

ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



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SUBJECT: BODY WORN AUDIO/VIDEO RECORDERS

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ACCREDITATION STANDARDS:

3.5.5

BY THE ORDER OF:

Chief Giacomo Sacca

BY AUTHORITY OF:

Police Director Earl J. Graves

SUPERSEDES ORDER #: V5C13 (01/13/2021) (06/23/2021)

PURPOSE The purpose of this general order is to maintain guidelines for the use, management, storage, and release of audio-visual media recorded by body worn video/audio recorders (BWR). BWR is 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. A further purpose is to define the media storage and retention system for the events recorded by these devices.

POLICY It is the policy of the Elizabeth Police Department to utilize body worn video/audio recorders (BWR) to assist agency personnel in the performance of their duties by providing an accurate and unbiased recorded account of an incident.

All personnel shall use this equipment consistent with manufacturer's guidelines, this general order, and those policies or guidelines issued by the New Jersey Attorney General and Union County Prosecutor's Office. Failure to use this technology in accordance with this general order and those policies or guidelines issued by the New Jersey Attorney General and Union County Prosecutor's Office can result in discipline.

The use of body worn recorders with electronically enhanced audio/visual capabilities, such as infrared vision features, is not authorized.

The Elizabeth Police Department website/webpage shall contain a clear statement that this department utilizes body worn video/audio recorders. The website posting shall include an image showing what the device looks like and how it is to be worn by uniformed officers or plainclothes detectives so that citizens will be able to determine whether an officer is equipped with the device.

PROCEDURES

I. DEFINITIONS

- A. For purposes of this general order, the following terms are defined:
1. Activate – means to actuate (put into operation) the recording mode/function of a BWR.
 2. Advisement – a statement made by an officer at the outset of using a BWR camera to record a communication, conversation, or interaction with a civilian for the specific purpose of informing the civilian that the communication or conversation is being recorded.
 3. Body worn audio/video recorder (BWR) – 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. Consent – Consent to record shall be considered obtained when the recording party (officer) has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that the communication or conversation is being recorded. This announcement itself to the other parties must also be recorded.
 5. Constructive authority – involves the use of an officer's authority to exert control over a subject (see *General Order V3C2 Use of Force*), 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.).
 6. Deactivate – means to shut off the recording mode of a BWR.
 7. Digital evidence – includes photographs, images, audio, and video recordings that are stored digitally.
 8. Equipped with a BWR – means that an officer is wearing a BWR at the time in question, as opposed to simply receiving BWR equipment from the agency.
 9. Force – has the same meanings as defined in *General Order V3C2 Use of Force*.
 10. Investigation of a criminal offense – means any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or 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. 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 these activities (e.g., street crime unit, crime suppression unit, etc.). The nature of their work 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.
12. 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.
13. 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 general order, serious bodily injury and serious bodily harm have the same meaning.
14. 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.
15. 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 BWR recording and shall not include a person who only incidentally appears on the recording.
16. 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 BWR or other camera recordings.
17. Tactical team – is 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.
18. Tagging – is an electronic labeling of an electronic file captured by a BWR.
19. 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.
20. Youth facility – means a facility where children assemble under adult

supervision for educational or recreational purposes, such as day-care centers, youth camps, residential and/or treatment facilities, etc.

II. GENERAL ADMINISTRATION

- A. BWR recordings are invaluable to law enforcement for evidential purposes. BWR have consistently demonstrated its 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. While visual and audio evidence may be captured on the recordings, the use of BWR is 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. There is no intent to utilize the BWR 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. BWR shall only be utilized for legitimate law enforcement purposes.
- C. Adequate safeguards are necessary to ensure that this technology is:
 - 1. Used in a non-discriminating way; and
 - 2. Used to document visual evidence.
- D. When properly used, this equipment will have the following capabilities:
 - 1. Creation of accurate documentation of motorist contacts and other patrol related activities.
 - 2. Preservation of an audio and video record of events, actions and conditions during arrests, critical incidents, and prisoner transports.
- E. 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 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 general order, 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 public.
 8. Recordings enhance management's ability to train personnel in proper police procedures.
- F. The Chief of Police shall maintain a training program on the lawful and proper use of BWR equipment. Only officers who have received training in the use of BWR are permitted to use this system and must demonstrate a satisfactory degree of familiarity and efficiency in the use of this system.
- G. The Chief of Police shall appoint a BWR training coordinator. The designated BWR training coordinator is responsible for:
1. Providing initial training to all newly hired officers or officers who were not previously trained.
 2. Providing periodic refresher training, as required, to ensure the continued effective use and operation of the equipment.
 3. Providing initial and refresher training to non-sworn personnel whose responsibilities include accessing, copying, or distributing BWR records.
 4. Ensuring proper calibration and performance of the BWR equipment.
 5. Incorporating changes, updates, or other revisions in policy and equipment.
 6. Providing supplemental training as part of this department's progressive disciplinary processes.
- H. The Chief of Police shall appoint a system administrator to manage the BWR equipment whose duties shall include maintaining the system and procedures to ensure the integrity and proper handling and storage of all BWR recordings.
- I. Repairs to any BWR equipment shall only be performed by the manufacturer or under the direction of the designated BWR system administrator or his/her designee. The system administrator's responsibilities include:
1. Ensure that all recordings are uploaded to a secure data storage system in a timely fashion.
 2. Prevent tampering with or deletion of recorded data both before and after downloading from the BWR and uploading to the storage system.

3. Prevent unauthorized access to stored BWR recordings.
 4. Ensuring documentation of all instances when BWR recordings are accessed, viewed, copied, disseminated, or deleted by the agency BWR software system; permit auditing of all instances where BWR recordings are accessed, viewed, copied, or deleted; and
 5. Authorize access to downloaded BWR files
- J. BWR is intended for official police department use only and are not to be used for frivolous or personal activities. Intentional misuse or abuse of the units will result in disciplinary action.
- K. This department will not tolerate the reliance by any officer on race, ethnicity, gender, gender identity, gender expression, sexual orientation, religion, economic status, age, culture, LGBTQ+ status, or any other immutable characteristic of a group or class of persons, in determining whether to activate or deactivate a BWR.
- L. All recording media, images, and audio are intellectual property of the Elizabeth Police Department and will not be copied, released or disseminated in any form or manner outside the parameters of this general order without the expressed written consent of the Chief of Police or the Union County Prosecutor.
- M. Under no circumstances will any member of the Elizabeth Police Department make a personal copy of any recorded event.
- N. Officers will use only those BWRs approved and issued by the Chief of Police. Wearing any personally owned video/audio recorder is not authorized without the expressed permission of the Chief of Police, the Union County Prosecutor's Office, or the New Jersey Division of Criminal Justice. Violations will be subject to disciplinary action, up to and including termination.
- O. BWRs shall be used only in conjunction with official law enforcement duties.
1. Officers engaged in undercover operations or surveillance activities are not required to utilize BWR.
 2. BWRS shall be used only in conjunction with official law enforcement duties. The BWR shall not be used to record:
 1. Encounters with undercover officers or confidential informants; or
 2. Strip and body cavity searches; or
 3. When the officer is on break or otherwise engaged in personal activities; or
 4. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room; or
 5. When the officer is involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisor-subordinate interaction; or

6. When the officer is engaged in police union business; or
 7. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording, see section III.B of this general order; or
 8. While discussing criminal investigation strategies.
3. Officers are not required to wear and use a BWR:
 - 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.
 4. BWRs shall not be used surreptitiously.
 5. BWRs 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.

III. INCIDENTS TO RECORD

- A. BWRs allow for a clearly documented, first-hand, and completely objective account of an incident and will produce the maximum amount of information regarding the incident to be captured. Therefore, all personnel assigned to or assisting in that event shall activate their BWR immediately upon acknowledging dispatch to a call for service or in the performance of a proactive event as soon as is safely possible.
- B. Except when otherwise restricted in this SOP, officers shall video and audio record all law enforcement activity including any interaction with a civilian. However, if an immediate threat to the officer's life or safety makes activating the BWR impossible or dangerous, the officer shall activate the BWR at the first reasonable opportunity to do so. Examples of such required recordings include, but are not limited to:
 1. All traffic stops from the initiation of the stop until the stop is concluded, including sobriety testing.
 2. All calls for service.
 3. Stationary police details, such as DWI checkpoints, car/truck inspections, seatbelt use checkpoints, extra duty assignments at ABC establishments where alcohol is consumed (ABC establishments, festivals, etc.). Procedures are outlined in section IV. E/F/G.

4. Crash scenes, including interviews on the scene.
5. Crime scenes except for crime scene processing.
6. Motor vehicle and foot pursuits.
7. Investigations of criminal violations (not to include undercover investigations or related surveillance activities).
8. Any call for service related to a violation or suspected violation of possessing or consuming alcohol, marijuana, hashish, or cannabis item.
9. Investigative detentions / field interviews.
10. Out-of-court identifications (i.e., show ups, lineups).
11. Warrantless searches (all types, including frisks, but not strip or body cavity searches).
12. Search or arrest warrant service (entire service).
13. Arrests.
14. Arrestee/prisoner transportation.
15. Drug recognition expert (DRE) evaluations.
16. Overdose and suspected overdose investigations.
17. Emotionally disturbed person investigations / encounters.
18. 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).
19. Crowd control, unruly crowds, or incidents requiring activation of the all-hazards or emergency operations plan.
20. Strikes, picket lines, demonstrations.
21. Domestic violence investigations.
22. Officer initiated pedestrian stops.
23. Welfare checks of residents and motorists (motorist aid).
24. When an officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.
25. Any contact that becomes adversarial when the BWR has not already been activated.

- C. When an officer equipped with a BWR volunteers for a call for service or assistance, upon advising dispatch, the officer shall **immediately** begin to record the response unless impracticable. In a situation where it is impractical to record the situation, the officer must notify their immediate supervisor as soon as it is safe to do so. Reasons for not recording the incident shall be documented in a private report.
- D. Notwithstanding any other provision of this general order, when an officer equipped with a BWR 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 BWR before arriving at the scene unless impracticable.
- E. Notwithstanding any other provision of this directive, an officer while at the scene of a police deadly-force event, pursuit resulting in a death or serious bodily injury, in-custody death, or the on-scene investigation of such events shall not deactivate his/her BWR unless instructed to do so by the independent investigator supervising the investigation of the incident pursuant to *Attorney General Law Enforcement Directive 2019-4*. The independent investigator or his/her designee supervising the investigation can provide such instruction telephonically.
1. Officers can deactivate their BWRs once they leave the scene of the incident.
 2. BWRs do not need to remain activated while officers are receiving medical evaluation, medical treatment, or have returned to headquarters.
 3. Once officers deactivate their BWRs in these instances, they shall surrender their BWRs to a supervisor, who shall submit them as evidence in accordance with this agency's general order on *Evidence and Property*.
- F. BWRs shall remain activated for the entire duration of public contacts (calls for service, pedestrian/MV stop, etc.) until the officer has departed the scene and the officer has notified communications that the event is closed. Officers shall narrate when intentionally stopping the recording.
- G. When a BWR is activated to transport an arrestee/prisoner, it shall remain activated at all times while the BWR-equipped officer is in the presence of the arrestee and until the arrestee is secured in the processing room or a cell, or until custody of the arrestee has been transferred to county jail personnel, or until the arrestee is with hospital/medical/mental health personnel and the officer is no longer in the presence of the arrestee. Officers shall narrate when intentionally stopping the recording.

- H. When wearing a BWR, 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 and, if the occupant requests the officer to discontinue use of the BWR, the officer shall immediately discontinue use of the BWR 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 he or she is being recorded and, if the apparent crime victim requests the officer to discontinue use of the BWR, the officer shall immediately discontinue use of the BWR.
 - 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 BWR, officers shall evaluate the circumstances and, if appropriate, discontinue use of the BWR.
 - 4. If the officer decides not to provide notification of BWR 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 BWR recording.
 - 5. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
- I. If a civilian inquires of an officer whether the officer is equipped with a BWR, or inquires whether the device is activated, the officer shall answer truthfully unless the Union 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.
 - 1. Officers may deactivate a BWR 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.
 - a. Officers shall not suggest to the person that the BWR should be deactivated; nor shall the officer ask the person whether he or she would prefer that the BWR 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).

- b. In deciding whether to deactivate the BWR, 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.
2. Officers may deactivate a BWR when a person, other than an arrestee, is seeking emergency medical services for him/herself or another and requests that the BWR be deactivated. In deciding whether to de-activate the BWR, 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 BWR shall be re-activated as soon as it is safe and practicable to do so.
3. When an officer deactivates a BWR:
 - a. The conversation between the officer and the civilian concerning the request for deactivation shall be electronically recorded; and
 - b. The officer before deactivating the BWR shall narrate the circumstances of the deactivation (e.g., "*...I am now turning off my BWR as per the victim's request*"); and
 - c. The officer shall report the circumstances concerning the deactivation to their supervisor as soon as is practicable; and
 - d. The officer shall document the circumstances of the deactivation in any incident report concerning the incident under investigation.
4. If an officer declines a request to deactivate a BWR, 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 memorialized on the recording and documented and shall be reported to an immediate supervisor as soon as it is safe and practicable to do so.
 - a. If 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 BWR has been turned off when in fact it is operating unless the Union County Prosecutor or his/her designee or the Director of the Division of Criminal Justice or his/her designee expressly has authorized covert recording.
5. Officers may deactivate a BWR when specifically authorized to do so by an assistant prosecutor for good and sufficient cause as determined by the assistant prosecutor. When an officer deactivates a BWR 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 BWR as per the instruction of assistant prosecutor (insert name)*").
6. Officers may deactivate a BWR 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 BWR-equipped officer is not actively engaged in the collection of physical evidence (i.e., conducting a search). When an officer deactivates a BWR pursuant to this section, the officer shall narrate the circumstances of the deactivation (e.g., "...I am now turning off my BWR to discuss investigative strategy with my supervisor").

7. If an officer is required to deactivate the BWR 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 BWR shall be reactivated as soon as it is safe and practicable to do so if and when the circumstances requiring deactivation no longer exist (e.g., the officer is conversing with an adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWR).
 8. If a BWR captures the image of a patient in a substance abuse treatment facility, the Chief of Police or his/her designee shall notify the Union County Prosecutor or his/her designee to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information (42 USC § 290dd-2, 42 CFR §23.1 to 23.41). The recording shall not be accessed without the permission of the Union County Prosecutor or his/her designee. (Note that 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.)
 9. In any instance where a BWR was deactivated pursuant to this section, the device shall be reactivated as soon as it is safe and practicable to do so when the circumstances justifying deactivation no longer exist (e.g., the interview of the person requesting deactivation is completed, etc.) and the officer would otherwise be required to activate the BWR.
- J. Officers shall not activate a BWR, and shall deactivate a BWR that has been activated, if the officer knows or reasonably believes that the BWR 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. The BWR shall be activated/reactivated as soon as it is safe and practicable to do so if and when the risk of capturing the image of an undercover officer or confidential informant no longer exists.
- K. Officers shall not activate a BWR 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.

- L. BWRs shall be deactivated or removed while in the ALCOTEST area when the ALCOTEST device is being used. Nothing herein shall be construed to preclude the use of a BWR to record the behavior of a person arrested for driving while intoxicated other than while the person is in the ALCOTEST area while the ALCOTEST device is being operated. If this provision requires deactivation of a BWR, the officer shall narrate the reasons for deactivation (e.g., "... *I am deactivating the BWR because the suspect is about to take a breath test*"), and the BWR shall be reactivated when safe and practicable to do so following the completion of the breath testing operation.
- M. When a BWR is activated, officers are encouraged to provide narration where practical and appropriate to augment the value of the recording and to provide clarity for the viewer.
- N. 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 *General Order V2C15 Internal Affairs*. All other requests to view and/or obtain footage by the public shall be handled in accordance with section V of this general order.
- O. If an officer fails to activate the BWR, fails to record the entire event contact, or interrupts the recording, the officer shall document in the applicable incident report why a recording was not made, was interrupted, or was terminated.

IV. OFFICER AND SUPERVISORY RESPONSIBILITIES

- A. All police personnel will be assigned an individual BWR with a unique serial number and internal tracking number. ESU operators will be assigned additional specific units designed for tactical operations. Supervisors, detectives, and officers assigned to other divisions may also be assigned a BWR if the need arises. The training division staff will maintain a record of all BWR serial numbers and assignments.
 - 1. Officers are not required to activate their BWRs in police headquarters unless they are investigating a walk-in complaint, or other similar related functions.
 - 2. Detectives and administrative officers shall wear BWRs when conducting arrests and while engaged in field duties (e.g., patrol coverage, search warrant executions, raids, etc.) consistent with the requirements and restrictions in this general order.
 - 3. BWRs shall be worn and used on all extra duty assignments (e.g., ABC establishments, security, etc.).
 - 4. Officers shall also wear and use a BWR consistent with this general order when:
 - a. On aggressive driving, DWI interdiction assignments, or other proactive enforcement team.
 - b. When assigned to front desk assignments and interacting with the public on a law enforcement matter.
 - c. When assigned to or assisting any tactical team in the field.

- d. When assigned to duties at demonstrations or potential civil disturbances.
- B. BWRs utilized on checkpoints (DWI, seatbelt, etc.), extra duty assignments/overtime shall be set to record continuously throughout the officer's tour from the beginning to the end of the shift, except for personal breaks or an otherwise restricted in this general order. Each time a recording is started and stopped the officer shall narrate the reasons.
 - C. BWRs utilized on extra duty assignments/overtime details where alcoholic beverages are consumed shall be set to record continuously throughout the officer's tour from the beginning to the end of the shift, except for personal breaks or an otherwise restricted in this general order. Each time a recording is started and stopped the officer shall narrate the reasons.
 - D. Officers not assigned an individual BWR or who have an assigned BWR that is low on power, may still work extra duty assignments; however, they must be issued a temporary BWR for the assignment. The desk lieutenant issuing the BWR must complete a private report, notifying the system administrator accordingly, to log the proper serial number allocation.
 - E. BWRs shall be worn on the outer-most garment. It will be secured to the garment using the mount/clip supplied by Axon that is part of the BWR equipment. The BWR will be positioned high on the center of the chest at badge level, head, or collar, facing the officer's point of view. Officers are responsible to ensure the BWR remains in a position to allow the recording of an encounter or incident to the extent possible.
 - F. All officers assigned a BWR are responsible for its use and maintenance during their tour of duty. Officers are required to keep their BWR powered on and in buffering mode at all times while it is being worn and not actively generating a video recording.
 - G. Prior to beginning a shift, officers assigned a BWR will ensure its readiness by conducting an operational inspection. Officers shall also inspect BWRs at the conclusion of each shift to ensure system integrity.
 1. When conducting the pre and post shift inspection, the officer shall activate the BWR and verbally state the date, time, whether a pre or post-shift inspection is being conducted, and that a test is being performed on the unit.
 2. Any problems preventing the use of the unit during the shift will be reported to the officer's immediate supervisor upon discovery. The supervisor shall assign a spare BWR from the charger and note the number of the fresh unit on a private report directed to the training division commander.
 3. After each roll call (1st and 2nd) the shift sergeants shall inspect the BWR docks to ensure that all BWR's have been deployed and returned accordingly. BWR deployment and returns shall be compared to the shift schedules and the inspection shall be noted on the supervisors round sheet.
 - H. When video/audio footage is captured, it shall be noted in the coinciding report (e.g., incident, NJTR1, etc.), by typing/writing the capital letters *BWR* at the end of the report to signify that video/audio is available for the case. BWR recordings are not a replacement for written reports. Under no circumstances shall officers simply refer

to a BWR recording on an investigation report instead of detailing the facts and circumstances of their investigation/observations.

- I. When reviewing such reports, desk lieutenants shall ensure that the pertinent CAD/RMS record is annotated with an entry noting a BWR was used.
- J. When reviewing incident reports, desk lieutenants shall ensure that division commanders are made aware of recordings that are subject to meaningful command review. For compliance with this general order's section IV.O.6., division commanders shall be notified of recordings subject to meaningful command review by the lieutenant's completion of a private report. Multiple notifications can be made using one private report.
- K. At the end of each shift the officer shall place the BWR into the charger, which will automatically download. Officers shall tag any recordings that correspond to their name. Tagging shall include the case number and/or any other identifying markers to link it to a specific case. Officers shall assign recordings to all applicable categories in *Evidence.com* or Axon View or Axon View XL that are evidentiary in nature and/or they feel are pertinent to any investigation(s). All recordings from the officer(s) associated with an incident and/or investigation, requiring retention beyond the 180-day default retention period, shall be assigned a category (listed below). Tagging such recordings shall not be used to generate overtime. Recordings that have not downloaded prior to the end of a shift shall be tagged upon the officer's return to work.
 1. *Evidence.com* and Axon View or Axon View XL categories for tagging and retention purposes:
 - a. Civil lawsuit - for evidence related to an actual pending civil lawsuit.
 - b. Complaint against police - recording needed for a potential or actual complaint against police.
 - c. Criminal arrest.
 - d. Delete request - for recordings as described in section VI.
 - e. Disorderly arrest.
 - f. Evidence.
 - g. Officer injury.
 - h. Pedestrian stop.
 - i. Pending review - for Taser quality control purposes only.
 - j. Special operations - for recordings as described in section IV.N.
 - k. Special privacy - for recordings as described in section IV.M.
 - l. Training demonstration.
 - m. Use of force.

- n. Vehicle pursuit.
- L. Officers shall categorize videos that capture any of the following circumstances that the New Jersey Attorney General has deemed 'special privacy' issues (see below). Officers must tag those recordings falling into these categories by the end of their next shift. Recordings marked 'special privacy' will have viewing immediately restricted to commanding officers and departmental designated evidence technician(s) assigned by the training division commander. All Initial police reports must be written prior to a video being categorized 'special privacy'. To identify BWR recordings that may raise special privacy or safety issues, officers shall appropriately label recordings that:
- 1. Captured a law enforcement incident, as defined in *New Jersey Attorney General Directive 2019-4*:
 - a. Any use of force by a law enforcement officer resulting in death or serious bodily injury.
 - b. Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury.
 - c. The death of any civilian during an encounter with a law enforcement officer; and
 - d. The death of any civilian while in the custody of law enforcement.
 - 2. Captured the image of a victim of a criminal offense.
 - 3. Captured the image of a child.
 - 4. Were 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.
 - 5. Captured a conversation with a person whose request to deactivate the BWR was declined.
 - 6. Captured a special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded.
 - 7. Captured the image of an undercover officer or confidential informant; or
 - 8. Captured the screen of a law enforcement computer monitor that is displaying confidential personal or law enforcement sensitive information.
- M. Officers assigned to the emergency service unit deploying their BWRs during tactical operations shall assign those recordings to the 'special operations' category in *Evidence.com*. Officers participating/observing a tactical operation whose BWR captures the movements and techniques of the ESU team may also be directed to categorize those videos in the 'special operations' category at the discretion of the ESU commander or his/her designee.

- N. Anyone accessing any recording for any purpose and subject to the viewing restrictions in subsection V.C.4 of this general order (e.g., report preparation, meaningful review, etc.) shall document, in the 'Notes' box under the video, the date, purpose for viewing the recording, their initials and badge number. The officer will then 'post' the note to record the entry into the audit trail in *Evidence.com* for that video.
- O. Supervisors are responsible for ensuring that on-duty officers are equipped with functioning BWRs. at the beginning of each shift. This section applies to all divisions assigned the use of BWRs (patrol, traffic, community services, ESU, etc.)
1. Desk lieutenants will conduct a daily check to ensure that all BWRs currently in use are registered properly on Evidence.com through the "Respond" feature.
 2. Desk lieutenants will conduct a formal review of one video recording per officer/sergeant assigned to their shift monthly, in order to assess officer performance as well as to flag video/audio that may be appropriate for training purposes. The reviewing lieutenant shall post a note on each video reviewed in *Evidence.com*. Lieutenants may review more than one video per officer per month, at their discretion.
 3. Sergeants shall conduct a formal review of one video recording per officer assigned to them monthly, in order to assess officer performance as well as to flag video/audio that may be appropriate for training purposes. The reviewing sergeant shall post a note on each video reviewed in *Evidence.com*. Sergeants may review more than one video per officer assigned to them per month, at their discretion.
 4. Division commanders shall ensure that all officers are assigned a specific supervisor to conduct monthly reviews of their BWR recordings. If an assigned lieutenant or sergeant is out for an extended period of time, and monthly reviews cannot be accomplished, a substitute supervisor shall be assigned to conduct the reviews until the return of the assigned supervisor. Commanders shall complete a monthly private report to the Chief of Police, channeled through the chain of command, ensuring that video reviews have been completing by their subordinate supervisors.
 5. Sergeants shall formally review all instances when a BWR is deactivated prior to the conclusion of an incident and forward the documented review through the chain of command to the Chief of Police or his/her designee. The reviewing sergeant shall post a note on each video reviewed in *Evidence.com*.
 6. 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 will label the video/audio for indefinite retention.

7. Division commanders must review all videos involving incidents subject to a meaningful command review (e.g., use of force, vehicle pursuit, officer involved injury) and provide notes in the video log, prior to completing review reports.

V. RECORDS RETENTION AND REVIEW

- A. Viewing of BWR events is strictly limited to sworn officers 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 general order.
- B. BWR 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 department shall access, view, copy, disseminate, or otherwise use a BWR recording except for an official purpose. Access to, use of, and receiving an account of a stored BWR recording is permitted only:
 1. When relevant to and in furtherance of a criminal investigation or prosecution.
 2. When relevant to and in furtherance of an internal affairs investigation.
 3. When relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern or practice of possible misconduct.
 4. To assist the officer whose BWR 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 general order 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.
 - b. Whenever an officer reviews or receives an accounting of a BWR 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 BWR recording either verbally or in writing within each such report, statement, or interview.

- 1) The officer shall document each BWR recording that was reviewed and the date of the review.
 - 2) If the officer received an accounting of a BWR recording, the officer shall document the name of each person who provided an accounting of the BWR recording, the date of the accounting, and the specific BWR recording for which an accounting was provided.
- c. Officers shall only be permitted to review or receive an accounting of such BWR 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 BWR recording will not otherwise interfere with the ongoing investigation.
- 1) In cases subject to *Attorney General Directive 2019-4*, the independent investigator is the investigating entity.
 - 2) In all other cases, the Chief of Police or his/her designee is the investigating entity.
 - 3) The appropriate investigating entity shall document the authorization to review or receive an accounting of a BWR of a specified incident.
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.
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.
 - c. This agency reserves the right to redact video as applicable by law.
 - d. All requests for copies or review of BWR recordings are subject to the fee requirements of the prevailing city ordinance.
8. To comply with any other legal obligation to turn over the recording to a person or entity.
9. Solely and exclusively for internal training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording

cannot be determined by persons viewing the training video, unless the depicted individuals have consented to the recording being used for training purposes:

- a. Note: consent is not required from Elizabeth police officers appearing in the recording.
 - b. Recordings retained beyond 180 days solely and exclusively for training purposes shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.
10. 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 Union County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee.
 11. To show or disseminate the recording to a civilian or a non-law enforcement entity or to disseminate it to the public, where the Union 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.
 12. To conduct an audit to ensure compliance with this general order.
 13. Any other specified official purpose where the Union County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWR recording
- D. Officers/employees shall not erase or in any other manner alter, tamper with, destroy, or conceal BWR recordings or remove or disable any camera. Officers/employees shall not instruct another to alter, tamper with, destroy, or conceal BWR recordings or remove or disable any camera. If an officer, employee, or agent fails to adhere to the recording or retention requirements contained in this SOP or N.J.S.A. 40A:14-118.5 et seq., or intentionally interferes with a BWR's ability to accurately capture audio or video recordings.
1. The officer, employee, or agent shall be subject to appropriate disciplinary action; 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 BWR recorded in contravention of this general order or any other applicable law shall be immediately brought to the attention of the command staff and immediately destroyed by the command staff following consultation and approval by the Union 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 BWR.
- E. Recordings are considered criminal investigative records of this police department and shall be maintained on *evidence.com* and disposed of in accordance with New Jersey Bureau of Records Management (BRM) records retention schedules.
1. 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.
 2. Recordings that are being stored for criminal, civil, or administrative purposes are to be tagged in *Evidence.com* with a permanent retention period and may be transferred to a DVD/CD and preserved as evidence. Transfer of BWR recordings to other media sources for these purposes, shall be conducted by the system administrator or internal affairs personnel, upon request through a private report. The requesting entity is responsible for documenting the transfer in an incident and evidence report.
 3. 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.
 4. BWR 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 BWR recording.
 5. BWR recordings shall be retained for not less than three years if requested by:
 - a. The officer whose BWR 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 BWR recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or

- c. Any immediate supervisor of an officer whose BWR made the recording or who is a subject of the BWR recording, if that immediate supervisor reasonably asserts the recording has evidentiary or exculpatory value; or
 - d. Any officer, if the BWR recording is being retained solely and exclusively for police training purposes; or
 - e. Any member of the public who is a subject of the BWR recording; or
 - f. Any parent or legal guardian of a minor who is a subject of the BWR 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 V.E.5 (e)(f)(g)) shall be permitted to review the BWR recording in accordance with N.J.S.A. 47:1A-1 et seq. to determine whether to request a three-year retention period
6. When a BWR 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.
- F. Open public record requests. Only the following BWR recordings shall be exempt from public inspection:
1. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection VII.E.4 of this general order if the subject of the BWR 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 VI.E.5 of this general order.
 3. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection VII.E.5(a)(b)(c)(d) of this general order.
 4. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection VII.E.5(e)(f)(g) if an officer, parent, or legal guardian, or next of kin or designee requests the recording not be made available to the public.
- G. The Chief of Police or his/her designee shall notify the Union County Prosecutor's Office within one business day upon receiving any subpoena, court order or OPRA request for a BWR recording before complying with it. Such notice shall clearly state the deadline by which a response must be made.

- H. A BWR recording of an event or encounter that involves an investigation of a criminal offense 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 in consultation with the Union 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.
1. If disclosure of a BWR 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 Union 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.
 2. A BWR recording tagged pursuant to subsections IV.L.2 through IV.L.8 (Special Privacy) of this general order shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Union County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee. The Union County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee may authorize the Chief of Police and one or more supervisory officers to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWR recordings tagged pursuant to section IV.L.
 3. The independent investigator or his/her designee overseeing an investigation pursuant to *Attorney General Law Enforcement Directive 2019-4* may, in the exercise of sound discretion, authorize a civilian or law enforcement witness to be given access to or view a BWR recording of the incident under investigation (subsection IV.L.1).
- I. The Chief of Police or his/her designee shall maintain a record of all BWR recordings that are accessed, viewed, copied, disseminated, or deleted. Such a record can be maintained by the system software. The Chief of Police shall cause a periodic audit of these records to ensure compliance with this general order. Minimally, the record keeping system shall document the following information:
1. The date and time of access.
 2. The specific recording(s) that was/were accessed.
 3. The officer or civilian employee who accessed the stored recording.
 4. The person who approved access, where applicable; and
 5. The reason(s) for access, specifying the purpose or purposes for access and specifying the relevant case/investigation number, where applicable.

- J. If an original recording is required for use in court or by another law enforcement agency, that recording shall not be released without the prior approval of the Chief of Police or designee.
 - 1. Duplicate copies shall be maintained as evidence in accordance with this department's property and evidence guidelines.
 - 2. The property/evidence custodian shall ensure that any media used for duplicate recordings is properly stored away from magnetic fields (speakers, etc.) or other areas that may facilitate corruption in the property room.
- K. Officers and employees shall not reproduce or store any recordings to any device or storage medium. This shall include, but not limited to, cell phones, electronic notebooks, etc.
- L. Recorded video of unusual or significant incidents, deemed to be beneficial for departmental training, may be utilized for departmental in-service training purposes only with the approval of the Chief of Police. Officers are encouraged to notify their supervisors of recordings, which may be beneficial for training purposes.

VI. DELETION REQUESTS

- A. Only the internal affairs bureau can delete BWR recordings with the expressed consent of the Chief of Police or the Union County Prosecutor's Office.
- B. If an officer has inadvertently recorded data that is private or in appropriate, a request to delete the recording should be made to their immediate supervisor as soon as possible.
 - 1. The video shall not be viewed, but the officer shall tag the recording as special privacy and submit a private report to the internal affairs bureau and the system administrator. The actual BWR shall be taken out of service and turned over to the internal affairs bureau for downloading. The officer shall be issued a spare unit.
 - 2. Depending on the circumstances, the internal affairs commander shall assign an investigator to the incident.
 - 3. Internal affairs shall investigate, respecting all rights to personal privacy, having the BWR recording viewed only by an officer of the same sex, if necessary.
 - 4. Upon completion of the investigation, the internal affairs commander shall notify the Chief of Police and request permission to delete the recording if warranted.