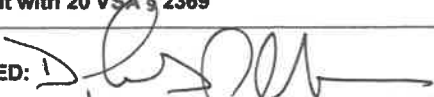


**Colchester Police Department
General Order #35 Video/Audio Recordings**

COLCHESTER POLICE DEPARTMENT

		SUBJECT: Video/Audio Recordings	
EFFECTIVE DATE: 02/24/2023	NUMBER: General Order # 35		
REFERENCE: Replaces GO # 35 of 03/04/2022 Compliant with 20 V.S.A. § 2369			
REEVALUATION DATE: As needed	APPROVED: 	NO. PAGES 11	

I. Purpose/Statement of Meaning

- a. Body Worn Cameras are intended to record police interactions with members of the public. These recordings serve many purposes including enhancing agency transparency, accountability and public trust while documenting emergency responses and crime scenes, collecting evidence and more. This policy provides consistent guidance statewide for how and when body cameras will be used by law enforcement. It also provides consistent guidance on storage, retention, and release of recordings.
- b. Agencies are required to adopt each component of this policy and may adopt additional components, provided that the additional components do not conflict with provisions of this policy.
- c. The policy must be publicly available on the agency's website or by contacting the agency.
- d. This policy shall apply to any Vermont law enforcement agency that equips their officers with Body Worn Cameras. Generally, only uniformed officers assigned to patrol functions are required to wear Body Worn Cameras unless individual agencies determine otherwise.
- e. Policy: This policy provides consistent statewide guidance for how and when body cameras will be used by law enforcement.

II. Definitions

- a. **Body Worn Camera (BWC):** An electronic device capable of capturing audio and visual recording worn on an officer's body.
- b. **Law Enforcement Officer or Sworn Member:** A sworn Colchester Police Department law enforcement officer. Referred to as "officer" in this order.

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- c. **Mobile Audio/Visual Recording (MVR):** An electronic device capable of capturing audio and visual recordings mounted in a Colchester Police Department vehicle.
- d. **Subject of the audio/video recording:** Any identifiable law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the BWC/MVR recording, and shall not include people who only incidentally appear on the recording.
- e. **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.
- f. **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.
- g. **Video footage or file:** Any images and/or audio and metadata recorded by a BWC/MVR
- h. **Tagging:** Procedure used by officer to add metadata to video recording that identifies, categorizes, and assists in directing preservation of the recording.

III. Policy

- a. **Use of Body Worn Cameras (BWC):**
 - i. 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.
 - ii. Generally, body worn cameras (BWC) shall be worn by all sworn uniform officers. An agency head may exempt specific personnel or functions. An agency head may authorize non-sworn personnel to wear a BWC.
 - iii. 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 so authorized by a judicial order.
 - iv. Both the video and audio recording functions of the body camera shall be activated in any of the following situations:

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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. Officers should activate their BWC in the above situations even if they are in a "back-up" response and other officers' BWC or MVR may be in use.
 6. Recordings from BWC/MVR may be used as any other captured image/audio of a crime scene or statement but should not be relied on as the primary source of that evidence or statement.
 7. Officers in plain-clothed assignments will be issued a BWC but are not expected to wear it as part of their daily attire. It is understood that this may create situations where their BWC may not be immediately available for use. Plain clothed officers should make every attempt to have their camera available and in use when necessary.
 8. Officer(s) interviewing sensitive victims may choose other methods of recording and/or documenting those statements.
- v. Except as noted in section (c)(i) & (c)(ii) below, the body camera shall not be deactivated until the encounter has fully concluded and the officer leaves the scene or continued custody of a person has ended.
- b. Mobile Video/Audio Recordings
- i. All applicable aspects of this order that pertain to the use, retention and release of footage captured by BWCs also apply to footage captured by MVRs.
 1. Members assigned to patrol vehicles equipped with MVR equipment shall ensure that all required pre-operational checks are performed in accordance with the manufacturer's recommendations including updating metadata information (Officer/Vehicle).

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- a. Malfunctioning MVR equipment will be reported to a supervisor as soon as possible and another police vehicle used if available.
- 2. Members using MVR equipment shall record the following
 - a. Criminal investigation situations/scenes whenever possible:
 - b. Motor vehicle and criminal enforcement stops
 - c. Police pursuits
 - d. In progress motor vehicle or criminal statute violations
 - e. Traffic collisions involving department vehicles, and/or collisions resulting in injury or death.
 - f. Any situations where the member, because of experience or training, determines that the incident shall be documented
 - g. All searches involving motor vehicles
 - h. The Colchester Police Department shall maintain an MVR media storage system in a secure location.
 - i. No personnel shall alter, delete, tamper with or remove MVR media from either the police vehicle or the storage area except in accordance with this policy.
- c. Notwithstanding the requirements of subsection (a.) above:
 - i. Prior to entering a private residence without a warrant or in non-exigent circumstances, an officer shall notify the occupant(s) of use of the BWC as soon as practical.
 - 1. If an occupant with privacy rights objects to the operation of the body cameras, an officer shall consider the need to continue the encounter. If the officer has no lawful 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.
 - ii. 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.

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- d. Permissive Department Restrictions on the Use of BWCs
 - i. 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. If the officer pauses or stops a recording, he/she shall document the reason for the termination or suspension of the recording. Acceptable reasons for discontinuing recording or activating the mute feature include:
 - 1. During on-scene conferences between officers, supervisors, advocates, clinicians, EMS personnel, attorneys, etc. where the officer determines the conference would violate confidentiality, privacy or individual rights.
 - 2. Conferences between officers and supervisors that might compromise this or further investigations or would otherwise impede law enforcement efforts or strategy.
 - 3. Encounters with undercover officers or confidential informants.
 - 4. If a person reporting a crime or assisting with an investigation requests to remain anonymous, the recording may be stopped.
 - 5. During times of prolonged waiting absent citizen contact such as waiting for a tow truck, funeral home or similar.
 - 6. Recordings are not expected during non-enforcement activities.
 - 7. Recordings are not expected during operations such as routine regulatory functions that are unique to specialized law enforcement agencies.
 - 8. 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.
 - 9. 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.
 - 10. 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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e. Prohibitions on the use of BWC:

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.
- v. 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.
- vi. Recording should resume as soon as any exception no longer exists.
- vii. 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.

f. Review of Recordings:

- i. Except as otherwise prohibited (see section ii below), an officer may review BWC recordings prior to writing reports about incidents or arrests.
- ii. 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 recordings or be provided an account of any recordings of the incident prior to being interviewed or writing a report,

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unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

- iii. See General Order 15, Appendix A for procedures following a lethal force incident.

IV. Equipment and Training

a. Responsibilities of Officers

- i. Prior to the 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, seek a replacement if available, and send an email to the Operations Lieutenant detailing the date and time the equipment malfunction was discovered.
 - 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.
- ii. 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 a written report.
- iii. Officers are responsible for “tagging” each recording appropriately. The tags or categories of files correspond to its retention period; therefore, officers must take extreme care to properly categorize each recording. Intentionally “mis-tagging” will result in appropriate disciplinary action.
- iv. Data from the BWC will automatically be downloaded to the CPD video storage. Officers that experience problems with downloading data shall report the situation to a supervisor immediately.
- v. 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 pursuant to Section V of this of this General Order. Only staff designated by the Chief of Police are authorized to duplicate and distribute copies of recordings pursuant to Section V of this General Order.
- vi. Should any officer or employee fail to adhere to the recording requirements contained in this order, intentionally interfere with a body camera’s ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body worn camera during or after its operation, appropriate disciplinary action shall be taken.

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- b. Responsibilities of Department
 - i. CPD will ensure that proper training on the use of equipment described in this order including the contents of this policy, instruction on operation of the BWC, how data is transferred to storage, and proper identification and “tagging” of recordings.
 - ii. CPD shall provide instruction to officers on how to report and replace malfunctioning equipment.
 - iii. Supervisors may review recordings for the purpose of ensuring compliance with established policies, when investigating a complaint as outlined in General Order # 2, or when verifying the proper functioning of equipment, and, when there is a question regarding adherence to the General Orders, which shall be noted, to identify whether training or guidance is required.
 - iv. The Chief of Police is responsible for ensuring that all BWCs are equipped with a “buffering” feature that is set to record at least the most recent 30 seconds of video prior to an officer’s activation of the BWC and that “buffering” feature is activated.
 - v. The Chief of Police is responsible to ensure that the retention schedule listed in Section V below is followed.

V. Storage, Retention and Release

- a. Storage
 - i. This department will ensure the secure storage of all recordings made by employees. All recordings and associated data are the property of Colchester Police Department and shall only be used for official purposes.
- b. Retention and Release
 - i. At a minimum, all recordings shall be held in accordance with the Vermont Access to Public Records Act. When appropriate and not exempt under 1 VSA § 317, recordings shall be released, or released with redaction, upon request to members of the public or media.
 - ii. Should any employee intentionally fail to adhere to the retention requirements contained in this order, appropriate disciplinary action shall be taken.
 - iii. This department shall make a good faith effort to locate recordings of interest to the public. If recordings exist of an interaction or event captured by BWC and that interaction or event is identified with reasonable specificity, the agency will

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make that recording(s) available for review or release consistent with 1 V.S.A. 317 and any other applicable records release schedule.

- iv. Recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.
- v. Any approved vendor such as a technician, IT staff, etc. shall not be allowed to access, view, copy, alter or delete footage unless in accordance with this policy and at the express direction of the Chief of Police or his/her designee.
- vi. When a BWC/MVR 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 footage that is captured shall be treated the same as any other recording as described in this order.
- vii. Retention Schedule –The following retention guidelines are enacted:
 - 1. 14 (fourteen) days - In instances where a BWC/MVR is activated mistakenly or as a test and records no discernable human activity, such footage may be permanently deleted after 14 days. The time, date, length of recording, assigned BWC/MVR designator, and a brief summary of the image depicted shall be documented.
 - 2. 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. 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.
 - d. Police-citizen interactions that do not involve enforcement action, a search or seizure.
 - 3. 3 (three) years - Recordings shall be retained for no less than three (3) years if:
 - a. The recording captures an interaction or event involving:
 - i. Any use of force.
 - ii. Any incident in which a member of the public has made a complaint against an agency employee.
 - iii. Recordings used in disciplinary action against an employee shall be held for a

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- minimum of three years from the completion of the disciplinary action.
 - iv. Is requested by the officer whose body camera recorded the video footage or their supervisor, or any officer who is a subject of the recording, if the officer or supervisor reasonably asserts the video footage has evidentiary or exculpatory value.
 - v. Recordings shall be retained for no less than three years upon written request from a member of the public who is a subject of the recording, the next of kin of a subject who is deceased, or the parent/guardian of a juvenile who is a subject of a recording. (4.)
- b. 7 (seven) years – Recordings shall be retained for no less than seven (7) years if the recording captures an interaction or event involving:
 - i. Recordings related to misdemeanor arrests or non-violent felony arrests (or longer if the case is not resolved in this time frame)
- c. Recording related to the following will be retained indefinitely and require manual deletion only with approval of the Chief of Police :
 - i. Use of force incidents resulting in injury or allegation of injury.
 - ii. Officer involved shootings.
 - iii. Major incidents such as mass arrests.
 - iv. Offenses listed under 33 V.S.A. § 5204(a);
 - v. Homicide cases or any criminal death investigation.
 - vi. Active missing persons cases.
- c. Lethal Force/Criminal Investigation Recording
 - i. Whenever an officer equipped with a BWC/MVR 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's conduct becomes the subject of a criminal investigation:
 - a. Such officer's BWC and/or MVR shall be immediately seized by CPD supervisory or

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command level personnel, or the agency or department conducting the related criminal investigation, and maintained in accordance with the rules governing the preservation of evidence.

- b. All files on the seized body camera shall be maintained in accordance with the rules governing the preservation of evidence and,
- c. The procedure referenced in General Order 15, Appendix A "Review of Body Worn Camera Recordings Following Lethal force Incidents".
- d. This General Order is publicly available on the CPD website or by contacting CPD.
- e. Nothing in this General Order shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.

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