




WINCHESTER POLICE DEPARTMENT OPERATION ORDER

NOTE: This policy is for internal use only, and does not enlarge an employee’s civil liability in any way. It should not be construed as the creation of a higher standard of safety or case in an evidentiary sense, with respect to third party claims. Violation of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

Number 2-77		Effective Date August 10, 2018	Review Date June 25, 2018	Reviewing Division Administration
Subject Body Worn Cameras (BWC)	<input checked="" type="checkbox"/> New Policy <input type="checkbox"/> Amends <input type="checkbox"/> Replaces:		This policy shall apply to personnel assigned to the following divisions: <input checked="" type="checkbox"/> All Personnel <input type="checkbox"/> Patrol Division <input type="checkbox"/> Administration Division <input type="checkbox"/> Investigation Division	
References VLEPSC: CALEA				
 <hr/> Chief of Police or Designee		March 23, 2023 <hr/> Date		

I. PURPOSE

- 1. Professionalism, Accountability and Evidence Collection.** The Winchester Police Department equips members with a Body-Worn Camera (BWC). Proper BWC use promotes professionalism, accountability, and transparency by documenting WPD interactions with the public, and the performance of WPD duties. The cameras also serve as useful tools for recording evidence. Members who are issued a BWC will use it in accordance with the provisions of this policy and all local, state, and federal laws. Violation of this policy is cause for disciplinary action.
- 2. Privacy Protection.** BWCs might record extremely sensitive and private data. A breach in BWC data security, careless handling of the BWC data and/or intentional release of BWC data to non-authorized individuals could jeopardize relationships with victims, witnesses, and the general public, as well as subject those people to invasions of privacy, endanger their safety, and/or jeopardize prosecutions. Accordingly, the utmost care and caution will be taken to ensure that this data is not mishandled or misused.
- 3. Transparency.** The WPD must balance privacy and investigative concerns against the need for transparency while complying with relevant public disclosure laws. When not otherwise prohibited by this policy, members are permitted to use their BWC to record in circumstances when they determine that doing so would be beneficial to the public interest. When in doubt, record.
- 4. Expectation of Privacy.** No law prohibits officers from recording citizens in public, as individuals in a public area have no expectation of privacy. BWC recording of any police contact with individuals is permissible in a private residence, provided the officers have a

legal authority to be in that location, are present at the location in furtherance of legitimate law enforcement purposes, and are recording as part of their official law enforcement duties.

II. GENERAL

1. BWC data is subject to the rules of discovery.
2. All images and sounds recorded by the BWC are the property of the Department.
3. Members may only utilize issued BWC devices while on-duty.
 - a. The use of the BWC while off-duty is prohibited unless working approved uniformed overtime functions.
 - b. The use of a non-issued BWC device on-duty is strictly prohibited.
 - c. The BWC will remain in the Power On position when worn, unless engaged in non-work related personal activity or routine administrative activities.
4. Issuance and Utilization
 - a. Sworn members assigned to divisions or units whose primary duties involve interactions with citizens and/or enforcement related activities (e.g. patrol, SWAT, K-9, CRT, etc.) shall wear the BWC at all times while on-duty. It is recognized that instances may occur in emergency or call back situations in which retrieval of the BWC could cause unnecessary delay to public safety.
 - b. EXCEPTIONS: Members performing tasks in which wearing the BWC would be impractical or unsafe shall not wear the BWC while performing those tasks (e.g. driving a marked vehicle enroute to locations such as home, training, maintenance, etc. where official duties are not routine).
 - c. Administrative/Investigative Units: Members assigned to units whose primary duties are administrative or investigative are not required to wear the BWC during the normal course of their duties, unless:
 - i. The officer anticipates participating in a planned enforcement activity.
 - ii. The officer is detailed to work a uniformed assignment where citizen/police interaction is occurring, or is likely to occur (e.g. patrol, parade, sporting event, approved overtime activity).
 - iii. The officer is directed to wear the BWC by a supervisor.
5. BWC Maintenance and Battery Life
 - a. Officers will perform a function and battery test of the BWC in accordance with training prior to beginning each shift.

- b. Officers will routinely monitor the battery level to the BWC during their tour of duty. The battery level can also be viewed via the paired mobile device.
- c. Officers are required to dock and re-charge their assigned BWC at the end of their tour of duty.
- d. During extended periods where the BWC activation is not anticipated, (e.g- report writing, evidence submission, etc.) officers should charge the BWC.

6. Malfunctions

- a. Upon discovering a BWC malfunction, officers will:
 - i. Immediately report the malfunction to a supervisor.
 - ii. Officers issued a BWC will not perform enforcement related functions if their BWC is not functioning due to a critically low battery or any other malfunction.
 - iii. Supervisors will immediately notify the Chief of Police or his/her designee of any BWC malfunction and complete a BWC administrative report.

7. Wearing the BWC

- a. The BWC is designed to be worn on the officer's outermost garment, in the best position to maximize the BWC field of view and facilitate ease of BWC operation based on the clothing/equipment worn by the officer.
- b. The BWC will be Powered On at all times while worn on the body (see acceptable exemptions).
- c. The BWC is not to be utilized off-body as a surveillance tool.
- d. Officers issued a BWC are not required to wear the BWC when in Class A uniform unless engaged in enforcement activity.

8. Prohibited and Restricted Recording

- a. In locations where individuals have a reasonable expectation of privacy, such as a residence, individuals may decline to be recorded unless the recording is being made pursuant to an investigation, arrest, or search of the residence or individuals within the residence. Officers will confirm and record the request to turn the camera off before doing so.
- b. Except when authorized by the Chief of Police or his designee BWCs are not to be used in the following circumstances:
 - i. Communications with other law enforcement personnel;

- ii. Communications involving law enforcement tactical and strategic policy, procedures, or plans;
 - iii. Encounters with undercover officers and confidential informants;
 - iv. While conducting strip searches;
 - v. When community member, who wishes to remain anonymous, is reporting crime;
 - vi. Appearing before a magistrate;
 - vii. When officers are on break or otherwise engaged in personal activities;
 - viii. In restrooms or locker rooms or other places where persons are reasonably likely to be unclothed and have an expectation of privacy.
 - ix. When investigating crimes of a sensitive nature (sexual assaults, child abuse) or when dealing with sensitive topics and/or populations.
- c. Officers shall comply with individual federal, state, and local courthouse policies regarding the wearing of BWCs within respective courthouses.
 - d. Law enforcement officers shall comply with medical facility policies pertaining to video and audio recordings.

A member will not activate the BWC to record:

- i. Agency personnel during routine administrative activities;
- ii. While officers are testifying or present in court or administrative proceedings or in preparation for such matters with the Commonwealth's Attorney or City Attorney.
- iii. Non-work related personal activity.

9. Mandatory Recording

- a. Unless unsafe, impossible, or impractical to do so, all officers (not just the primary unit) present, dispatched, or otherwise participating in any of the below listed activities must activate their BWC:
 - i. At the initiation of a call for service with a citizen encounter that is investigative or enforcement-related in nature.
 - ii. During any encounter with the public that becomes confrontational.
 - iii. When operating a vehicle in emergency response (emergency lights and siren activated).

- iv. When attempting to conduct a stop (traffic stop, bicycle stop, or person).
 - v. When transporting a detainee.
 - vi. When following a medic unit, tow truck, or other vehicle as part of a continuation for an investigation or call for service.
 - vii. When a search for evidence or inventory of a vehicle is being conducted. This applies to both the officer(s) searching and those on-scene.
 - viii. Unless contrary to any provision of this Policy, at the request of any citizen in furtherance of law enforcement activities. Furthermore, when asked, all officers will advise that a recording of the encounter is being made.
- b. An officer who does not activate the BWC as directed by this subsection will document the reason that the BWC was not activated in a BWC administrative report, as soon as possible after the incident concludes, and submit the report to the officer's supervisor by the end of the officer's tour of duty. Upon review, the supervisor will provide a copy of the report to the shift Lieutenant and the Captain of Patrol.
 - c. Any officer who interrupts or terminates a BWC recording in progress will document the reason that the BWC was interrupted or terminated in an administrative report, as soon as possible after the incident concludes. The officer will submit the completed report to their supervisor who in turn will forward the report to the shift Lieutenant and the Captain of Patrol.

10. Exceptions to Recording

- a. An officer is not required to activate the BWC if they reasonably believe recording would risk the safety of a confidential informant or undercover officer.
- b. When victims, witnesses or other individuals wish to make a statement or share information during a voluntary interaction with police, but refuse to do so while being recorded, officers may deactivate the BWC in order to obtain the statement or information. If the encounter begins when the BWC is not actively recording, the officer may, but is not required to, temporarily activate the BWC for the sole purpose of documenting the person's request they not be recorded.
- c. Health Care Facilities: Patient Privacy
 - i. Inside a medical facility, officers will not activate the BWC until just prior to meeting with the complainant/victim on a call for service or when encountering an on-view incident which would require BWC activation under this policy.
 - ii. Officers will be aware of patients' rights to privacy when in medical settings. When recording in hospitals and medical facilities, officers will avoid recording persons other than the person of interest, or recording medical documents, if at all possible.

- iii. However, as in any setting, if confronting a violent or assaultive suspect, or in an anticipated use of force instance, the officer will activate the BWC in advance of the encounter or as soon as reasonably practicable.

11. Court and Administrative Proceedings

- i. Unless confronting a violent or assaultive suspect, or in an anticipated use of force instance, Officers shall not record during court or administrative proceedings or in preparation for such matters with the Commonwealth's Attorney or City Attorney.

12. Bomb Threats

- a. Officers may power off their BWC when investigating bomb threats or suspicious packages under the same circumstances where utilization of the WPD radio is prohibited due to concerns that radio transmissions or BWC Bluetooth transmissions could potentially cause a detonation.
- b. Members must immediately power on the BWC when safe to do so.

13. Ending a Recording

- a. Once recording with a BWC has been initiated, officers will not end the recording until:
 - i. The event or encounter has fully concluded; or
 - ii. The officer leaves the scene and anticipates no further involvement in the event.
 - iii. When in doubt, officers will continue to record the interaction if it is reasonable to do so.
 - iv. Supervisors will authorize the cessation of recording if warranted by the circumstances. The reason for ceasing the recording should be stated before the camera is turned off.

14. Uploading, Categorizing, and Titling BWC Data

- a. Titling, tagging, or marking camera data facilitates the retrieval of data at a later date.
 - i. The officer is responsible for uploading all BWC data by the conclusion of the officer's tour of duty.
 - ii. Prior to the end of your tour of duty, ensure the data is categorized, titled, and markers are placed.
 - iii. A supervisor will take possession of the officer's BWC and be responsible for uploading and titling the data any time there is a reportable use of force, or any other time at the discretion of a supervisor.

15. Reporting Requirements

- a. Officers will note in incident, arrest, and related reports when video recordings were made. BWC recordings shall not be a replacement for written reports.

16. Review of Recordings

- a. Supervisors may review BWC data capturing the performance of a subordinate under their command for the purpose of:
 - i. Conducting an investigation;
 - ii. When a subordinate's professional conduct/performance has been questioned;
 - iii. Training;
 - iv. At the direction of the Chief of Police or his/her designee.
- b. At the discretion of the Chief of Police or his/her designee, BWC data may be reviewed or copied from any officer's camera.
- c. Where not otherwise prohibited by this policy, members may view BWC data from their own assigned camera, or the camera of another involved officer to assist in complete and accurate report writing for routine matters. An officer must document in their written reports whether BWC data for the incident was reviewed.
- d. Officers who are involved in a reportable use of force, in-custody death, or who are the subject of a criminal investigation **may not** view their BWC recordings related to the incident prior to completing a submitting any required reports and/or being interviewed by the appropriate investigative unit unless:
 - i. The officer is in receipt of an Investigation Acknowledgment Form along with the Pre-Disciplinary Form and has been compelled to make a statement. **NOTE:** In reviews under this subsection, members may only review data from their assigned BWC. The cross-review of additional officer's BWC data is prohibited even if said officers are involved in the same incident.
- e. A supervisor must review the BWC data of an officer when:
 - i. An officer is injured or killed during the performance of their duties;
 - ii. There is a reportable use of force;
 - iii. The officer is involved in an incident that results in an injury requiring hospitalization or a fatality including, but not limited to, in-custody deaths, crashes, and/or vehicular pursuits; or

- iv. The officer has informed the supervisor they believe that the event may result in a complaint.
- f. BWC recordings of constitutionally protected activity may not be used to identify persons present at the activity who are not otherwise suspected of being engaged in illegal activity.

17. Security, Retention, and Disclosure of BWC Data

- a. Members are strictly prohibited from sharing any BWC log-in credentials with any other person.
- b. Accessing, copying, or releasing BWC data for non-law enforcement purposes is strictly prohibited, unless directed by the Chief of Police or his/her designee.
- c. Accessing, copying, releasing, or sharing BWC data on any computer or device not controlled or provided by the WPD is strictly prohibited.
- d. Access to BWC data will be controlled through a secure location.
- e. Access to BWC data will not be shared with any member of the media unless authorized by the Chief of Police or his/her designee via the BWC administrative report.

18. Audits and Inspections

- a. The Chief of Police or his/her designee will direct authorized personnel to conduct periodic, random views and audits of BWC video to assess whether the officer's activity was conducted consistent with law and WPD policy.
- b. Violations of WPD policy, violations of law, and any activity with may bring discredit to the officer or the WPD will be reported to the Chief of Police or his/her designee when appropriate.
- c. Audits will be used to assess:
 - i. Officer performance,
 - ii. Training and equipment needs, and
 - iii. Consistency between written reports and recording.

19. Retention

- a. Officers will make requests for the deletion of portions of the recording (e.g. in the event of an accidental personal recording, conversations with confidential informants, etc.) in writing. The Chief of Police or his/her designee will approve or deny requests in accordance with this policy and the records and retention schedules issued by the Library of Virginia. All requests for deletions and the final decision will be kept on file.

- b. Video will be stored primarily based on three classifications: evidentiary, non-evidentiary and administrative. Deletion of data in each category will occur as follows:
 - i. Non-evidentiary – (data having no evidentiary value) deleted 90 days after date of recording;
 - ii. Evidentiary – (data that may be needed for court proceedings) retained in accordance with the records and retention schedules issued by the Library of Virginia;
 - iii. Administrative – (data that may be needed for administrative investigations or civil actions) retained until release by the authority of the Chief of Police or his/her designee;
 - iv. If a video is re-classified to a different category (e.g. non-evidentiary to evidentiary) the video will be subject to deletion based on the new category and the original date of the recording.
- c. Back-up storage for video files will be provided.