

# THURMONT POLICE DEPARTMENT

<b>GENERAL ORDER</b>	<i>Date Issued:</i> January 26, 2022	<i>Effective Date:</i> January 26, 2022	<i>Order No:</i> Chapter 2.23
<i>Authority: Chief of Police</i> <i style="text-align: center;">Gregory L. Eyer</i>		<i>Manual Page No:</i>	
<i>Subject: Body Worn Camera</i>		<i>Replaces Page No:</i>	
<i>Accreditation Standard:</i>	<i>Distribution: ALL</i>	<i>Amends:</i>	<i>Number of Pages: 12</i>
<i>Related Documents:</i>		<b>New Policy</b>	

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, governmental entity's, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

**I. PURPOSE:**

The purpose of the policy is to provide guidelines for members of the Thurmont Police Department related to the use, management, storage, and retrieval of the data stored on the department issued Body Worn Camera. (BWC).

**II. BACKGROUND:**

The use of Body Worn Cameras has proven to be effective in reducing violent confrontations and complaints against officers. BWCs provide additional documentation of police/public encounters and may be an important tool for collecting evidence and maintaining public trust. Video cannot capture everything that is occurring during an incident nor does it record the officer's perception of what is happening. Officers are reminded that the use of recordings does not reduce the requirement for them to complete a detailed written report. It is important to remember that the recording is the perspective of the camera and not that of the officer or witnesses.

Specific uses of the Body Worn Cameras are:

1. To capture crimes in progress, whether perpetrated against the officer or the community and to maintain this evidence for court presentation.
2. To enhance officer safety during citizen contacts.

3. To mitigate potentially confrontational interactions with members of the public through the presence of the camera.
4. To document initial police response, the discovery of evidentiary items and the actions of the police pursuant to an investigation, including calls for service or self-initiated police contacts.
5. To prevent and resolve complaints made against officers during the course of their police duties.
6. To provide a supplement to personal testimony of officers in court.
7. To enable the Department to review the performance of its officers during investigations such as:
  - a. Legal basis used to conduct a stop if captured on video;
  - b. Officer/citizen-violator interaction;
  - c. Arrest procedures
  - d. To serve in training and performance feedback, ensuring the professionalism of the Department.

### III. POLICY:

- A. It is the policy of the Thurmont Police Department to continually improve its efficiency and effectiveness as a law enforcement agency, while at the same time reinforcing the integrity and professionalism of its members and improving its accountability to the community. All designated members of the Department equipped with a Body Worn Camera will utilize the equipment to record law enforcement activities and events, collecting evidence to be used in the prosecution of person(s) who violate the law, and to enhance officer safety. It is the policy of the Department to provide guidelines for the use of the BWC equipment and the retention and disposition of recordings, as well as a training tool to improve officer performance.
- B. Policy Review.
  1. Because body-worn camera technology is new and evolving, the Thurmont Police Department may find it necessary to revise its existing **“Body-worn digital recording device body worn camera (BWC) policy and procedures”** due to:
    - i. technological/operational/administrative changes;
    - ii. statutory changes; or
    - iii. relevant court decisionswhich may affect the Department’s BWC program. Therefore, the Thurmont Police Department will revise its BWC policy and procedure, consistent with existing law, whenever it is determined to be necessary.

2. It will be the responsibility of the BWC Coordinator to notify the Head of the agency, as soon as practical, in the event there is any need to change the agency's existing **"Body-worn digital recording device body worn camera (BWC) policy and procedures"**:

- i. Notification of recommended changes to the existing policy and procedure will be done in writing, citing the suggested change and the reason for it. Once authorized by the Head of the agency, changes to the policy will be published and disseminated to agency personnel as per existing policy and procedure.

3. Notwithstanding any need to make changes to the BWC policy and procedure, the BWC Coordinator shall review the existing BWC policy and procedure annual [in \_\_\_ of each calendar year] in keeping with existing agency policy and procedure and ensure that the BWC policy and procedure is current.

4. The BWC Coordinator will ensure the policy posted on the agency's website is updated as soon as practical.

#### IV. DEFINITIONS:

- A. Body Worn Camera System- a device worn on the person of a law enforcement officer that is capable of recording video and intercepting oral communications
- B. Officer- All Sworn Thurmont Police Department officers
- C. BWC Coordinator-an individual, designated by the Chief of Police, who will oversee the inventory, control and operational maintenance of the department's BWC system and equipment.
- D. BWC Recording- Any audio-video signal recorded by and digitally stored on a body worn camera downloaded to and stored on the department's BWC storage system.

#### V. LEGAL CONSIDERATIONS:

While the use of video recorders to record events which occur in public places is not regulated by law, the recording of any conversation which takes place during the video taping of an event is covered by Maryland's "Wiretapping and Electronics Surveillance" law.

As a matter of law, a conversation between a law enforcement officer performing his or her duties and a member of the public is protected under the Act where the circumstance does not fall within a statutory exception to the prohibition against intercepting the conversation and when a party to the conversation has a reasonable expectation of privacy in the communication.

The Annotated Code of Maryland, “Courts and Judicial Proceedings,” Section 10-402(c)(4)(i) provides a statutory exception from the general prohibition to record oral communication as follows:

*It is lawful under this subtitle for a law enforcement officer in the course of the officer’s regular duty to intercept an oral communication, if:*

1. *The law enforcement officer initially detained a vehicle for a traffic violation;*
2. *The law enforcement officer is a party to the oral communication;*
3. *The law enforcement officer has been identified as a law enforcement officer to the other parties to the oral communication prior to any interception;*
4. *The law enforcement officer informs all other parties to the communication of the interception at the beginning of the communication; and*
5. *The oral interception is being made as part of a video tape recording.*

Section 10-402(c)(2) also provides exceptions to the interception of oral communications outside the parameters of a vehicle stop. Because BWC is equipped with audio recording capabilities, the pertinent parts of Section 10-402(c)(2) which list the circumstances/conditions under which an audio recording can be made are listed in this order:

*It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation...to intercept a wire, oral or electronic communication in order to provide evidence of the commission of the offenses of:*

- i. *Murder;*
- ii. *Kidnapping;*
- iii. *Rape;*
- iv. *A sexual offense in the first or second degree;*
- v. *Child abuse in the first or second degree;*
- vi. *Child pornography under Section 11-207, Section 11-208, or Section 11-208.1 of the Criminal Law Article;*
- vii. *Gambling;*
- viii. *Robbery under Section 3-402 or Section 3-403 of the Criminal Law Article;*
- ix. *A felony under Title 6, Subtitle 1 of the Criminal Law Article;*
- x. *Bribery;*
- xi. *Extortion;*
- xii. *Dealing in a controlled dangerous substance, including a violation of Section 5-617 or Section 5-619 of the Criminal Law Article;*
- xiii. *A fraudulent insurance act, as defined in Title 27, Subtitle 4 of the Insurance Article;*
- xiv. *An offense relating to destructive devices under Section 4-503 of the Criminal Law Article;*
- xv. *A human trafficking offense under Section 11-303 of the Criminal Law Article;*
- xvi. *Sexual solicitation of a minor under Section 3-324 of the Criminal Law Article;*
- xvii. *An offense relating to obstructing justice under Section 9-302, Section 9-303 or Section 9-305 of the Criminal Law Article;*
- xviii. *Sexual abuse of a minor under Section 3-602 of the Criminal Law Article;*

- xix. A theft scheme or continuing course of conduct under Section 7-103(f) of the Criminal Law Article involving an aggregate value of property or services of at least \$10,000;*
- xx. Abuse or neglect of a vulnerable adult under Section 3-604 or Section 3-605 of the Criminal Law Article;*
- xxi. An offense relating to Medicaid fraud under Sections 8-509 through 8-515 of the Criminal Law Article; or*
- xxii. A conspiracy or solicitation to commit an offense listed in items i through xxi of this item.*

A law enforcement officer may intercept “a conversation concerning an emergency,” Section 10-402(c) (5).

In all cases the interception of the conversation is authorized with the consent of the individual Section 10-402(c) (3).

NOTE: Nothing in this Order precludes an officer from VIDEO RECORDING any incident, encounter, contact or activity that occurs in a public place using BWC without using the audio option.

## **VI. PROCEDURES:**

### **A. Official Use:**

1. Personnel issued Body Cameras will be trained on the use of the system and the policy governing its use. Officers will only wear department issued cameras.
2. BWCs are individually issued and assigned to members.
3. Members will only use the device assigned to them.
4. All BWCs will be used for official business only.
5. The BWCs will only be worn in a manner consistent with Department policy and training.
6. Under no circumstances will an Officer or member of the Department loan or otherwise give a BWC or any other BWC equipment to any non-Department personnel without being specifically authorized to do so.

### **B. Testing:**

1. Prior to beginning of each shift, personnel assigned a BWC will perform a function test in accordance with the manufacturer’s recommendations and agency policy.
2. Upon discovery of a malfunction, personnel will promptly report the malfunction to a supervisor. The supervisor will document the malfunction and provide a replacement if available. The BWC Coordinator will also be contacted, who will coordinate repairs.

**C. Activation:**

1. The Thurmont Police Department recognizes there are certain circumstances where officers in a proactive (non-dispatched) capacity may become involved in a situation requiring immediate action to prevent injury, make arrest and/or prevent the destruction of evidence or escape. When these situations occur, officers must activate the BWC, unless doing so would be unsafe, impossible, or impracticable. If the immediate activation of the BWC is not feasible due to an immediate risk to the safety of the officer or others or because doing so is impossible or impractical, the officers will activate the BWC at the first reasonable opportunity to do so. Any reason for delayed activation will be noted in an incident report.
2. The Thurmont Police Department has set a pre-defined buffering time of 60 seconds on each BWC in operation. This buffer time allows 60 seconds of video recording prior to the activation of the BWC. The purpose of this buffering time is to capture the lead up to incidents officers are involved in prior to activation. Officers will not circumvent this buffer cycle in any manner to include power cycling the BWC. Audio is not captured during the 60 second buffer.
3. The BWC shall be activated under the following circumstances:
  - a. At the initiation of a call for service or other activity that is investigative or enforcement in nature, or an encounter between the officer and a member of the public that is investigative or enforcement in nature.
  - b. Any encounter that becomes confrontational after the initial contact.
  - c. Responding to a request for assistance by another law enforcement officer or other first responder.
  - d. Arrests and transports
  - e. Traffic stops
  - f. Priority Responses
  - g. Vehicle and Foot pursuits
  - h. Suspicious situations
  - i. All searches (persons, vehicles, structures), except strip searches
  - j. Interviews and interrogations

- k. Mental health interventions
  - l. When engaging in a forced entry
  - m. To assist in documenting warrantless or consensual searches. The BWC will be utilized to record the request and consent. This recording is intended to enhance a documented consent. It is not intended to replace the use of the Consent to Search form.
- 4. When not otherwise prohibited by law or agency policy, Officers may begin recording with their BWC in circumstances when they determine that doing so would be beneficial to the public interest.

**D. Notification:**

- 1. Except as otherwise exempted by law, an Officer shall notify individuals as soon as practical that the individual is being recorded, unless it is unsafe, impractical or impossible to do so, by stating your name, agency, and that a recording is being made.
  - a. Example: “I am Officer \_\_\_\_\_ of the Thurmont Police Department. For your safety as well as my own, I am advising you that you are being audibly and visually recorded.”
  - b. This notice provision is satisfied even if another individual becomes a party to the communications after the initial notice has been provided.

**E. Ending a Recording:**

- 1. Once the recording with a BWC has been initiated, officers shall not end the recording until:
  - a. The event or encounter has fully concluded;
  - b. The officer leaves the scene and anticipates no further involvement in the event – If there is reasonable potential that either the individual and/or officer may resume contact at the scene or near the scene of the original encounter, the BWC user shall allow the recording to continue until either the individual and/or officer leaves the scene;
  - c. A supervisor or agency policy has authorized that a recording may cease because the Officer is no longer engaged in a related enforcement or investigative activity;
  - d. When victims, witnesses or other individuals wish to make a statement or share information but refuse to do so while being recorded, or request that the camera be turned off, officers may turn off the BWC in order to obtain the statement or information;
  - e. The BWCs may be deactivated during conversations with officers or Supervisors during information sharing sessions or discussing tactics and strategy.

2. Whenever the BWCs equipment is deactivated, the officers must record a brief verbal explanation for the deactivation prior to turning off the recording.

**F. Failure to Record/ Interrupting a Recording:**

1. Whenever an officer who is equipped with a BWC fails to record an event/incident/encounter or interrupts the recording, the officer shall:
  - a. Document in an Incident Report a detailed explanation of why the BWC recording was not made, such as:
    - Equipment malfunction
    - Unsafe/impractical/impossible circumstances
    - At the request of a victim/witness/individual sharing information with an officer
    - Any other unforeseen reason.
  - b. Ensure that the supervisor is notified as soon as practical that the BWC recording was not made.

**G. Restricted Use of the BWC:**

1. Officers will only use a BWC that has been approved and issued by the Thurmont Police Department. The use of personal video recorders is prohibited.
2. All BWC equipment and recording, BWC audio, images and media associated with the BWC, are the property of the Thurmont Police Department, and these items are not to be copied, released or disseminated in any form or manner outside the parameters of this policy without express written approval from the Chief of Police. Under no circumstances will any employee make a personal copy of any recorded event.
3. Officers will not alter or erase recordings.
4. Officers are not authorized to playback BWC recorded media for citizen viewing.
5. Officers shall not activate the BWC in places where a reasonable expectation of privacy exists, such as hospital rooms, locker rooms, restrooms, dressing rooms, unless part of a criminal investigation.
6. A BWC will not be used to create recordings of strip searches
7. A BWC will not be used to record personnel during routine administrative activities.
8. Officers will not intentionally record undercover officers or confidential informants without their consent, unless the recording is:
  - i. Required by a valid Court order;
  - ii. Authorized by command official as part of a criminal or administrative investigation;or
  - iii. In response to observed criminal behavior or an observed serious infraction of agency policies/procedures or rules/regulations.
9. Officers will not record non-work related personal activity.

10. The BWC shall not be used to surreptitiously record conversations with citizens and/or department employees unless a crime is occurring or about to occur.

**H. Documentation:**

1. When an incident report is generated, the officer must note the existence of a recording in the **FIRST LINE** of the incident report.
2. If no recording was made, the officer will explain in detail in the Incident Report why the BWC recording was not made when otherwise required by the policy and procedure.
3. All BWC recordings must be uploaded by the officer at the end of the officer's shift, unless an exception is authorized by a supervisor. The officer will be responsible for properly categorizing and tagging the recording at the time of the upload.
4. In a critical incident, such as an officer involved shooting, in-custody death or other officer involved incident that results in serious injury or death, a supervisor will immediately take custody of the BWC and, in such case, will be responsible for the upload.

**I. Review of Recordings:**

1. Authorization to view any BWC recording by any individual outside the Department shall only be granted by the Chief of Police, and as officially ordered by the Court. Prosecutors and/or their official representatives of the criminal justice system who are acting in their official capacity, may view the recordings. The Department shall maintain a log which denotes the identity of any person accessing the BWC footage, as well as the date and time of the viewing and whether or not the footage was copied or edited.
2. Requests from the public to view or to obtain a copy of any BWC recording shall be handled in accordance with requests for public information. When deemed necessary and prior to the showing or distribution of a recording, the Town Attorney will review the request and advise the Chief of Police as to its validity. Any unauthorized viewing of an agency video recording (or portion thereof) is prohibited and may subject an Officer to disciplinary action.
3. A BWC recording may be reviewed by the recording officer for any work related reason, including but not limited to:
  - To ensure the BWC system is operable
  - To assist with completing reports or statement of charges. Officers should note items that are from the video that are included in the report.
    - To review/critique his/her own performance
    - To review and prepare for court
    - To respond to a civil suit, criminal investigation (if the officer is the subject of the investigation), citizen complaint, or administrative complaint. The officer shall have the ability to review their BWC recording of the incident prior to making a statement.

4. A supervisor may review the recording for the purpose of conducting an investigation, monitoring an employee's professional conduct/performance as triggered by an action or complaint. (Recordings will not be routinely or randomly viewed by members for the sole purpose of enforcing policy violations). Supervisors may view the recording for training purposes and to review evidence.

A supervisor shall review the BWC recording of an incident when an officer is involved in a reportable use of force and/or an officer is injured or killed during the performance of his/her duties.

5. Officers will not review videos after an Officer Involved Shooting until after making an initial statement. This is to protect the officer from influence on his original perceptions that lead to the officer's decision process in using deadly force. The officer will then be permitted to review the video before making a detailed statement.
6. BWC recordings may be reviewed by the following non-members upon proper legal written requests to the Chief of Police:
  - a. Members of the State's Attorney's office, U.S. Attorney's Office, or Attorney General's Office;
  - b. Legal Affairs representing the Town of Thurmont;
  - c. Members of the credentialed media;
  - d. By any legitimate judicial process, such as a subpoena; or
  - e. By any member of the public through proper legal authority or Maryland Public Information Act request, as long as it does not jeopardize the safety of the officer or citizen and does not hinder the investigation.
7. The BWC Coordinator will maintain a dissemination log of all requests, whether granted or denied.
8. A BWC recording of constitutionally protected activity may not be used to identify persons present at the activity who are not suspected of being engaged in illegal activity or in need of assistance.
9. The stored video and audio data from the BWC may not:
  - Be used to create database or pool mug shots;
  - Be used as fillers in photo arrays; or
  - Be searched using facial or voice recognition software.

This does not prohibit the use of recognition software to analyze the recording of a particular incident when a supervisory law enforcement officer has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording.

**J. Evidence/Retention:**

1. Original, unedited versions of stored BWC footage shall be retained in Evidence for a period of 120 days prior to erasure unless tagged for evidence or administrative retention.

2. BWC recordings that can be used in an investigation or capture a confrontational encounter between an officer and a member of the public will be deemed “evidentiary” and categorized and tagged according to the type of incident.

**K. Training:**

1. The Department shall ensure that Officers are trained on agency policy and the operation of the BWC equipment prior to use in the field. Training shall include alternative methods for effective notification of recording to persons with special needs or limited English proficiency.

**L. Discipline:**

1. Violations of these policies may result in discipline.

**ATTACHMENTS:**

**DOCUMENT DATES:**

*Amended Date:*

*Review Date:*

*Review Date:*

*Rescinds:*

*Order Written By: Chief Gregory L. Eyster*

*Order Reviewed, Edited and Approved By: Powell Flynn, LLP*