



## MSI Law Enforcement Risk Analysis



# New Jersey Attorney General Law Enforcement Directive 2022-1 Update to Body-Worn Camera Policy

On January 19, 2022, Acting New Jersey Attorney General Andrew Bruck, issued [Law Enforcement Directive Number 2022-1, Update to Body-Worn Camera Policy](#). This is the third directive issued by the Office of the New Jersey Attorney General addressing body-worn cameras (BWCs) since the initial directive issued in 2015.

It is well understood that agency policies are not a "one size fits all" and that a well-crafted policy needs to reflect each specific agency's unique structure, core values, and priorities. Although Directive 2022-1 outlines the mandates, law enforcement leaders who simply place an agency cover sheet or memo on such a directive may leave many officers unsure of how they should operate at their agency to meet the specified requirements. For example, Directive 2022-1 directs in Section 3.8 that every agency shall "designate one or more training officers and shall establish a training program." Additionally, Directive 2022-1 contains numerous terms that are not defined or instances where it is specified that an officer "may" perform a certain task. The placing of a cover sheet on Directive 2022-01 will likely not result in developing a training program or adequately addressing key definitions and tasks.

Agency leaders must update their policies and procedures to reflect the changes announced in this Attorney General Directive. A comprehensive agency policy should serve as the roadmap for every agency member to perform their duties in a safe, legal, and consistent manner. This update may present an opportunity for agency leaders to review their existing body camera program to determine if additional changes are needed to their policy, procedures, or training program. This Risk Analysis is not a complete review of the entire 2022-01 Directive. This analysis identifies numerous areas where agency leaders may wish to closely analyze, discuss considerations with their municipal attorney, and ensure their agency training programs and policies address areas of ambiguity to reduce the likelihood of inconsistency involving BWCs among agency personnel.

Please do not hesitate to contact a J.A. Montgomery Consulting Law Enforcement Team member if we can be of any assistance or provide additional resources.

**Disclaimer:** The materials provided in this correspondence are for general informational and educational purposes only and are not intended to be and should not be considered legal advice or opinions. Prior to making any policy or rule changes, seek the advice of your municipal attorney.

<b>Directive(s):</b>	<b>1</b>	<b>New Jersey Attorney General Directive 2022-1 – Update to Body-Worn Camera Policy</b>	Issued:	1/19/22	Effective:	1/29/22

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Item #	Directive Page #	General Subject/Item	Potential Risk/Concern	Potential Actions/Risk Mitigation
1	6	Section 3.3(C) Officers Not Required to Wear BCWs	Item “c” addresses officers assigned to “administrative positions” and only delineates “front desk” duty as an exception. “Administrative Position” is not specifically defined in the directive, and may be interpreted differently by officers within the same agency unless clearly guided.	Ensure the agency policy clearly delineates who is required to wear a BWC and whom the agency may not require because the person holds an “administrative position.” If the agency leader elects not to require those assigned to “administrative positions” to wear a BWC, such positions unique to the agency should be clearly defined.
2	7	Section 3.2 Officers Required to Wear BWCs	Item “h” indicates that officers are not required to wear a BWC when assigned to “extra duty” or “off duty” assignments that involve strictly traffic direction. The agency leader should establish what “strictly traffic direction” is to ensure consistency. Additionally, officers killed in traffic-related incidents increased by 38% in 2021,	Ensure the agency training program addresses these issues and all officers have a clear understanding of their responsibilities to ensure consistency.

			and struck by fatalities of officers increased 93% in 2021 as reported in the <a href="#">2021 End-of-year Preliminary Law Enforcement Officers Fatalities Report</a> . It is understood that the storage requirements associated with the use of BWC's for such traffic-related extra and off duty assignments may be significant; however, video footage may help identify causal factors to help mitigate such future tragedies.	Evaluate the feasibility and compare the benefits of capturing traffic direction activity during extra and off-duty activity.
3	7	Section 3.5 Placement of BWC	<p>Absent clear and consistent agency direction, numerous risks may be present:</p> <ol style="list-style-type: none"> <li>1. Inconsistent placement of the BWC among various officers within the same agency may create the appearance that one or more officers affix the camera in a manner that is designed to restrict capturing clear footage. For example, some officers may affix the BWC to their uniform shirts, others to a lower portion of an outer vest, and others to a jacket pocket.</li> <li>2. Improperly fastening the camera may also result in the camera becoming more easily dislodged and not recording the incident.</li> </ol>	Provide clear policy direction regarding the specific placement and fastening method for the various uniforms, vests, coats, and other equipment worn by officers within the agency.
4	7	Section 3.8 Training	Section 3.8 directs that the agency shall designate one or more training officers and establish a "training program". Inconsistent training amongst officers or training that is left open to broad interpretation by front-line supervisors may create inconsistency. Additionally, such a training program should be consistent, updated, and utilized not only for initial agency implementation of a BWC Program but also during initial hiring and re-training as necessary. As BWCs become more common, agency leaders and those assigned training functions should not take for granted that newly employed officers will not understand the requirements even though the rest of the agency is well familiar with the policy and BWC functions.	<p>Designate specific training officers, and maintain appropriate training records including testing results, PowerPoints, or other training materials and outlines.</p> <p>Create a re-medial training program for officers who fail to comply with the agency BWC standards and document such training and additional appropriate monitoring of such personnel.</p>

5	9	Section 4.4 Notice When using BWCs Inside a Private Residence	Section 4.4 specifies under which circumstances that officers should keep their BWC activated when entering a private home even when the occupant requests it be de-activated. One area of potential risk is the instance where the officer(s) is “responding to an emergency”. Emergencies are not clearly defined in the directive and it is critical that officers within the agency do not interpret this differently. Consistency and guidance are needed. The specifics of these criteria should be addressed in the agency training program and approved by the agency leader.	Address the circumstances of what “responding to an emergency” means in the agency policy and training program.
	10	Section 4.5 Notice When Using BWCs with an Apparent Crime Victim	This section specifies that an officer shall immediately discontinue the use of the BWC when requested by a crime victim. This section may be confusing to officers when reviewing Section 6.2, <i>Deactivation at the Request of a Person Seeking Emergency Medical Assistance</i> , where they may “de-activate”.	Ensure the agency training program addresses these issues and all officers have a clear understanding of their responsibilities to ensure consistency.
6	11	Section 5.2 Circumstances When BWC Activation is Generally Required	Item “b” indicates that the officer should activate the camera “when responding to a call for service and is at or near the location to which the officer has been dispatched”. The agency leader may wish to consider requiring officers to activate the BWC at the time the officer is dispatched as opposed to being “near the location”. Officers are faced with many distractions inside of a police vehicle while en-route to an assignment. Radio communications, mobile computer notifications, cell phones ringing, traffic, sirens, and more are likely capturing the officer’s attention. When the officer does not activate his or her BWC at the time of dispatch, they may not capture the true environment in which the officer is required to operate. For example, a dispatcher may relay critical information about a weapon being a “toy” or the age of a suspect, but yet the officer does not fully comprehend the message due to these distractions. When the situation is reviewed by Internal Affairs, Prosecutors, or by the public, they may be provided the opportunity to hear a clear recording of the dispatcher’s message as opposed to the actual message the officer heard	Item “b”: Evaluate the feasibility and compare the benefits of requiring officers to activate their BWC at the time of initial dispatch. See also Section 5.3 and ensure any policy and training actions are consistent between these two sections.  Item “c”: Ensure the agency training program addresses these issues and all officers have a clear understanding of their responsibilities to ensure consistency.  Agency leaders may also wish to explore automatic holster draw technology that may be available for agencies utilizing Axon products: <a href="#">Axon Signal Sidearm</a>

			<p>or didn't hear in the vehicle with the many other distractions. This also may assist in addressing and meeting some provisions of the <a href="#">New Jersey Attorney General Use of Force Policy</a>, including "critical decision making" in Section 2.4. Officers may be judged on their decisions, and it may be imperative to replicate to those reviewing such decisions what the officer actually heard compared to what he was told via a radio under sometimes chaotic circumstances.</p> <p>Item "c" delineates that an officer is required to activate a BWC during a "motorist aid or community caretaking check". Neither one of these terms is defined in the directive. Absent clear direction and policy guidance, officers and supervisors may interpret these actions differently.</p>	
7	16	Section 6.5 De-Activation During Criminal Investigation/Strategy Planning Discussions	<p>Numerous examples are listed of what may constitute criminal investigation strategy and planning. The agency leader may wish to discuss with members of the agency to learn of other examples that can be included in the agency training program to help mitigate inconsistency of de-activation.</p>	<p>Ensure the agency training program addresses these issues and all officers have a clear understanding of their responsibilities to ensure consistency.</p> <p>Ensure officers are aware that although they may be permitted to de-activate, there may be other body-worn cameras worn by first responders who are not required to adhere to the Attorney General Directive. <a href="#">See MSI Law Enforcement Bulletin – Critical Considerations in Light to the Prevalence of Firefighter Helmet Cameras.</a></p>
8	26	Section 10.1 Restrictions on Access to and use and Dissemination of BWC Recordings	<p>Item "c" explains that access is permitted to a BWC recording pursuant to a "management review process". It is critical that this process is defined by the agency leader and included in the agency training program.</p> <p>Item "d" explains that access is permitted to a BWC recording pursuant to a "supervisor's review". This process must be defined by the agency leader and included in the agency training program. Inconsistency in the supervisory review process creates many risks which include accusations</p>	<p>Items "c" and "d":</p> <p>Ensure the agency training program addresses these issues and all officers have a clear understanding of their responsibilities to ensure consistency.</p> <p>Consider utilizing a Job Safety Observation (JSO) process for BWC Review. A sample of a JSO and JSO Policy that an agency may wish to</p>

			<p>of failure to supervise and individuals being “targeted” by a supervisor.</p> <p>Item “I” details restrictions for the use of a BWC recording for training purposes, and specifies that unless individuals have consented to the recording their identity should be redacted. The directive is not specific if this provision applies to law enforcement officers, although it may likely include law enforcement officers as it states “depicted individuals”. Inconsistency in the use of BWC recordings that depict specific officers presents risks when a clearly defined procedure for acquiring consent is not known. Additionally, officers who feel compelled by their direct supervisor to permit the use of such a recording may later claim they were being targeted. Furthermore, if an officer objects to the use of a recorded video that contains their image, they may later claim they are being retaliated against.</p>	<p>consider when reviewing BWC footage on a regular basis is available <a href="#">HERE</a>.</p> <p>The agency leader may also wish to sometimes incorporate a more thorough JSO. A sample of a more comprehensive JSO can be viewed <a href="#">HERE</a>. It is imperative that the process of review, including the use of the basic and comprehensive JSO, is well specified and understood by all agency members.</p> <p>Item “I”:</p> <p>The agency leader in consultation with the municipal attorney should obtain clarification of this section, and if necessary develop a consent form that must be utilized within the agency for an officer to provide consent to the use of a BWC recording for training purposes. The agency leader may wish to designate him or herself or another higher command authority as the final person to approve the use of such video recordings to avoid allegations of targeting and retaliation involving supervisors.</p>
9	27	Section 10.3 Restriction on Access to BWC Recordings Prior to Creating Reports, Statements, Interviews	<p>The agency training program should be updated to reflect all of the new changes specified in N.J. Attorney General Directive 2022-1 which includes this section. Ambiguity, unintentional inconsistent interpretation, or purposeful interpretation of the directive to possibly circumvent these requirements create tremendous risk. The term “substantive initial report” is defined in the directive and should be clear in the policy to all agency members. However, “providing a statement” and “submitting to an interview” is not specifically defined and could be interpreted differently by members of the agency.</p>	<p>Develop a policy and training program that addresses these risks.</p>

		<p>Items “e” and “f” provide direction regarding “internal affairs complaints” and “subject of a citizen complaint”. These terms are not defined in this directive even though their meaning is likely easily understood and governed by the New Jersey Attorney General Attorney Directive on Internal Affairs. However, there is a risk in having any inconsistency with how these situations are handled regarding the viewing of a BWC recording prior to writing certain reports. For example, if an officer on a traffic stop is told by a citizen that they are leaving the scene and going to police headquarters to file a complaint against the officer because he or she is lying about the stop, does it mean that the officer cannot review the BWC before completing a substantive initial report? There is a tremendous risk that occurs if one supervisor allows such a review and another does not in this example.</p> <p>Additionally, the terms “bias” or “dishonesty” are not defined but listed in Items “e” and “f”. Again, all agency personnel must have a clear understanding of these terms to ensure consistency.</p> <p>Section 10.3.1: This section specifically details requirements for documenting when an officer has received an account of a BWC recording. These requirements must be included in the agency policy and training program. It is also of great importance that supervisors review applicable reports and ensure officer compliance.</p> <p>This A.G. Directive contains numerous changes with respect to when officers can and cannot review or receive an account of a BWC Recording. It is critical that the agency training program addresses these circumstances and the importance of completing police reports. In light of some of the restrictions, officers may believe that the BWC recording will be an appropriate accounting of their activity. However, the BWC recording alone may not memorialize their actions nor describe the officer’s state of mind, concerns, fears, past</p>	
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10	N/A	New Jersey Attorney General Use of Force Policy – <a href="#">Addendum B – Vehicle Pursuit Policy</a>	<p>Section 12.2, of Addendum B, Vehicle Pursuit Policy addresses audits of vehicle pursuits. Item “c” specifically mentions “an audit of BWCs and other videos on a risk-based and randomly selected basis”. Although such a provision is not included in the Body-Worn Camera Update of January 2002, it is clearly delineated in the Pursuit Policy Addendum. The term “risk-based” and randomly selected are not defined.</p> <p>Additionally, agency leaders should ensure that officers are not engaging in short pursuits of a motorist who flees when a traffic stop is attempted and the pursuit is not called into police communications, and a pursuit was not authorized. It may likely be that when a motorist flees and the officer does not actively pursue the vehicle then no such pursuit occurred. However, when officers do pursue, even for a brief time, but do not report the pursuit, these incidents are sometimes referred to as “ghost pursuits” which are pursuits that may have occurred but were never called into police communications. A finding at a later time that an officer regularly engages in ghost pursuits presents a tremendous amount of risk to the agency and the individual officer.</p>	<p>The Agency leader may wish to examine Section 12.2 of Addendum B, while reviewing their Body-Worn Camera Policy and training programs to ensure uniformity throughout the organization.</p> <p>Agency leaders may wish to evaluate measures to help eliminate such ghost pursuits by detailing in their Body-Worn Camera Policy and training programs that any motor vehicle stop resulting in a person fleeing from officers, but the officer does not engage in a pursuit, is reviewed for policy compliance.</p>