

# SOUTH BURLINGTON POLICE DEPARTMENT

## Special Order 2023-01: Body Worn Camera Policy

Effective: 1/9/2023

Updated: 1/3/2023

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### 1. PURPOSE

This policy ensures compliance with Title 20 VSA §2369 - Statewide policy; required use of body camera policy. This policy supersedes Special Order 2022-02.

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### 2. POLICY

The South Burlington Police Department is committed to the principals of 21<sup>st</sup> Century policing, body worn camera technology is an essential element. The objectives of the program include; enhanced officer safety, documentation of incidents as they occur, collection and digital preservation of evidence related to criminal prosecution and civil litigation, and to provide greater transparency to the community. All South Burlington Police officers shall utilize body worn camera technology as outlined in this policy.

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### 3. DEFINITIONS

**Body Worn Camera (BWC):** An electronic device capable of capturing audio and visual recordings worn on a person's body.

**Law enforcement officer or sworn member:** A Vermont law enforcement officer with the authority to conduct searches and make arrests. Referred to as "officer" in this policy.

**Lethal force incident:** Whenever an officer uses lethal force (whether the subject is injured or not); and any incident where an officer takes action that results in death or serious bodily injury to a person.

**Recordings:** Refers to files captured by BWCs.

**Subject of the video footage:** Any identifiable law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording and shall not include people who only incidentally appear on the recording.

**Use of force:** Any action beyond verbal commands and compliant handcuffing by a law enforcement officer that is intended to control, restrain, or overcome the resistance of another. This includes any action that results in death, injury, or complaint of injury or pain that persists beyond the use of a physical control hold. Force also includes the use of a weapon (including pointing of a firearm at a person) or empty-handed control and restraint tactics against a member of the public.

**Video footage or file:** any images or audio and metadata recorded by a body camera.

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**4. USE OF BODY WORN CAMERAS**

- A. Body worn cameras shall be worn by all sworn uniform officers assigned to a patrol function; this shall include Youth Services and Traffic Safety operations. Officers assigned to BCI shall wear BWC technology when conducting high risk field operations; e.g. search warrant execution, arrest warrant execution, or other planned operations involving a high potential for use of force. Nothing shall preclude a member of BCI using BWC technology in other circumstances in accordance with this policy.
- B. BWCs shall be worn in a location and manner consistent with the manufacturer's recommendations that maximize the camera's ability to capture video and audio footage of the officer's activities.
- C. BWCs are not intended to be used surreptitiously. Specifically, officers should not conceal the presence of a body worn camera, nor shall they attempt to utilize the body camera to record in secret unless authorized by a judicial order.
- D. Both the video and audio recording functions of the body camera shall be activated in any of the following situations:
  - 1. At the beginning of any investigative or enforcement encounter between an officer and a member of the public, except when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous. The officer shall activate the camera at the first reasonable opportunity to do so.
  - 2. During all requests made in the field to conduct a search and during the performance of the search, including K-9 searches.
  - 3. During administration of Miranda warnings and any response when in the field.
  - 4. At any incident that the officer reasonably anticipates may be confrontational or result in the need to use force.
  - 5. The Chief of Police may identify additional circumstances where BWC's shall be used.
- E. Except as authorized in subsections (G & F) of this section, body cameras shall not be deactivated until the encounter has fully concluded and the officer leaves the scene or continued custody of a person has ended.
- F. Prior to entering a private residence, or premise where there is a reasonable expectation of privacy, without a warrant or in non-exigent circumstances, an officer shall notify the occupant(s) of use of the body camera.
  - 1. If an occupant with privacy rights objects to the operation of the body camera, an officer shall consider the need to continue the encounter. If the officer has no lawful

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basis to continue the encounter absent consent, the officer shall consider terminating the encounter. If the officer has a lawful basis to continue the encounter or remain present, other than the individual's consent, the officer may continue using the body camera.

2. If entering a private residence pursuant to a search warrant, the officer shall, at the time of applying for the search warrant, consult with the State's Attorney's Office or Attorney General's Office to determine whether a search warrant is needed for use of the body worn camera.
- G. Permissive agency restrictions on the use of BWCs:
1. There are specific situations in which the use of BWCs is not appropriate and officers should not initiate a recording or, if an audiovisual recording has been initiated, the officer may pause or stop the recording prior to the conclusion of the event. Acceptable reasons for discontinuing recording or activating the mute feature include:
    - a. During on scene conferences between officers, supervisors, advocates, clinicians, EMS personnel, attorneys, prosecutors, or other situations in which the officer determines the conference would violate confidentiality, privacy, or individual rights.
    - b. Conferences between officers and supervisors that might compromise this or further investigations or would otherwise impede law enforcement efforts or strategy.
    - c. Encounters with undercover officers or confidential informants.
    - d. If a person reporting a crime or assisting with an investigation requests to remain anonymous.
    - e. During times of prolonged waiting absent contact with members of the public such as waiting for a tow truck, funeral home, or similar.
    - f. Recordings are not expected during non-enforcement activities.
    - g. Recordings are not expected during operations such as routine regulatory functions that are unique to specialized law enforcement agencies.
    - h. Recordings are not expected during the execution of a search warrant for evidence of child pornography where capturing recordings of such material and uploading them to a third-party vendor's storage would constitute a crime.
    - i. Recordings are not expected during transports conducted pursuant to a transport order or where a cruiser camera is enabled and captures the individual being recorded.

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- j. Recordings should not be made to record personal activities such as meal breaks or conversations with other officers, supervisors, or staff outside of the scope of official duties.

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**5. PROHIBITIONS ON USE OF BODY WORN CAMERAS**

- A. Officer shall, upon request of a victim of domestic or sexual violence, stop recording, provided the scene has been stabilized and made safe following initial response.
- B. Once a scene has been stabilized and made safe by law enforcement, recording shall stop for victims of domestic or sexual violence during interactions involving matters of safety planning or related to victim privacy.
- C. Officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, nor within a hospital or medical facility except when responding to an imminent threat to life or health or when a use of force is anticipated.
  - 1. This prohibition does not prevent officers from using BWCs as recording devices as part of an investigatory interview in a private setting within a school or medical environment.
- D. Officers shall not use body cameras to record for the sole purpose of gathering intelligence information on First Amendment protected activities such as speech, associations, or religion.
  - 1. This shall not be construed to limit lawful use of body cameras to record investigative encounters between an officer and a member of the public or activity that raises an articulable suspicion of on-going or imminent criminal conduct.
- E. Agencies shall not run recordings through facial recognition or automated analysis programs without appropriate judicial review, except for automated redaction processes which are not for the purpose of identification or comparison to any other source.
- F. Recording should resume as soon as any exception no longer exists.
- G. If an officer pauses or stops a recording, or uses a mute feature, they shall document the reason for the termination or suspension of the recording.

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**6. REVIEW OF RECORDINGS**

- A. Except as otherwise prohibited (see section B. below), an officer may review BWC recordings prior to writing reports about incidents or arrests.
- B. In situations that result in an officer involved shooting, or death or serious bodily injury to a member of the public due to the actions of an officer, the officer shall not review any

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recordings or be provided an account of any recordings of the incident prior to being interviewed or writing a report, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

- C. See PR-302 Use of Force - Appendix A Video Evidence policy for procedures following a lethal force incident.

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**7. EQUIPMENT & TRAINING**

- A. Prior to start of each shift officers are responsible for checking their body camera equipment to be sure it is operational, fully charged and free of any defects. Officers shall report any malfunctioning equipment to a supervisor. The supervisor will assign the officer a replacement device and will report the date, time, and nature of the equipment malfunction to the division lieutenant.
  - 1. During interactions where there is an expectation that the body camera would be activated, an officer should periodically check the body camera to assess that it is functioning properly but only when safe to do so.
- B. In the event a body camera either fails to activate and begin recording or fails to cease recording, the officer will describe this, along with any additional relevant details, in their written report of the incident.
- C. Officers are responsible for categorizing each recording appropriately. The categories of files correspond to its retention period; therefore, officers must take extreme care to properly categorize each recording. Intentionally mis-categorizing recordings will result in appropriate corrective action. Recordings shall be categorized without unreasonable delay and within seven (7) days of the incident absent supervisor approval.
- D. Officers shall transfer data from their assigned BWC to the agency's storage as soon as practical, officers shall dock and download their assigned BWC at the end of each shift.
- E. Under no circumstances shall an officer erase, edit, alter, duplicate share or otherwise distribute any recordings on their device except as allowed by this policy. Only a system administrator is authorized to delete or edit files. Only designated staff are authorized to duplicate and distribute copies of recordings.
- F. Should any officer or employee fail to adhere to the recording requirements contained in this policy, intentionally interfere with a body camera's ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation, appropriate disciplinary action shall be taken.

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- G. The agency is responsible for providing training on the proper use of equipment to include the contents of this policy, instruction on operation of the BWC, how and when to transfer files, proper identification and proper categorizing of recordings.
- H. The agency shall provide instruction to officers on how to report and replace malfunctioning equipment.
- I. Supervisors may review recordings of officers under their command for the purpose of ensuring compliance with established policies, verifying the equipment is functioning properly, to identify any areas in which additional training or guidance is required and to identify material that would be appropriate for training.
- J. SBPD employs Axon technology which has a “buffering” feature. This feature is set to record and retain the most recent 30 seconds of video prior to an officer’s activation of the BWC.

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**8. STORAGE, RETENTION and RELEASE OF VIDEO EVIDENCE**

- A. All recordings or files are the property of the South Burlington Police and shall only be used for official purposes.
- B. All recordings shall be held in accordance with the State’s record retention act for law enforcement records. When appropriate and not exempt under 1 V.S.A. 317, recordings shall be released, or released with redaction, upon request to members of the public or media.
- C. Should any employee intentionally fail to adhere to the retention requirements contained in this policy, appropriate disciplinary action shall be taken.
- D. The agency shall make a good faith effort to locate recordings of interest to the public. If recordings exist of an interaction or event captured by a BWC and that interaction or event is identified with reasonable specificity, the agency will make that recording(s) available for review or release consistent with 1 V.S.A. 317 and any other applicable records release schedule.
- E. Recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.
- F. In the event that the South Burlington Police authorizes access to stored footage by a vendor such as a technician, information technology staff, etc. they shall not be permitted to access, view, copy, alter, or delete footage unless in accordance with this policy and at the express direction of the agency.
- G. The following retention guidelines are in addition to the requirements of the specific record schedule for this agency. When a BWC fails to capture some or all of the audio or video of an incident due to malfunction, displacement of camera, or any other cause, any audio or video

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footage that is captured shall be treated the same as any other recording as described in this policy.

1. **Non-Event - 14 (fourteen) days** - In instances where a body camera is activated mistakenly or for testing purposes and records no discernable human activity, such footage may be permanently deleted after 14 days. The time, date, length of recording, assigned body camera designator, and a brief summary of the image depicted shall be documented in some fashion by the law enforcement agency prior to permanent deletion.
2. **Non-Criminal Incident - 90 (ninety) days** - Recordings shall be retained for no less than ninety days if the recording captures an interaction or event involving:
  - a. Response to calls for service where no enforcement action occurs;
  - b. Police-public interactions that do not involve enforcement action, a search or seizure;
  - c. Service of legal process.
3. **Field Detentions - 3 (three) years** - Recordings shall be retained for no less than three (3) years if the recording captures an interaction or event involving:
  - a. All detentions, to include incapacitated persons.
  - b. traffic stops with no enforcement action taken beyond a written warning;
  - c. traffic stops with enforcement action taken shall be kept until the civil case is closed;
4. **Criminal Investigation / Arrest Use of Force 7 (seven) years** – Recordings shall be retained for no less than seven (7) years if the recording captures an interaction or event involving:
  - a. any use of force;
  - b. Recordings related to misdemeanor arrests or non-violent felony arrests (or longer if the case is not resolved in this time frame);
  - c. Records related to felony investigations
5. **Indefinite / Manual Deletion** - Recording related to the following will be retained indefinitely and require manual deletion:
  - a. Use of force incidents resulting in injury or allegation of injury;

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- b. Use of force involving the use of lethal force or those which result in serious bodily injury of a person;
  - c. Major incidents such as mass arrests;
  - d. Offenses listed under 33 V.S.A. § 5204(a);
  - e. Homicide cases
  - f. Active missing persons cases.
- H. Whenever an officer equipped with a BWC is involved in, a witness to, or within audio or sight range of a police use of force that results in a death or serious bodily injury including discharge of a firearm for other than humane destruction of an animal, or when any officer conduct becomes the subject of a criminal investigation:
- 1. Such officer's body camera shall be immediately seized by the officer's agency or department, or the agency or department conducting the related criminal investigation, and maintained in accordance with the rules governing the preservation of evidence;
  - 2. All files on the seized body camera shall be maintained in accordance with the rules governing the preservation of evidence; and
  - 3. The procedure referenced in PR-302 Appendix A "*Lethal force incident procedures and statewide policy on review of BWC recordings following lethal force incidents*".
- I. BWC footage may only be offered as evidence by any government entity, agency, department or prosecutorial office, in accordance with established rules of evidence.
- J. Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person's voice, provided the redaction does not interfere with a viewer's ability to fully, completely, and accurately comprehend the events captured on the video footage.
- K. Nothing in this section shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.
- L. This policy is publicly available on the City of South Burlington Police Department website under Key General Orders.

Signature: 

Date: 01/03/2023