

Body Camera Statewide Policy

SECTION 1.

- (a) Only law enforcement officers with the authority to conduct searches and make arrests shall be permitted to wear a body camera. Such body cameras shall be worn in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities.
- (b) Both the video and audio recording functions of the body camera shall be activated whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a law enforcement officer and a member of the public, except that 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. The body camera shall not be deactivated until the encounter has fully concluded and the law enforcement officer leaves the scene.
- (c) A law enforcement officer who is wearing a body camera shall notify the subject(s) of the recording that they are being recorded by a body camera as close to the inception of the encounter as is reasonably possible.
- (d) Notwithstanding the requirements of subsection (b):
  - (1) Prior to entering a private residence without a warrant or in non-exigent circumstances, a law enforcement officer shall notify an occupant of use of the body camera and inquire if continued use is acceptable. If the occupant responds in a negative fashion, the law enforcement officer shall immediately discontinue use of the body camera. If entering a private residence pursuant to a search warrant or in exigent

circumstances, or during the completion of any custodial arrest, use of the body worn camera shall continue regardless of consent being granted.

- (2) When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, notify the apparent crime victim of body camera usage and inquire if continued use is acceptable. If the apparent crime victim responds in a negative fashion, the law enforcement officer shall immediately discontinue use of the body camera; and
  - (3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body camera. If the person seeking to remain anonymous responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera.
  - (4) Unless the encounter occurs in a location where there is an expectation of privacy, a law enforcement officer does not have an obligation to cease a body camera recording when interacting with an individual suspected of involvement in unlawful conduct, even if the individual requests the recording to be stopped.
- (e) In instances where the individual requests the law enforcement officer to discontinue the use of a body camera made pursuant to subsection (d), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.
  - (f) When there is an occurrence of a body camera either failing to activate and begin recording or failing cease recording, a law enforcement officer will denote this along with any additional relevant details regarding such an occurrence.

- (1) During interactions where there is an expectation that the body camera would be activated, a law enforcement officer should periodically check the body camera to assess that it is functioning properly.
- (g) Body cameras shall not be used surreptitiously. Specifically, law enforcement 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.
- (h) Law enforcement officers shall avoid using body cameras to record for the sole purpose of gathering intelligence information on First Amendment protected activities such as speech, associations, or religion. Body cameras shall not be equipped with or subjected to any real time facial recognition technologies. This shall not be construed to limit lawful use of body cameras to record investigative encounters between a law enforcement officer and a member of the public or activity that raises an articulable suspicion of possible on-going or imminent criminal conduct.
- (i) Law enforcement officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, nor within any restroom facilities, except when responding to an imminent threat to life or health.
- (j) Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for six (6) months from the date it was recorded, after which time such footage shall be permanently deleted.
  - (1) During the six (6) month retention period, people shall have the right to inspect or obtain a copy of the body camera footage in accordance with the provisions of Vermont's Public Records Act found within Title 1, Chapter 5, or the requirements of discovery pursuant to litigation.

- (2) When a body camera 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 body camera audio or video footage under the law.
  - (3) In instances where a body camera is activated mistakenly and records no discernable human activity, after 14 days, such footage may be permanently deleted by the law enforcement agency. The time, date, length of recording, assigned body camera designator, and a brief summary of the image depicted shall be documented in some fashion by the law enforcement agency prior to permanent deletion.
- (k) Notwithstanding the retention and deletion requirements in subsection (j):
- (1) Video footage shall be automatically retained for no less than three (3) years if the video footage captures an interaction or event involving:
    - (A) Any use of force; or
    - (B) An encounter about which a complaint has been registered by a subject of the video footage.
  - (2) Body camera video footage shall also be retained for no less than three (3) years if a longer retention period is voluntarily requested by:
    - (A) The law enforcement officer whose body camera recorded the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;
    - (B) Any law enforcement officer who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

- (C) Any superior officer of a law enforcement officer whose body camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary or exculpatory value;
  - (D) Any law enforcement officer, if the video footage is being retained solely and exclusively for police training purposes;
  - (E) Any member of the public who is a subject of the video footage;
  - (F) Any parent or legal guardian of a minor who is a subject of the video footage; or
  - (G) A deceased subject's spouse, next of kin, or legally authorized designee.
- (l) To effectuate subsections (k)(2)(E), (k)(2)(F) and (k)(2)(G), any member of the public who is a subject of video footage, the parent or legal guardian of a minor who is a subject of the video footage, or a deceased subject's next of kin or legally authorized designee, pursuant to the provisions of the Public Records Act, shall be permitted to review the specific video footage in question in order to make a determination as to whether they will voluntarily request it be subjected to a three (3) year retention period.
- (m) All video footage of an interaction or event captured by a body camera, if that interaction or event is identified with reasonable specificity and requested by a member of the public, shall be provided to the person or entity making the request in accordance with the procedures for requesting and providing government records set forth in the Public Records Act. A law enforcement officer should complete an initial report, statement, or interview prior to obtaining an account of or reviewing any body camera video footage that is subject to the provisions of subsection (j)(1), unless doing so is necessary, while in the field, to address an immediate threat to life or safety.
- (1) Upon obtaining an account or review of the body camera video depicting the recorded

event; the law enforcement officer may provide additional details in the form of a supplemental report, supplemental statement, or follow-up interview. The law enforcement officer should articulate the additional information contained within the supplemental documentation.

- (n) Video footage that is not subject to a minimum three (3) year retention period shall not be:
  - (1) Viewed by any superior officer of a law enforcement officer whose body camera recorded the footage absent a specific allegation of misconduct; or
  - (2) Subjected to facial recognition or any other form of automated analysis or analytics of any kind, unless:
    - (A) A judicial warrant providing authorization is obtained;
    - (B) The judicial warrant specifies the precise video recording to which the authorization applies;
    - (C) The authorizing court finds there is probable cause to believe the video footage contains evidence that is relevant to an ongoing felony criminal investigation; and
    - (D) The judicial warrant is consistent with the prohibitions contained in Section 1(g) of this Act.
- (o) Notwithstanding existing legislation governing public records, video footage shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.
- (p) Where a law enforcement agency authorizes a third-party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view, or alter any video footage, except to delete videos as required by law or agency retention policies.

- (q) Should any law enforcement officer, employee, or agent fail to adhere to the recording or retention requirements contained in this chapter, intentionally interfere with a body camera's ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation:
  - (1) Appropriate disciplinary action shall be taken against the individual officer, employee or agent.
  
- (r) Whenever a law enforcement officer equipped with a body camera is involved in, a witness to, or within viewable sight range of either a police use of force that results in a death, a police use of force where the discharge of a firearm results in an injury, or any law enforcement officer conduct that becomes the subject of a criminal investigation:
  - (1) Such officer's body camera shall be immediately seized by the officer's agency or department, or the agency or department conducting the related criminal investigation, and maintained in accordance with the rules governing the preservation of evidence (also, refer to other agency policy as necessary);
  - (2) All data on the seized body camera shall be maintained in accordance with the rules governing the preservation of evidence (also, refer to other agency policy as necessary); and
  - (3) A copy of the data on the seized body camera shall be made in accordance with prevailing forensic standards for data collection and reproduction and shall be made available to the public pursuant to the Public Records Act.
  
- (s) Body camera video footage may only be offered as evidence by any government entity, agency, department, prosecutorial office, in accordance with established rules of evidence.

- (t) Any law enforcement policy or other guidance regarding body cameras, their use, or the video footage therefrom that is adopted by a state, county, or local government entity or agency, including any police or sheriff's department, should be made publicly available on that entity's or agency's website.
- (u) Nothing in this chapter shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.
- (v) As used in this policy:
  - (1) "Law enforcement officer" shall mean any person authorized by law to conduct searches and effectuate arrests and who is employed by the state, by a state subsidiary, or by a county, municipal, or metropolitan form of government.
  - (2) "Subject of the video footage" shall mean any identifiable law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording, and shall not include people who only incidentally appear on the recording.
  - (3) "Use of force" shall mean any action by a law enforcement officer that (A) results in death, injury, complaint of injury, or complaint of pain that persists beyond the use of a physical control hold, or (B) involves the use of a weapon, including a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy device, or firearm, against a member of the public, or (C) involves any intentional pointing of a firearm at a member of the public.



(4) "Video footage" shall mean any images or audio recorded by a body camera.