

[IMPORTANT NOTICE]

Act 22 was signed into law by Governor Wolf on July 7, and is due to take effect on September 5, 2017. The Act makes significant strides in clarifying the treatment of police body camera footage under Pennsylvania's Wiretap Act (if it meets certain criteria, it is no longer subject to the Wiretap Act), and the Right to Know Law (requests for body camera footage are no longer subject to the Right to Know Law). However, just as Act 22 provides some manner of clarity, it also creates questions which have no definitive answer at this point in time.

For example, Act 22 provides no clear guidance as to the length of time that body camera footage must be retained by a police department when it has not been subject to a request for production. The Act further requires police departments to establish numerous policies governing the use of body cameras and retention systems, but leaves it to the Pennsylvania State Police to establish standards for the equipment to be used. Although the State Police have previously issued standards for body cameras, standards for the onsite and off-site storage of body camera recordings have not yet issued. When body camera footage is the subject of a request for release, Act 22 provides that such requests may be denied if the recording contains certain categories of sensitive information and "reasonable redaction" would not safeguard that information without defining what "redactions" might be "reasonable." In short, this is a developing area of the law, and future developments, whether through case law or the issuance of administrative regulations, may or will likely impact the policies and procedures of departments utilizing body cameras.

The following policy should be considered as a starting point for the implementation of a body camera system for your police department. It is a conglomeration of Act 22, certain records retention requirements of the Wiretap Act which may (or may not) continue to apply in certain circumstances, and practical considerations. It is not, however, intended to serve as a comprehensive model for adoption, without consideration of departmental needs and legal developments on the open questions under the Act. Any policy which is developed in light of these recommendations should be thoroughly vetted by your solicitor or special labor counsel, reviewed and revised pursuant to subsequent developments in the law, and as with all policy recommendations, should be carefully tailored to suit the needs of your police department.

POLICE DEPARTMENT BODY WORN CAMERA POLICY

01. PURPOSE

The purpose of this policy is to provide police officers with guidelines on the use of police worn audio/video recording equipment, Body Worn Cameras (BWC), as an effective tool to help audio/visually document events as they actually occur. Future changes in law, regulation, and/or procedure, as well as training provided on this procedure, may give rise to modifications of this

policy. In any criminal investigation or other dynamic police activity, specific circumstances may require deviation from the dictates of this policy. In such instances, the reason for departure from policy shall be documented per established department procedures.

02. POLICY

Officers should activate the BWC to record contacts with citizens in the performance of their official duties, in accordance with this policy. Officers manually activating the BWC should be mindful of their surroundings and environment and understand that officer and citizen safety shall be the primary consideration when interacting with citizens and/or suspects.

The Department recognizes that video images cannot always show the full story nor do video images capture an entire scene. The Department also recognizes that the BWC video does not mirror the perspective of the officer at the time of an incident, nor does the video include other factors known to be perceived by the officer that could impact the officer's judgment and decision-making, such as events beyond the scope of the camera, or the difference between human vision and the camera's video recording abilities. Therefore, the use of body-worn cameras does not reduce the requirement to provide thorough written documentation of an incident.

This policy does not regulate the use and operation of Mobile Video Recording (MVR) equipment that is permanently mounted inside of some Department owned vehicles (refer to Department MVR policy).

03. DEFINITIONS

Body Worn Camera (BWC) System – all cameras, accessories, docking stations, etc. related to BWC systems approved for use by the _____ Police Department.

BWC Technician – The _____ Chief of Police, or his or her Designee, who is specifically trained in the maintenance and care of the BWC equipment, and who is trained to maintain and administer the storage of the recordings.

Agency Administrator – Chief of Police or Sergeant will be identified at the administrator level, with full access to user rights.

End User – Officers of the Department who have been issued or assigned a BWC.

Evidence Transfer Manager (ETM) – A computer server with built-in, networked or wirelessly connected docking stations physically installed within the Department that simultaneously recharges the BWC equipment while digitally encrypting and uploading all data captured to the server.

Storage Server – An online, digital media storage facility that can be remotely accessed by End Users and Administrators. This virtual evidence warehouse stores digitally encrypted data in a

highly secure environment that is only accessible to approved personnel based upon their security clearance.

Digital Evidence – BWC files, including photographs, audio recordings and video footage, captured by a BWC and stored digitally.

04. PROCEDURES

A. Officer Responsibilities:

1. Officers must successfully complete department BWC training for the activation, use, uploading of data, inspection and storage for each device prior to using a BWC.
2. Officers shall only use BWC equipment in the performance of their official duties.
3. Officers shall only use Department-issued BWC equipment, which has been approved for use by the _____ Police Department.
4. During BWC use, officers shall ensure that they are clearly identifiable as a law enforcement officer. This requirement is satisfied if the officer is in uniform and operating a marked patrol vehicle, or is otherwise clearly identifiable as a Law Enforcement Officer.
5. Officers shall wear body-worn cameras above the midline of their torso and in a position designed to produce an effective recording.
6. The BWC shall be worn for the entire shift and maintained in a constant state of operational readiness.
7. When the BWC has been activated to record an incident, it shall not be deactivated until the incident has been completed, unless otherwise authorized per policy.
8. When safe and practicable to do so, officers may narrate the video recording contemporaneously (*i.e.*, at the same time) with a recorded incident, to assist with accurate documentation.
9. Officers will note in the incident, arrest and any related reports if BWC recordings were made during the incident in question, and shall indicate in their reports any information regarding the use of the BWC required by this policy.

B. Supervisor Responsibilities:

1. Supervisors shall ensure officers use the body worn camera equipment.
2. Supervisors shall review the following recordings:

- a. Recordings of any officer injury.
 - b. Recordings of any actor injury.
 - c. Recordings of any use of force incident.
 - d. Recordings of any vehicle pursuit and actions taken following the pursuit.
 - e. Recording of any citizen complaint.
 - f. Random recordings as designated by the Chief of Police.
3. Supervisors will utilize the information from the recordings during the completion of performance evaluations.
4. Supervisors shall refer for investigation any officer found to have failed to properly use or care for the body worn camera equipment.

05. USE & MAINTENANCE PROCEDURES

A. BWC-equipped Officers

1. Officers are responsible for the proper use and care of their assigned BWC at all times and are reminded that BWC recordings do not replace written reports.
2. Prior to deployment, officers shall:
 - a. Inspect and test their BWCs to ensure that they are operational and functioning properly. If a BWC is damaged or inoperable, officers shall immediately notify a supervisor who will immediately test the camera and, if inoperable, place the camera out of service and notify the Chief of Police or his designee.
 - b. Make every effort to ensure that they begin their shift with a fully charged BWC that does not contain data from a prior shift.
3. Lost or damaged BWC:
 - a. Officers who discover at any time during their shift that their BWC is lost, shall immediately notify a supervisor.
 - b. Officers who discovery at any time during their shift that their BWC is damaged, malfunctioning, or that it contains data from a previous shift shall immediately notify a supervisor who will immediately test the camera, and, if inoperable, place the camera out of service and notify the Chief of Police or his designee.
4. Officers, including primary, secondary and assisting officers, shall start their BWC recordings as soon as a call is initiated via radio or communication from 911 on their mobile data computer (MDC), or at the beginning of any self-initiated police action.

5. In addition, when reasonable and **safe to do so**, officers operating the BWC equipment will ensure all dispatched and self-initiated calls-for-service are recorded, including but not limited to the following:
 - a. All stops (*e.g.*, traffic and pedestrian), frisks and searches;
 - b. Vehicle and foot pursuits;
 - c. All traffic crash scenes;
 - d. DUI investigations, to include Field Sobriety Testing;
 - e. High-risk encounters (*e.g.*, barricade situations, active shooter);
 - f. Mental health encounters;
 - g. Suspicious activities;
 - h. Use of force situations;
 - i. Investigative detentions or arrests;
 - j. Encounters that require the advising of Miranda rights;
 - k. All transports of prisoners and citizens (unless in a MVR equipped car);
 - l. Any of the following searches of a person or property:
 - (1) Consent searches (record consent);
 - (2) Warrantless searches;
 - (3) Vehicle searches;
 - (4) Searches conducted incident to arrest;
 - (5) Inventory searches;
 - (6) Cursory searches;
 - (7) Probable cause searches;
 - (8) Execution of search or arrest warrants;
 - (9) Frisks;
 - (10) Field searches;
 - (11) Full-custody searches;
 - (12) During the initial inventorying of seized money/high value property;
 - (13) Deployment of drug detection dogs;
 - (14) Any incident when the member deems it appropriate to activate the BWC in accordance with this policy or upon direction from a supervisor.
6. Although not required by law, officers utilizing BWC should inform, as soon as reasonably practicable, individuals identifiably present whose oral communications are being intercepted and recorded that such recording is taking place. This notification is intended to deter or deescalate dangerous, threatening, or criminal behavior. The notification should be very plain and clear (*i.e.*, “Our words and actions are being recorded”).
7. Officers who are on the scene of an incident and are not the primary reporting officer shall inform the reporting officer of their BWC recording(s) so that the primary officer may include this information in his or her report.
8. BWCs may also be used to record initial interviews of victims, complainants and witnesses.

9. Once activated in accordance with this policy, officers shall not deactivate their BWC until:
 - a. They have cleared the assignment or, in the case of arrest, have transferred custody of the arrestee to another member;
 - b. Their involvement in the citizen contact or detention has concluded;
 - c. They receive an order from a supervisor; in these cases, officers shall document the order via a BWC recording prior to deactivation.
 - d. The incident requiring activation has concluded.
10. When officers activate their BWCs and such activation was not required by policy, and the circumstances no longer need to be recorded, they may deactivate their BWC.
11. After officers deactivate their BWCs, it is their responsibility to ensure they reactivate their BWC should circumstances require.
12. Any delay or failure to activate their BWC required by this policy, as well as any interruption of a BWC recording required by this policy, shall be documented in the narrative section of any related report and shall be reported to a supervisor.
13. At the completion of their shift, officers shall:
 - a. Inspect his/her BWC and ensure that it is operational and functioning properly, and that the battery is recharged. If the camera is damaged or inoperable, officers shall immediately notify a supervisor who will immediately test the camera and, if inoperable, shall place the camera out of service and notify the Chief of Police or his/her designee.
 - b. BWC recordings shall only be stored on a Department approved server or on a Department approved storage device. Officers shall ensure all BWC data is uploaded at the end of their shift, and when necessary, during their shift, to ensure storage capacity is not exceeded.
 - c. Charge the camera in an approved BWC charging device.
 - d. Officers will ensure BWC devices are securely stored in authorized locations when devices are not in use.
14. Officers **shall not**:
 - a. Remove, dismantle, or tamper with any hardware or software component or part associated with BWCs.
 - b. Erase, destroy, disseminate, edit, alter, or otherwise use BWC recordings without the written permission of the Chief of Police, except for approved annotation in

accordance with the training and capabilities of the BWC system (*e.g.*, flagging a location in the retrieval video for use in court at a later date).

- c. Officers shall not copy, record, or disclose the contents of a BWC recording including posting to any social media site without approval of the Chief of Police. BWC recordings shall only be shared for official law enforcement purposes.
- d. Allow unauthorized personnel to view the BWC recordings without permission from the Chief of Police. Governmental employees who are directly involved in the investigation and/or prosecution of a criminal case related to the digital evidence, or who are previously authorized to interact with Department evidence, are exempt from this restriction.
- e. Delete any BWC recording except as specified in Section 06, Accidental Recordings.
- f. Download or convert any BWC recording for personal use.
- g. Use Department-issued BWCs while off-duty.
- h. Record conversations of officers without their knowledge during routine, non-enforcement related activities such as in Department locker rooms, restrooms or any other place where there would be a reasonable expectation of privacy.
- i. Record gratuitously violent or obscene images, unless necessary for evidentiary documentation or required by this policy.
- j. Record a particular person based solely on the person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, physical disability status, or political affiliation.
- k. Intentionally or willingly record confidential informants or undercover officers.
- l. Use any other electronic device or other means in order to intentionally interfere with the capability of the BWC.
- m. End a recording based solely on a citizen's request/demand. Officers may end a recording if the citizen wishes to provide anonymous information; however, officers must balance the value of the proffered information versus the value of the ongoing BWC recording.
- n. View recordings for reasons other than official law enforcement purposes.

06. ACCIDENTAL RECORDINGS

1. In the event of an accidental activation of their BWC where the resulting recording has no investigative or evidentiary value, officers may submit a deletion request to the Chief of Police or his/her designee for review and tracking.
2. Officers shall ensure the request contains sufficient information (*e.g.*, date, time, BWC number) to locate the recording.
3. The Chief or his/her designee shall review accidental recordings and determine whether or not the recording had an official purpose, or should otherwise be retained pursuant to this policy. If the recording had no official purpose, and if this policy does not otherwise require the retention of the recording, it may be deleted. An audit log on the history of every recording will be maintained in the storage system.

07. ACCESS AND REVIEW

1. Officers may view their own BWC recordings to assist in accurate report writing, testifying in court, for training purposes, and debriefing.
2. Officers who are the subject of an administrative investigation may view their own BWC recording in the presence of their immediate supervisor or the Chief of Police and labor representative, if requested.
3. **Deadly Force/Critical Incident**
In an attempt to determine the unadulterated thought process and feelings perceived by the officer at the time of the critical incident, officers may view their BWC recordings related to the incident after being interviewed.

08. BWC TECHNICIAN RESPONSIBILITIES

1. BWC Technicians shall be responsible for the retention, duplication and purging of BWC recordings. BWC Technicians shall also ensure recordings of incidents are maintained in accordance with this policy and department evidence retention procedures.
2. BWC Technicians shall ensure that the recordings are identified and retained in accordance with this policy. Electronically retained recordings shall be retained until the case is adjudicated or there is a court order, unless otherwise indicated.

09. RETENTION OF BWC RECORDINGS

1. The recordings produced on the BWC equipment are property of the Department, and will be subject to the Department policies regarding the viewing, release, retention and destruction of such recordings.
2. Retention: A recording captured on BWC equipment must be retained for a minimum of sixty (60) days following the date the recording was created or, if a request for a recording pursuant to the procedures established in Chapter 67A of Title 42 is received,

until the final disposition of the request or the expiration of the time periods allowed for the seeking of judicial review.

3. Destruction: If not the subject of a request under Chapter 67A of Title 42, a recording should be deleted within ninety (90) days of the date of its creation, unless one of the following applies:
 - a. The content of the recording results in the issuance of a citation or criminal charges. The recording shall be destroyed within ninety (90) days after the conclusion of the proceedings related to the citation or criminal charges if retained pursuant to this Subparagraph.
 - b. The recording is requested to be preserved by an officer on the recording, a supervisor, or the Chief of Police, where the recording may be necessary for use in any criminal or forfeiture proceeding. The recording shall be retained until destruction is authorized by the Chief of Police.
 - c. The recording is requested to be preserved by an officer on the recording or a supervisor, where the recording may be necessary for use in any summary proceeding involving a traffic violation. The retained recording shall be purged 90 days from the conclusion of all proceedings related to the citation.
 - d. The recording is requested to be preserved by a supervisor, or solicitor where the recording may be necessary for use in any civil, administrative, or disciplinary proceeding. The recording shall be retained until destruction is authorized by the Chief of Police.
 - e. The recording is requested to be preserved by any individual who is a participant on the recording for use in any **criminal** proceeding. Such requests must be in writing to the Chief of Police and should contain the date, time, and location of the recording and the names of the parties involved.
 - f. The recording is requested to be preserved by an individual who is a participant on the recording for use in any **civil** proceeding against the Department or its personnel. Such requests must be in writing, and should contain the date, time location of the recording, and the names of the parties involved. Notice of the request shall be immediately provided to the municipality's Solicitor and the recordings shall be retained for a minimum of two (2) years from the date of the incident, and shall not be destroyed without the permission of the Solicitor.
 - g. The recording is requested to be preserved by an individual who is a participant on the recording for use in any civil proceeding that is not against the Department or its personnel. Such requests must be in writing to the municipality's Solicitor, and should contain the date, time, location of the recording, and the names of the parties involved. The recordings shall be retained for a period of two (2) years or until a

copy of the recording has been provided to the requester when authorized under Department policies, whichever comes first.

- h. The recording is that are the subject of a subpoena, court order, or request for pretrial discovery or inspection. Copies of the recording shall be furnished to the requester in accordance with existing Department policies.
 - i. The recording is intended to be used for the purpose of officer training, in which case, it may be retained so long as it is used for that purpose.
- 4. In criminal cases, notice shall be provided to the prosecuting attorney of any request for BWC recordings.
- 5. A request for retention must be submitted to the BWC Technician. The Technician shall evaluate each request in accordance with this policy. All requests for duplication/retention are to be requested on a Department Form, "BWC Video/Audio Recording/Request Form." The completed form must be sent to the BWC Technician.
- 6. When properly requested and approved, the BWC Technician will duplicate the recording of the incident from the Storage Server system and ensure its delivery to a requesting police officer in a timely manner. The Department BWC Request Form will specify the reason the recording is requested (*e.g.*, court), and the date that the recording is needed.
- 7. BWC Technicians shall ensure that all recordings are purged 90 days from the date of the last recorded incident, after all properly requested and approved duplications have been made, unless otherwise regulated by this policy. A request for retention of a recording that has not been preserved (*i.e.*, after it is purged per policy) cannot be processed.

10. BWC MEDIA CATEGORIZATION NOTATION AND USE IN REPORTS

- 1. Each event must be categorized according to the type of event, to ensure proper retention periods are applied.
- 2. The use of the BWC shall be recorded in the appropriate section of Department reports, and in the remarks section of citations.
- 3. Officers may use media captured via the BWC to assist with investigations and the completion of required reports. Officers may also use the media captured by the BWC to assist investigators and supervisors in evaluating on-going situations.
- 4. Using the capabilities of the storage server, officers may add markers and/or create clips in order to assist investigators and/or prosecutors.
- 5. Officers may use media captured on the BWC for training purposes, with proper authorization from the Chief of Police. Additionally, Field Training Officers may use

media captured via the BWC to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR).

11. STORAGE & ERASURE

Storage and Erasure of audio and video recordings will be in accordance with Pa.C.S. §5749(a)(1)-(5) (Retention of Certain Records) and standards published by the Pennsylvania State Police and published in the Pennsylvania Bulletin. Storage and Erasure of audio and video recordings is the responsibility of the BWC Technician.

12. DISSEMINATION

1. The contents of BWC audio and video recordings are considered “INVESTIGATIVE” and/or “INTELLIGENCE” in nature and as such are for Department use only and are not open to random inspection or review. Copies of BWC audio and video recordings will not be released to anyone with the exception of the District Attorney’s Office or another criminal justice agency and only with prior approval of the Chief of Police, or as deemed subject to disclosure under 42 Pa.C.S. Chapter 67A (referring to public requests for audio or video recordings by a law enforcement agency). Any cost of duplication will be the responsibility of the requesting agency.