

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



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VIA ELECTRONIC MAIL (tafaverill@nola.gov)

Deputy Superintendent Timothy Averill
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

RE: Amended Chapter 41.3.10

Dear Superintendent Averill:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on the amended Chapter 41.3.10, Body Worn Camera. The OCDM has no objection to the policy as amended.

We believe that the amended Chapter 41.3.10, Body Worn Camera, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 18.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.

Very truly yours,

David Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
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CC: HONORABLE SUSIE MORAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 41.3.10

TITLE: BODY–WORN CAMERA (“BWC”)

EFFECTIVE: 04/05/2015

REVISED: Replaces Policy/Procedure 447

PURPOSE

This Chapter governs the use of the Body–Worn Camera systems and does not apply to or limit the use of the In-Car Camera Systems as defined in Chapter 41.3.8. Certain law enforcement assignments within the New Orleans Police Department may be equipped with an on-body audio/video recording system (BWC) as directed by the Superintendent of Police or the Superintendent’s designee. This system will be used to document events and capture data to be preserved in a Web-based digital storage facility at EVIDENCE.COM. Once captured, these recordings cannot be altered in any way and are protected with multiple layers of encryption. The New Orleans Police Department has adopted the use of *BWC* technology to accomplish the following objectives:

- (a) To promote officer safety.
- (b) To document statements and events during the course of an incident.
- (c) To enhance the law enforcement operator’s ability to document and review statements and actions for internal reporting requirements as well as for courtroom preparation and presentation.
- (d) To preserve visual and audio information for use in current and future investigations.
- (e) To provide an impartial measurement for self-critique and field evaluation during officer training.
- (f) To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of video and audio recordings.

POLICY STATEMENT

1. The New Orleans Police Department is committed to the belief that video/audio documentation of a Department member’s daily encounters is an important and valuable resource for law enforcement. The New Orleans Police Department also is committed to respecting civilians’ reasonable privacy expectations, including but not limited to medical and health privacy and privacy in one’s home.

2. Selected field assignments may be equipped with Body-Worn Camera (“BWC”) devices per Appendix “A” of this policy. The **AXON body** and **AXON flex** systems manufactured by **Taser International** are the only BWC equipment authorized for use. Use of this technology provides for audio/video documentation of a police officer’s enforcement and investigative activities from the perspective of the officer’s person. Benefits to using this equipment can be expected to promote officer safety, result in greater transparency, more effective prosecution, and improved protection against false allegations of excessive use of force, racial profiling, or other misconduct. This policy is intended to achieve an appropriate balance between the benefits of BWC devices and civilians’ reasonable expectations of privacy.
3. The BWC device is used to record certain activities, as set out in this policy, thereby creating an unbiased visual and/or audio record of the incident and a supplement to the officer’s report. Audio or video recordings of enforcement or investigative actions are evidence, and subject to rules of disclosure. It is in the best interest of justice that the Department regulates and controls all forms of evidence collection and storage.

DEFINITIONS

For purposes of this Chapter, the following terms are defined as:

Audio Recording—The electronic recording of conversation, spoken words, or other sounds.

Body-Worn Camera (“BWC”)—Equipment worn by a Department member that captures audio/video signals and includes, at a minimum, a camera, microphone, and recorder. There are two models of BWC systems in use by the New Orleans Police Department: 1) **AXON ‘body’ System** – Self-contained / clip-on audio/video recording device; and 2) **AXON ‘flex’ System** – Variable mount audio/video recording device that includes a cable tethered camera/DVR attached to a controller.

Controller Switch—Master on/off power switch located on the top left, outward-facing corner of the BWC device.

District/Division System Administrator (“DSA”)—Supervisor assigned to the district or division who is responsible for inventory control and operational maintenance of the In-Car Camera system equipment at a District/Division level.

Event Record Button—Push button activation switch located in the center of the BWC device.

EVIDENCE.COM—Online Web-based digital media storage facility. The virtual warehouse stores digitally encrypted data in a highly secure environment accessible to personnel based on assigned levels of security clearance. The New Orleans Police Department account is accessed at: <https://nopd.evidence.com>

Media or Data—For the purposes of this Chapter, references to media or data include photographs, audio recordings and video footage captured by the BWC device. The media are stored digitally and encrypted.

Remote Camera/DVR—Cable tethered camera/DVR affixed to an approved Taser mounting device unique to the **AXON flex** system. Accessories provided with the **AXON flex** system offer a variety of mounting options, such as on glasses, collars, epaulettes, helmets, etc.

Video Recording—The electronic recording of visual images with or without audio component.

GENERAL

4. Department members who have completed authorized training sanctioned by the NOPD Academy shall be the only personnel authorized to use a BWC in an operational setting. Department members assigned these devices are only authorized to audio or video record investigative and/or enforcement activities using departmentally assigned equipment following the practices prescribed within this chapter. The BWC shall be worn at all times while on duty when assigned this device.
5. Department members are **not** authorized to make copies of any recordings for their personal use and are prohibited from using a recording device (such as a phone camera or secondary video camera) to record media from EVIDENCE.COM.
6. Department members assigned a BWC shall not erase, alter, reuse, modify, destroy, abuse, or tamper with BWC audio-video recordings or the device. Department members shall not use other electronic devices or other means to intentionally interfere with the capability of the BWC equipment.
7. BWC equipment will be assigned with priority given to each of the primary patrol shifts in each District and other uniform operations assigned under the Field Operations Bureau based on quantity of operational units in the department's inventory.
8. BWC equipment will be assigned according to the priorities established in **Appendix A**. When a member is transferred, the following shall apply:
 - (a) If the member is transferred to a command that also utilizes a BWC, the equipment shall be relocated with the member.
 - (b) If a member equipped with a BWC is transferred to a command that does not utilize a BWC per **Appendix A**, the member must return his/her BWC to the BWC Office on his/her next Tour of Duty. If the member is unable to return the BWC personally, the DSA of the unit from which the member is being transferred shall make arrangements to return the member's BWC. This includes members transferred to ADD.
 - (c) If the member is transferred from a unit that does not utilize a BWC, the member must obtain a BWC from the BWC Office prior to reporting to his/her new assignment. If the member is unable to obtain a BWC personally, arrangements shall be made with the DSA of the unit to which the member is being transferred to ensure a BWC will be available for that member.
9. Digital recordings shall be preserved for at least two years, or if a case is under investigation or in litigation for longer than two years, at least three years after the final disposition of the matter, including appeals, unless a written request is made to store them for a longer period of time for a legitimate law enforcement purpose.

REQUIRED ACTIVATION OF THE BWC

10. This policy is intended to achieve an appropriate balance between the benefits of BWC devices and civilians' reasonable expectations of privacy. Although this policy identifies those situations in which activation of the BWC is required, an officer has discretion to manually activate the system any time the officer believes it would be appropriate or valuable to document an incident. In exercising this discretion, officers should be aware of, and sensitive to, civilians' reasonable privacy expectations. The BWC shall only be activated for legitimate law enforcement purposes.

Activation of the BWC is required for the following situations:

- (a) All field contacts involving actual or potential criminal conduct within video or audio range;
 - (b) Traffic stops (to include, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops);
 - (c) Emergency responses;
 - (d) Vehicle pursuits;
 - (e) Suspicious vehicles;
 - (f) Arrests and transports;
 - (g) Vehicle searches;
 - (h) Consent to search;
 - (i) Physical or verbal confrontations or use of force;
 - (j) Pedestrian checks/Terry Stops;
 - (k) DWI investigations, including field sobriety tests;
 - (l) Domestic violence calls;
 - (m) Statements made by individuals in the course of an investigation or complaint;
 - (n) Advisements of Miranda rights;
 - (o) Seizure of evidence;
 - (p) Swat rolls;
 - (q) High-risk warrants; and
 - (r) All calls for service.
11. Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.
12. Any other legitimate law enforcement contact where the officer believes that a recording of an incident would be appropriate.
13. The BWC may not be used for the purpose of intimidating an individual or to discourage an individual from observing police activity, making appropriate inquiries of an officer, or making a complaint.
14. Department members have discretion whether to activate a BWC during consensual contacts of a non-criminal nature.

OFFICER RESPONSIBILITIES

15. Prior to beginning each shift, the assigned Department member shall perform an inspection to ensure that the Body-Worn Camera is performing in accordance with the manufacturer's recommendations. If problems are encountered with any component of the system, the BWC equipment shall not be used.
16. At the start of each shift, any member assigned to a District, Division and or Unit that has been provided with body worn cameras shall wear and use the BWC, as directed within this Chapter, while in a uniform or plainclothes capacity. Officers shall wear a BWC while working in a proactive capacity, including but not limited to: traffic checkpoints, directed patrols, and/or traffic enforcement overtime shifts. Members assigned a BWC shall ensure they have adequate recording media for the entire duty assignment and shall test the equipment prior to use according to manufacturer guidelines and testing procedures. Members shall immediately report malfunctioning BWC systems to their immediate supervisor.

17. Inspection, general care and maintenance of a BWC shall be the responsibility of the authorized Department member who has been issued this equipment. BWC equipment shall be operated in accordance with the manufacturer's recommended guidelines, department training and associated department policies.
18. Malfunctions, damage, loss or theft of BWC equipment shall be reported immediately by the assigned Department member to an immediate supervisor. The department member's immediate supervisor shall be responsible for providing written notice to the District/Division System Administrator documenting the suspected cause of equipment failure or corrective action initiated related to possible misuse. All lost or stolen BWC's shall be documented in an incident report. (Refer to **Policy/PR 700, Department Owned and Personal Property**).
19. Body-worn cameras, when worn by District Patrol Officers, shall be worn in the center mass of the officer's chest. Mounting options for SOD personnel shall provide for a frontal view in accordance with uniform specifications (i.e., helmets or other protective gear).
20. Department members issued a BWC shall place the device in the **Event Record Mode** as soon as practical at the onset of a given situation. Once in the **Event Record Mode**, Department members shall continue to record until the completion of the event, or until they have left the scene (this includes recording of statements). Additional arriving units to a scene shall place their BWCs in the **Event Record Mode** as soon as practical (if so equipped), and continue to record until the completion of the event, or they have left the scene (this includes recording of statements).
21. When the BWC is used in an investigative or law enforcement contact, this fact will be documented on any citation, summons, and/or report prepared. Whenever a Department member obtains a video statement, the fact the statement was recorded will be listed in the Incident Report. A video statement is not a replacement for a written or tape recorded statement.
22. Whenever a Department member believes that a recorded event may lead to a citizen complaint, he/she shall bring the recording to the attention of his/her immediate supervisor as soon as possible.

SUPERVISOR RESPONSIBILITIES

23. If a member makes a supervisor aware that a recorded may lead to a citizen complaint, the supervisor should review the recording and conduct any further investigation that he or she deems appropriate. If no incident report or supplemental report directly related to the possible citizen complaint is warranted, details of the contact shall be documented via Interoffice Correspondence (Form 105). The Department member's immediate supervisor shall be responsible for ensuring a copy of any report or correspondence related to the contact is forwarded to his or her respective District/Division Commander, Bureau Deputy Superintendent and the Deputy Superintendent of the Public Integrity Bureau.
24. Supervisors shall issue and inspect BWC equipment assigned to members to ensure operability per testing protocols provided under training.
25. Non-functioning or malfunctioning BWC systems shall not be placed into service.
26. Any BWC equipment malfunction shall be reported immediately in writing, via Form 105,

to the member's or supervisor's respective District/Division System Administrator (DSA) with a copy forwarded to the District/Division Commander. The DSA shall be responsible for coordinating maintenance or repair issues directly to the Master System Administrator (MSA) assigned to the Information Systems Section.

27. Supervisors shall ensure all members with malfunctioning or non-functioning BWC replace their BWC before answering any Calls for Service (except for Code 2 priority calls) by obtaining a replacement BWC from:
 - (a) The Body Worn Camera Office during normal working hours (8 am to 4 pm Monday through Friday excluding holidays); or
 - (b) Communication Services outside normal working hours.
28. Supervisors shall log into EVIDENCE.COM each working day and perform a random review of their subordinates' BWC recordings to ensure category accuracy and the proper use of the BWC.
29. Supervisors shall ensure any officer working under their supervision and working in a field assignment listed in **Appendix A** wears a BWC while working in a proactive capacity. This includes but is not limited to: traffic checkpoints, directed patrols, and/or traffic enforcement overtime shifts.
30. When an incident arises that requires the immediate retrieval of a BWC digital recording (e.g., serious crime scenes, officer-involved shootings, Department vehicle crashes) a supervisor from the involved member's chain of command or the assigned investigator shall respond to the scene to secure the member's BWC and maintain a chain of custody. The chain of custody shall be maintained until the BWC digital recordings have been uploaded, properly labeled and entered into EVIDENCE.COM.

MASTER SYSTEM ADMINISTRATOR (MSA)

31. The Master System Administrator (MSA) is/are supervisor(s) authorized by the New Orleans Police Department and assigned to the Information Systems Section with full access to use rights. The MSA shall coordinate access requests to the recorded events for officers and investigators for legitimate law enforcement purposes or as directed by the Superintendent of Police or his/her designee.
32. The MSA is responsible for:
 - (a) Assigning and tracking inventory of equipment;
 - (b) Password control;
 - (c) End-user security access rights;
 - (d) Quality checks of video and sound quality;
 - (e) Coordinating with the District/Division System Administrators; and
 - (f) Serving as liaison to Taser International representative on operational equipment related matters.

CESSATION OF RECORDING

33. The BWC shall be utilized by any Department member assigned this device during all investigative or enforcement contacts however, there may be limited circumstances when the respect for an individual's privacy or dignity outweighs the need to record an event (e.g. – a victim traumatized following a violent assault). When an officer believes such circumstances exist, or that use of a BWC would impede or limit the cooperation of a victim or witness during an investigative contact, an officer may deactivate the BWC after receiving authorization from a supervisor.
34. Once the BWC system is activated, it shall remain on and shall not be turned off until an investigative or enforcement contact or incident has concluded. For purposes of this section, conclusion of an incident has occurred when an officer has terminated contact with an individual, cleared the scene of a reported incident, or has completed transport of a civilian or an arrestee. In any instance in which cessation of the recording prior to the conclusion of the incident may be permitted, the officer must seek and obtain supervisory approval prior to deactivating the BWC. If supervisory approval cannot be reasonably obtained, officers must document on the BWC the reason for termination of the recording prior to deactivation of the BWC.
35. When handling calls for service or incidents involving the treatment of individuals at a medical facility, Department members may be required to restrict use of a BWC in accordance with facility privacy protocols. Where facility protocols do not allow for the recording of an event for which recording would otherwise be required, an officer must notify his or her supervisor as soon as reasonably practical, and shall document the reasons for the failure to activate the BWC in the incident report.

PROHIBITED AUDIO/VIDEO RECORDING BY EMPLOYEES IN THE WORKPLACE

36. The BWC shall not be used to record non-work related personal activity. The BWC shall not be activated in places where an employee has a reasonable expectation of privacy, such as locker rooms, dressing rooms or restrooms, unless a criminal offense has occurred in these locations, at which time every precaution shall be taken to respect the dignity of the victim by avoiding recording videos of persons who are nude or when sensitive areas are exposed. The BWC shall not be intentionally activated to record conversations of fellow employees during routine, non-enforcement related activities without their knowledge.
37. Department members shall not intentionally record confidential informants or undercover officers unless the recording is conducted specifically for the purpose of documenting a sting, drug purchase/sale, or other undercover operation in furtherance of a criminal investigation.
38. Department members shall not make covert recordings of conversations with other Department members except when necessary in the course of a criminal investigation or for Department administrative investigations **and** only with the express consent of the Superintendent of Police or one of his/her designees: the Deputy Superintendent of the Public Integrity Bureau, the Deputy Superintendent of the Field Operations Bureau, the Deputy Superintendent of the Investigations & Support Bureau, the Deputy Superintendent of the Compliance Bureau, and the Deputy Superintendent of the Management Services Bureau.

39. Body-worn cameras shall not be used for purpose of conducting Departmental administrative investigations, including undercover/plainclothes operations, **without** the approval of the Superintendent of Police or his/her designee. However, this requirement shall not restrict the Public Integrity Bureau's routine access to or review of BWC recordings when investigating complaints of misconduct.

TRAINING

40. All members who are authorized to use BWC equipment must complete mandatory training provided by the NOPD Academy to familiarize themselves with the audio/video recording system and Departmental procedures prior to its use.

BODY-WORN CAMERA MODES OF OPERATION

41. **Pre-Event Buffering Mode:** Device feature through which the camera continuously records and holds the most recent 30 seconds of video prior to record activation. With this feature, the initial event that causes the officer to activate recording is likely to be captured automatically, thereby increasing the capability of recording the entire activity. Pre-event buffering does not occur when the Controller Switch is in the off position.
42. **Event Record Mode:** In this mode, the BWC device saves the buffered video and continues recording audio and video for up to eight hours or the life of the battery. To activate, the end-user must double click the Event Record Button located on the center of the OCM device (an audible tone will sound to alert the end-user the device is now recording). To stop recording, the end-user must push and hold the Event Record Button for three seconds to return to the Pre-Event Buffering Mode.
43. **Operational LED:**
- (a) Solid Red LED - Device Boot up
 - (b) Blinking Green LED – Device Buffering
 - (c) Blinking Red – Device Recording
 - (d) Blinking Yellow – Remote Camera/DVR Disconnect / Other Device Malfunction

CATEGORIZING BWC VIDEOS

44. Department members shall properly categorize each BWC video made. Department members shall categorize a BWC video as follows:
- **ID:** NOPD item number utilizing the corresponding alphabetic character for the month (A-L), followed by a hyphen (-), followed by a five digit incident number (use zeroes to form the five digit number if necessary), followed by a hyphen (-), followed by the year Indicator which is the last two digits of the current year (EXAMPLE: A-12345-14).
 - **CATEGORY:** Choose the applicable category(s) from the dropdown list. (e.g. – field interview, case file, citation, traffic stop, traffic accident, miscellaneous, training or other appropriate category listed for the event, provided, however, that miscellaneous shall be used only where the activity does not reasonably fall within another category).
 - **EVENT:** Replace the “AXON Body Video” label with the address of the incident.

45. Failure to properly categorize a BWC recording may result in disciplinary action.

DELETION OF UNINTENTIONAL RECORDINGS

46. In the event of an unintentional activation of BWC equipment during non-enforcement or non-investigative activities (e.g. a restroom or meal break, or in other situation when a reasonable expectation of employee privacy exists) a Department member may request deletion of the recording.
47. A form 105 detailing the circumstances of an unintentional recording shall be forwarded via the chain of command to the member's District/ Division Commander and, if approved, the actual deletion shall require two-party authorization. One of those parties shall be the member's District/Division Commander, and the other shall be the Master System Administrator.
48. Only the Master System Administrator shall facilitate the actual removal of any record approved for deletion. Records related to any request for the deletion of records shall be maintained by the Master System Administrator.

CHARGING AND UPLOADING PROCEDURE

49. At the end of their shift, Department members issued a BWC shall place the device into an open slot on the Evidence Transfer Manager (ETM docking station) located at their District/Division assignment. This will allow for recharging of the device and media or data transfer from the BWC through the docking station to EVIDENCE.COM.
50. At the conclusion of recharge/upload cycle, the device is automatically cleared of all previously recorded data. The BWC device shall not be removed from the ETM until media or data has been uploaded and the battery has been fully recharged. When complete, a green light will illuminate on the device's associated ETM docking port signifying the BWC is ready for use. Under normal use (routine shift), a recharge/upload cycle can be expected to take between one to three hours to complete.

AUTHORIZED USER ACCESS TO UPLOADED MEDIA OR DATA

51. General access to digital recordings shall be granted to Department-authorized users only. It is the responsibility of authorized users to keep their user names and passwords confidential. Accessing, copying, or releasing any recordings for other than official law enforcement purposes is strictly prohibited, except as required by law.
52. A department member who has been assigned a BWC device may review his or her own BWC recording to help ensure accuracy and consistency of accounts. This can be done by accessing EVIDENCE.COM. To prevent damage, original recordings shall be viewed only by members who are assigned a BWC device through means authorized by the Department. Any review of a BWC by the officer shall be documented in the incident report corresponding with the incident.

53. A Department member involved in any use of force incident or accident causing injuries will be permitted, but will not be required, to review his or her own BWC video recordings prior to providing a recorded statement or completing reports. Witness Department members will only be allowed to review BWC video if it can be determined that their on-scene position would allow them to simultaneously perceive events in question from the same perspective as the involved member.
54. The Superintendent of Police or one of his/her designees (the Deputy Superintendent of the Public Integrity Bureau, the Deputy Superintendent of the Field Operations Bureau, the Deputy Superintendent of the Investigations & Support Bureau, the Deputy Superintendent of the Compliance Bureau, and the Deputy Superintendent of the Management Services Bureau) may authorize an investigator participating in an official Department investigation of a personnel complaint, claims investigation, administrative inquiry, or criminal investigation, access to review specific incidents contained on BWC recordings. Access for any other purpose shall require the express approval of the Superintendent of Police.
55. A supervisor may review specific BWC media or data for the purpose of training, performance review, critique, early intervention inquiries, civil claims, administrative inquiry, or other articulable reason.
56. Field Training Officers may use media captured via a BWC device to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR).
57. Under no circumstances shall members with access to BWC media or data files be allowed to use, show, reproduce or release recordings for the purpose of ridicule or embarrassment of any officer or individual or for other non-law enforcement related purposes. This includes submission of any portion of a BWC recording to a media organization unless release has been approved in advance by the Superintendent of Police.

APPENDIX “A” –**List of selected field assignments required to have a Body Worn Camera in accordance with this policy**

- All District Platoon Officers
- All District Task Force / General Assignment Officers
- All School Resource Officers
- All Gang Task Force commissioned personnel that are not full-time administrative staff
- All SOD commissioned personnel that are not full-time administrative staff, including:
 - Canine
 - Traffic
 - V.O.W.S.
- All District Platoon Sergeants
- All District Task Force / General Assignment Sergeants