre-planned arrest.
 - 4. All officers assigned to duties at demonstrations or potential civil disturbances.
 - 5. All officers assigned to aggressive driving, DWI interdiction, or other proactive enforcement details.
- B. The following personnel are not required to wear and use the BWC, except when conducting pre-planned arrests or engaged in field duties (e.g., patrol coverage, search warrant executions, raids, etc.) consistent with the requirements and restrictions in this policy.
 - 1. Officers participating in undercover operations or surveillance duties.
 - 2. Officers assigned to administrative duties when not in uniform, except when interacting with a member of the public as part of a law enforcement incident.
 - 3. Detectives while engaged in crime scene processing.
- C. Officers are not required to activate their BWCs in police headquarters unless they are investigating a walk-in complaint or other similar related functions.
- D. Wearing of any personally owned video/audio recorder by department personnel is not authorized without the expressed permission of the Chief of Police, the Morris County Prosecutor's Office, or the New Jersey Division of Criminal Justice. Violations will be subject to disciplinary action, up to and including termination.
- E. BWCs shall be stored in their docking stations when not in use to permit charging of the device and the uploading of recordings.
- F. A body worn camera shall not be used surreptitiously.
- G. A body worn camera shall not be used to gather intelligence information based on 1st 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, except in accordance with any applicable guidelines or directives promulgated by the New Jersey Attorney General.

- H. This department will not tolerate the reliance by any officer on race, ethnicity, gender, gender identify, gender expression, transgender status, sexual orientation, religion, economic status, age, culture, or any other immutable characteristic of a group or class of persons, in determining whether to activate or deactivate a BWC.
- I. BWC-Equipped Officer's Responsibilities
1. BWC equipment is the responsibility of the assigned officer and shall be used with reasonable care for ensuring proper functioning during their daily tour of duty.
 2. Officers assigned BWCs shall use the device specifically assigned to them unless otherwise authorized or directed by a supervisor.
 3. Officers shall ensure the BWC is powered on and in stand-by mode so it is ready to be activated at any time prior to leaving headquarters at the beginning of their shift and for the duration of their daily tour of duty.
 4. Uniformed officers shall wear their assigned BWC mounted to the front center of their outermost garment on the upper chest area, facing forward, using the mounting equipment provided by the manufacturer. No object shall be placed in front of the BWC in such a manner that it interferes with or obstructs the recording.
 - a. Class III Special Police Officers wearing the Special Police Officer "Class B" uniform may wear their assigned BWC mounted near to the front center of their beltline, using the belt clip provided by the manufacturer.
 5. Officers who are not in uniform but performing their regularly assigned duties (e.g., detectives, members of the command staff, etc.) may wear their assigned BWC mounted to the front center of their outermost garment on the upper chest area, facing forward, using the mounting equipment provided by the manufacturer or near the front center of their beltline, using the belt clip provided by the manufacturer.
 6. Prior to beginning their shift, officers assigned a BWC will ensure the system's readiness by conducting an operational inspection. The inspection shall include, but is not limited to, the following:
 - a. Ensuring the battery is adequately charged prior to leaving headquarters; and
 - b. Ensuring the device has sufficient memory to complete their daily tour of duty; and
 - c. Ensuring the proper positioning of the BWC on his/her uniform; and
 - d. Activate the BWC and verbally state the date and time, their name, their assigned vehicle number (*if applicable*), and that a pre-shift inspection is being conducted.
 - e. Review the recording to ensure that the system is functioning properly.
 - 1) This can be completed using the Focus Mobile App or by

uploading and viewing the video in the Digital Evidence System.

7. Prior to beginning their shift, officers assigned an MVR equipped patrol vehicle shall sync their BWC to the patrol vehicle's MVR.
 - a. An officer will not sync his/her BWC with a patrol vehicle's MVR system if he/she is not the primary officer assigned to the patrol vehicle. Only one BWC can be synced with an MVR at one time.
8. Officers assigned a BWC shall periodically, and no later than the end of each shift, upload the contents of their specific device by placing the device in its docking station.
9. At the conclusion of their shift, officers shall inspect their BWC to ensure system integrity. The officer shall:
 - a. Place their BWC in the docking station at headquarters for battery charging and remaining video uploads to the Digital Evidence System.
 - b. Ensure all uploaded video/audio recordings have been properly categorized and notated or tagged, if required, for retention purposes (see sections IX and X of this policy)
10. Any BWC that is found to be not functioning properly, is damaged, or becomes lost, thereby preventing the use of the device during the shift, shall be reported to the assigned officer's immediate supervisor upon discovery.
11. Officers are prohibited from tampering with any BWC, including, but not limited to, attempting to take the device apart or disable, alter, or repair it in any way.
12. Officers shall inform their immediate supervisor of any recordings that may be of value for training purposes.
 - a. All such use shall be pursuant to the written authority of the Chief of Police.
 - b. Recordings may be shown for training purposes upon completion of a criminal case, pursuant to written authority from the Chief of Police.

IV. MOBILE VIDEO RECORDERS

- A. Equipment installed in a patrol vehicle is the responsibility of the officer assigned to that vehicle.
 1. No one is permitted to move the installed components of the system from their positions without authorization by the administrative specialist or his/her designee or as permitted by this policy.
 2. Likewise, no one is authorized to repair any MVR equipment or related component except those personnel authorized by the administrative specialist or his/her designee.

3. Equipment shall be maintained according to manufacturer's recommendations.
- B. Installation, removal, or repairs to any of the MVR equipment shall only be performed under the direction of the administrative specialist or his/her designee.
1. MVRs will upload automatically to the Digital Evidence System when a vehicle is close to headquarters.
 2. No officer or other police employee shall conduct him/herself in any way that would intentionally interfere with any data upload from occurring. If an officer or police employee is found to have intentionally interfered with any upload, an internal affairs investigation shall be initiated.
 3. If a police vehicle is towed due to a collision or having become disabled, contact the administrative specialist or his/her designee so that arrangements can be made to secure the removable media.
 4. Promptly notify the administrative specialist concerning any MVR equipped vehicle involved in:
 - a. A crime; or
 - b. A collision with serious bodily injuries to any party; or
 - c. A motor vehicle pursuit involving any crash or injury.
 5. The administrative specialist or his/her designee shall respond and remove the removable media and forward the removable media to the support services division commander or his/her designee to secure it as evidence.
- C. It is the officer's responsibility to exercise reasonable care when using the equipment. Misuse of the equipment that results in damage or loss may result in disciplinary action and/or replacement of such equipment by the officer.
- D. Prior to each shift, officers shall determine whether their MVR equipment is working satisfactorily and shall bring any problems, discovered at this or any other time during their shift, to the attention of the shift supervisor and administrative specialist as soon as possible.
1. To verify operation of the MVR, activate the MVR and place it in record mode (manually or via activation of overhead lights) to test operability of both the video and audio portions of the recording.
 2. Inoperable or damaged MVR equipment shall be immediately reported to the shift supervisor.
 3. The shift supervisor/administrative specialist shall check the MVR equipment to determine the problem. In the event all other MVR equipped patrol vehicles are in use, the officer may utilize the patrol vehicle if equipped with a working BWC or with permission from the shift supervisor.
- E. In the event an officer who has reported for duty needs to immediately respond to a priority call and is unable to fully check the MVR system prior to their response, they shall still operate the MVR within this policy until such time they are able to fully check the system as soon as reasonably possible.

- F. During the course of their shift, after deactivating a MVR, properly categorize the recorded video for retention purposes (see subsection IX.A of this policy).
- G. MVR equipment is preprogrammed to begin recording when the vehicle's emergency lights/siren are activated, the vehicle operator's synced BWC is activated, the vehicle is involved in a crash, or the record button is pressed manually on the MVR in-car display or the MVR's body worn microphone.
 - 1. MVRs are programmed to pre-record 30 seconds of video only.
 - 2. Video recording might not completely document events as they occur. Therefore, officers are encouraged to provide narration as the events are occurring to the extent possible.
 - 3. Officers equipped with BWCs are still required to utilize the patrol vehicle's MVR, if so equipped.
 - 4. MVRs are also equipped with a microphone that will record audio while recording video. This can be muted like the BWC. The indicator light will blink orange while the mute feature is activated (mute feature should be activated using the mute button on the front of the microphone and not turning the microphone off using the power button on the bottom of the microphone). Mute should only be used for the same reasons as it would be used for a BWC recording and shall be unmuted as soon as possible.
 - 5. Officers are encouraged to manually activate the MVR prior to activating overhead emergency lights when appropriate to record actions, which may assist in demonstrating probable cause or capturing video evidence of a violation (e.g., moving violations committed prior to stopping the vehicle).
 - 6. The MVR camera should be always kept at the widest available setting unless the officer feels a specific need to zoom into an object or person (e.g., SFSTs on a suspected drunk driver, etc.). At no time will the MVR camera be manipulated in any way to take the stopping officer out of view of the camera upon initial approach to a motor vehicle stop.

V. SUPERVISORY RESPONSIBILITIES

- A. Supervisors are responsible for ensuring that on-duty officers are equipped with functioning BWCs at the beginning of each shift. This section applies to all divisions, bureaus, squads or units assigned the use of BWCs (i.e., patrol, traffic, etc.).
- B. Supervisors are responsible for ensuring that on-duty patrol officers are assigned to a patrol vehicle equipped with an operational MVR, unless such vehicles are unavailable.
- C. Supervisors shall:
 - 1. Ensure that all officers follow proper procedures for the use and operation of BWC and MVR equipment.
 - 2. Document requests for repairs and replacement of damaged or inoperable BWC and MVR equipment in accordance with this policy.
- D. Upon discovery of a BWC that is damaged or non-functioning, the supervisor will remove the BWC from service and notify the administrative specialist with the details

of the malfunction, problem, or deficiency via email. The supervisor will assign a spare BWC to the affected officer and note in the email which BWC was given to the officer. The malfunctioning BWC shall be placed in a small plastic evidence bag clearly marked with the officer's name / badge number and placed in the administrative specialist's mailbox.

- E. Upon discovery of an MVR that is damaged or non-functioning, the supervisor shall notify the administrative specialist with the details of the malfunction, problem, or deficiency via email. In the event all other MVR equipped patrol vehicles are in use, the officer may still utilize the patrol vehicle if equipped with a working BWC.
- F. After receiving approval from the assistant prosecutor, deputy attorney general, or independent investigator assigned the investigation, supervisors shall take protective custody of the BWC from any officers that are involved in a serious incident to safeguard the recording. Such incidents include, but are not limited to, use of deadly force, use of force resulting in serious bodily injury or death, serious motor vehicle crashes involving an on-duty officer, any incident resulting in the incapacitation of the on-duty officer, or any other incident in which the supervisor feels is necessary to protect the recordings. The process shall take place as follows:
 - 1. The supervisor shall take custody of the BWC after the entire incident has concluded and the BWC has been deactivated in accordance with the parameters set forth in this policy.
 - 2. The supervisor who takes custody of the BWC shall forward it to the support services division commander or his/her designee and issue the officer a spare BWC, notifying the administrative specialist and support services division commander via e-mail which BWC was given to the officer.
 - 3. The support services division commander or his/her designee shall upload and categorize any footage captured of the incident accordingly.
 - 4. Such BWCs shall only be placed back in service at the direction of the Chief of Police.
- G. Sergeants shall formally review one (1) recording of selected non-evidential BWC and MVR recordings for every officer under their supervision each month using a *Supervisory Review of Digital Video/Audio Recordings Form*, to:
 - 1. Assess officer performance (positive or negative activities); and
 - 2. Ensure the equipment is operating properly; and
 - 3. Assess officer performance and adherence to this policy; and
 - 4. Flag video/audio recordings that may be deemed appropriate for training and/or disciplinary purposes.
 - 5. If a supervisor is out for an extended time and monthly reviews cannot be accomplished, the appropriate division commander shall conduct the reviews until the return of the assigned supervisor.
- H. Reviewing supervisors are responsible for ensuring all BWC/MVR recordings are categorized properly, as listed under section IX of this policy. Officers under their supervision will be retrained on proper categorizing, as needed.

- I. Each reviewing supervisor who accesses a BWC recording on the Digital Evidence System shall make an entry into the *BWC Access Log* identifying his/her purpose for viewing the BWC video before doing so.
- J. Supervisors shall formally review all instances when a BWC/MVR is deactivated prior to the conclusion of an incident. They will prepare a written report of the specific incident on a *Supervisory Review of Digital Video/Audio Recordings Form* and forward the documented review through proper chain of command to the Captain.
- K. If an internal affairs complaint is associated with a recorded event, or an officer believes an incident may generate an internal affairs complaint, the reviewing supervisor shall tag the recording in the Digital Evidence System for retention as per section IX of this policy and add an "Internal Affairs" notation to the recording.
- L. The captain or his/her designee shall retain all administrative reports, to include *Supervisory Review of Digital/Audio Recordings Forms*, generated in accordance with this policy and a copy will be forwarded to the Chief of Police for review.
- M. Separate from the above-mentioned formal review of one (1) audio/video recording of selected non-evidential BWC/MVR recordings of each officer, shift commanders or the internal affairs commander or his/her designee may review specific BWC/MVR footage if circumstances arise that requires an investigation to commence.
 - 1. If conducted by a shift supervisor, this review shall be documented on a *Supervisory Review of Digital/Audio Recordings Form* and forwarded through the Chain of Command to the Captain.

VI. ACTIVATION / OPERATION

- A. When on duty, the officer's BWC will remain in standby mode ready to be activated at any time. Activation should occur before arriving at the scene, when feasible. Likewise, the vehicle's MVR shall be activated when the officer is assigned to an MVR-equipped vehicle.
- B. Except when otherwise restricted in this policy, officers shall video and audio record all law enforcement activity including any related interaction with a civilian. However, if an immediate threat to the officer's life or safety makes activating the BWC/MVR impossible or dangerous, the officer shall activate the BWC/MVR at the first reasonable opportunity to do so. Examples of such required recordings include, but are not limited to:
 - 1. During all calls for service (includes those to which the officer is dispatched or are self-initiated).
 - 2. Any 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 cannabis item, or at the initiation of any other law enforcement or investigative encounter related to a violation or suspected violation of that provision.
 - 3. Prior to civilian engagement and/or immediately upon observing circumstances supporting constitutional justification regarding self-initiated events.

4. Conducting motor vehicle stops from the time of the stop until the stop is concluded, to include conducting or monitoring field sobriety tests,
5. Aiding or backing up an officer on a call for service, on a motor vehicle stop, or with a civilian contact,
6. During motor vehicle and foot pursuits,
7. During stationary police details, such as DWI checkpoints, car/truck inspections, seatbelt use checkpoints, extra duty assignments at ABC establishments where alcohol is consumed (e.g., bars, carnivals, festivals, etc.) when police-civilian contact is initiated.
8. Investigation of crash scenes, including interviews on the scene.
9. Investigation of crime scenes (except for crime scene processing).
10. Interviewing a witness while investigating a criminal offense.
11. Investigating criminal violations (not to include undercover investigations or related surveillance activities).
12. Conducting domestic violence investigations.
13. Custodial interrogation of a suspect unless the interrogation is otherwise being recorded in accordance with *Court Rule 3:17 (Electronic Recordation of Station House Interrogations)*.
14. Out-of-court identifications (i.e., show ups, lineups).
15. Investigative detentions or officer-initiated pedestrian stops.
16. Conducting warrantless searches (all types, including protective frisks, consent, etc., but not strip or body cavity searches).
17. Search or arrest warrant service (entire service).
18. Conducting arrests.
19. During arrestee/prisoner transports to police station, county jail, or other place of confinement, as well as hospitals or other medical care facilities and mental health facilities.
20. Drug recognition expert (DRE) evaluations.
21. Overdose and suspected overdose investigations.
22. Emotionally disturbed person investigations/encounters.
23. Crowd control, unruly crowds, strikes, picket lines, demonstrations or incidents requiring activation of the all-hazards or emergency operations plan.
24. When an officer uses force or constructive authority, 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*);

25. During 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;
 26. Conducting welfare checks of residents and motorists (motorist aid) / community caretaking function;
 27. An officer reasonably believes that any other officer on the scene has undertaken, or is engaged in, any of the foregoing police actions/activities.
- C. Whenever the BWC/MVR is activated, officers shall ensure that the audio portion is also activated (mute feature is not activated).
- D. BWCs/MVRs shall remain activated for the entire duration of an incident.
- E. Upon activation of a BWC/MVR, officers should, if possible, provide verbal narration of the circumstances at the start of the encounter audibly so that the recordings will be easier to locate if review of the video is necessary at a later time (e.g. an officer arriving upon the scene of a serious motor vehicle accident may narrate the recording by stating as the BWC/MVR is activated, "...*Officer Smith coming upon the scene of a serious motor vehicle crash at the intersection of Route 46 and West Main Street...*").
1. Officers can also audibly narrate or actually bookmark significant events while recording and provide details of the marked segments.
 2. Officers are encouraged to provide narration where practical and appropriate in an effort to augment the value of the recording and to provide clarity for the viewer.
- F. When wearing a BWC, officers shall notify the subject of the recording that they are being recorded unless it is unsafe or unfeasible to provide such notification. Such notification shall be made as close to the inception of the encounter as is reasonably possible.
1. Prior to entering a private residence, officers 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 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.
 2. When interacting with an apparent crime victim, officers shall, as soon as practicable, notify the apparent crime victim that they are 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.
 3. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, if the person requests that the officer discontinue use of the body worn camera, officers shall evaluate the circumstances and, if appropriate, discontinue use of the BWC.

4. If the officer decides not to provide notification of BWC activation because it is unsafe or unfeasible to do so, the officer shall document the reasons for that decision in the *Investigation Report* of the incident and/or by narrating the reasons on the BWC recording.
 5. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
- G. Truthful response to civilian inquiry:
1. If a civilian inquires whether the officer is equipped with a BWC or inquires whether the device is activated, the officer shall answer truthfully unless the Morris 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 section does not apply to:
 - a. Officers while operating in an undercover capacity;
 - b. While conducting/participating in stationhouse custodial interrogation electronically recorded in accordance with Court Rule 3:17.
 2. Nothing in this section shall be construed to establish a basis for suppressing a statement or other evidence.
- H. Special activation rules governing deadly force incidents and other exigent circumstances when officers are in danger.
1. If an immediate threat to the officer's life or safety makes activating the BWC impossible or dangerous, the officer shall activate the BWC at the first reasonable opportunity to do so.
 2. Notwithstanding any other provision of this policy, when an officer equipped with a BWC/MVR is dispatched to or otherwise goes to the scene of an incident knowing or reasonably believing that police deadly force has been or is being employed, or to a scene where an officer has requested emergency assistance (*e.g., an officer in distress, shots fired, etc.*), the officer shall activate his/her BWC/MVR before arriving at the scene unless impracticable.
 3. Notwithstanding any other provision of this policy, an officer while at the scene of a police deadly force event, pursuit resulting in death or serious bodily injury, in-custody death incident, or the on-scene investigation of such events shall not deactivate their BWC/MVR unless instructed to do so by the independent investigator supervising the investigation of the deadly force incident pursuant to *Attorney General Law Enforcement Directive 2019-4*. The assistant prosecutor/deputy attorney general or their designee supervising the investigation can provide such instruction telephonically.
 - a. Officers can deactivate their BWCs once they leave the scene of the incident.
 - b. BWCs do not need to remain activated while officers are receiving medical evaluation, medical treatment, or have returned to headquarters.
 - c. Once officers deactivate their BWCs in these instances, they shall

surrender their BWCs to a supervisor, who shall submit them as evidence in accordance with this agency's policy on Evidence and Property.

- I. Deactivation of a BWC/MVR:
 1. BWCs/MVRs shall not be deactivated until the incident is concluded. The term concluded can be interpreted as:
 - a. BWC/MVR equipped officer has left the scene; or
 - b. All the civilians involved in the encounter have left the scene; or
 - c. The officer has informed the dispatcher or a supervisor that the incident has concluded; the incident is closed in CAD; or
 2. BWCs/MVRs shall remain active during the transportation of an arrestee until:
 - a. From the scene of the arrest to headquarters until:
 - 1) The vehicle is parked and turned off (MVR may be deactivated).
 - 2) The arrestee is secured in the holding cell or processing room (BWC may be deactivated).
 - b. Until custody of the arrestee has been transferred to the county jail personnel and the officer is no longer in the presence of the arrestee (BWC may be deactivated).
 - c. Until the arrestee is admitted or being treated by hospital, medical, or mental health personnel and the officer is no longer in the presence of the arrestee (BWC may be deactivated).
 - d. The BWC will be immediately reactivated at the commencement of any violent, confrontational, argumentative, or accusatory interaction, or at any indication that constructive authority or force may become necessary.
 3. A BWC/MVR-equipped officer may also deactivate a device under the following special circumstances:
 - a. Discussions pertaining to criminal investigation strategy / planning – Officers may deactivate a BWC/MVR 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 and further provided that the BWC/MVR-equipped officer is not actively engaged in the collection of physical evidence (i.e., conducting a search). When an officer deactivates a BWC/MVR pursuant to this section, the officer shall narrate the

circumstances of the deactivation (e.g., "...I am now turning off my BWC/MVR to discuss investigative strategy with my supervisor").

- b. Assistant prosecutor/deputy attorney general authorization – Officers may deactivate a BWC/MVR when specifically authorized to do so by an assistant prosecutor/deputy attorney general for good and sufficient cause as determined by the assistant prosecutor/deputy attorney general. When an officer deactivates a BWC/MVR 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/MVR as per the instruction of assistant prosecutor (insert name)").
 - c. Electronic breath testing – BWCs (and MVR transmitters) shall be deactivated and removed from the booking room or any other area where the **ALCOTEST** is being used. Nothing herein shall be construed to preclude the use of a BWC/MVR 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 **ALCOTEST** is being operated. The officer shall narrate the reasons for deactivation (e.g., "...I am deactivating the BWC because the suspect is about to take a breath test") and the BWC shall be reactivated when safe and practicable to do so following the completion of the breath testing operation.
 - d. Emergency medical assistance – Officers may deactivate a BWC/MVR when a person, other than an arrestee, is seeking emergency medical services for him/herself or another and requests that the BWC/MVR be deactivated. In deciding whether to deactivate the BWC/MVR, the officer shall consider the privacy interests of the person requesting deactivation and the person in need of medical assistance. However, in situations when an officer reasonably believes that the officer or another person is likely to use force, the BWC/MVR shall be re-activated as soon as it is safe and practicable to do so.
 - e. Walk-in reports at headquarters – In order to prevent the recording of events unrelated to calls for service, officers at police headquarters investigating walk-in complaints are authorized to deactivate their BWC when not in the presence of the complainant (e.g., *typing of complaints, or other follow-up activities conducted in the dispatch area, booking room, report writing room, etc.*). The officer shall narrate on the BWC the reason for the deactivation and immediately re-activate the BWC each time contact with the civilian is reestablished.
4. When an officer deactivates a BWC/MVR as per a civilian's request:
 - a. The conversation between the officer and the civilian concerning the request for deactivation should be electronically recorded.
 - b. The officer, before deactivating the BWC/MVR, shall narrate the circumstances of the deactivation (e.g., "...I am now turning off my BWC/MVR as per the victim's request").

- c. The officer shall report the circumstances concerning the deactivation to their supervisor as soon as is practicable.
 - d. The officer shall document the circumstances of the deactivation in any *Investigation Report* concerning the incident under investigation.
5. If an officer declines a request to deactivate a BWC/MVR, 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 an immediate supervisor as soon as it is safe and practicable to do so.
- a. In the event that the officer declines a deactivation request, the officer immediately shall inform the person making the request of that decision.
 - b. Officers are prohibited from misleading the person making the deactivation request into believing that the BWC/MVR has been turned off when in fact it is operating unless the Morris County Prosecutor or his/her designee or the Director of the Division of Criminal Justice or his/her designee expressly has authorized covert recording.
6. In any instance when a BWC/MVR was deactivated pursuant to this section, the device shall be reactivated as soon as it is safe and practicable to do so when:
- a. The circumstances justifying deactivation no longer exist (*e.g., the interview of the person requesting deactivation is completed, etc.*).
 - b. The officer would otherwise be required to activate the BWC/MVR.
 - c. Circumstances develop so that an officer is authorized to use force.

J. Civilian request to stop recording:

1. Civilian request to stop recording – An officer has no obligation to deactivate the recording in response to a civilian’s request if the recording is pursuant to an investigation, arrest, or lawful search, or if the circumstances dictate that the continuous recording is necessary.
- a. Officers may deactivate a BWC/MVR 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 provided however, that the agreement to participate under that condition is itself recorded.
 - 1) The conversation between the officer and the civilian concerning the request for deactivation should be electronically recorded.
 - 2) Officers shall not suggest to the person that the BWC/MVR should be deactivated; nor shall the officer ask the person whether he or she would prefer that the BWC/MVR be deactivated. Rather, the request for deactivation 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).

- 3) In deciding whether to deactivate the BWC/MVR, the officer shall consider the privacy and safety interests of the person requesting deactivation, 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 deactivation request is honored.

K. Failure to activate, record an entire event or interrupted recording:

1. If an officer fails to activate the BWC/MVR, fails to record the entire event contact, or interrupts the recording, the officer shall document in the applicable *Investigation Report*, *Operations Report*, and/or *NJTR-1 Crash Report* the reasons why a recording was not made, was interrupted, or was terminated prematurely.
2. If the encounter involves an incident that does not require a police report (e.g., motor vehicle stop not resulting in an arrest or search, etc.), the officer shall add a note under the applicable incident number within RMS indicating why a recording was not made, was interrupted, or was terminated prematurely. In addition, the officer shall also notify their supervisor.

VII. RESTRICTIONS ON BWC/MVR ACTIVATIONS

- A. BWCs/MVRs are intended for official police department use only and shall not be used for frivolous or personal activities. Intentional misuse or abuse of the units will result in disciplinary action.
- B. BWCs/MVRs shall be used only in conjunction with the purpose of recording incidents, investigations, and police-civilian encounters involving official law enforcement activities specified in this policy. The BWC/MVR shall not be used to record the following events or any other event restricted in this policy:
 1. Strip and body cavity searches.
 2. When on break or otherwise engaged in personal activities.
 3. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.
 4. When engaged in police union business.
 5. When involved in internal affairs interviews, counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisor-subordinate interaction.
 6. While discussing criminal investigation strategies.
 7. Officers are not required to wear and use a BWC:
 - a. When engaged in hostage negotiations.
 - b. When processing crime scenes.

- c. When 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.
- d. When conducting searches of cellphones, tablets, computers, or other electronic devices that are suspected to contain images of child sexual exploitation.

C. Schools, houses of worship, health care facilities, substance abuse centers, etc.:

- 1. 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/MVR, or shall deactivate a BWC/MVR that has been activated while the officer:
 - a. Is in a school or youth facility or on school or youth facility property under circumstances where children would be in view of the BWC/MVR.
 - b. Is in a place of worship under circumstances where worshipers would be in view of the BWC/MVR.
 - c. 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/MVR.
 - 1) If a BWC captures the image of a patient in a substance abuse treatment facility, the Chief of Police or his/her designee shall notify the Morris 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 § 290dd2, 42 CFR §23.1 to 23.41).
 - 2) The recording shall not be accessed without the permission of the Morris County Prosecutor or his/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.)*
- 2. If an officer is required to deactivate the BWC (or MVR transmitter) 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/MVR transmitter shall be reactivated as soon as it is safe and practicable to do so 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/MVR).

D. Image of undercover officers / confidential informants:

- 1. Officers shall not activate a BWC/MVR, and shall deactivate a BWC/MVR

that has been activated, if the officer knows or reasonably believes that the BWC/MVR would capture the image 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 their supervisor that the image of an undercover officer or confidential informant was recorded.

2. The BWC/MVR shall be activated/reactivated as soon as it is safe and practicable to do so when the risk of capturing the image of an undercover officer or confidential informant no longer exists.
 3. 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 an undercover operative will be arrested to preserve his or her cover*), the Morris County Prosecutor or his/her designee, may provide specific instructions to any BWC/MVR-equipped officers participating in the operation on whether to activate their BWCs/MVRs.
- E. Tactical operations – BWCs shall be worn during tactical operations (*e.g., execution of arrest and/or search warrant, etc.*). If a BWC worn during the execution of tactical operations 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 categorized as indicated in section IX.B of this policy.
- F. Officers 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, or unless the presiding judge expressly authorizes such activation.

VIII. WRITTEN DOCUMENTATION REQUIRED

- A. BWC/MVR recordings shall not be utilized as a replacement for written reports. Officers shall not simply refer to the recording in lieu of submission of a narrative portion of the written report.
- B. Whenever practical, the officer should review the recording prior to completing the written report. (NOTE: see restrictions in subsection XII of this policy).
- C. At a minimum, officers shall document in their written reports when BWC/MVR recordings were made during the incident in question and give a summary of the events in adequate detail that allows the reader of the report to understand the events that occurred.
- D. Officers shall document at the end of the narrative section of their reports (*Investigation Reports, Operation Reports, NJTR-1 Crash Reports, etc.*) that video/audio recordings are available for the case and specify the type available (BWC, MVR, or BWC and MVR).

IX. CATEGORIZING BWC/MVR RECORDINGS

- A. Officers shall uniformly categorize their recordings during the course of their assigned shift or at the conclusion of their shift in the Digital Evidence System. Categorizing a recording consists of identifying the reason the events were captured by the recording.
1. Incident categories:
 - a. BWC Special Privacy (residence, child, etc., see section IX.B).
 - b. Arrest.
 - c. Use of Force.
 - d. Search (all types, including protective frisks).
 - e. MV Summons (MV stops, crashes, etc.)
 - f. MV Warning (MV stops, crashes, etc.)
 - g. Citation/Non-Arrest (non-custodial complaint summons, municipal ordinance violations, etc.)
 - h. MVR/BWC Test (includes accidental activations).
 - i. Other (recording does not fall within any of the specified categories)
 2. In deciding which of the above categories to use to properly classify a recording, the highest listed category takes precedent over all those listed below it.
- B. Additionally, officers shall categorize recordings that capture any of the following circumstances that the New Jersey Attorney General has deemed “special privacy” issues as such, with the specific reason(s) indicated as a notation on the video within the Digital Evidence System software. The following BWC recordings must be specifically categorized and notated as they raise special privacy or safety issues:
1. Images of a victim of a criminal offense.
 2. Images of a juvenile.
 3. Images made in a residence (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. Videos of conversation with a person who requested to deactivate the BWC/MVR was declined.
 5. Video of special operations event 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. Images of an undercover officer or confidential informant.

7. Images of any screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information.
- C. If more than one officer captures video/audio of an event that will be stored as evidence, it is the responsibility of the primary reporting officer to ensure that all videos of such event are categorized properly and uniformly and attached to the applicable case within the Digital Evidence System.
1. All BWC/MVR videos attached to a case will be automatically archived to a blue ray burner and burned to blue ray media. The blue ray burner will be secured in the evidence room and maintained by the Support Services Lieutenant.
- D. In addition to properly categorizing BWC recordings, officers shall also tag any BWC recording in the Digital Evidence System that requires a special retention period as specified in section X.B of this policy. Tagging the video ensures that the recording will be properly retained on the Digital Evidence System's server or other media.

X. RETENTION OF BWC RECORDINGS

- A. Officers shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings or disable any camera. Officers shall not instruct another to alter, tamper with, destroy, or conceal BWC recordings or disable any camera. If an officer, employee, or agent fails to adhere to the recording or retention requirements contained in this policy or N.J.S.A. 40A:14-118.5 et seq., or intentionally interferes with a BWC's ability to accurately capture audio or video recordings:
1. The officer, employee, or agent shall be subject to appropriate disciplinary action and/or criminal sanctions; and
 2. 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
 3. There shall be a rebuttable presumption that evidence supporting a 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.
 4. Any recordings from a BWC recorded in contravention of N.J.S.A. 40A:14-118.5 et seq. or any other applicable law shall be immediately destroyed and shall not be admissible as evidence in any criminal, civil, or administrative proceeding.
- B. Recordings are considered criminal investigatory records of the Denville Police Department and shall be maintained on the Digital Evidence System's server and disposed of in accordance with the guidelines set forth by the New Jersey Bureau of Records Management, *New Jersey Attorney General Directive 2021-5*, and N.J.S.A. 40A:14-118.4 et seq.
1. Contents downloaded from BWCs will be stored on the Digital Evidence System server or other designated storage media. Such storage media shall be maintained as evidence or with the appropriate case file. If maintained as evidence, all policies and procedures regarding evidence handling and

retention shall be followed.

2. Except for recordings being stored for criminal, civil administrative proceedings, or evidentiary purposes, recordings shall be retained for a period of at least 180 days.
3. Recordings being stored for criminal, civil, or administrative purposes must be retained until the conclusion of the case plus any retention period.
4. Recordings of an arrest that did not result in an ongoing prosecution, or records the use of police force, 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 (2 years).
5. BWC recordings 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.
6. BWC recordings shall be retained for not less than three years if requested by:
 - a. The officer whose BWC made the recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
 - b. The officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
 - c. Any immediate supervisor of an 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; or
 - d. Any officer, if the BWC recording is being retained solely and exclusively for police training purposes; or
 - e. Any member of the public who is a subject of the BWC recording; or
 - 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.
 - h. NOTE: the member of the public, parent, or legal guardian, or next of kin or their designee (subsections X.B.6(e)(f)(g)) shall be permitted to review the BWC recording in accordance with N.J.S.A. 47:1A-1 et seq. to determine whether to request a three-year retention period
7. When a BWC records an incident that is the subject of an administrative internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation, any resulting administrative action and required retention.
8. In order to preserve any recordings as required in sections X.B.4, X.B.5, X.B.6 or X.B.7 of this policy, the recording(s) must be "tagged" utilizing the tagging feature within the Digital Evidence System.

- C. Prior to the destruction, erasing or deletion of any BWC recording, other than by automated retention, the support services division commander or his/her designee shall review the specific recording, as well as any relevant department investigation, supplemental reports, or any other reports in the case file to confirm proper retention schedule compliance.
- D. When seeking authorization to purge/erase BWC recordings being held for evidence in criminal matters, the Chief of Police or his/her designee must submit a destruction request to the Morris County Prosecutor's Office before purging/erasing any recordings. In DWI cases, consult with the municipal prosecutor before purging/destroying any DWI-related BWC recordings.

XI. RETENTION OF MVR RECORDINGS

- A. Officers and civilian employees shall not erase or in any other manner alter, tamper with, destroy, or conceal MVR recordings or remove or disable any camera or monitoring device installed in a police vehicle. Any such tampering is a violation of N.J.S.A. 2C:28-7 and is a 4th degree crime.
- B. Recordings are considered investigatory records of the Denville Police Department and shall be stored on the Digital Evidence System's server and disposed of in accordance with the guidelines set forth by the New Jersey Bureau of Records Management.
 - 1. Routine recordings with no criminal, civil, administrative, or evidential value must be maintained for at least 120 days.
 - 2. Recordings being stored for criminal, civil, or administrative purposes must be retained until the conclusion of the case plus any retention period.
 - 3. When seeking authorization to purge/erase MVR recordings being held for evidence in criminal matters the Chief of Police or his/her designee must submit a destruction request to the Morris County Prosecutor's Office before purging/erasing any recordings. In DWI cases, consult with the municipal prosecutor before purging/destroying any DWI-related MVR recordings.
- C. Video and/or audio recordings may be subject to release under the *Open Public Records Act* N.J.S.A. 47: 1A-1 et seq. and prevailing municipal ordinance regarding fees. Questions concerning the applicability of the *Open Public Records Act* N.J.S.A. 47: 1A-1 et seq. in criminal matters should be referred to the Morris County Prosecutor's Office.
- D. All requests by the media or the public to view video/hear audio related to a crime must be referred to the Morris County Prosecutor's Office and or municipal prosecutor, depending on jurisdiction.
- E. Video and/or audio recordings shall be provided in discovery to defendants and their attorneys, in accordance with *R. 3:13-3*, *R. 7:4.2*, and *R. 7:7-7*.
 - 1. Such request must be specific and on the proper instrument, i.e., subpoena, discovery request, etc.
 - 2. Only those portions of the recording pertinent to the request shall be forwarded.
 - a. NOTE: when providing discovery in a domestic violence matter,

ensure that the recording is reviewed prior to release to verify that there is no confidential information that should be redacted.

- b. This confidential information includes, but is not limited to, the location where the victim is being sheltered or contact phone numbers for those assisting the victim, etc.
3. All requests for copies or review of MVR recordings are subject to the fee requirements of the prevailing municipal ordinance.

XII. RESTRICTIONS ON ACCESS TO, USE, AND DISSEMINATION OF BWC RECORDINGS

- A. NOTE: This subsection (XII) applies to BWC recordings ONLY. Viewing of BWC events is strictly limited to authorized employees of this department. Viewing by any other person is prohibited unless authorized by the Chief of Police, his/her designee, or consistent with the provisions of this policy.
- B. BWC recordings shall not be divulged or used for any commercial or other non-law enforcement purpose.
- C. No law enforcement officer or civilian employee of this agency shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in this section. Access to, use of, and receiving an account 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 police misconduct or to determine the existence of a pattern or practice of possible misconduct.
 4. To assist the officer whose BWC made the recording in preparing his/her **own** substantive police report, providing a statement, or submitting to an interview.
 - a. Except:
 - 1) The incident involves the use of force by the officer, when the officer knows or should know that the use of force resulted in significant or serious bodily injury or death; or
 - 2) The incident involved the discharge of a firearm or any use of deadly force by the officer (see this agency's policy on Use of Force); or
 - 3) The incident involved the death of a person while in law enforcement custody; or
 - 4) The incident involved the death of a person during an encounter with a law enforcement officer; or

- 5) An incident the officer knows or has been advised is or will be the subject of an internal affairs or civilian complaint relating to the officer's use of force, bias, or dishonesty.
- 6) Officers shall only be permitted to review or receive an accounting of such BWC recordings 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.
 - a) In cases subject to Attorney General Directive 2019-4, the independent investigator is the investigating entity.
 - b) In all other cases, the Chief of Police or his/her designee is the investigating entity.
 - c) The appropriate investigating entity shall document the authorization to review or receive an accounting of a BWC of a specified incident.
- b. Whenever an officer reviews or receives an accounting of a BWC recording prior to the creation of any report, statement, or interview, the 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.
 - 1) The officer shall document each BWC recording that was reviewed and the date of the review.
 - 2) If the officer received an accounting of a BWC recording, the officer shall document the name of each person who provided an accounting of the BWC recording, the date of the accounting, and the specific BWC recording for which an accounting was provided.
5. When relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency.
6. To show to a civilian who intends to file a complaint against an officer to demonstrate what occurred during the encounter so that the person can make an informed decision whether to file the complaint. Only the Chief of Police or his/her designee can show such a recording to a civilian. *(NOTE: It is the policy of this department to show footage of the prospective complaints unless doing so would interfere with an ongoing investigation, threatened the safety or privacy interests of other individuals who appear on the recording, or is otherwise prohibited under this policy).*
 - 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 policy on *Internal Affairs*.
7. To comply with the state's discovery obligations in prosecutions pursuant to the Rules of Court.

- a. Such request must be specific and on the proper instrument (*i.e., subpoena, discovery request, etc.*).
 - b. Only those portions of the recording pertinent to the request shall be forwarded (DVD or hyperlink).
 - c. This agency reserves the right to redact recordings as applicable by law.
 - 1) NOTE: when providing discovery in a domestic violence matter, ensure that the recording is reviewed prior to release to verify that there is no confidential information that should be redacted.
 - 2) This confidential information includes, but is not limited to, the location where the victim is being sheltered or contact phone numbers for those assisting the victim, etc.
 - d. All requests for copies or review of BWC recordings are subject to the fee requirements of the prevailing ordinance.
8. To comply with any other legal obligation to turn over the recording to a person or entity.
 9. To show or disseminate the recording to a civilian or a non-law enforcement entity, or to disseminate it to the public, when the Morris County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, determines that disclosure to that 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.
 10. Solely and exclusively for internal training purposes upon authorization of the Chief of Police, 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. Note: consent is not required from Denville police officers appearing in the recording.
 - b. If used for outside department training, all officers/persons would need to consent or be blurred.
 11. To conduct an audit to ensure compliance with this policy.
 12. 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 Morris County Prosecutor or his/her designee.
 13. Any other specified official purpose where the Morris County Prosecutor or his/her designee finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.
- D. The independent investigator or his/her designee, overseeing an investigation pursuant to *Attorney General Law Enforcement Directive No. 2019-4*, may, in the

exercise of sound discretion, authorize a civilian or law enforcement witness to be given access to or view a BWC recording of the incident under investigation.

- E. Recordings marked 'special privacy', pursuant to subsection IX.B of this policy, shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Morris County Prosecutor or his/her designee. Except for when a BWC recording captures the image of a patient at a substance abuse treatment facility and subject to the requirements of Section XIV (requiring notice to the Morris County Prosecutor's Office prior to complying with a subpoena, court order, or request for records under the Open Public Records Act or the common law right to know), the Morris County Prosecutor has authorized the Chief of Police or his/her designee, identified as the captain or either division commander, to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings categorized pursuant to subsection IX.B.
- F. 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 Morris County Prosecutor or his/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 order from the court (See section VII of this policy).
- G. Except as otherwise provided in subsection IX.B of this policy, a BWC recording of an event or encounter that involves an investigation of a criminal offense, as defined in subsection I.A.10 of this policy, shall not be shared with or 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, or by a court order, or unless the Chief of Police or his/her designee in consultation with the Morris County Prosecutor or his/her 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.

XIII. CONTROL AND MANAGEMENT

- A. Contents downloaded from BWCs/MVRs will be stored on the Digital Evidence System's server or other authorized device(s) as designated by the agency. All images and sounds recorded by the BWC/MVR are the exclusive property of the agency. Accessing, copying, or releasing files for non-law enforcement purposes is strictly prohibited.
- B. Copies of an event captured on BWCs/MVRs will not be released to other criminal justice agencies other than the Morris County Prosecutor's Office and/or the New Jersey Division of Criminal Justice without the expressed permission of the Chief of Police or his/her designee.
- C. BWC/MVR recordings containing information that may be of value for case prosecution or in any criminal or civil adversarial proceeding shall be safeguarded, as are other forms of evidence. As such:

1. The BWC/MVR software shall be designated as the activity tracking software for all BWC recordings.
 2. All BWC/MVR recordings covered in this subsection shall be maintained on the designated storage device until such time as they are authorized to be destroyed by statute, rule, or other directive governing the record.
 3. BWC/MVR recordings authorized for release shall be copied to portable media and shall be subject to the same security restrictions and chain-of-evidence safeguards and documentation in accordance with the *Evidence and Property Control Policy and Procedures* (Volume 5, Chapter 6).
- D. All recordings are maintained within the BWC/MVR system in the BWC/MVR software and are authenticated by an internal audit program with the BWC/MVR system that includes:
1. The date and time of access.
 2. The specific BWC/MVR recording(s) that was/were accessed.
 3. The officer or civilian employee who accessed the stored BWC/MVR recording.
- E. In addition to the information captured by the Digital Evidence System, all officers who access or view any BWC video shall make an entry in the *BWC Access Log* specifying the purpose(s) for access, pursuant to subsection IX.B.
1. No entry is required in the *BWC Access Log* when reviewing your BWC test video(s).
- F. Officers shall not reproduce or store any recordings to any device or storage medium to include but, not limited to cellular phones, electronic notebooks, etc. Officers shall not direct another to reproduce or store any recordings to any device or storage medium, to include, but not limited to, cellular phones, electronic notebooks, etc.
- G. Officers shall inform their supervisor of any recordings that may be of value for training purposes.
1. Recordings from BWCs/MVRs may be shown for training purposes upon completion of a criminal case. All such use shall be pursuant to the written authority of the Chief of Police.
 2. Officers shall be provided with at least fifteen (15) days' notice if recordings intended for use for training purposes were either made by them or captured their image or voice.
- H. Any recordings from a BWC recorded in contravention of this policy or any other applicable law shall be immediately brought to the attention of the officer's division commander and immediately destroyed by the command staff following consultation and approval by the Morris County Prosecutor or Director of the Office of Public Integrity and Accountability. Such recordings shall not be admissible as evidence in any criminal, civil, or administrative proceeding, except as evidence in any proceeding related to the unauthorized use of a BWC.

XIV. NOTICE TO PROSECUTOR OF SUBPOENA, COURT ORDER, OR OPRA / COMMON LAW REQUEST

- A. Open public record and common law right to access requests. Only the following BWC recordings shall be exempt from public inspection:
1. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection X.B.5 of this policy if the subject of the BWC recording making the complaint requests the recording not be made available to the public.
 2. Recordings not subject to a minimum three-year retention period or additional retention requirements pursuant to subsection X.B.6 of this policy.
 3. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection X.B.6(a)(b)(c)(d) of this policy.
 4. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection X.B.6(e)(f)(g) of this policy if an officer, parent, or legal guardian, or next of kin or designee requests the recording not be made available to the public.
- B. Any employee of this agency receiving a subpoena, court order, or request pursuant to the *Open Public Records Act*, or the common law right to access, for a BWC/MVR recording shall, within one (1) business day of receipt of such subpoena, court order, or request, and before complying with it, provide notice to the Morris County Prosecutor.
1. Such notification must contain the date the request was received, the deadline by which a response must be made, whether the agency intends to release or deny the request, and the justification for that decision.
 2. Provide the type of police action or activity depicted in the recording, including but not limited to, whether the officer was involved in an investigative detention, an arrest, an interrogation of a suspect, a witness interview, a search, a protective frisk for weapons, or was using constructive or actual force.
 3. Indicate whether the recording is part of an ongoing criminal or internal affairs investigation or whether release of the recording potentially infringes upon a victim and/or juvenile privacy rights.
 4. The employee will receive an email acknowledgement. If no further communication is received within 2 business days, the employee or his/her designee should respond to the request as deemed appropriate.
 5. Pursuant to the *Open Public Records Act* (N.J.S.A. 47:1A-5c and N.J.S.A. 47:1A-5d), the department can apply service fees for any extraordinary expenditure of time and effort to accommodate a request. The service fees will be based upon the actual direct cost of providing the service or extraordinary time. If the requester objects to the fee, the request is closed and access to the records is not granted.
 6. BWC footage requests requiring a substantial amount of manipulation or programming of information technology will be assessed a special service fee that shall be reasonable and shall be based on the cost for the labor cost

of personnel providing the service, that is actually incurred for the programming, clerical, and supervisory assistance required, or both, if a request is for a copy of a record.

7. The fee will be based at the lowest hourly rate of the personnel authorized to review/redact/approve the request.
8. The records bureau supervisor or their designee will provide the requestor an estimate before any action is taken.

XV. DELETION REQUESTS

- A. Only the internal affairs officer or his/her designee can delete BWR/MVR recordings with the expressed consent of the Chief of Police or the Morris County Prosecutor's Office.
- B. If an officer has inadvertently recorded data that is private or inappropriate, a request to delete the recording should be made to their immediate supervisor as soon as possible.
 1. The recording shall not be viewed but, the officer shall categorize the recording as '*special privacy*' and submit a DP-4 to their immediate supervisor, who will then forward such to the internal affairs officer. The actual BWC shall be taken out of service and turned over to the internal affairs officer or his/her designee for uploading. The officer shall be issued a spare device until it is returned.
 2. Depending on the circumstances, the internal affairs supervisor may investigate the incident.
 3. If an investigation is warranted, the internal affairs commander or his/her designee shall conduct the investigation, respecting all rights to personal privacy, having the BWR/MVR recording viewed only by an officer of the same sex, if necessary.
 4. Upon completion of the investigation, the internal affairs commander or his/her designee shall notify the Chief of Police and request permission to delete the recording if warranted.