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From: Gabby Bayness, Kelly McConney Moore
Date: 12/18/2025
Re: BWC Implementation in Delaware

When we last spoke, you advised that the body-worn camera (BWC) bill passed in 2021 had not been fully implemented and asked us to provide some additional detail on which law enforcement agencies, if any, were in compliance with the BWC law and its implementing regulations. We obtained five BWC policies from local law enforcement agencies, although we queried 36 local and state agencies for their policies. Only one of the five BWC policies we reviewed was legally sufficient. This memo provides a summary of the legal requirements for BWC policies, per state statute and regulation, an analysis of the five publicly-available BWC policies we obtained, and policy recommendations to address the inadequate implementation.

Legislative and Regulatory History

2021 HB 195

On July 21, 2021, [DE HB 195](#), was signed by the Governor and went into effect. The bill set forth some minimum standards for who must wear BWCs in 11 Del. C. § 8402A. This section mandates that police, probation, parole, and Department of Services for Children, Youth, and Their Families officers assigned to a task force or special investigator must wear a BWC while on duty “in a role that is likely to result in interaction with the public.” These officers are required to record interactions with the public while on duty, in accordance with to-be-created regulations.

HB 195 also created 11 Del. C. § 8404(c), which initially directed the state Council on Police Training (COPT) to establish minimum standards for local agency BWC policies, requiring COPT to address use, activation, electronic storage, training, etc. COPT has since established these minimum standards. Following COPT’s promulgation of a model policy, this section has been amended to require that COPT periodically review the existing regulations and standards around BWCs, including storage and dissemination of recording. This section also now directs COPT to ensure

its regulations and standards address victims' right to review the footage that includes statements they have made.

Finally, the bill required the Department of Services for Children, Youth, and Their Families and the Department of Correction (who are not subject to regulation by COPT) to devise and adopt BWC policies consistent with or exceeding the policy promulgated by COPT in 11 Del. C. §§ 4321 and 9003.

The bill made additional changes, none of which set standards for agency BWC policy.

COPT Regulations

Following the enactment of HB 195, COPT promulgated mandatory standards for BWC use at [1 DE ADC 801-26.0](#). The regulation creates standards for the activation, wear, training, testing, handling, storage, and dissemination of BWCs and their data.

First, the regulations define when officers should be wearing, and should not be wearing, BWCs and in what aspect of their duties they should be activated. Broadly, uniformed officers and officers who are interacting with the public should always be wearing BWCs and have their cameras activated for an entire interaction, call of service, or investigation. This includes officers with "front desk duty." Prior to wear, officers must be trained in BWC use and inspect their cameras before each shift.

Per the regulations, officers are required to keep their cameras activated for the full duration of contact unless they are prohibited by law from doing so. These prohibitions mostly include private communications with other law enforcement officers, confidential conversations, undercover assignments, and several sensitive situations such as when a strip search is occurring or a recording would violate HIPAA. Another unique situation would be if an officer is a school resource officer (SRO), they have greater discretion as to when to activate and deactivate given their work with students. Officers are also not required to activate their cameras if it would endanger their lives, but they must later document what circumstances prompted the lack of activation. This documentation requirement also applies to any other circumstance when a camera is not activated or a recording is interrupted.

The remaining regulations place restrictions on the review and storage of camera footage. BWC footage is not permitted to be reviewed by the public at the scene of an incident. Officers may review footage when writing reports, and they must note any discrepancies between their narrative and the BWC footage, if any exist. BWC footage must be stored securely and in compliance with state retention laws. The regulations encourage agencies to create security features and abide by smart cybersecurity practices. The regulations designate the Chief as the primary authority over BWC footage. All access to stored footage must be authorized by the Chief, and officers are prohibited from editing or erasing footage without the Chief's written approval. Access is only permitted when relevant to criminal investigations and their impacted parties, misconduct reviews or investigations, discovery, other legal obligations, officer training, intelligence, report writing, or audits. The Chief may determine other reasons for access through a revision to the department's policy.

A brief summary of each standard of the regulations are described in Appendix B.

Compliance

We surveyed the 31 largest municipalities in Delaware and found that only four had published BWC policies online – Milford, Delmar, Wilmington, and Cheswold. Two other localities, Newark and Elsmere, do not have published policies available online, but appear to have extant policies based on references to such policies in the local collective bargaining agreement and police accountability committee, respectively. Of Delaware's three counties, only the New Castle County Sheriff's office published its BWC policy online.

The Department of Services for Children, Youth, and Their Families does not have a BWC policy published online.

Finally, the Department of Correction does not have a BWC policy published online, although the New Castle County policy indicates that the Department of Correction does not allow officers to wear cameras within their facilities.¹ If New Castle County's

¹ Subsection E(11)(e) of the New Castle County policy states that, per "Delaware Department of Correction policy, the use of the BWC is prohibited in Delaware Department of Correction facilities. Officers transporting detainees to Delaware Department of Correction facilities will

police accurately describe the Department of Correction policy, the Department of Correction may be noncompliant with its statutory and regulatory obligations if Department of Correction officers are likely to interact with the public within parts of their facilities.

This section will analyze whether the five published policies comply with COPT's regulatory requirements. Areas of deficiency are noted with the regulatory provisions' number for ease of comparison with the regulation. Only one agency, the Milford Police Department, has a fully compliant BWC policy. Appendix A summarizes this compliance in a chart.

[Milford](#)

The Milford Police Department clearly modeled its agency policy on the COPT regulation, with no deviations. Accordingly, Milford's policy fully complies with statutory and regulatory BWC standards.

[Delmar](#) (p. 354 of Policy Handbook)

Delmar is partially in compliance with the BWC standards set forth in statute and regulation. Delmar's policy handbook is drafted by Lexipol, a popular subscription service for police agency policies.²

Delmar Police Department's areas of deficiency:

1. **26.3 Requirement to Wear BWCs:** Delmar's policy does not specify when BWCs must be worn, though COPT minima require that "BWC shall be worn by officers while on duty in a role that is likely to result in interaction with the public," with several clarifying examples. Delmar directs officers to "wear their assigned BWC on their outermost garment positioned at or near chest level and as close to the center of their body as practicable" and ensure "there are no obstructions and that the BWC remains in a position suitable for recording."

remove the BWC and leave it in their patrol vehicle along with other equipment that is prohibited in these facilities."

² Although we were unable to obtain many agencies' BWC policies, you may be able to identify additional noncompliant agencies by determining which agencies use Lexipol to draft their handbooks. It is likely that all Lexipol users have similar problems to Delmar.

It does not, however, specify that any officer likely to interact with the public must wear a BWC while on duty.

2. **26.4 Activation of BWCs:** Delmar's policy is less specific than COPT requirements as to when officers must activate their BWCs, but its mandate that officers must activate BWCs during "calls for service and the performance of law-enforcement functions" appears compliant. COPT standards generally require that BWCs must be activated during law enforcement functions and include a non-exhaustive list of situations requiring activation including "[d]uring calls for service; [w]here an arrest or detention appears to be likely; [w]here use of force appears to be likely; [w]here it appears doing so may promote the safety of people and property; and [w]here doing so may be helpful to preserve evidence."
3. **26.13 Recording Prohibitions:** Delmar's policy fails to prohibit the recording of "[p]rivate communications with other police personnel without the permission of the Chief," as required by COPT regulations.
4. **26.14 Storage of Digital Files:** COPT regulations require that all BWC data can be accessed only when authorized by the Chief. Delmar's policy allows the Chief *or an authorized designee* to grant access; moreover, it only limits access to BWC data "tagged as restricted" without placing access limitations on all BWC data.

New Castle County

New Castle County Department of Public Safety's areas of deficiency:

1. **26.3 Requirement to Wear BWC:** COPT regulations require that "BWC shall be worn by officers while on duty in a role that is likely to result in interaction with the public," with several clarifying examples. New Castle County's policy only assigns BWCs to officers in the patrol, special operations, and criminal investigation sections. This likely excludes many officers covered by the COPT regulations, including examples specifically called out in the regulations, such as officers assigned to "front desk" duty whose duties include interaction with members of the public."

2. **26.16 Dissemination:** The policy excludes the requirement for disseminating BWC footage to victims of a crime.
3. **26.4 Activation of BWCs:** New Castle County's policy deviates from, but ultimately does not appear to be deficient to, COPT's policy regarding turning off BWCs. New Castle County provides that a "Supervisor may authorize an Officer to stop a BWC recording when the Officer is on an assignment of an extended duration. An example of such would be when an Officer is assigned to a security post at a crime scene and the situation is under control. The Officer shall document [the] same in a report along with the name of the Supervisor." COPT regulations do not explicitly authorize shutting off BWCs during a call for service, but the scenario described by New Castle County is not one during which recording is mandatory. Moreover, this New Castle County provision is consistent with COPT's policy requiring officers to note in a written report why the camera was turned off or not recording if a BWC is not activated for an entire contact.

Wilmington

Wilmington Police Department areas of deficiency:

1. **26.3.2 Officers not required to wear BWC:** Wilmington's policy does not include a subsection of situations where officers are not required to wear a BWC.
2. **26.8 On-scene review:** Wilmington's policy does not include a provision prohibiting recordings from being reviewed by the public at the scene of the incident.
3. **26.16 Dissemination:** Wilmington's policy does not include a section regulating the dissemination of BWC recordings.
4. **26.17 Redactions:** Wilmington's policy does not include a section mandating redactions of BWC footage under certain circumstances.

Cheswold

Cheswold's agency policy appears to be identical to a DPCC [model policy](#) published in 2016, predating the requirements of HB 195 and COPT regulations.

Cheswold Police Department's areas of deficiency:

1. **26.3 Requirement to Wear BWC:** Cheswold's policy does specify when officers are required to wear BWCs, only a requirement that they activate BWCs in certain situations.
2. **26.4 Activation of BWCs:** Cheswold does not require that BWCs be activated during calls for service or "when doing so may be helpful to preserve evidence."
3. **26.13 Recording Prohibitions:** Cheswold is missing a significant portion of the list of recording prohibitions, including: "[a]ny location where individuals have a reasonable expectation of privacy, such as a restroom or locker room; [a] strip search; [c]ourt proceedings by non-court personnel officers, except where an incident occurs during a court proceeding; and [a]ny other situation where applicable law or regulation provides for confidentiality."
4. **26.5 Officer Safety:** Cheswold's policy does not include a provision instructing officers not to jeopardize their safety in order to activate a BWC. This section also should require officers to note the circumstances that led to the camera not being activated.
5. **26.15 Quality Control:** Cheswold's policy does not include any provisions relating to the quality control mechanisms regarding compliance with the COPT regulations.
6. **26.16 Dissemination:** Cheswold's policy does not include a section regulating the dissemination of BWC recordings.
7. **26.17 Redactions:** Cheswold's policy does not include a section mandating redactions on BWC footage under certain circumstances.

Recommendations

Policy Transparency

The COPT regulations do not require agencies to publish their policies on a public website. Because of this lack of transparency, we have been unable to assess the full implementation of the policy mandate. The regulations should be updated to require agencies to publish their BWC policies on their website.

Footage Access and Retention

COPT has not created any guidelines for when the public may access BWC footage, nor has it directed how long BWC data must be stored. The regulations should be updated to create a mechanism for the public to access footage of critical incidents, especially those involving alleged police misconduct. Additionally, COPT should set a floor for retention of BWC footage, requiring at a minimum that footage be retained until after all internal investigations for misconduct and any subsequent legal actions are completed.

Define the Public

As stated before, the Department of Correction may be out of compliance with the regulations if we consider the Department of Correction to fall under a “role that is likely to result in interactions with the public.” To remedy this, the regulation should more explicitly define whether DOC facilities are places where officers should be wearing their BWCs and if those who reside in them are considered members of the public.

Appendix A

Appendix A provides a brief overview of each policy’s compliance with COPT regulations. Please refer to the policy text itself when reviewing its compliance.

Provision	Milford	Delmar	Wilmington	Cheswold	NCCSO
26.3 Wear	Compliant	Missing	Compliant	Missing	Deficient
26.3.2 NO wear	Compliant	Missing	Missing	Missing	Compliant
26.3.3 SROs	Compliant	Missing	Compliant	Missing	Compliant

26.4 Activation	Compliant	Deficient	Compliant	Deficient	Possibly deficient
26.5 Safety	Compliant	Compliant	Compliant	Missing	Compliant
26.6 Remain active	Compliant	Compliant	Compliant	Compliant	Compliant
26.6 BWC to remain active	Compliant	Compliant	Compliant	Compliant	Compliant
26.6 Document disruption	Compliant	Compliant	Compliant	Compliant	Compliant
26.8 Review at scene	Compliant	Compliant	Missing	Compliant	Compliant
26.9 Training	Compliant	Compliant	Compliant	Compliant	Compliant
26.10 Inspection	Compliant	Compliant	Compliant	Compliant	Compliant
26.11 NO editing	Compliant	Compliant	Compliant	Compliant	Compliant
26.12 Reports	Compliant	Compliant	Compliant	Compliant	Compliant
26.13 NO outside recording	Compliant	Deficient	Compliant	Deficient	Compliant
26.14 Storage	Compliant	Deficient	Compliant	Compliant	Compliant
26.15 Quality control	Compliant	Compliant	Compliant	Missing	Compliant

26.16 Disseminati on	Compliant	Compliant	Missing	Missing	Deficient
26.17 Redactions	Compliant	Compliant	Missing	Missing	Compliant
26.18 Private right of action	Compliant	Compliant	Compliant	Compliant	Compliant
26.19 Exemptions for NOT recording	Compliant	Compliant	Compliant	Compliant	Compliant

Appendix B

Appendix B provides a brief overview of the regulatory requirements. Please refer to the regulation for the complete text.

Provision	Requirement
26.3 Requirement to wear	Officers are required to wear BWC while in uniform acting in official duties, regularly engaging with the public, engaging in enforcement activities, acting in field investigations, and officers in “front desk” duty who interact with the public.
26.3.2 NO requirement to wear	Officers are not required to wear BWC when undercover, in administrative positions, hostage or crisis negotiations, meeting with confidential sources, when not in uniform, when engaging in collective bargaining, and in extraordinary circumstances (e.g. riot or large concert) where an agency has so many officers they cannot provide each with a BWC.
26.3.3 Requirements for SROs	This section allows SROs greater flexibility to interpret the policy given their interaction with students.
26.4 Activation of BWC	BWC must be on during calls for services, an

	arrest/detention, when use of force appears to be likely, when doing so would promote the safety of people and property, and when helpful to preserve evidence.
26.5 Safety	At no time should officers jeopardize their safety or the safety of others to activate a BWC. If not activated, the officer must document the reason why.
26.6–7 BWC to remain active	BWCs shall remain active during the entire contact; if a recording is interrupted, the officer must document why.
26.8 Review at scene	Recordings shall not be reviewed by the public at the scene of an incident.
26.9 Training	Agencies must insure officers receive BWC training.
26.10 Inspection	Officers must inspect and test BWCs prior to each shift or special event and notify a supervisor of any issues; Officers must document why they did not test their BWC.
26.11 NO editing	Officers must not edit, alter, or erase BWC recordings. Officers may make duplicates with the Chief's prior written approval.
26.12 Reports	Officers must note in the relevant report when a recording was made during the incident and if the recording was reviewed by the officer prior to or during writing the report. The report should note discrepancies between the officer's perception and the video. BWC footage may not be a substitute for written reports.
26.13 NO outside recording	BWC may not be used to record non-officer duties and other sensitive scenarios including private communications, undercover or confidential informants, breaks, locations with a reasonable expectation of privacy, strip searches, court proceedings, and other situations with confidentiality expectations (e.g. HIPPA).

26.14 Storage	Agencies should not store digital files in an unsecured manner, and storage must feature proven security protocols. File storage will also be compliant with state or local record retention laws. Access to files must be authorized by the Chief.
26.15 Quality control	Agencies must establish quality control mechanisms to comply with these regulations.
26.16 Dissemination	BWC footage may not be accessed unless for official purposes: relevant to an investigation, viewing by individuals with vested interest, pattern or practice investigation, supervisory processes, etc. Any video should not be released until criminal investigations or prosecution have been completed unless otherwise authorized by DCRPT. The video may not be released until interviews are completed, the victim's family has an opportunity to view, confidential information is redacted, and DCRPT approval is obtained.
26.17 Redactions	Redactions will include, but are not limited to, compliance with Victim's Bill of Rights, Right to privacy, and Considerations in 26.13.7 (privacy).
26.18 Private right of action	Regulation does not create a private right of action for third parties; it is the responsibility of the agency to enforce their policies.
26.19 Exemptions for NOT recording	Exemptions are permitted only when approved by the Chief and only under special circumstances that have been demonstrated and documented in writing.