

Legal Analysis of Jay-Z's 99 Problem's Second Verse

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The year is '94, in my trunk is raw

In my rearview mirror is the motherfuckin' law

- An investigatory traffic stop requires an officer to have reasonable and articulable suspicion that a crime has occurred. Reasonable suspicion, while requiring less of a showing than probable cause, requires at least a minimal level of objective justification for making the stop. **United States v. Sokolow, 490 U.S. 1 (1989)**. See also, **Bauder v. Commonwealth, 299 S.W.3d 588, 590–91 (Ky. 2009) (citing Terry v. Ohio, 392 U.S. 1, 30(1968))** (“A police officer may constitutionally conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.”)

Got two choices, y'all: pull over the car or

Bounce on the double, put the pedal to the floor

And I ain't tryin' to see no highway chase with Jake

520.095 Fleeing or evading police in the first degree.

- (1) A person is guilty of fleeing or evading police in the first degree:
 - (a) When, while operating a motor vehicle with intent to elude or flee, the person knowingly or wantonly disobeys a direction to stop his or her motor vehicle, given by a person recognized to be a police officer, and at least one (1) of the following conditions exists:
 1. The person is fleeing immediately after committing an act of domestic violence as defined in KRS 403.720;
 2. The person is driving under the influence of alcohol or any other substance or combination of substances in violation of KRS 189A.010;
 3. The person is driving while his or her driver's license is suspended for violating KRS 189A.010; or
 4. By fleeing or eluding, the person is the cause, or creates substantial risk, of serious physical injury or death to any person or property; or
 - (b) When, as a pedestrian, and with intent to elude or flee, the person knowingly or wantonly disobeys an order to stop, given by a person recognized to be a peace officer, and at least one (1) of the following conditions exists:
 1. The person is fleeing immediately after committing an act of domestic violence as defined in KRS 403.720; or
 2. By fleeing or eluding, the person is the cause of, or creates a substantial risk of, serious physical injury or death to any person or property.
- (2) Fleeing or evading police in the first degree is a Class D felony.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 606, sec. 161, effective July 15, 1998.

- **California v. Hodari, 499 U.S. 621, 629 (1991)** – evidence abandoned during flight from attempted seizure is not suppressible even if the officer lacked reasonable suspicion for the attempted seizure)

Plus I got a few dollars, I can fight the case

- **Sixth Amendment to the United States Constitution** – “[i]n all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defence [sic].”
- **Kentucky Rules of Criminal Procedure RCr 2.14(1)** provide an individual a right to contact an attorney “as soon as practicable for the purpose of securing the services of an attorney.”

So I pull over to the side of the road

- **Delaware v. Prouse, 440 U.S. 648, 653 (1979)** - passengers are also seized, for Fourth Amendment purposes, during traffic stops, and thus also have standing to raise Fourth Amendment claims based on the illegality of the stop

I heard, "Son, do you know why I'm stopping you for?"

- This interaction should be memorialized on body cam.
- See attached Lexington Police Department Policy on Body Cams
- **Kentucky is a One-Party Consent State - KRS 526.010** - “Eavesdrop” means to overhear, record, amplify or transmit any part of a wire or oral communication of others without the consent of at least one (1) party thereto by means of any electronic, mechanical or other device.
- **Butler v. Commonwealth, 367 S.W.3d 609 (Ky. App. 2012)** – interrogation during traffic stop is not subject to Miranda

‘Cause I'm young and I'm black and my hat's real low?

Do I look like a mind reader, sir? I don't know

Am I under arrest or should I guess some more?

- **Whren v. United States, 517 U.S. 806, 813 (1996)** – pretextual stops are allowed as long as there is reasonable and articulable suspicion a traffic violation had occurred.
- **Greer v. Commonwealth, 514 S.W.3d 566 (Ky. App. 2017)** – officer’s subjective intentions in conducting a traffic stop is irrelevant.

"Well, you was doing 55 in a 54

- **Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001)** – holding that the Fourth Amendment permits full custodial arrests even for misdemeanors not punishable by jail time

License and registration and step out of the car

Are you carrying a weapon on you? I know a lot of you are."

I ain't steppin' out of shit, all my paper's legit

- **Pennsylvania v. Mimms, 434 U.S. 106, 111 n.6 (1977)** – Once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violation the Fourth Amendment's proscription of unreasonable searches and seizures
- **Michigan v. Long, 463 U.S. 1032 (1983)** – extended the Terry v. Ohio rationale to vehicle stops, allowing for a "frisk" of the car itself – that is, a search of the car for readily available weapons.
- **Carlisle v. Commonwealth, 601 S.W. 3d 168 (Ky. 2020)** – officer reasonably may ask for driver's identification and perform a criminal-records check during traffic stop

"Well, do you mind if I look around the car a little bit?"

- He's asking for a consent to search the vehicle.
- **Combs v. Commonwealth, 965 S.W.2d 161, 163 (Ky. 1998)** – generally the Constitution of the United States and Kentucky require that all searches be conducted pursuant to a search warrant supported by probable cause.
- **Commonwealth v. Jones, 217 S.W.3d 190, 198 (Ky. 2006)** – one exception is that a proper consent terminates the need for a search warrant

Well, my glove compartment is locked, so is the trunk in the back

And I know my rights, so you gon' need a warrant for that

- **Williams v. Commonwealth, 147 S.W.3d 1, 8 (Ky. 2004)** – Our Supreme Court has recognized that a warrantless search preceding or following an arrest does not violate the constitution so long as probable cause existed to make the arrest prior to the search
- **Dunn v. Commonwealth, 199 S.W.3d 775, 777 (Ky. App. 2006)** – Plain Smell Exception - the smell of marijuana coming from a person's vehicle (gives) an officer probable cause to search the person
- **Mayfield v. Commonwealth, 590 S.W.3d 300 (Ky. App. 2019)** – Plain View Exception - An officer may lawfully seize evidence under this doctrine, if: (1) the officer is lawfully located in a place from which he can plainly see the object; (2) he has a lawful right of access to the object itself; and (3) the object's "incriminating character" is also "immediately apparent."

"Aren't you sharp as a tack?"

You some type of lawyer or something?

Somebody important or something?"

Well, I ain't passed the bar, but I know a little bit

Enough that you won't illegally search my shit

- **Kentucky Rules of Criminal Procedure 8.27 – Suppression of Evidence**
 - o Must be filed by the deadline set by the court, if no deadline within a reasonable time before trial
 - o Production of Witness's Statements – no later than 48 hours before a suppression hearing, a party who reasonably anticipates calling a person to testify as a witness at the suppression hearing shall furnish every other party with a copy of all statements of such person that related to the subject matter of that person's anticipated testimony
 - o Briefing – The court shall allow a party to file a brief in support of or in opposition to any such motion or objection, either in advance of the hearing, upon its final adjournment, or both
- **Commonwealth v. Garrett, 585 S.W.3d 780 (Ky. App. 2019)** – burden is on the prosecution to show that a warrantless search comes within an exception to the rule that a search must rest upon a valid warrant

"Well, we'll see how smart you are when the K9 come!"

- **Rodriguez v. United States, 575 U.S. 346, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015):**
 - o [A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation," (quoting *Caballes, supra*).
- **Davis v. Commonwealth, 484 S.W.3d 288 (Ky. 2016)** – recognized the holding of Rodriguez and overruled *Epps and Johnson*.
- **Commonwealth v. Smith, 542 S.W.3d 276 (Ky. 2018)** – It's not just the amount of time reasonably necessary to complete the necessary actions incident to the stop; the officer must actually do the things related to the stop.
- **Commonwealth v. Moberly, 551 S.W.3d 26 (Ky. 2018)** – nervous behavior, brow sweat and smoke blowing insufficient to create a "new reasonable articulable suspicion to justify a new stop."
 - o "This opinion is not for Rakim Moberly. He has pleaded guilty and has already served out his prison sentence for these crimes. **We render this opinion for the untold numbers of innocent Kentucky citizens who have had "criminal charges" and may become nervous and sweaty and look around when confronted by police at a traffic stop at night,** and if smoking at the time, would reasonably direct the smoke away from the officer. **They have the right to live their lives unfettered by police having no reasonable articulable suspicion to interfere.** The Commonwealth's position is tantamount to a rule that says those citizens have no Fourth

Amendment protection against unreasonable searches and seizures. We reject that position. [Emphasis added.]”

- ***Commonwealth v. Lane*, 553 S.W.3d 203 (Ky. 2018)** – police must pursue acts incident to a stop with reasonable diligence
- ***Warick v. Commonwealth*, 592 S.W.3d 276 (Ky. 2019)**
- **Creative extensions of this precedent:**
 - o Unlawful prolongment when officer training in DUI cases



Lexington Police Department

Lexington, Kentucky

GENERAL ORDER

BY THE AUTHORITY OF THE CHIEF OF POLICE

G.O. 2015-15B Body-Worn Cameras

Rescinds: GO 2015-15A

Effective Date: 04/07/20

Originally Issued: 2016

Distribution

| All Department Employees

I. PURPOSE

The purpose of this policy is to establish guidelines regarding the use, management, storage, and retrieval of the audio and video recordings from body-worn cameras (BWCs) so that officers may systematically and automatically record their contacts with the public in accordance with applicable laws and department policy.

II. POLICY

It is the policy of the Lexington Police Department that officers issued body-worn cameras (BWCs) shall use them to record contacts and interactions that occur between officers and members of the public, suspects, and others in a wide variety of situations. BWCs also provide supplemental documentation for criminal investigations and administrative investigations.

It is also department policy that BWCs are utilized by officers to promote transparency in accordance with state law and accountability for officers and the community through objective evidence.

III. DEFINITIONS

Audit: The supervisor's review of BWC recordings to ensure compliance with departmental policies.

Body-Worn Camera (BWC): An on the body video and audio recording system assigned to an officer as a means of documenting interactions between officers and the public. This system will be used to document events and capture data to be preserved in a web-based digital storage facility.

Body-Worn Camera Administrator: Employee with full access to user rights and to the current department storage solution. The body-worn camera administrator assigns and tracks master inventory of equipment, controls passwords and end user security access rights, conducts quality checks of uploaded BWC data video and sound quality, and coordinates data retention. The department's body-worn camera administrator is designated by the Chief of Police.

Buffering Mode: An officer places their BWC in Buffering Mode per currently approved procedures. While in Buffering Mode the BWC is continually recording video only (no audio), but is not committing it to memory. Once the officer activates their BWC to Event Mode, the previous 30 seconds of video is then committed to memory.

BWC Recording: Refers to all data and associated metadata digitally recorded by a BWC. Each recording has an audit trail that tracks the date and time of each person's accesses to the recording

within the system.

Data: Refers to the audio and video recordings digitally recorded by the BWC, uploaded to the department's current storage solution, stored digitally and encrypted.

Docking Stations: Docking stations are installed at various department locations. When an officer inserts the BWC equipment into a designated docking station it simultaneously recharges the BWC equipment batteries and uploads all BWC recordings (digitally encrypted data) to the current department storage solution in a secure manner that prevents the BWC recordings from being altered.

End User: An officer or designated employee with individual account access rights to the current department storage solution.

Event Mode: An officer activates their BWC from Buffering Mode to Event Mode per currently approved procedures. When activated to Mode the BWC commits to memory the previous 30 seconds of buffered video and begins recording both audio and video. The BWC has the battery life to record audio and video up to 12 hours while in Event Mode.

Law Enforcement Activity: Any activity performed by an officer in an official capacity for the purposes of maintaining public order and enforcing the law, particularly the activities of prevention, detection, and investigation of crime and the apprehension of criminals.

Law Enforcement Contact: Direct or potential contacts with members of the public, investigative or otherwise which occur within the performance of an officer's official duties.

Release: To provide a copy of a BWC recording.

Storage Solution: The department's current storage solution is an online web-based digital data storage facility which stores digitally encrypted data in a highly secure environment accessible to authorized department employees based on their assigned levels of security clearance.

IV. USES OF BWCs

A. The department has adopted the use of body-worn cameras to accomplish several objectives, including:

1. To enhance public trust and strengthen departmental transparency by having a clearly documented, firsthand, objective account of interactions with victims, witnesses, and others during police-public encounters, arrests, and critical incidents.
2. To increase officer safety.
3. To reduce complaints and be useful for officers in the favorable resolution of both administrative and criminal complaints and as a defense resource in cases of civil liability.
4. The availability of BWC audio and video recordings as evidence can be the key to successful prosecution.

5. Recordings arrests and the events leading up to an arrest is an excellent means of documenting the circumstances establishing probable cause for arrest, the clear and accurate reading of items such as *Miranda* and other rights related to custodial interrogation to the suspect, and an invocation or waiver of those rights by the suspect.

6. To provide additional information to help supervisors evaluate officer performance in a more complete and fair manner.

Note: While BWCs may be useful for providing supplemental documentation of crime scenes or incident scenes; they should not take the place of primary evidence collection and documentation procedures.

B. Officers are not required to inform individuals that they are being recorded. Officers should answer truthfully if an individual asks if they are being recorded, unless this information could agitate an individual or create a safety issue for the officer.

V. PROCEDURES

A. When and Where to Record

Note: Only those officers who have been trained in the use of BWCs and who have been issued BWC equipment as authorized by the Chief of Police are required to wear and utilize BWCs in accordance with their training and with department policies.

1. Officers in uniform who are operating a department vehicle to or from home while reporting for or returning from a uniformed regular duty assignment, a uniformed overtime assignment, or uniformed off-duty employment shall properly wear their BWC and place it in Buffering Mode, or ensure it is in Buffering Mode, regardless of duty status while in Fayette County.

a. If a uniformed officer described in 1. above encounters or responds to a circumstance involving a law enforcement contact or law enforcement activity that would require an on-duty officer to activate their BWC to Event Mode, the officer is likewise required to activate their BWC to Event Mode (and confirm that it is recording) for these incidents.

2. A uniformed officer operating their own vehicle (as outlined in 1. and 1. a. above) who encounters an incident and opts to exercise their police authority is also required to properly wear their BWC and to activate their BWC to Event Mode as outlined in policy. These officers are encouraged to place their BWC in Buffering Mode while in uniform in their own vehicle to facilitate BWC activation as needed.

3. Officers who have not already done so shall place their BWC in Buffering Mode at the end of the shift's or assignment's opening roll call, or when they are ready to receive and respond to calls for service, or when they begin working the overtime assignment or off-duty employment.

a. The BWC should remain in Buffering Mode until an officer inserts their BWC into a designated docking station prior to the end of their shift or assignment for recharging and to facilitate automatic video/audio upload of all their BWC

recordings.

Note: Properly docked BWCs shall not be removed from their docking station before the uploading of recordings is complete and the battery has been fully recharged.

Note: At the conclusion of the recharge/upload cycle, the BWC is automatically cleared of all previously recorded data.

b. Officers shall then attach their other (previously docked) BWC to their uniform and place it in Buffering Mode. This BWC will remain in Buffering Mode as outlined in 1. and 1. a. above.

4. Officers are required to activate their BWCs to Event Mode as outlined in this policy, keeping in mind that officer safety is always paramount.

a. It is understood that, in extremely rare situations, an officer may become involved in a sudden and unanticipated situation requiring immediate action to prevent injury to themselves or others, to make an arrest, and/or to prevent the destruction of evidence. If exigent safety concerns prevent the immediate activation of the BWC, the officer will activate their BWC at the first available opportunity when it is safe and practical to do so.

b. Likewise, if the above circumstances prevent the officer from confirming that their BWC is recording, they will confirm that it is recording at the first available opportunity.

5. Officers shall activate their BWC to Event Mode, and confirm that it is recording, for the following law enforcement contacts, law enforcement activities, events, and circumstances.

a. Prior to their arrival at the scene to any call for service or crime-related interactions with individuals.

Note: This includes additional responding officers to a scene, regardless of whether they were dispatched. They shall activate their BWC prior to their arrival at the scene.

b. Prior to performing self-initiated activities that would normally involve notifying E911.

c. Prior to initiating or attempting to initiate a law enforcement contact, including but not limited to traffic stops, motorist assists and occupied vehicle contacts.

Note: All traffic stops shall be recorded in their entirety, which includes the following of a vehicle an officer intends to stop or has failed to stop, until the officer has left the stop or has stopped following the vehicle.

d. Prior to any operation as an emergency vehicle and prior to any involvement in a

vehicle pursuit or foot pursuit.

e. Prior to conducting enforcement or investigative stops, including voluntary contacts and investigatory detentions.

f. When contacting a victim, witness, suspect, or when transporting a prisoner.

g. When it is reasonably likely that law enforcement action will be taken (making an arrest; issuing a summons or citation; use of force).

h. Prior to any search, including but not limited to executing a consent search; searches or inventories of vehicles; searches (including search warrants or exigent searches) of residences, buildings, and other places; and canine tracks and building searches.

1. Officers will use their BWC to record all consent searches in their entirety.

2. During a consent search officers shall also record themselves asking the person for consent and the person's response to that request.

i. When assisting other law enforcement agencies that are engaged in official law enforcement activities.

j. Prior to the discharge of a firearm euthanizing an injured non-domesticated animal.

k. When, at the officer's discretion, the BWC recording may have evidentiary or administrative value, including parking enforcement or the towing of vehicles.

l. When interacting with an individual who requests that the camera be turned on or with a person behaving in an erratic manner.

m. When directed to activate the BWC by a supervisor.

Note: Nothing in this policy prohibits an officer from activating their BWC whenever they determine that a BWC recording may be appropriate and/or valuable to document an incident. When an officer activates their BWC and such activation is not required by policy and the circumstances do not require continued recording, they may use their discretion when deciding to stop recording.

Note: Officers are not required to record report calls taken over the telephone.

6. Once the BWC is activated, and with few exceptions as outlined in this policy, officers are required to record the entire incident or encounter without interruption until the event that prompted the activation has concluded and/or the officer has left the scene, and/or they have transferred custody of the prisoner to another officer.

a. When an officer is involved in a pursuit as a primary or secondary unit and the pursuit is terminated either by the officer, by another officer involved in the pursuit, by a supervisor, or by E911, the officer's BWC shall continue recording until they have

done all of the following:

1. They have notified E911 on the radio by voice transmission that they are terminating their involvement in the pursuit, and;
2. They have actually terminated their involvement in the pursuit by turning off the vehicle's emergency lights and siren, and;
3. They have either stopped their vehicle entirely or are proceeding in a different direction other than the direction of travel of the vehicle that they are no longer pursuing.

b. An officer who transports a prisoner will continue to record throughout the transport process until the transfer of custody of the prisoner is completed and the officer has physically left the detention facility.

Note: The officer will comply with the facility's recording guidelines when transferring custody of a juvenile prisoner to a juvenile detention facility.

7. An interruption of an officer's BWC recording should only occur on rare occasions, as the interruptions may potentially have an adverse impact on prosecution. When an officer decides it is necessary to interrupt their BWC recording within constraints of this policy, the officer will:

- a. Verbally indicate on their BWC their intent to stop the recording (and note the reason for stopping) before they stop the recording by placing the BWC into Buffering Mode, and
- b. Upon reactivation to Event Mode, state that they have restarted their BWC recording.
- c. Verbally notify their supervisor, prior to the end of their shift or assignment, that they made the decision to interrupt a BWC recording.

d. Document the circumstances of their BWC recording interruption on:

1. The appropriate documents, if any were generated for the event, and
2. A BlueTeam report.

e. If an officer fails to activate their BWC for a law enforcement contact or activity, event, or scene which requires BWC recording, or fails to completely record their participation in, arrival at and/or their entire involvement, the officer is required to:

1. Verbally notify their supervisor, prior to the end of their shift or assignment, of the circumstances.
2. Document the circumstances of the lack of recording or the incomplete BWC recording on:

- a. The appropriate documents, if any were generated for the event, and
 - b. A BlueTeam report.
8. The use of BWCs for recording official activities at special and/or large scale events will be at the discretion of the incident commander of the special event.
- a. The incident commander will instruct officers on the types of activities that will be recorded.
 - b. Officers will activate their BWCs and record law enforcement contacts and law enforcement activities as directed in this policy and in accordance with the instructions provided by the incident commander.
 - c. Officers who work special and/or large scale events where there is no incident commander shall wear and activate their BWC in accordance with this policy.

B. Restrictions on Using the BWC (When and Where Not to Record)

1. BWCs will only be used for official law enforcement purposes in accordance with applicable law and departmental policy.
 - a. The BWC will not be used for non-law enforcement or personal use, or to record personal activities.
 - b. Officers will only access, review and view their own BWC recordings or, and with prior supervisory approval, those that they have a legitimate law enforcement purpose to review.
 - c. Employees will only access, review and view those BWC recordings that they have a legitimate law enforcement purpose to review (e.g. review by the Open Records Unit as a result of an open records request, etc.).
2. The BWC shall not generally be used to record:
 - a. Communications and conversations with other police department employees without their knowledge, unless approved by the Chief of Police.
 - b. When the officer is on break, during meals, or otherwise engaged in personal activities.
3. Additional situations where BWCs may not be activated, or BWC recordings may be interrupted due to safety or confidentiality concerns include, but are not limited to:
 - a. Activities at a tactical situation or location incident command post. In these situations, the incident commander or designee has the discretion to direct officers to activate or interrupt their BWCs.

- b. At an officer involved shooting or other critical incident scene, involved officer(s) will leave their BWC activated and recording until directed otherwise by a supervisor.
 - 1. These incidents require the immediate retrieval of a BWC recording. A non-involved supervisor will promptly secure the involved officer's BWC equipment and maintain a chain of custody.
- c. Incidents where the Hazardous Devices Unit Commander, or designee, or a fire department representative believes that the use of the BWC may create a danger of fire, explosion, or other risk to public safety.
- d. When tactical planning is being conducted.
- e. During any court proceedings or conferences with prosecutors or defense attorneys, or during any civil depositions or proceedings.
- f. When discussions occur between individuals with privilege, such as attorneys, members of the clergy, peer support counselors, and medical professionals.
- g. While inside of any juvenile detention facility.
- h. While on school property or during school-related events, officers will only record legitimate law enforcement contacts or activities.
- i. There are circumstances in which the decision to record, or to interrupt the BWC recording, or to record the audio portion only by repositioning the BWC away from the person so that the individual cannot be visually identified is at the officer's discretion. The officer should take into account the potential impact of BWC recordings on the person being recorded and consider whether the potential value of the person's information or statement outweighs the need for an uninterrupted BWC recording. These circumstances include, and are not limited to:
 - 1. When a person wishes to submit an anonymous tip.
 - 2. When an officer is interviewing a crime victim or witness where obtaining the statement from the victim outweighs the need to have the encounter recorded. When possible, requests by victims or witnesses to stop recording should be considered.
 - 3. During encounters with undercover officers or confidential informants, unless:
 - a. The recording is authorized by a supervisor and is conducted specifically for the purpose of documenting a sting, a drug purchase or sale, or other undercover operation in furtherance of a criminal investigation, or
 - b. If an officer determines it is necessary to record a confidential

informant, the officer may opt to record the audio portion only by repositioning their BWC away from the informant.

4. During a strip search.

a. Prior to conducting strip searches, officers will use a BWC to video and audio record a 360° view of the location where the strip search will take place. However, officers will only record the audio portion of the actual strip search by repositioning their BWCs away from the person on whom the strip search is being conducted.

Note: Whenever an officer repositions their BWC to record audio, they are responsible to promptly restore their BWC to the standard point of view as soon as the reason to reposition their BWC has concluded.

j. At the request of the medical staff at any hospital or medical facility, unless the officer is engaging in a law enforcement contact or activity (e.g. active shooter, unruly patient/visitor, etc.).

1. Use of a BWC in a hospital setting shall be limited to investigative use only. Officers will not intentionally record a patient's medical interaction and procedures with hospital personnel unless it directly relates to the investigation.

2. When in a hospital emergency room or similar places, and when possible, officers should attempt to avoid the recording of images that may depict medical or personal information of third parties unrelated to the investigation.

k. Officers assigned to Guard Duty are generally not required to activate their BWC and record:

1. If the officer is outside of the prisoner's hospital room, or

2. If the officer is inside the prisoner's hospital room and no law enforcement related contacts or interactions are taking place.

Note: Whenever the officer is called into the prisoner's hospital room by the hospital staff or the prisoner, or whenever the officer has to address an issue with the prisoner, the BWC will be activated.

4. Unless present in an official capacity, officers should not activate their BWC, or they should interrupt BWC recording and reactivate it per current procedures, in places where an individual unrelated to the investigation would have a reasonable expectation of privacy, such as locker rooms, dressing rooms, restrooms, doctor's office examination rooms, or other places where there is a similar expectation of privacy. An exception is when the location is the scene of an incident or the recording is required for a specific law enforcement activity.

5. Officers will not intentionally obstruct the view of their BWC except in the situations outlined above.

C. BWC Use

1. Department issued BWCs are assigned to officers as authorized by the Chief of Police.
2. Only officers who have completed a department approved and/or provided BWC training program are authorized to be assigned department issued BWC equipment.
3. Officers authorized to be assigned BWC equipment shall use only the BWC equipment issued to them by the department.
 - a. Officers shall not utilize another officer's assigned BWC equipment at any time.
 - b. No officer, regardless of their BWC authorization status, is permitted to wear any personal video recorder.
4. Officers are required to wear and use BWC equipment in accordance with policy when they are working any uniformed regular duty assignment or overtime assignment, or any uniformed off-duty employment, unless otherwise directed or authorized by a supervisor.
5. BWC equipment is the responsibility of the individual officer to whom it is assigned.
 - a. Officers are responsible to use BWC equipment with reasonable care to ensure proper functioning.
 - b. BWC equipment will only be stored in secure locations, per current training and department procedures, when they are not in use.
6. Only fully operational BWC equipment shall be used. Officers will visually inspect their BWCs for damage, and verify that it is functioning properly and is appropriately charged prior to, during, and after each shift, and shall notify their supervisor of any problems.
7. If their BWC malfunctions or becomes inoperable during an officer's shift, uniformed overtime assignment or uniformed off-duty employment, the officer shall immediately:
 - a. Notify their supervisor and take prompt actions to obtain a fully operational BWC.

Note: Officers and supervisors shall not attempt to make repairs to BWC equipment.
 - b. The officer is responsible to document in all their electronic case reports and uniform citations the reason for lack of BWC recordings.
 - c. If the problem is or appears to be a malfunctioning BWC cable, the officer can promptly obtain a replacement BWC cables from:
 1. The body-worn camera administrator in the Computer Information Systems (CIS) Unit (during normal business hours), or

2. Central Records Reports Desk (on a twenty-four (24) hour basis).

d. If the problem is not related to the BWC cable, or if it is not resolved by obtaining a replacement BWC cable, the officer is responsible to promptly:

1. Retrieve their docked BWC equipment from their roll call location, and utilize this BWC equipment as a replacement for their malfunctioning or inoperable BWC equipment for the duration of their shift or assignment.

2. Go to CIS and deliver their malfunctioning or inoperable BWC equipment to the body-worn camera administrator or designee. At the discretion of the body-worn camera administrator or designee the officer will either be issued replacement fully operational BWC equipment, or their BWC equipment will be repaired.

3. Notify their supervisor that they have gone to CIS, and their BWC equipment was either repaired or replaced by the body-worn camera administrator or designee.

e. If CIS is closed, or the officer cannot otherwise have their malfunctioning or inoperable BWC equipment repaired or replaced before they are required to dock their operable BWC prior to the end of their shift or assignment, they are responsible to:

1. Notify their supervisor that they will be operating a department vehicle to their home in uniform without wearing any operable BWC equipment.

2. Notify their supervisor (after they have gone to CIS during its normal business hours) that their malfunctioning or inoperable BWC equipment was either repaired or replaced by the body-worn camera administrator or designee.

Note: The supervisor will make the appropriate schedule adjustment when an officer is off duty when they go to CIS.

f. The officer is responsible to make every effort to promptly deliver their malfunctioning or inoperable BWC equipment to CIS for repair or replacement. Whenever possible, this process should be completed before the officer reports for their next regular duty assignment.

8. If any part of an officer's BWC equipment is lost, stolen, or damaged, officers are required to:

a. Immediately report the situation to their supervisor.

b. Forward a memorandum to their supervisor by the end of the officer's next shift or assignment that includes a description of the activity that was recorded by the lost, stolen, or damaged BWC and the circumstances surrounding the loss, theft, or damage.

1. Appropriate reports will be completed when a BWC has been lost, stolen, or damaged as a result of criminal activity.

9. Officers shall routinely position the camera either on their head or on the collar of their uniform shirt or jacket to facilitate recording video and audio from the officer's point of view.

Note: Officers who are assigned the Body2 BWC equipment are exempt from this positioning requirement.

D. BWC Recordings

1. The BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the BWC equipment is designated as the sole property of the Lexington Police Department.

a. The department maintains strict managerial control over all BWC devices and recorded content so that it can ensure the integrity of recordings made by officers.

b. All access to BWC recordings shall be audited as directed by the Chief of Police or designee to ensure that only authorized users are accessing the recordings for legitimate and authorized purposes.

2. BWC audio and video recordings of enforcement or investigative actions are evidence, and subject to rules of disclosure.

Note: Whenever an officer believes that a BWC recorded contact may lead to a complaint from a member of the public, they should bring the recording to the attention of their supervisor as soon as possible.

Note: Officers shall not allow members of the public to review BWC recordings unless authorized by a supervisor of higher organizational authority.

3. BWC recordings are not a replacement or substitution for written electronic case reports or Uniform Citations.

4. Officers will document in all associated reports that a BWC recording was made.

a. Officers will state one of the following notations in an electronic case report, uniform citation, and/or other related documents:

1. "No BWC present"

2. "BWC present- not activated"

3. "BWC present- activated- not reviewed"

4. "BWC present- activated- reviewed"

Note: 'Reviewed' or 'not reviewed' refers to whether or not the officer reviewed their own BWC recording prior to completing their reports or related document(s).

5. Officers are strictly prohibited; unless authorized by the Chief of Police or designee, from:

a. Reviewing, accessing, editing, altering, erasing, duplicating, copying, sharing, uploading/downloading, or releasing BWC recordings for personal or non-law enforcement related purposes or otherwise distributing BWC recordings in any manner without proper approval.

Note: Officers are reminded when they obtain a department BWC recording through the open records process, any distribution or showing of that video may be considered misconduct if that action reflects discredit upon the officer as an employee of the department or reflects negatively on the police department.

b. Using other devices (e.g. cell phones, cameras, etc.) to record video and/or audio from the BWC.

6. Storage

a. All BWC recordings shall be securely uploaded per currently approved department procedures. Officers will dock their BWC to begin the upload of all BWC recordings prior to the end of their shifts or assignments or earlier, if directed by a supervisor.

1. The BWC will not be removed from the docking station until the video and audio has been uploaded.

2. Once the BWC has been docked, the officer is responsible to verify that the BWC was docked correctly and that no error or fault indicators are present. If a docking station error or fault is indicated and the officer is unable to resolve the issue on their own, they are responsible to notify a supervisor of the docking station's error status prior to the end of the officer's shift or assignment.

3. The supervisor is responsible to notify the body-worn camera administrator, in the Computer Information Systems Unit, of any docking station error or fault indicators, prior to the end of the supervisor's shift or assignment.

b. BWC recordings made in an off-duty situation, during off-duty employment or at the end of a shift or assignment after the officer has docked their BWC shall be uploaded at the beginning of the next shift or within 3 days of the situation, whichever is shorter; or earlier, if directed by a supervisor.

c. If a BWC recording includes any portion of an on-duty or off-duty officer's direct involvement in an officer involved shooting or other critical incident:

1. A supervisor will take custody of the officer's BWC, and

2. The officer's BWC recordings shall be uploaded as directed or as coordinated

by a supervisor or the Personal Crimes Section lieutenant immediately following, or as soon as practical, after the incident.

7. Procedures for Categorizing BWC Recordings

- a. Officers may utilize a departmentally issued computer or personal smartphone to view, categorize or add case numbers to BWC recordings.
- b. The officer will provide the necessary information to uniquely identify each BWC recording and its retention category within the current department storage solution. The officer will provide this information prior to the end of the next shift or within 3 days of the incident, whichever is shorter.
- c. The ID field shall be the 10 digit case number for the primary incident. It shall be the four digit year followed by the six digit case number with no spaces or punctuation.
- d. Additional case numbers (e.g. JC-3) shall be placed in the Title field.
- e. The Title field shall be the nature of the call and the incident location (e.g. Domestic Violence – 150 E. Main St. – JC-3# 2017123456).
- f. The Category field is used to establish the retention time period for the BWC recording. At least one category must be selected for each item.
- g. The correct categories should be chosen to ensure the proper retention. BWC recordings which contain evidence shall be categorized to ensure they are available should they be needed for trial.

Note: Additional information about the categories is located in the Resources Folder on the G Drive and in the appendix of this policy.

8. Viewing of Recordings and Review of BWC Recordings

- a. Officers may review their own BWC recordings before or after they are uploaded and per current procedures, unless viewing a BWC recording is otherwise restricted by this policy or unless exempted by the Chief of Police.
- b. After a BWC recording has been uploaded to the current department storage solution, an officer may view their own BWC recording at a department computer by logging into the storage solution and documenting their specific reason for accessing and viewing their own BWC recording, on the BWC file page in the “NOTES” section, prior to viewing their own BWC recording.

Note: The current department storage solution automatically creates a record each time a BWC recording is accessed and it generates a time/date stamp record of each BWC recording accessed by the accessing officer’s name.

- c. Officers are permitted to view their own BWC recordings in the following instances:

1. Prior to or while completing an electronic case report, Uniform Citation or other documentation following an arrest or other law enforcement contact or activity.

2. Prior to courtroom testimony or in preparation for a courtroom presentation.

d. A field training officer (FTO) who is currently assigned a probationary officer is authorized to review their own BWC recordings to assist them with the completion of the Weekly Probationary Officer Observation Reports and the Five-Week Probationary Officer Evaluations.

1. Both the FTO and their currently assigned probationary officer are authorized to review their own BWC recordings with each other. This dual BWC recording review:

- a. Provides the FTO with the opportunity to give their currently assigned probationary officer direct and/or immediate training and officer safety feedback.

- b. Enables the FTO to observe, via reviewing the probationary officer's BWC recordings with them, additional job performances that may have occurred when the FTO was unable to witness the probationary officer's job performance in person.

e. Any detective assigned a case, or any officer conducting a follow-up investigation (including and not limited to Collision Reconstruction Unit officers and Hit-and-Run Unit officers) that involves BWC recordings shall be permitted access to review the BWC recordings. Proper documentation will also be added to the "NOTES" section of the current department storage solution prior to viewing any BWC recordings.

1. Detectives who are assigned a case and officers conducting a follow-up investigation which has BWC recordings shall review the recordings to ensure they are categorized correctly.

2. If they discover a BWC recording is not categorized correctly, they shall change the category to ensure proper retention and notify the recording officer of the change

3. If a detective or an officer places a criminal charge or files a criminal complaint on a case with BWC recording, they shall ensure the category "05-Arrest/Criminal Citation" is added to all recordings from the incident.

4. Any detective or officer investigating a homicide shall ensure the category "07-Homicide" is added to all BWC recordings from the incident.

f. Officers shall not view any BWC recording prior to making an administrative investigation statement in the Public Integrity Unit in the following instances:

1. When the actions of the officer resulted in any individual's death or serious physical injury.

2. When the officer used deadly force.

g. Officers are not permitted to view other officers' BWC recordings unless directed otherwise by the Chief of Police or designee, or their supervisor or when specifically authorized in this policy.

h. Once an officer has made an administrative investigation statement in the Public Integrity Unit, in the instances outlined in f above, the officer will ordinarily be permitted by the Chief of Police or designee to review their own BWC recording and clarify anything the officer observed in the BWC recording. Written clarifications, if appropriate, will be submitted in the form of a memorandum.

Note: An involved officer will not be required to review their own BWC recording.

i. The Chief of Police reserves the right to limit or restrict the viewing of any BWC recording as they deem appropriate.

9. Restricting Access to BWC Recordings Related to Criminal or Administrative Investigations

a. Only authorized employees can view restricted BWC recordings. The following employees have been granted full access to restricted BWC recordings:

1. Command Staff and the BOA administrative section lieutenant.

2. Open Records Unit employees

3. Body-Worn Camera Administrator

4. CIS Unit employees

b. Once an officer or supervisor has categorized a BWC recording as "31-Restricted," only the body-worn camera administrator or the BOA Assistant Chief's designee have the authority to grant access to view restricted BWC recording (beyond those employees listed above to whom access has already been granted).

c. In extremely rare circumstances an officer may temporarily categorize a BWC recording as "31-Restricted" for the purpose of requesting immediate review and possible redaction when a portion of the BWC recording contains extremely sensitive and personal content involving the officer that does not have any legitimate law enforcement purpose or evidentiary or investigative value. The officer is responsible to immediately:

1. Send written notification, via the chain of command, to the BOA Assistant

Chief's office to provide notification that they temporarily added the category "31-Restricted" to a BWC recording pending BOA review.

a. Due to the presence of extremely sensitive and personal content on the BWC recording, the officer will either provide a generic explanation of the circumstances in the written notification, or will request to be contacted directly by the BOA Assistant Chief or designee.

2. The BOA Assistant Chief or designee is responsible to:

a. Ensure the prompt review of the "31-Restricted" BWC recording,

b. Determine whether any redaction(s) will be made to the BWC recording, and ensure their completion as needed,

1. If a redacted version is made:

a. Retain the original version with the sensitive content until it can be deleted per BWC records retention schedules.

b. Make a redacted version of the BWC recording in which only the sensitive content has been redacted.

c. Put a note in the redacted version explaining the reason for the redaction and deletion.

c. Remove the "31-Restricted" category (as appropriate) and ensure the BWC recording is properly categorized, and

d. Notify the officer whether the redaction(s) they requested were completed.

Note: It must be emphasized that an officer opting to temporarily categorize a BWC recording as "31-Restricted" as described above shall rarely occur. Potential inappropriate utilization of category "31-Restricted" by any officer may lead to discipline.

d. Whenever an officer or supervisor conducting a criminal investigation, or a supervisor conducting an administrative investigation determines that access to a BWC recording related to the incident under investigation should be also categorized as "31-Restricted," they will:

1. Restrict access by adding the category "31-Restricted" to all BWC recordings from the incident they determine should be restricted.

2. Immediately send notification, via the chain of command, to the BOA Assistant Chief's office to:

- a. Provide notification and a brief explanation why they added the category “31-Restricted” to one or more BWC recording(s), and
- b. Submit a request for specific officers or units to have access to the restricted BWC recording(s).
- e. Any supervisor can request removal of a category “31-Restricted.” The supervisor will send a request, in writing, via the chain of command to the BOA Assistant Chief’s office explaining the specific reasons why they are requesting that the “31-Restricted” category should be removed. The request will be processed by the BOA office.
- f. When any officer who has been granted access views a restricted BWC recording, they shall:
 - 1. Document the reason for viewing the restricted recording on the BWC “NOTES” field prior to viewing.

10. Tagging an Accidental BWC Recording That is Not Related to Any Law Enforcement Contact, Law Enforcement Activity, or Call for Service

- a. When an officer accidentally activates their BWC and the recording is not sensitive and does not involve any law enforcement contact, activity, or call for service, the officer will:
 - 1. Not request a case number
 - 2. Leave the ID field blank
 - 3. Title the recording “Accidental Activation”
 - 4. Set the category to “01-Non-Evidentiary”
- b. The officer will send written notification, via the chain of command, to the BOA Assistant Chief’s office requesting the recording of the accidental BWC activation be deleted. The officer will provide sufficient information (officer, date and time) to locate the BWC recording.

E. Statutory Provisions for DUI Cases

- 1. KRS 189A.100 specifically addresses the procedures for securing, reviewing, maintaining and destroying video and audio evidence in DUI cases.

KRS 189A.100 Administration of preliminary breath tests -- Visual recording of vehicle pursuits, traffic stops, and field sobriety tests -- Conditions of recording -- Use and destruction of recordings. [Excerpts]

- (2) Law enforcement agencies may record on film or videotape or by other visual and audible means the pursuit of a violator or suspected violator, the traffic stop, or field

sobriety tests administered at the scene of an arrest for violation of KRS 189A.010 or such tests at a police station, jail, or other suitable facility subject to the following conditions:

- (a) The testing is recorded in its entirety (except for blood alcohol analysis and testing); and
- (e) Recordings shall be used for official purposes only, which shall include:
 - 1. Viewing in court;
 - 2. Viewing by the prosecution and defense in preparation for a trial; and
 - 3. Viewing for the purposes of administrative reviews and official administrative proceedings. Recordings shall otherwise be considered confidential records; and
- (f) The videotape or film taken in accordance with this section shall, upon order of the District Court, be destroyed after the later of the following:
 - 1. Fourteen (14) months, if there is no appeal of any criminal or traffic case filed as a result of the videotape or film, or if the videotape or film does not record the actual happening of an incident involving a motor vehicle;
 - 2. Fourteen (14) months after a decision has been made not to prosecute any case upon which an arrest has been made or a citation issued as a result of the videotape or film, if the videotape does not record the actual happening of an accident involving a motor vehicle;
 - 3. Twenty-six (26) months, if there is no appeal of any criminal or traffic case filed as a result of the videotape or film, if the videotape or film records the actual happening of an accident involving a motor vehicle;
 - 4. After all appeals have been exhausted arising from any criminal or traffic case filed as a result of the videotape;
 - 5. At the conclusion of any civil case arising from events depicted on the videotape or film; or
 - 6. At the conclusion of the exhaustion of all appeals arising from any law enforcement agency administrative proceedings arising from events depicted on the videotape or film; and
- (g) Public officials or employees utilizing or showing recordings other than as permitted in this chapter or permitting others to do so shall be guilty of official misconduct in the first degree.

F. Supervisory Responsibilities

1. Supervisors shall ensure that officers properly wear, utilize, and maintain their BWCs, and properly document BWC activation in accordance with department policy and procedures.
2. Supervisors are also responsible to monitor that officers properly dock their BWCs for charging and uploading all their BWC recordings, or that the officer articulates, and they approve, any circumstances preventing this from taking place.
3. When a supervisor is notified by an officer or discovers that an officer has a malfunctioning or inoperable BWC, the supervisor will:
 - a. Ensure that the officer takes prompt and appropriate actions to obtain a replacement BWC cable (if it is the problem), or to:
 1. Switch their malfunctioning BWC equipment with their docked BWC equipment;
 2. Exchange it with or have their malfunctioning BWC equipment repaired by the body-worn camera administrator or designee.
 - b. If appropriate, notify the officer to document in any applicable electronic case reports and Uniform Citations, the reason for lack of BWC recordings.
 - c. Monitor the above situation until ~~the~~ notified by the officer that they have obtained operable BWC equipment.
4. Ensure proper reporting procedures are completed if any part of the officer's BWC equipment is lost, stolen, or damaged; including if this occurred as a result of criminal activity.
5. Supervisors will document monthly inspections of officers' BWCs on the Inspection Sheet (Form #603). Supervisors' monthly BWC inspections (which should be conducted at the start of a shift) shall include verifying that all BWC cables and connectors are in place, are apparently undamaged, and the battery indicator is green.
6. If an officer is involved in an officer involved shooting or other critical incident, a supervisor who responds to the scene is responsible to verbally direct the involved officer when to turn off their BWC. This command will be recorded by the officer's BWC prior to the BWC being turned off.
7. Supervisors will review the appropriate BWC recordings of officers under their direct supervision in the following situations.
 - a. The investigation of an informal complaint against an officer.

Note: Supervisors investigating an informal complaint shall ensure the category "09-Informal Complaint" is added to all BWC recordings from the incident.

b. To review a specific incident in which the officer was involved, including and not limited to when a BlueTeam report is required to be completed, such as:

1. Officer involved shooting or other critical incident.
2. An officer's response to resistance.

Note: Supervisors investigating a critical incident or response to resistance shall ensure the category "08-Critical Incident/Response to Resistance" is added to all BWC recordings from the incident.

3. Vehicle pursuit or foot pursuit.
4. Injury to a prisoner.
5. Injury to an officer.
6. Officer involved collision.

c. During the performance evaluation process to provide, as appropriate, both positive and negative feedback to an officer, or to a probationary officer during their probationary period.

d. When there is an allegation (internally or externally) of abuse or of misconduct by an officer.

Note: The supervisor's review of BWC recordings should also include BWC recordings that were recorded prior to the allegation.

e. When notified by an officer of a situation recorded on the BWC that, in the officer's opinion:

1. May result in a complaint.
2. May have value as a training tool. (Refer to Section G below.)
3. May otherwise be beneficial for the supervisor to review.

f. At the supervisor's discretion.

8. Supervisors shall, on a routine basis, randomly audit BWC recordings by viewing them in order to:

- a. Verify compliance with BWC standards and that the camera is being utilized according to departmental policy.
- b. Assess an officer's overall performance and conduct and whether there is reason to believe that the officer may need additional guidance or training in certain operational areas.

- c. To identify any BWC recording that may benefit future training.

G. Viewing of BWC Recordings for Training Purposes

- 1. A BWC recording may have value as a training tool for individual officers, specific units, and/or the department as a whole.

- a. Unusual or even routine events recorded by an officer's BWC can be used in the basic training academy and in-service training to reinforce appropriate behavior and procedures; enhance communications skills and officer safety habits; and improve feedback provided by FTOs and supervisors.

- 2. Officers who have recorded unusual and/or operational situations or incidents that may have potential value in training are encouraged to inform their supervisor, so that the supervisor can evaluate the recording.

- a. The supervisor will initially review and evaluate the BWC recording prior to forwarding the officer's recommendation, along with their evaluation, via the chain of command, to the BOA Assistant Chief's office.

- b. The Chief of Police has designated that the BOA Assistant Chief's office, in coordination with the Training Section, will review the recommended BWC recording and determine whether to use the BWC recording for training purposes and how best to utilize it. Considerations include:

- 1. The identities of all involved parties on the BWC recording.
 - 2. The sensitivity and overall circumstances of the incident.
 - 3. The benefit of utilizing the BWC recording as a training tool versus communicating the information via other options

- Note: Under no circumstances shall any BWC recordings be used or shown for the sole or primary purpose of bringing ridicule or embarrassment upon any officer, employee, individual, or group.

- c. If the BOA Assistant Chief's office, in coordination with the Training Section (and the Chief of Police, as appropriate), approves the use of the recommended BWC recording as a training tool, and prior to any use of the BWC recording:

- 1. Any officer or employee who appears in the BWC recording shall mandatorily be notified by the Training Section of the approval to use a specific BWC recording in which they appear.

- Note: Any involved officer or employee who has not had access to or has not watched the approved BWC recording may contact the approving supervisor or the Training Section and arrange to watch the BWC recording.

2. Any involved officer or employee who has reason to object to using the BWC recording for training purposes will submit a memo to the BOA Assistant Chief's office, which will consult with the Chief of Police to ultimately determine if the employee's or officer's objection outweighs the training value of the BWC recording.

3. Any involved officer or employee who submitted a memo objecting to the use of a BWC recording for training purposes will be notified in writing of the ultimate determination made by the Chief of Police.

H. Public Integrity Unit Responsibilities

1. In order to ensure compliance with this policy, other department policies and procedures, and to evaluate the overall performance of officers, the Public Integrity Unit shall conduct a random monthly audit of at least 20 BWC recordings, or as determined by the Chief of Police or designee.

2. This random audit will identify instances where a BWC recording has been recorded, or should have been recorded according to this policy, and BWC recordings selected for the audit will be reviewed.

3. The Public Integrity Unit shall compile and track instances when an officer should have activated their BWC but did not and ensure those instances have been recorded in BlueTeam.

4. The Public Integrity Unit shall ensure the category "10-Formal Complaint" is added to all BWC recordings from an incident that results in a formal complaint.

I. BWC Recordings Requests

1. Open records requests for copies of BWC recordings from persons or agencies outside of the department will be directed, in writing, to the Open Records Unit.

2. Requests for a BWC recording, including and not limited to media requests, shall be accepted, received, processed and released to any person in accordance with applicable laws, including but not limited to the Kentucky Open Records Act, and current department policy and procedures.

3. Only that portion of a BWC recording which contains a specific contact in question may be released to the requestor.

4. The Open Records Unit will make appropriate redactions in BWC recordings, prior to releasing the recording to the requestor. Some considerations for redaction may include, but are not limited to, redacting faces of uninvolved juveniles and personally identifiable information.

5. Nothing in this section prevents officers or designated employees from securing or releasing copies of BWC recordings based on requests from the United States Attorney's Office, Fayette Commonwealth's Attorney's Office, or the Fayette County Attorney's Office

for official purposes.

- a. These requests shall be submitted via currently approved department methods.
- b. Sufficient information to locate the proper BWC recording will be included in the request.

J. Records Retention

1. BWC recordings will be retained for a minimum of 30 days (non-evidentiary recordings), with the exception of those recordings which need to be retained longer (evidentiary recordings) due to an investigation (including criminal, administrative, etc.), litigation, or open records request.

- a. These recordings will be maintained until all investigative or legal activity or proceedings are completed, pursuant to KRS or applicable records retention schedules.

2. Recordings containing DUI video evidence will be maintained and destroyed pursuant to KRS 189A.100.

3. All BWC recordings are subject to open records requests as allowed by Kentucky law. Recordings that are the subject of a denied open records request shall be maintained until the dispute between the department and the person or entity requesting the records is resolved.

- a. The Open Records Unit shall ensure the category “12-Denied Open Records Request” is added to all BWC recordings which are requested to be released but are denied.

- b. The Open Records Unit shall ensure the category “12-Denied Open Records Request” is removed from the BWC recordings once the dispute has been resolved.

4. Evidence Disposition

- a. BWC recordings marked with a manual retention category are considered evidence and will be disposed of consistent with GO series 1991-13 Property and Evidence Procedures.

- b. Officers will indicate in the Dispose section of the Property and Evidence Disposition Form (Form #320) when a BWC recording exists and is approved for disposal.

- c. The Property and Evidence Disposition Form (Form #320) will be sent to the Property and Evidence Unit.

- d. The Property and Evidence Unit will forward Forms #320 with BWC recording disposal information to the body-worn camera administrator.

- e. The body-worn camera administrator will delete all BWC recordings for the incident

indicated on Form #320; unless any BWC recording also has an additional category that prevents its deletion, such as 12-Denied Open Records Request.

K. Training

1. Prior to using BWC equipment, officers must be trained in their proper use and related department policy by completing department approved BWC training.
2. The Training Section will coordinate or provide additional training on a regular basis to ensure the continued effective use and operation of the BWC equipment; and to incorporate changes, updates, or other revisions in policy, law, or equipment.

[The appendix begins on the next page.]

Appendix

Body-Worn Cameras Recordings Category Descriptions

The below information provides guidance to assist employees with choosing the correct categories for BWC recordings. This information is not all-inclusive and does not cover every circumstance. If additional assistance is needed, contact a supervisor.

If the BWC recording may have evidentiary value, then one of the categories with a manual retention schedule shall be selected in order to prevent that BWC recording from being disposed of prior to it being needed in court. There does not have to be an arrest made or citation issued for a BWC recording to be considered evidentiary.

01-Non-Evidentiary (30 day retention) (*)

Used for BWC recordings documenting situations where no enforcement action was taken and nothing of evidentiary value was recorded. Some examples of these include:

- * Motorist assists
- * Law enforcement contacts where no enforcement action taken
- * No witness statements were taken
- * Collisions with no serious injuries
- * Accidental activations that are not sensitive and do not involve any law enforcement contact, activity, or call for service

02-Evidentiary (Manual retention) (*)

Used for BWC recordings documenting law enforcement contacts which may have evidentiary value and no other category is appropriate. Some examples of these include:

- * Suspect interviews
- * Victim interviews when they are also a witness to the crime
- * Witness interviews
- * Collisions with serious injuries and the potential for criminal charges
- * Domestic/dating violence and abuse investigations
- * BWC recordings where evidence of the crime is recorded

03-Traffic Citation Only (1 year retention) (*)

Used for BWC recordings documenting traffic stops where only traffic charges were placed and no criminal citations were issued.

04-Traffic Stop - No Citation (30 day retention) (*)

Used for BWC recordings documenting traffic stops where only a warning citation was issued.

05-Arrest/Criminal Citation (Manual retention) (*)

Used for BWC recordings documenting encounters where a criminal citation was issued or an arrest was made by any officer on the call.

Note: This category should be added to all BWC recordings from the incident by the investigating detective whenever they place criminal charges or file a criminal complaint in a case.

06-DUI (Manual retention) (*)

Used for BWC recordings documenting an investigation or charge of DUI. Per KRS 189A.100, these BWC recordings shall be considered as confidential records and shall be used for official purposes only.

07-Homicide (Indefinite retention) (*)

Used for BWC recordings documenting investigations of homicides.

Note: This category should be added to all BWC recordings from the incident by any officer investigating a homicide.

08-Critical Incident/Response to Resistance/ (5 year retention)

Additional category added to BWC recordings related to a critical incident, or involving any level of response to resistance. This should not be the only category assigned to a BWC recording. BWC recordings recorded by supervisors while investigating the incident should have this category as well as the category appropriate for the original incident.

Note: This category should be added by the supervisor or Public Integrity Unit employee who is investigating the critical incident or response to resistance.

09-Informal Complaint (2 year retention)

Additional category added to BWC recordings related to an informal complaint. This should not be the only category assigned to a BWC recording. BWC recordings recorded by supervisors while investigating the complaint should have this category as well as the category appropriate for the original incident.

Note: This category should be added by the supervisor who is investigating the informal complaint.

10-Formal Complaint (Manual retention)

Additional category added to BWC recordings related to a formal complaint. This should not be the only category assigned to a BWC recording.

Note: This category should be added by the Public Integrity Unit employee investigating the formal complaint.

11-Pending Litigation (Manual retention)

Additional category added to BWC recordings related to potential pending litigation. This should not be the only category assigned to a BWC recording.

Note: This category should be added by the body-worn camera administrator at the request of the Office of the Chief of Police.

12-Denied Open Records Request (Manual retention)

Additional category added to all BWC recordings which have been denied release as part of an open records request. This should not be the only category assigned to a BWC recording.

Note: This category should be added by an Open Records Unit employee when they deny the release of the BWC recording.

19-Emergency Response - Never Arrived (30 day retention) (*)

Used for recordings of officers driving to a call they were not dispatched to and at which they never arrived. These BWC recordings will not be subject to the Officer Not on Call error. If the officer actually arrives at the call, they will be marked on the call and use another category.

20-DOT Inspections (2 year retention) (*)

Used for BWC recordings of DOT inspections to ensure the BWC recordings are retained for two years.

31-Restricted (Manual retention)

Additional category added to BWC recordings to restrict them from view by most users. Only authorized employees can view restricted BWC recordings.

32-Redaction (Manual retention)

Additional category added to BWC recordings which have been redacted by Open Records Unit employees. This should not be the only category assigned to a BWC recording.

Note: This category should be added by an Open Records Unit employee when they perform redactions using the currently approved redaction software.

51-Training (Manual retention)

Additional category added to BWC recordings which are approved for use as training tools. This should not be the only category assigned to a BWC recording.

Note: This category should be added by a Training Section employee when a BWC recording is approved for use as a training tool.

52-CEW Logs (Manual retention)

Used for Taser logs uploaded to the current department storage solution.

53-Basic Training Academy (30 day retention)

Used for BWC recordings created by recruits while they are attending the Basic Training Academy.

General Information

1. At least one of the categories with a **red asterisk (*)** must be chosen for every BWC recording. The category with the longest retention will be used to determine how long to keep the BWC recording.
2. BWC recordings with a manual retention need to be disposed of using the normal evidence disposal process. Officers will indicate in the Dispose section of the Property and Evidence Disposition Form (Form #320) that a BWC recording exists and is approved for disposal.
3. Additional categories can be added in the current department storage solution. Use the search tools to find the BWC recordings to which categories need to be added. Check the appropriate BWC recordings and click the “Add Category” button. Select the proper category to be added and click “Update.”

UPDATE ID **ADD CATEGORY** REASSIGN REDACT SHARE DOWNLOAD DELETE RESTORE EXPORT

108999 Files Found | 5 files selected PAGE LAYOUT: Table

	ID	CATEGORY	TITLE	FILE TYPE	OWNER	UPLOADED BY	UPLOAD DATE	RECORDED DATE	STATUS	DURATION
<input checked="" type="checkbox"/>	2017045916	01-Non-Evidentiary	Alarm- 200 Market St Code 12F	Video	Childers, Alex	Childers, Alex	07 Mar 2017 - 06:51:19	07 Mar 2017 - 06:14:42	Active	4:15
<input checked="" type="checkbox"/>	2017045917	02-Evidentiary	163 rand ave #2 theft c-17	Video	Rice, Richard	Rice, Richard	07 Mar 2017 - 07:05:31	07 Mar 2017 - 05:59:00	Active	12:35
<input checked="" type="checkbox"/>	2017045915	01-Non-Evidentiary	Susp Act, 140 E Main	Video	Adkins, Jeremy	Adkins, Jeremy	07 Mar 2017 - 07:10:17	07 Mar 2017 - 05:44:42	Active	3:24
<input checked="" type="checkbox"/>	2017045913	02-Evidentiary	760 Bennett Ave. Unk911 C-3	Video	Hill, Banford	Hill, Banford	07 Mar 2017 - 07:12:56	07 Mar 2017 - 05:31:06	Active	17:44
<input checked="" type="checkbox"/>	2017045892	06-DUI	Traffic Stop New Circle Rd Nicholasvill...	Video	Cole, Michael	Cole, Michael	07 Mar 2017 - 07:25:50	07 Mar 2017 - 05:28:20	Active	14:22