



# POLICY MEMORANDUM

County of Lackawanna  
District Attorney's Office

Date: 1 October 2020 **POLICY: 2.11**

From: Chief Detective David M. Baker

To: Detective Division

Subj: BODY-WORN CAMERA AUDIO-VIDEO RECORDING EQUIPMENT

Info: District Attorney Mark Powell  
First Assistant District Attorney Judith Price

Ref: (a) Recordings by Law Enforcement Officers, Title 42 Pa.C.S Chapter 67A (Act 22 of 2017)  
(b) Pennsylvania Commission on Crime and Delinquency, Body-Worn Camera Policy Recommendations  
(c) Pennsylvania State Police, Law Enforcement Officer Camera System Data Handling Requirements; PA Bulletin, 47 Pa.B. 7815 (December 23, 2017)  
(d) Pennsylvania Wiretapping and Electronic Surveillance Control Act, Title 18, Pa.C.S. §5701, et seq

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## I. PURPOSE

- A. The purpose of this policy is to adopt the use of body-worn camera ("BWC") audio/video recording equipment and establish procedures for its use.
- B. The Lackawanna County District Attorney's Office ("LCDAO") Detective Division has adopted the use of BWCs in order to accomplish several objectives, including:
  1. Accurately documenting events, actions, conditions and statements made during official encounters between and amongst detectives, suspects/subjects, witnesses and the general public, so as to enhance detectives' reports, evidence collection, and testimony in court. Such encounters include, but are not limited to, interdiction activities, execution of warrants, patrols and special duty

assignments, activities which may reasonably result in the detention and/or arrest of individuals and critical incidents.

2. Enhancing the Division's ability to review probable cause for arrest, improving arrest procedures, monitoring detective and suspect/subject interaction, reviewing evidence, enhancing training programs, preparing cases for court, supporting successful prosecutions and protecting the rights of all parties involved in law enforcement activities.

## II. APPLICABILITY

This policy shall apply to the LCDAO Detective Division ("Division"), and supersedes any existing guidance regarding the use of BWCs by LCDAO personnel.

## III. POLICY

- A. BWCs have been demonstrated to be of value in the prosecution of criminal offenses, evaluation of officer performance, protection of the public, the officer and the officer's employer from erroneous claims of civil liability resulting from wrongful accusations, and training. In order to allow both LCDAO and the general public to reap the advantages of BWCs, this Division hereby adopts the procedures set forth below, which shall be followed by all detectives. Procedural violations may subject the violator to disciplinary procedures.
- B. This policy is written in accordance with Refs (a), (b), (c) and (d).

## IV. DEFINITIONS

*Access and Dissemination Log (ADL)* – Record(s) prepared and maintained by the Agency Administrator/Designated Custodian of Recordings which reflect all instances of access to, and dissemination of, BWC recordings collected by LCDAO detectives.

*Agency Administrator (AA)* – Member of the Lackawanna County District Attorney's Office, Detective Division with full administrative rights. The AA shall maintain and oversee the BWC system under the supervision of the Chief Detective, serve as the Designated Custodian of Recordings and maintain exclusive access to BWC system administrative functions.

*Body-Worn Camera (BWC) System* – Equipment worn by a detective/officer which is designed to capture and electronically record audio and video footage and includes a microphone, camera and electronic storage medium.

*Chief Detective* – The Chief Detective of the Lackawanna County District Attorney's Office, Detective Division, as appointed by the Lackawanna County District Attorney.

*Critical Incident* – Any officer-involved shooting, in-custody death, use of force resulting in serious bodily injury to any involved party, protracted vehicle pursuit, allegation of criminal activity or misconduct against a Division detective or any other officer working in concert with LCDAO, or any other incident resulting in a formal



complaint by any party against a Division detective or any other officer working in concert with LCDAO.

*Designated Custodian of Recordings (DCR)* – An employee designated by the Chief Detective who is assigned to maintain custody of, and manage, the electronic audio and video recordings stored on any BWC system storage media, prepare reproductions of recordings for approved dissemination and maintain the ADL. The *Agency Administrator* shall serve as DCR for the Lackawanna County District Attorney’s Office.

*District Attorney* – The elected District Attorney for Lackawanna County, Pennsylvania.

*Encounter* – An interaction between an officer/detective and any suspect/subject, target of investigation, defendant, person(s) in LCDAO custody, victim, witness, or member of the general public which is investigative or law enforcement-related in nature.

*Evidence Transfer Module (ETM)* – A docking station/interface which simultaneously recharges individual BWC units and uploads all data captured by the BWC to the system’s server or other virtual storage location. The ETM ensures evidence handling is secure and recordings are not altered or otherwise accessible to anyone other than authorized parties.

*Oral Communication* – This term shall have the meaning ascribed to it by Ref (d), specifically, “*Any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation.*”

*Periodic Audit Log* - Record(s) prepared and maintained by the Agency Administrator/Designated Custodian of Recordings reflecting pertinent facts about all periodic audits of BWC recordings conducted pursuant to this policy.

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## V. PROCEDURES

### A. Training

1. All Division detectives will be initially trained according to vendor standards on the proper use, wear and operation of BWCs. Detectives will also be specifically trained by the Chief Detective regarding the provisions of this policy and will demonstrate proficiency in the use/wear/operation of the BWCs and thorough working knowledge of this policy. This policy shall be disseminated individually to each detective and made available in portable document format (.pdf) on the LCDAO internal office server.
2. Refresher training on BWC protocols shall be conducted at least once per calendar in every year after the BWC system is initially implemented.
3. Both initial and refresher training will cover, at a minimum:
  - a. Proper use, wear and operation of BWC units
  - b. An overview of Refs (a) and (d) and any other relevant Pennsylvania statute or case law governing consent, evidence, victim and witness privacy, and public disclosure of BWC recordings (a Deputy District Attorney or Assistant District Attorney shall be requested to provide such legal updates).
  - c. Best practices in responding to crime victims, including privacy considerations specified in Ref (b) concerning informed consent to record and trauma-informed response.

4. All training shall be memorialized in Division records by the Agency Administrator, including but not limited to records of all trained personnel and their most recent training dates.

#### B. Use, Wear and Operation of BWC Units

1. BWC equipment is to worn and utilized only by personnel outfitted in clearly-marked attire unambiguously identifying the wearer(s) as a law enforcement officer(s) and who is/are working in an enforcement or investigative function as authorized by LCDAO. Examples of such attire include, but are not limited to: tactical vests, vest carriers, outer jackets, windbreakers, t-shirts, polo-type shirts, pull-overs, et cetera clearly displaying "POLICE" or "DETECTIVE" markings in large-font block letters, or in plainclothes with LCDAO-issued badge clearly displayed at or above chest level.
2. Division detectives shall only use BWCs issued by LCDAO. The BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment is solely and exclusively the property of LCDAO. No personally-owned recording equipment (including but not limited to personal cell phones) shall be used to record audio and/or video footage of LCDAO business of any kind.
3. BWC equipment shall only be used to record audio and/or video footage of encounters while the detective is on-duty and outfitted in clearly-marked attire unambiguously identifying the wearer as a law enforcement officer as specified above.
4. Detectives will be issued BWCs prior to conducting operations involving traffic stops, interdiction activities, mere encounters, arrests, warrant executions, legal searches of property or any other activity/operation which may reasonably result in a substantive official encounter with a suspect/subject, target of investigation, defendant, person(s) in LCDAO custody, victim, witness, or the general public. The operational supervisor shall remove BWCs from the ETM and issue units to involved personnel only after ensuring the BWC has completed the data upload from its previous use and is fully charged for the next recording cycle.
5. Wearing the BWC:
  - a. BWC placement is dependent on the wearing detective's individual uniform of the day.
  - b. The BWC must be worn:
    - 1) On the front of the outermost, clearly marked uniform garment (with the exception of a rain jacket) in such a manner as to give the lens a clear, unobstructed view to capture video footage to the maximum extent possible;
    - 2) In a manner taking into consideration the security and safe handling of the camera and the intended purpose of the recording(s);
    - 3) Facing outward, in an upright orientation, above the waist at approximately mid-chest height (to the extent possible given tactical and uniform considerations).
6. BWC Operation:
  - a. The BWC recording function shall be manually activated by the involved detective as follows:



- 1) The BWC shall be activated in the “On” (recording) position immediately prior to operations involving an arrest, warrant execution, traffic stop, interdiction activity, or any other activity which can reasonably be anticipated to include a substantive official encounter with a suspect/subject, target of investigation, defendant, person(s) in LCDAO custody, victim, witness, or the general public.
- 2) Immediately after activating the BWC to the “On” (recording) position, the involved detective should state in a clear voice “BEGIN ENCOUNTER”.
- 3) The BWC should remain activated in the “On” (recording) position for the remainder of the activity as described above. The BWC may be deactivated in the “Off” (non-recording) position whenever a detective engages in non-enforcement activities (e.g., restroom visits, personal hygiene or other activity where a reasonable expectation of privacy may exist.)
- 4) Detectives are to be exceptionally cautious to ensure the BWC is deactivated in the “Off” (non-recording) position at any time when electronic recording may otherwise require authority of Ref (d) (such as during telephone conversations or other situations where a reasonable expectation of privacy may exist.)
- b. Detectives are encouraged to narrate events during a recorded incident, which will assist in establishing probable cause for enforcement action and report-writing.
- c. When the BWC is activated in the “On” (recording) position to document an encounter, it should be deactivated in the “Off” (non-recording) position only upon conclusion of the encounter the BWC was activated to record. The cessation of recording prior to the conclusion of an encounter may give the impression that the recording was halted to conceal improper, questionable or embarrassing conduct. To avoid any appearance of impropriety, the wearing detective shall state, in a clear voice, his/her justification for halting recording prior to conclusion of the encounter.
- d. Upon conclusion of an encounter and immediately prior to deactivating the BWC to the “Off” (non-recording) position, the wearing detective shall state in a clear voice “END ENCOUNTER”.
7. Upon conclusion of the assignment or activity for which the BWC was issued, the involved detective shall return the BWC to the AA or his/her designee, or shall otherwise follow guidance of the AA for returning BWC units to the ETM. The AA or designee shall inspect the BWC, and ensure it is placed in the ETM for recharging and data transfer. During operational activities, detectives shall monitor their assigned BWCs and ensure the units are charged and fully functional for the duration of the shift/assignment/activity.
8. Detectives *shall* use issued BWCs to record, to the extent practicable:
  - a. All field contacts and encounters as outlined above involving actual or potential criminal conduct, including arrests, warrant execution, traffic stops, interdiction activities, transportation/movement of persons in custody.
  - b. Any substantive official encounter with a member of the general public, however, detectives maintain discretion in whether or not to record informal, non-law enforcement interactions with members of the community.

Detectives should remain mindful that indiscriminate recording may unintentionally create an atmosphere of apprehension and uncertainty. Detectives may deactivate or not activate BWCs when dealing with witnesses or victims who are reluctant to appear on recorded audio or video footage. Recognizing that this policy cannot anticipate every possible scenario requiring the exercise of record/non-record discretion, detectives should always be prepared to articulate why they deactivated or failed to activate BWCs during encounters as described above.

- c. Detectives shall maintain discretion over whether to record encounters when circumstances at hand may make it unsafe, impossible or impractical to do so, and shall be prepared to articulate the reasons for their decisions in this regard.
  - d. The confiscation and documentation of evidence or contraband.
  - e. Any other contact or encounter which becomes adversarial after the initial contact in a situation which may not otherwise require recording.
9. Detectives *may* use BWCs to record:
- a. Legal, reasonable and appropriate surveillance of potential criminal suspects and activities, as well as crime scenes. Once again, detectives are encouraged to narrate their activities when documenting crime scenes.
  - b. Motor vehicle accident scenes and situations in which aid is rendered to motorists or when backing up other law enforcement officers engaged in traffic stops or traffic-related activities.
  - c. Any other incident the detective deems appropriate due to the unique circumstances at hand.
10. Detectives shall note the use of BWCs in incident reports and case documentation. Detectives shall articulate reasons for failing to record an encounter, or discontinuance of recording prior to encounter conclusion, as required by this policy.
11. Prohibited uses:
- a. The use of BWCs or related equipment for any reason other than an enforcement or investigative purpose is expressly prohibited and shall subject the involved detective(s) to disciplinary action. Detectives shall not edit, alter, erase, duplicate, share, or otherwise distribute in any manner BWC recordings in contravention of this policy.
  - b. Detectives utilizing BWCs shall remain situationally aware at all times so as to prevent recording whenever and wherever a reasonable expectation of privacy may exist.
  - c. BWCs shall *not* be utilized:
    - i. To make recordings during routine, non-enforcement related activities unless a bona fide reason exists to do so.
    - ii. To make recordings in locker rooms, restrooms, et cetera, or any other place where a reasonable expectation of privacy may exist, unless a bona fide enforcement or investigative reason exists to do so.
    - iii. To record statements given by any confidential informant, cooperating individual or law enforcement officer working in an undercover capacity. While BWCs may be used to record the statements of victims or witnesses, every precaution shall be taken to respect the dignity and privacy of such parties and *no* BWC recordings shall be made if a victim/witness specifically requests to not be recorded.



Detectives shall note in their investigative reports instances when a victim/witness gave a statement but declined to be recorded on BWCs for this purpose.

- iv. To make recordings in the course of strip searches of persons in custody.
- v. To make recordings inside or on the property of any prison, jail or correctional facility.
- vi. To make recordings within law enforcement-restricted office spaces unless a bona fide investigative reason exists for same.
- vii. To record conversations of other government employees without their knowledge unless a bona fide investigative reason exists for same and such activity is not otherwise prohibited by Ref (d) or other applicable law.
- viii. To record the exercise of religious activities unless a bona fide investigative reason exists for same or said activities are conducted in plain view, in areas accessible to the general public.
- ix. To make any recordings whatsoever within court facilities.
- x. To make recordings within the treatment areas of hospitals or other medical facilities or offices where a reasonable expectation of privacy may exist unless a bona fide investigative reason exists for same and such recording is explicitly disclosed to, and authorized by, the party(ies) being recorded.

*(Note: It is anticipated BWCs may be useful for recording statements of victims, witnesses or other parties who may be receiving medical treatment in the wake of a criminal incident. However, great caution should be taken to ensure such party/ies are cognizant of, and consent to, such recordings. Detectives should conduct due diligence to establish such parties are medically competent to participate in such recordings.)*

- xi. To make recordings of any potentially privileged conversation(s).
- xii. To make recordings of any conversations or consultations with supervisors, other law enforcement officers or prosecuting attorneys during the course of investigative or law enforcement actions, which communication may be considered investigative work product.
- xiii. To make recordings in any other situations as may be proscribed by the Chief Detective or District Attorney.

12. All detectives shall follow procedures established by the Chief Detective and Agency Administrator for the use and maintenance of BWC equipment, handling of recordings and completion of proper documentation.

13. Muting Audio

- a. Regarding BWCs which have the capability to mute audio recording while video recording continues, detectives are permitted to utilize this function at their discretion, however the involved detective shall narrate a short statement justifying his/her bona fide reason(s) for muting audio recording. This is to avoid the appearance of an equipment failure or impression the detective was improperly attempting to conceal audio footage.

C. Notice to Persons Being Recorded

1. Pennsylvania law at Ref (a) does not require detectives to notify individuals that they are being recorded in accordance with this policy. This is extended into a person's residence while detectives are lawfully conducting official duties.
2. If asked, the detective shall acknowledge the BWC is recording.
3. A detective may at any time notify any person(s) that they are being video and/or audio recorded.
4. As stated in this policy, detectives maintain discretion to deactivate or not activate BWCs when dealing with reluctant witnesses or victims, subject to articulation of reasons for same.

D. Authorized Uses of BWC Recordings

1. Formal court proceedings.
2. Preparation of cases to be prosecuted by the Commonwealth.
3. Enforcement and investigative activities of the Division.
4. Assessment of agency training standards and policies/procedures.
5. Periodic audit and quality control of Division enforcement and investigative activities.
6. Employee disciplinary proceedings.
7. Facial recognition purposes.
8. Public information and education.
9. Any other lawful purpose authorized by the District Attorney.

E. Maintenance

1. BWCs and related equipment assigned to a detective is the responsibility of the detective and will be maintained according to manufacturer's specifications and Chief Detective and Agency Administrator guidance.
2. Prior to each use, detectives shall determine whether their BWC equipment is working satisfactorily and shall bring any concerns or problems to the attention of the Agency Administrator as soon as possible. Detectives shall immediately report damage, loss or theft of BWC equipment to the Chief Detective and Agency Administrator.
3. Detectives may clean the lenses of their BWCs with a soft, damp cloth as needed, however the use of solvents or cleaning products that may damage the lens of the BWC (e.g. Windex) is prohibited.
4. All other maintenance or adjustments of equipment shall be performed only by the Agency Administrator.
5. Detectives shall not be held responsible for normal wear-and-tear or damage to BWC equipment that occurs in the ordinary course of duty so long as reasonable care is exercised in the use of such equipment.

F. Review of Recordings

1. Review by Division Detectives
  - a. Detectives may review BWC recordings of their own activities or, upon approval of the Chief Detective, recordings of other detectives' activities in order to: assist with investigations and report preparation; prepare for court; review prosecution evidence; assist other investigators; review crime scene or search warrant scene footage; enhance training; comply with office policies; or for any other bona fide purpose approved by the District Attorney or Chief



Detective. However, in any such instance, the Agency Administrator shall make a duplicate WORK COPY of the subject recording for the requesting detective, while maintaining inviolate the original recording on the Division server or other virtual storage medium. The AA/DCR shall memorialize any reproduction and/or dissemination of any BWC recording in the ADL. Detectives shall not use or have access to original recordings or files for any purpose whatsoever.

- b. Detectives involved in any incident resulting in: officer-involved shooting, the use of force, injury of any kind, allegation of misconduct, citizen complaint or other critical incident will be permitted, but not required, to review their own BWC recordings prior to providing a statement or submitting a report(s) on the incident. *(Note: This allowance recognizes that critical incidents requiring split-second decisions often occur within the span of a few seconds, and is in keeping with the similar practice of allowing law enforcement officers testifying in court to refresh their memories from investigative notes or reports prior to entering formal testimony upon the record.)*
2. Supervisory review
- a. The Chief Detective or his/her designee may periodically review or make work copies of BWC recordings to assess the training needs of the Division, evaluate departmental policies/procedures, supplement any investigation/prosecution or conduct quality control monitoring of the BWC system.
  - b. The Chief Detective or his/her designee may review BWC recordings after receiving a specific complaint to determine if any violation of LCDAO policies/procedures or law has occurred.
    - 1) In the event a detective has reason to believe a recorded event may lead to a citizen complaint, he/she should, without unnecessary delay, bring the recording to the attention of the Chief Detective, who shall review the recording, conduct any investigation deemed appropriate and brief the District Attorney as soon as is practicable.
    - 2) LCDAO shall not solicit complaints against detectives.
    - 3) If a detective self-reports *de minimis* violations of policy/procedures and no citizen complaint is received, the reporting detective shall meet with the Chief Detective to discuss any training gaps or needs which may correct such violations going forward, but shall not be subjected to disciplinary action.
    - 4) If a complaint is received, the detective's self-reporting shall be taken into consideration in order to mitigate any discipline determination.
    - 5) Failure to self-report shall not be a basis for additional discipline.
  - c. Routine audits of BWC recordings shall be used for maintenance and training purposes only and not for formal discipline, absent additional corroborating evidence or complaint, unless a recorded act could be considered a crime or civil rights violation. Protection from discipline as defined in this section shall not extend to a detective's failure to use BWC as delineated by this policy.
    - 1) Periodic audits shall be conducted by the Chief Detective or his/her designee via random selection of recordings for training and quality control review. The Chief Detective or his/her designee shall not

repeatedly single-out individual detectives' BWC recordings absent justifiable cause.

- 2) The Chief Detective or his/her designee shall document such audits on the Periodic Audit Log (PAL) which will be shared with the District Attorney. The audit log shall be retained for the current and previous calendar year.
- 3) The Chief Detective may review recordings in the presence of the recording detective, discuss any positive or development issues found, and document any corrective actions taken.

3. Union Review

- a. A representative of the Lackawanna County Detectives Association, upon consent of the involved detective and written request made to the Chief Detective, shall have the right to a work copy of any detective's BWC recording(s) in the event such recording(s) will be utilized for disciplinary purposes. The work copy shall be delivered via portable electronic storage medium (e.g., CD-ROM, DVD, flash drive, but not sent via e-mail) and same may be shared with legal counsel for the collective bargaining unit.
- b. Work copies of any recordings provided under this section shall remain the property of the Lackawanna County District Attorney's Office and may not be further duplicated, released and/or further disseminated without the express prior approval of the District Attorney or his/her designee.

G. Access to and Release of BWC Recordings

1. Detectives may request a work copy of a recording be saved to a portable electronic storage medium (e.g., CD-ROM, DVD, flash drive) for investigative or prosecution purposes. The requesting detective will take care to ensure such recording is stored securely and shielded from unauthorized duplication and/or dissemination.
2. In compliance with PA Rules of Criminal Procedure, Pretrial Discovery and Inspection (Title 234 Rule 573), a recording saved to a portable electronic storage medium (e.g., CD-ROM, DVD, flash drive) may reproduced and released to the Attorney for the Commonwealth. The case detective responsible for turning over discovery material to the attorney for the Commonwealth shall ensure any such portable electronic storage medium is clearly and properly marked, and shall notify the AA/DCR of such dissemination so it may be memorialized in the ADL.
3. Court process seeking BWC recordings shall be served upon:  
Lackawanna County District Attorney's Office  
Attn: Designated Custodian of Recordings  
135 Jefferson Avenue  
Scranton, PA 18503
4. Any court process shall, upon proper receipt of service, be forwarded to the assigned Attorney for the Commonwealth for review, with copies provided to the Chief Detective and case detective. If a response is approved by the Attorney for the Commonwealth subject to Ref (a) §67A04, the case detective shall forward said court process and any instructions from of the Attorney for the Commonwealth to the DCR along with the following information:
  - a. Incident/case number
  - b. Defendant/suspect/subject first and last name



- c. Date and time of the incident
  - d. Full name and contact information of party requesting the information
  - e. Any other information as prescribed by the Attorney for the Commonwealth
- The DCR will make the required work copy and return same to the case detective for approved dissemination to the requesting party.
5. In compliance with court process served upon LCDAO in civil cases, a recording may be reproduced and saved to a portable electronic storage medium (e.g., CD-ROM, DVD, flash drive). Only those portions of the recording relevant to the incident should be reproduced and furnished in compliance with the subpoena, and a review of the LCDAO response should be conducted by the assigned LCDAO attorney pursuant to Ref (a) §67A04. The DCR, in consultation with the case detective and assigned attorney, shall ensure the correct portion of the correct recording is reproduced and properly marked/identified.
  6. The Chief Detective may, under very limited circumstances and with the express consent of the District Attorney, reproduce and make available for educational and/or training purposes recordings which are not part of an active investigation or ongoing litigation. The Chief Detective shall obtain written consent from any detective depicted in a video that is to be reproduced and utilized for such purposes.
  7. Upon the express consent and approval of the District Attorney, BWC recordings may be reproduced for public information purposes.
  8. Recordings may be reproduced in cases where the recording would be of use in any investigation or litigation involving LCDAO personnel, upon the direction of the District Attorney or request from the First Assistant District Attorney, or any Deputy/Assistant District Attorney. Such reproduction and dissemination shall be memorialized by the Agency Administrator in the ADL.
  9. The case detective, in consultation with the DCR, shall memorialize in the subject investigative case file any dissemination of BWC recordings made pursuant to this policy. Such memorialization shall include information as to the medium by which any recording was disseminated, how many work copies of the recording were made and to whom the work copies were released.
  10. No detective or employee of the Lackawanna County District Attorney's Office shall release any BWC recording to any party in contravention of this policy.
  11. No BWC recording of any kind shall ever be forwarded, disseminated or exchanged via email or any other transmission method aside from a portable electronic storage medium (e.g., CD-ROM, DVD, flash drive) unless same is explicitly approved by the District Attorney.
  12. BWC recordings reproduced and released to LCDAO employees shall not be edited in any way. Editing is allowed only by the DCR at the time a recording is copied for purposes of removing extraneous or superfluous footage, or to redact certain information as allowed by Ref (a) §67A05(e).
  13. Requests for BWC recordings from other government agencies shall be referred directly to the District Attorney or his/her designee. The requester shall specify with particularity the incident or event that is the subject of the BWC recording, including the date, time and location of the incident or event. Furthermore, such request shall include a statement indicating the reason(s) for the request and a certification verifying the request is for purposes of the agency's official function(s).

14. Prior to the release of any BWC recording to any party other than an Attorney for the Commonwealth, the DCR shall review the recording to be released and redact or otherwise render unintelligible any sensitive information as allowed by Ref (a) §67A05(e).

#### H. Requests by Members of the Public for BWC Recordings

1. In accordance with Ref (a) at §67A03, public requests for BWC recordings captured pursuant to this policy shall be made as follows:
  - a. An individual who requests an audio or video recording made by a law enforcement agency shall, within 60 days of the date when the audio recording or video recording was made, serve a written request to the individual who is designated as the open-records officer for the law enforcement agency under section 502 of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law. Service is effective upon receipt of the written request by the open records officer from personal delivery or certified mail with proof of service.
  - b. The request under subsection (a), supra, shall specify with particularity the incident or event that is the subject of the audio recording or video recording, including the date, time and location of the incident or event.
  - c. The request shall include a statement describing the requester's relationship to the incident or event that is the subject of the audio or video recording.
  - d. If the incident or event which is the subject of the audio recording or video recording occurred inside a residence, the request shall identify each individual who was present at the time of the audio recording or video recording unless not known and not reasonably ascertainable.
  - e. Requests made pursuant to this subsection shall be addressed to "Lackawanna County District Attorney's Office, Attn: Open Records Officer, 135 Jefferson Ave, Scranton, PA 18503" and may be delivered in person during normal business hours or via certified mail with proof of service.

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#### I. Law Enforcement Review of Requests Made by Members of the Public for BWC Recordings

1. Requests made by members of the public for BWC recordings shall be reviewed in accordance with the guidelines set forth in Ref (a) at §67A04.

#### J. Procedure for Handling Requests Made by Members of the Public

1. Requests made by members of the public for BWC recordings shall be processed in accordance with the guidelines set forth in Ref (a) at §67A05.

#### K. Procedure in the Event of Denial of Request

1. Individuals whose requests for BWC recordings are denied pursuant to Ref (a) at §67A05 may file a petition for judicial review of such denial pursuant to Ref (a) at §67A06.

#### L. Storage and Retention of Data



1. BWC recordings shall be uploaded and stored in the designated electronic storage medium (computer server) when the BWC is placed in the ETM docking station after use by a detective. Upon conclusion of use, the involved detective shall place the BWC on the ETM for recharging and uploading data.
2. The designated electronic storage medium (computer server) shall be located in such a way as to restrict physical access to only the Agency Administrator and Chief Detective. The medium (computer server) itself shall be configured with password-enabled electronic security settings in such a way as to restrict access to the server and any data electronically/digitally stored within solely to the Agency Administrator (who also acts as the Designated Custodian of Recordings). Passwords as required by this policy shall meet the minimum standards specified in Ref (d).
3. Detectives shall monitor individual BWC unit storage status to ensure the unit does not reach maximum capacity prior to the end of a detail or encounter requiring recording as specified herein. In such instance, the involved detective shall either place the BWC on the ETM dock for data upload. In the event this corrective measure is not feasible, the detective shall report same to the Chief Detective or his/her designee for further guidance.
4. All BWC recordings shall be stored in the Division's electronic storage medium (computer server) for a minimum period of 90 days from date of creation. Any BWC recording designated as evidence in an ongoing case shall not be disposed of until all judicial action and appeal periods of all known accused parties have expired, or upon express consent and approval of the Attorney for the Commonwealth. For homicide cases, the appeal period shall be deemed to extend until the conclusion of the sentence or the death of all convicted accused in the same case.
5. For all ongoing criminal or civil cases, the assigned Attorney for the Commonwealth shall be responsible for notifying the case detective and Chief Detective of any special storage or retention requests/requirements beyond those specified by this policy.
6. In the event any civil claim is made against a detective in which activity captured on a BWC utilized by the involved detective is at issue, notice of same shall immediately be provided to the District Attorney and Chief Detective. Such BWC recordings shall be retained for a minimum of two (2) years from the date of the incident and may not be destroyed without the express consent and approval of the District Attorney.
7. Requests for copies of BWC recordings for evidentiary or prosecution purposes shall be made by the case detective to the DCR. The DCR will memorialize such request(s) in the ADL, including case number, date of request, date of requested recording, assigned Attorney for the Commonwealth and any other information deemed necessary for accountability purposes by the AA/DCR. The requested BWC recording will be provided to the case detective via portable electronic storage medium (CD-ROM, DVD, flash drive) and the case detective shall ensure proper secure storage and protection from unauthorized dissemination of same.
8. The case detective shall memorialize in his/her investigative report the circumstances surrounding any request for BWC recording(s) and fulfillment



thereof (e.g., what recordings were requested, the electronic storage medium on which the recordings were saved, how many copies were made, et cetera).

Example: *On 8/11/2020, regarding incident number 20-12345, for evidentiary purposes in support of the Commonwealth's prosecution of Gilbert SMUCKATELLI (20-CR-1234), I made request to the DCR for a work copy of the audio/video recording captured by my BWC (S/N 12345678) on 7/21/2020 incident to my participation in the execution of a search warrant by the Lackawanna County District Attorney's Office Detective Division at 703 Yuengling Drive, Lower Slobovia, PA 18000. The requested recording concerns time period 06:04:10 through 06:43:28. On 8/19/2020, the DCR provided the requested BWC recording to me on an HP DVD+R disk (4.7Gb capacity), which I marked 'DMB 8/19/2020, Case 20-CR-1234 BWC recording' for identification purposes. The DVD+R is stored in my investigative work file."*

9. In the event of an unintentional activation of the BWC system during non-enforcement or non-investigative activities (e.g., restroom or meal breaks), or in areas where a reasonable expectation of privacy exists, the involved detective may request the DCR, via the Chief Detective, to delete the recording. Approval of any deletion request requires two-party authorization: the Chief Detective and the District Attorney. The involved detective will prepare an office memorandum documenting in detail the circumstances leading to such request. The Chief Detective and/or the District Attorney or his/her designee shall review the subject recording prior to approving any deletion request.
10. The DCR shall create a special storage area(s) on the Division's electronic storage medium (computer server) designated for storage of recordings exempt from routine (90-day) retention protocols and/or which require special handling procedures as outlined herein.

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#### M. LCDAO Detectives Supporting Lackawanna County SWAT Tactical Operations

1. Whenever LCDAO detectives are supporting or otherwise involved with Lackawanna County SWAT tactical operations, such detectives shall adhere to the Lackawanna County SWAT Team Member Reference Manual SOP as relates to BWC use. The Lackawanna County SWAT commander or other officer in charge may direct that BWCs not be utilized in concert with such operations in order to protect the integrity of law-enforcement sensitive tactics, techniques and procedures.
2. Upon conclusion of any SWAT tactical operation, and once the scene is declared to be secure by the SWAT commander or other officer in charge, LCDAO detectives may resume use of BWCs pursuant to this policy (such as in the event of a high-risk search warrant execution, where SWAT makes initial entry and secures the scene so LCDAO detectives may thereafter safely execute the subject search warrant and document said activities through the use of BWCs).

#### N. Extenuating Circumstances

1. Any extenuating circumstance or situation not otherwise addressed by this policy shall be brought without unnecessary delay to the Chief Detective for review and guidance. The ultimate authority for any question or conflict regarding this policy shall be the District Attorney.



O. Critical Incidents Requiring Immediate Action

1. In the event of an officer-involved shooting, in-custody death, use of force resulting in serious bodily injury to any involved party, protracted vehicle pursuit, or allegation of criminal activity or serious misconduct against a Division detective or any other officer working in concert with LCDAO, the Chief Detective and District Attorney, or his/her designee, shall review any/all BWC recordings captured by involved officers as soon as is practicable after such incident.
2. Original BWC recordings contemplated by Section (O)(1), supra, shall be segregated as soon as possible by the DCR in the Division's electronic storage medium (computer server) in a storage area particularly designated for such critical incident recordings and shall be accessed, reproduced or disseminated only upon the specific direction of the Chief Detective or District Attorney.

P. Access and Dissemination Log

1. The AA/DCR shall create and maintain an Access and Dissemination Log (ADL) which accurately tracks and documents all access to, reproduction of and dissemination of BWC recordings as required by this policy. Such log shall be maintained in a secure location accessible only by the AA/DCR and Chief Detective. The log shall reflect all access, reproduction and dissemination activity for an historical period of two (2) years.

Q. Backup of Stored Data

1. The AA/DCR shall conduct data back-ups of all stored BWC recordings at least monthly. Data will be backed-up to a secure, password-protected, portable electronic storage medium (such as a suitably-sized external hard drive) which will be secured in a locked container in the Division's evidence vault.

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**VI. CONFLICTS OF INTEREST**


In the event either the AA/DCR or Chief Detective is involved in any critical incident necessitating review or production of BWC recordings captured by that detective pursuant to this policy, the AA/DCR and/or Chief Detective shall, as soon as is practicable after the incident, surrender to the District Attorney or his/her designee all keys, passwords, usernames, log-in IDs or other means of physical or electronic access to the BWC system [including all BWC camera units, the ETM, designated electronic storage medium (computer server) and any other hardware or software associated with the system], and shall refrain from accessing the BWC system in any way until the District Attorney or his/her designee has reviewed any BWC recordings at issue and determined such access to the BWC system may be reinstated to the AA/DCR and/or Chief Detective.

**VII. ISSUES NOT SPECIFICALLY ADDRESSED HEREIN**

Any other issue, question, conflict of interest or instance in which the integrity of the BWC system may be cast into doubt shall be immediately referred to the Chief Detective for review and guidance. The ultimate authority for any question, conflict or issue not specifically addressed by this policy shall be the District Attorney.

**VIII. DURATION**

This policy is effective immediately and shall remain in full force and effect until such time as it is amended, suspended or otherwise superseded by the Chief Detective and approved by the District Attorney.



DAVID M. BAKER  
Chief Detective

Approved:



MARK POWELL  
District Attorney

Cc: LCDAO Shared Drive (J:)