

OPERATIONS ORDER Subject: Body-Worn Cameras – Pilot Program II

Body-Worn Cameras (BWCs) have the potential to be effective tools for recording officer-citizen encounters, gathering evidence, and increasing compliance and accountability. The Department's next BWC pilot program (BWC Pilot II) will involve the deployment of BWCs to selected members of the service performing patrol functions in approximately 20 commands. Through this pilot, the Department will further examine the efficacy, feasibility, and cost of a larger deployment of BWCs by the Department to its members.

PURPOSE

To establish procedures relating to: the use of BWCs; the preservation, review, and sharing of BWC recordings; and the operational support and maintenance of the BWC program for BWC Pilot II.

SCOPE

This procedure shall apply to members of the service issued BWCs and personnel responsible for maintaining, supporting or supervising the use of BWCs.

PROCEDURE

When a uniformed member of the service is equipped with a “Body-Worn Camera” (BWC):

UNIFORMED MEMBER OF THE SERVICE

1. PRIOR TO ROLL CALL:

- a. Retrieve Department-issued BWC and ensure that it is fully charged and operational.
 - i. The use of any non-Department issued body-worn camera is strictly prohibited.
 - ii. If the BWC is not functioning properly, becomes damaged, or is otherwise unaccounted for at any time, immediately notify Desk Officer and document the issue in **ACTIVITY LOG (PD112-145)**. The uniformed member of service is responsible for obtaining a backup camera from the Desk Officer before resuming patrol.
- b. Affix BWC in a manner that maximizes the camera's field of view.

NOTE *UMOS shall not wear a BWC when assigned to any detail, demonstration or event. See Patrol Guide Section 212-71 and P.G. 212-72.*

2. NOTICE OF RECORDING: Upon activating a BWC for recording, members are encouraged to advise members of the public that they are being recorded as soon as it is safe and practicable to do so. Consent from a subject is not required to start or continue recording.
 - a. Suggested notification: *Sir/Ma'am, I want to advise you that our interaction is being recorded by a body-camera.*
3. MANDATORY ACTIVATION: UMOS must activate BWC prior to initiating or assisting another uniformed member of service with:
 - a. Taking any of the following investigative or enforcement actions:
 - i. Arrests
 - ii. A summonses (only if the operator of the vehicle is present)
 - iii. B and C summonses
 - iv. Vehicle stops
 - v. Investigative Encounters with suspects based on founded or reasonable suspicion, namely Level 2 (Common Law Right of Inquiry) and Level 3 (*Terry Stops*) Investigative Encounters, as described in P.G. 212-11
 - vi. Any search of a person or his or her property, excluding inventory searches
 - vii. Interactions with an Emotionally Disturbed Person
 - viii. Uses of force as defined in P.G. 221-03
 - ix. Pursuits
 - x. In-custody transportation of prisoners/arrested persons (including transportation to the stationhouse, hospital or any detention facility)
 - b. Responding to the scene of any in-progress calls for service, including 10-13, the 10-30 series, 10-85 (excluding administrative assistance), calls for service involving a weapon, and Shot Spotter activations.
 - c. Conducting an interior patrol of either a Housing Authority residential building (pursuant to P.G. 212-60) or non-Housing Authority residential building enrolled in the Trespass Affidavit Program (pursuant to P.G. 212-59). BWCs must be activated immediately before entering the residential building and should not be deactivated until exiting the building and concluding any associated police action.
 - d. Upon discovery of a failure to record or the interruption of a recording involving any event listed in this step, report such failure or interruption to the Patrol/Unit

Supervisor and make an **ACTIVITY LOG** entry describing the event and the reason the event was not recorded.

NOTE *BWCs should be activated prior to the initiation of the above actions. If the circumstances require an UMOS to engage immediate safety measures first, the UMOS should do so and then activate the BWC as soon as it is practical and safe. At no point should proper tactics be compromised to begin a recording.*

The mandatory recording requirements in step 3 may cause the recording of initial accounts by victims or witnesses. Other than a victim of a sex crime, members should generally record initial encounters with witnesses or victims, such as a witness or victim's initial report, spontaneous utterances, physical injuries, or any relevant physical observations of the scene. However, members must consider the needs of victims and witnesses and the sensitivity of the nature of the crime being reported in deciding whether and for how long the statement should be recorded (provided that any deactivation is in accordance with step 5). Requests by a witness or victim to view a BWC recording that depicts a suspect should be declined and referred to an Assistant District Attorney. Confirmatory identifications ("show-ups") must be done in person and not by the witness viewing a BWC video of the suspect.

BWCs should not be activated in close proximity to potentially explosive materials or devices or post-explosion bomb scenes.

If equipped with a BWC, UMOS may not use a Department issued smart phone in lieu of the Department issued BWC.

4. DISCRETIONARY ACTIVATION: UMOS may record other activities when, in the member's judgment, it would be beneficial to record, so long as recording is not prohibited by step 6.
5. DEACTIVATION: Once the BWC has been activated, continue recording until the investigative or enforcement action is concluded. If the recorded event is an arrest, members should continue recording and not deactivate the BWC until the prisoner is lodged at a command for processing.
 - a. The BWC may be deactivated upon a recorded request by a member of the public if in the judgment of the UMOS it is safe and advisable to do so and after considering all the circumstances, including the requester's right to privacy. If a suspect is present at the scene, do not deactivate the BWC.
6. PROHIBITED RECORDINGS: BWCs shall only be used while conducting official law enforcement duties. Do not record any of the following events or locations:

- a. The performance of administrative duties or non-enforcement functions
- b. Activities within the command or Department facilities, except for lodging a prisoner
- c. Departmental meetings or training
- d. Personal conversations of or between Department personnel without the recorded employees' knowledge
- e. Personal, off-duty activity, including paid details
- f. Interviewing a current or potential confidential informant
- g. Interviewing the victim of a sex crime
- h. Strip searches
- i. When present in a court facility, except for the immediate lodging of a prisoner
- j. When present in a medical facility
 - i. If present in an ambulance, however, refrain from recording medical treatment or patient/caregiver conversations, but the UMOS may continue to record if necessary, e.g., the aided individual is in custody and potentially combative or is a victim and consents to the recording
- k. Any individuals who are engaged in political activity (See P.G. 212-72). Political activity is the exercise of a right of free expression or association for the purpose of maintaining or changing governmental policies or social conditions.
- l. Report the recording of a prohibited event listed in this step to the Patrol/Unit Supervisor and make an **ACTIVITY LOG** entry describing the event.

7. PRESERVATION AND DOCUMENTATION OF BWC FOOTAGE:

- a. Prior to the end of tour, upload all BWC video recorded during the tour and tag videos.
- b. Include a notation in the narrative section of any documentation, including, but not limited to, Stop Reports, that there is a BWC recording associated with the event, along with the serial number of the BWC.
- c. Notify the patrol/unit supervisor if you recorded a BWC video related to the arrest/complaint, regardless of whether you are the reporting officer.
- d. Notify on scene investigative personnel if you recorded a BWC video related to a crime scene or during critical incident
- e. Do not attempt to alter or delete BWC recordings. Members may correct or supplement the tags on their own recordings
- f. Any time a BWC recording is made, make an **ACTIVITY LOG** entry of the time, location and nature of event
- g. When events related to an arrest or open complaint have been recorded on a BWC, the arresting officer or the UMOS taking the complaint must:

- i. Document the existence of BWC footage related to the arrest or complaint in the narrative section of the **COMPLAINT REPORT (PD313-152)** and/or **ON LINE BOOKING SYSTEM ARREST WORKSHEET (PD244-159)**.
 - ii. Document the name, tax number, and serial number of any other UMOS who recorded BWC footage related to the arrest and/or complaint in the narrative of his or her complaint report or arrest report, when an arrest is made.
 - iii. Advise the appropriate Assistant District Attorney, Assistant Corporation Counsel, Assistant United States Attorney, Assistant Attorney General, Legal Bureau Attorney, or assigned Detective during any conferral about an investigation or civil or criminal case if BWC footage exists in connection with the investigation or case. Produce video to the appropriate Assistant District Attorney, Assistant Corporation Counsel, Assistant United States Attorney, Assistant Attorney General, Legal Bureau Attorney, or assigned Detective.
8. RELEASE OF BWC RECORDINGS: BWC recordings are the property of the New York City Police Department and shall be treated as official records and handled pursuant to existing Department policies and procedures. Do not duplicate, show, or release BWC recordings except for official purposes.
9. VIEWING OF BWC RECORDINGS:
 - a. In the performance of their duties, members may view their own BWC recordings, except for recordings related to a Level 3 use of force.
 - i. Members who record events related to a Level 3 use of force must refrain from reviewing BWC recordings of the event and immediately surrender his or her BWC to the Force Investigation Division Supervisor or other designated supervisor. The UMOS may review recordings related to the Level 3 use of force before giving an official statement but at a time and place set by the Force Investigation Division Supervisor.
 - b. Except as prohibited in 9(a), members may view BWC recordings made by other members if the viewing is in furtherance of an investigation, preparation of a case or other official purposes. All viewings will be recorded and monitored by the BWC audit system.
 - c. Requests by witnesses or victims to view a BWC recording should be handled pursuant to the note after step 3.

END OF TOUR: Dock BWC for recharging. BWCs must remain in docking stations when not in use.

PATROL/UNIT SUPERVISOR

10. Ensure unit members assigned BWCs wear cameras and record events in accordance with this procedure. Ensure they are located in manner to ensure maximum field of view. Check a camera when a UMOS reports that it is not functioning properly. If confirmed, send the UMOS to the Desk Officer to obtain a replacement camera.
11. If a UMOS is having difficulty uploading video from the BWC, immediately notify the BWC Borough Coordinator.
12. When notified, review a report of UMOS failure to record, or interruption of a recording of an event as required in Step 3, take appropriate action.

DESK OFFICER

13. At the start of each tour, the Desk Officer must account for all BWCs in the command log.
14. When a BWC is broken, assign the UMOS a replacement BWC and notify Operations Coordinator.
15. When a BWC is lost or stolen, follow P.G. 219.20 Loss or Theft of Department Property and make an immediate notification to the ITB Service Desk, which should be recorded in the telephone message log.

PLATOON COMMANDER

16. When a UMOS fails to record as described in step 3, the Platoon Commander should investigate the circumstances surrounding the failure. Platoon Commander should take appropriate action.
 - a. When a UMOS is present for an officer-involved shooting, or is present when a person dies in custody, the platoon commander will take possession of all BWCs making a notation as to what serial number camera was received from each officer, and provide the cameras to the Force Investigation Division Supervisor.

OPERATIONS COORDINATOR

17. When a BWC is broken/lost/stolen, the Operations Coordinator shall notify the BWC Borough Coordinator.
18. The Operations Coordinator shall be responsible for obtaining new cameras from BWC Borough Coordinator to replace lost/stolen BWCs.

INTEGRITY CONTROL OFFICER

19. The Operations Coordinator shall conduct an investigation into a damaged/lost/stolen camera.

20. ICO should investigate any recording that is prohibited in section 6. If the recording was done intentionally, the ICO should subject the UMOS to appropriate discipline.
21. ICO should report the prohibited recording to the BWC Borough Coordinator.
22. ICO must review video when there has been a CCRB complaint.

COMMANDING OFFICER

23. Designate a secure area within the muster room/desk area and under the control of the desk officer for storage of BWCs not being used.
24. If there is a lost or stolen camera, CO should investigate and take appropriate action.
25. Prepare a written request on TYPED LETTERHEAD to the Commanding Officer of the Risk Management Bureau, requesting that video which has been obtained in violation of Step 6 be purged.

BODY-WORN CAMERA BOROUGH COORDINATOR

26. When a camera is broken, BWC Borough Coordinator should arrange with XXXXX to have the camera repaired. If camera is lost or stolen, BWC Borough Coordinator shall provide a replacement camera to the command which reported it lost or stolen.
27. BWC Borough Coordinator will inform the Risk Management Bureau if there is a lost/stolen/damaged BWC.
28. BWC Borough Coordinator will take a report from the ICO whenever a video is recorded in error. BWC Borough Coordinator will send a report to the Risk Management Bureau.
29. If notified by Patrol/Unit supervisor that a BWC could not upload video, the BWC Borough Coordinator shall notify ITB.
30. When an officer is transferred, promoted, or reassigned into or out of a BWC command, BWC Borough Coordinator shall immediately notify the Risk Management Bureau.
31. BWC Borough Coordinator should identify videos that would be effective training tools and forward them to the Risk Management Bureau.

FORCE INVESTIGATION DIVISION SUPERVISOR

32. The Force Investigation Division Supervisor shall allow the UMOS to view his or her video prior to making a formal statement at a time and location determined by the Force Investigation Division Supervisor.

DESIGNATED SUPERVISOR

33. As appropriate, for training and management purposes, review member's BWC recordings. Provide positive feedback for exemplary work depicted in member's videos as well as address any performance deficiencies depicted in the member's videos. The supervisory review of a member's BWC recordings should not be the basis to initiate discipline against a member for Schedule A minor violations defined in P.G. 206.03 that were observed in the recording.

RISK MANAGEMENT BUREAU

34. Shall review reports from the BWC Borough Coordinator when footage as described in step 6 is captured. Risk Management Bureau may purge video, if appropriate.

Note: Information must be entered in each UMOS Activity Log (PD112-145). UMOS cannot rely on their partner entering the information in the Activity Log.

The procedures above will ultimately appear in a departmental operations order and will guide an officer and his or her chain of command in the use of the cameras and the maintenance of many but not all aspects of the program. Some duties, such as the processing of Freedom of Information Law requests, will not be processed by the officer or anyone in his or her chain of command. Instead, they will be processed by other units guided by other procedures and policies. The following highlights the NYPD's proposed policy on other areas of interest:

Public Release of Video

Freedom of Information Law (Public Officer's Law § 84-90)

- The NYPD intends to release footage in compliance with the New York State Freedom of Information Law ("FOIL"). FOIL creates a presumption of access to agency records. Under FOIL, recordings by body-worn cameras are agency records.
- There will be instances where the NYPD cannot release video, despite this presumption of access. For instance, there will be incidents where a person is arrested and the case is later dismissed. New York State Criminal Procedure Law requires that the NYPD seal all records related the arrest, including video captured by BWCs. In these instances, the NYPD is prohibited from releasing video except to the person in whose favor a criminal action or proceeding was terminated. There are other times where the NYPD will be prohibited from releasing video, such as when it captures information about victims of a sex crime, juvenile victims of crimes, juvenile offenders, discloses information about a person's mental illness or other medical information.
- Additionally, the NYPD has discretion to deny release or redact video when it interferes with active law enforcement investigations or judicial proceedings, could identify confidential sources, could deprive a person of a right to a fair trial, could endanger the life or safety of any person or if the footage would constitute an unwarranted invasion of personal privacy, such that it would result in economic or personal hardship. The NYPD will conduct a case by case review to determine whether video can be redacted to protect these interests, or if it needs to be completely withheld.

High-Profile Incident

- When there is a high-profile incident, such as an incident involving a serious use of force or death in police custody, the NYPD expects to confer with the Attorney General or a District Attorney about releasing the video to the public in order to balance the public's right to information with the integrity of any criminal investigation or criminal prosecution.

Officer and Civilian Complainants' Access to BWC Footage

- NYPD intends to allow officers to view video prior to filling out police paperwork and signing sworn complaints, even when the officer has been involved in a serious incident. The NYPD also believes that members of the public, in non-criminal cases, should be allowed to view video prior to making a formal CCRB complaint.

Release of BWC Footage to Criminal Defendants

- In criminal cases, the NYPD intends to produce the video to the prosecutor who will produce it to the defendant in accordance with New York State Criminal Procedure Law § 240.20 (g).

Retention

- As a general matter, the NYPD intends to retain video for six months. If the video is needed for some other purpose, the video will be retained longer. Any video that is related to an open criminal case, civilian complaints made to CCRB or the NYPD, or lawsuit will be retained until the conclusion of the case. If a video contains evidence of a felony, but no arrest is made, it will be retained for 5 years in accordance with the statute of limitations. If it contains evidence of a misdemeanor, but no arrest has been made, it will be retained for 3 years in accordance with the statute of limitations. Additionally, the NYPD will keep certain footage, such as when there has been a use of force, a death in custody, serious injury in custody, or an accident involving a police vehicle for 3 years, in order to comply with the statute of limitations to file a federal lawsuit.

Discipline

- Officer discipline is generally not mentioned in the proposed policy. It is difficult to specify a discipline system as there are many variables that determine whether or not an officer should face discipline in specific instance. However, police officers will face discipline for failure to follow the patrol guide and for consistent and unjustified failure to record.
- The proposed policy does mention that officers will not be punished for minor offenses. The purpose of this provision is to ensure officers aren't punished when supervisors see minor violations of the patrol guide, such as chewing gum or taking off a hat that the supervisor wouldn't have otherwise seen.