

VILLAGE OF WESTHAMPTON BEACH  
COMMUNITY LAW ENFORCEMENT REVIEW COMMITTEE  
REPORT AND RECOMMENDATIONS

MISSION:

Maintaining public safety is an essential role of government. Governor Cuomo has tasked each New York municipality with a police department to adopt a policing reform plan by April 1, 2021, with the goal of strengthening mutual trust and respect between the police and the community they serve. The Village Board of Trustees by resolution created the Westhampton Beach Community Law Enforcement Review Committee, comprised of local officials and community stakeholders, to engage in a fact based and honest dialog about the public safety needs of our community and to develop recommendations resulting from this review.

COMMUNITY LAW ENFORCEMENT REVIEW COMMITTEE MEMBERS:

- Maria Moore – Westhampton Beach Village Mayor
- Steven McManus – Westhampton Beach Village Chief of Police
- Stephen Frano – Westhampton Beach Village Trustee, resident, former police officer
- Rev. Jack King - Pastor of the Westhampton Beach Methodist Church
- James LaDu - Member of the Westhampton Beach Village Ethics Board and resident
- Suzanne Mensch – Westhampton Beach School District Board President, attorney, local business owner
- George Vickers – Local business owner, active community member
- Danielle Waskiewicz - Chamber of Commerce executive board member, Westhampton Free Library Director

## KEY CONSIDERATIONS:

The Committee members met several times during the months of December 2020 and January 2021 and explored the following key considerations:

- the role that the police currently play in our community
- staffing, duties and rules of conduct
- the use of in-car and body-worn video cameras
- whether law enforcement should have a presence in our schools
- how the police should engage in crowd control
- stops, searches and arrests, and related data collection
- accreditation
- diversity of the workforce
- officer training
- support of officer wellness and well-being
- community outreach plans

## POLICIES REVIEWED:

- Department Duties and Rules of Conduct (Appendix 1)
- Body-Worn Cameras (Appendix 2)
- In-Car Mobile Cameras (Appendix 3)
- Use of Force (Appendix 4)
- Recording of Custodial Interrogations (Appendix 5)

## BACKGROUND:

The Village of Westhampton Beach Police Department currently consists of 12 full-time sworn officers, as well as seasonal sworn officers, and two civilian staff. The Department serves a year-round population of approximately 2,000 people and a summer seasonal population of approximately 8-10,000 people. The land area is approximately 3 square miles.

STAFFING, DUTIES AND RULES OF CONDUCT:

The Department is comprised of one Chief of Police, three Sergeants positions, one Detective, nine Patrol Officers, one Public Safety Dispatcher and one Police Operations Aide.

The Committee members were provided with information to familiarize themselves with the composition of the Village's Police Department. The Committee also reviewed the Department's policy of Duties and Rules of Conduct, outlining the referenced positions and the roles of each officer within the Department.

BODY-WORN AND IN-CAR MOBILE CAMERAS:

Policies for body-worn cameras and in-car mobile cameras were reviewed. The Committee endorsed the fact that the Department employs body-worn and in-car cameras, noting that this type of equipment is necessary for both officer accountability and for their protection as well.

Chief McManus informed the Committee that Westhampton Beach was one of the first of the east end municipalities to implement the use of the body-worn cameras. He further explained that after years of use and changes in technology, it would be beneficial to upgrade the equipment. The Committee recommended that quotes for upgrades and/or replacements to the body-worn cameras and in-car camera and computer systems be promptly obtained and evaluated, and that steps be taken to ensure optimal functioning.

SCHOOL PRESENCE:

The Village and the Westhampton Beach School District implemented a cost-sharing School Resource Officer Program three years ago to promote safety and education, and establish a positive police presence within the schools while furthering the principles and

philosophies of community policing directly into the school environment. The School Resource Officer Program is designed to encourage working relationships between the police, the schools, and the students, and to provide school administrators and staff with law enforcement resources and expertise to maintain safety, order and discipline in the school environment. The responsibilities of the School Resource Officer include patrolling the school perimeter, assisting school administrators in emergency crisis planning and building security matters, working with the School on drills and exercises, providing training for school staff and security personnel in handling crisis situations, developing and implementing classes in law related education to support the educational efforts of the faculty, and improving security protocols and response plans for an active shooter event.

The position of School Resource Officer was discussed by the Committee, and feedback was provided by Chief McManus and Westhampton Beach School Board President Suzanne Mensch. They reported that the addition of the School Resource Officer in the Westhampton Beach schools for the past 3 years has been a success and much welcomed by the students and school administration. No changes to the program were recommended.

#### CROWD CONTROL:

The Committee discussed the role of the police in the community, and specifically discussed the interactions during recent protests and during large community events. The feedback was positive, and it was determined that the Department and the officers involved in these events managed the crowds with respect while maintaining order.

#### DATA COLLECTION:

Questions were raised by the Committee with respect to demographic data on stops, searches and arrests. It was explained by Chief McManus that this data is currently collected and stored, but that software program currently in use does not allow for the

data to be searched electronically for statistics on race and gender. The Committee noted that searchable data is an important tool for improving transparency and is necessary to identify the possible existence of disparate and biased policing. To that end, the Committee recommended that the Department's current records management system be replaced with one that allows for more efficient tracking of data on race and gender in connection with searches, traffic stops and the issuance of summonses.

### ACCREDITATION:

The Committee was briefed on the NYS Accreditation Program that encompasses four principal goals:

- To increase the effectiveness and efficiency of law enforcement agencies utilizing existing personnel, equipment and facilities to the extent possible,
- To promote increased cooperation and coordination among law enforcement agencies and other agencies of the criminal justice services,
- To ensure the appropriate training of law enforcement personnel, and
- To promote public confidence in law enforcement agencies.

“Accreditation demonstrates the agency performs in a consistently professional manner, that formalized policies are in place to govern its operational practices and procedures, and that all employees contribute to the agency's mission and know what is expected of them.” (New York State Law Enforcement Accreditation website).

Chief McManus described the process for updating and implementing the Department's policies and procedures, and informed the Committee that the Village has recently partnered with Lexipol, a private law enforcement support consulting company to assist with the accreditation process.

The Committee recognized that accreditation enhances effectiveness, efficiency and professionalism, and recommended that the Department diligently pursue the goal of achieving accredited status.

### DIVERSITY:

The Committee inquired as to the minority status of officers in the department and was informed that there are two fulltime and two part time minority and female employees. The Chief described the Civil Service selection process that requires the Village to hire officers from the top three candidates on the Civil Service list. The Chief also informed the Committee that the department is in the process of recruiting an officer for an open fulltime position, and that the eligible candidate on the Village's civil service list is female.

### TRAINING AND OFFICER WELLNESS:

The Committee discussed officer training as well as support of officer wellness and well-being. In responding to certain types of situations such as serious vehicle accidents and fatalities, officers occasionally experience trauma. Chief McManus described available wellness programs that offer support to officers experiencing stress from traumas, which programs include employee law enforcement support groups and peer group decompression methods.

### COMMUNITY OUTREACH:

Community outreach was a focus of the discussions, with the Committee recommending increased community engagement. The Committee generated many ideas for programs and initiatives to strengthen and foster community-police relationships. The Committee offered numerous suggestions that would lead to enhanced visibility and interaction between the police and the community including:

- Increase foot patrol on Main Street during the summer season.
- Partner with the Fire Department and the Southampton Town Police Department during community events.

- Partner with the Library and the School and utilizing their newsletters for community updates.
- Provide a child safety seat inspection station.
- Partner with the Suffolk County Sheriff's Department on a child ID program.
- Offer an open house/police department tour.
- Increase the Department's social media presence on Facebook and Instagram, and the Police Department's website.
- Issue a survey to the community for additional feedback.
- Organize a community "Night Out" program with music/games/activities.
- Partner with other agencies for Coat/Food/Toy Drives.
- Stop in at local houses of worship hosting overnight homeless programs.
- Issue a community safety guide.
- Establish a "Coffee with a Cop" program.

#### BAIL/DISCOVERY REFORM:

One of the Committee meetings was attended by several representatives from the Suffolk County District Attorney's Office who provided information to the Committee on the new bail reform laws as well as the new discovery laws and how each has impacted the police department in terms of the documents required to be delivered to the District Attorney's office, and the timeframes under which they must be provided. The representatives from the District Attorney's office were complimentary of the Village's police department, stating that it has navigated the new rules well.

## COMMUNITY LAW ENFORCEMENT REVIEW COMMITTEE RECOMMENDATIONS:

The Committee issued the following recommendations:

- Replace the department's current records management system with one that provides for more efficient tracking of data on race and gender in connection with searches, traffic stops and the issuance of summonses.
- Update all department policies and procedures and diligently pursue obtaining accredited status for the Department from the New York State Division of Criminal Justice Services.
- Obtain and evaluate quotes for upgrades and/or replacements to the body-worn cameras and in-car camera and computer systems, and take steps to ensure optimal functioning of the equipment.
- Take steps to enhance visibility and positive interaction with the community by implementing some or all of the following suggestions:
  - Increase foot patrol on Main Street during the summer season.
  - Partner with the Fire Department and the Southampton Town Police Department during community events.
  - Partner with the Library and the School and utilizing their newsletters for community updates.
  - Provide a child safety seat inspection station.
  - Partner with the Suffolk County Sheriff's Department on a child ID program.
  - Offer an open house/police department tour.
  - Increase the Department's social media presence on Facebook, Instagram, and the Police Department's website.
  - Issue a survey to the community for additional feedback.
  - Organize a community "Night Out" program with music/games/activities.
  - Partner with other agencies for Coat/Food/Toy Drives.
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  - Issue a community safety guide.
  - Establish a "Coffee with a Cop" program.

## APPENDIX 1



GENERAL ORDERS

<b>Duties and Rules of Conduct</b>		
<b>General Order</b>		<b>Reference: Administration - Organization</b>
<input checked="" type="checkbox"/> rescinds: All previous version		<b>accreditation standard:</b> NYS L.E.A.P.: Standard : Standards 2.2, 2.7, 2.9, 2.10
<input checked="" type="checkbox"/> amends:		
<b>effective date:</b> 12/5/2016	<b>amend date:</b>	

**Purpose**

To set forth job descriptions and Duties and Rules of Conduct for all members of the Village of Westhampton Beach Police Department.

**Policy**

In order to assure that members of the force are aware of their responsibilities and duties, it is the policy of the Village of Westhampton Beach Police Department to describe the basic duties and responsibilities of all members of the Department.

**Glossary**

**VILLAGE OF WESTHAMPTON BEACH POLICE DEPARTMENT**  
**DUTIES AND RULES OF CONDUCT**

<u>ARTICLE</u>	<u>SUBJECT</u>	<u>SECTIONS</u>
I	Organization	1.1-1.6
II	Duties of Chief of Police	2.1-2.3
III	Duties of Lieutenant	3.1-3.2
IV	Duties of Sergeant	4.1-4.2
V	Duties of Detectives	5.1-5.3

VI	Duties of Senior Officer	6.1-6.2
VII	Duties of Members of the Force	7.1-7.2
VIII	Patrol Responsibilities	8.1-8.16
IX	Authority and Command	9.1-9.11
X	Rules of Conduct	10.1
XI	General Rules	11.1-11.11
XII	Penalties by Village Board	12.1
XIII	Duties of Public Safety Dispatchers	13.1 – 13.5
XIV	Duties of Crossing Guards	14.1 – 14.5
XV	Duties of Civilian Members	15.1 – 15.7

## ***Procedure***

### **ARTICLE I**

#### **ORGANIZATION**

##### **1.1 Police Department**

The Police Department of the Village of Westhampton Beach, New York shall consist of a Chief of Police and such other officers as the Village Board shall deem necessary.

##### **1.2 Duties and Responsibilities**

The Police Department and its Police Force have the power and it is their duty to:

- a) Protect life and property.
- b) Prevent Crime.
- c) Detect and arrest offenders.
- d) Preserve the public peace.
- e) Enforce all laws and ordinances over which the police department has jurisdiction.
- f) Execute all criminal processes in accordance with law.

##### **1.3 Chief of Police**

The Chief of Police is the chief executive of the Police Department subject to the Rules and Regulations approved by the Village Board. The government and control of the police department and its members is vested in the Chief of Police.

The Chief of Police shall be designated by the Village Board of the Village of Westhampton Beach to exercise command of the Police Department and its members.  
(8-804- NYS Village Law)

1.4 Temporary Absence or Disability of Chief of Police

During the temporary absence or disability of the Chief of Police, when no special designation is made by competent authority, the command automatically devolves upon the senior ranking member of the command. He/she shall possess all the powers and perform all the duties of the Chief of Police, except the power of making any changes in Rules and Procedures, appointment, promotion, assignment and he/she shall carry out the orders previously given, and such orders shall not, except in cases of extreme emergency, be countermanded nor set aside: however, when such action is taken, a report shall be made to the Chief of Police in writing stating the reasons thereof in such instances.

1.5 Order of Rank

Chief of Police  
Lieutenant  
Sergeant  
Detective / Police Officer

1.6 Seniority

Seniority is determined: (Civil Service Rules)

First: by rank  
Second: by continuous service in rank  
Third: by date of appointment to previous rank or ranks  
Fourth: by date of appointment to Department  
Fifth: by highest score on civil service list from which appointments were made.

## ARTICLE II

### DUTIES OF CHIEF OF POLICE

#### 2.1 General Duties

Within the boundaries of the Village, the Chief of Police shall be charged with and responsible for:

1. The enforcement of all laws, ordinances and regulations, and is especially charged with enforcement of laws relating to vice, gambling, narcotics and dangerous drugs, public morals and intoxicating liquors.
2. The regulation and movement of vehicular and pedestrian traffic in streets, roads, places and highways, as described in the Vehicle and Traffic Law of the State of New York and Village Ordinances.

#### 2.2 Specific Duties

1. Enforce the Rules and Regulations of the Police Department and is charged with and responsible for the discipline and efficiency of the members of the Force and Department.
2. provide each member with a copy of the rules and regulations and see that he/she is properly instructed in his/her duties, and that he/she performs them in such a manner as to render effective police service; also that he/she is instructed with regard to their conduct, on and off duty, so that his/her conduct will not be detrimental to the good order and efficiency of the Police Department.
3. Insure the accurate preparation, maintenance and forwarding of reports and records;
4. conformity with the laws of the State of New York and the Rules and Regulations of the Department and see that entries therein are properly made.
5. as directed, take inventory, inspect and maintain department building, property and equipment, and forward a report to the Village Board.
6. account for the property assigned to and issued for the use of members of the Department, and is responsible for the proper care, economical use, sufficiency and serviceability thereof and shall make frequent inspections thereof;
7. submit the annual budget to the Village Board as directed.
8. frequently visit every building or parts thereof assigned to his department and all parts of the territory within the boundaries of the Village at intervals of the day and night, and take, or direct to be taken, such action as may be required to render police service and to maintain proper discipline. He shall frequently test the knowledge of subordinates as to conditions upon their posts.
9. carry out the following in addition to all other reports, when a member of the force is injured:
  - a. He/she shall make a careful investigation of the circumstances of the injury, and shall where possible interview and obtain a signed statement from each witness.
10. He/she shall cause an inspection by unit supervisor(s) of their personnel to be made periodically of the uniforms and equipment and direct said supervisors make a written report of discrepancies to their immediate superior officer.

11. carefully observe the police duty performed by Probationary Police Officer, and shall report to the Village Board prior to the expiration of the probationary period, the manner in which such duty was performed.
12. obtain all Police Department property, and all firearms, in the possession of a member of the Force who resigns, retires, is dismissed or enters active military service, and shall obtain all Police Department property and all revolvers and pistols from among the effects of a member who dies.
13. divide into posts the territory within the Police jurisdiction of the Village. A post shall be designated as indicated:
  - a. A patrol post includes the public thoroughfares within the boundaries of the post. It does not include the interior of buildings, except as otherwise specified.
  - b. A traffic post includes the portion of the public thoroughfare necessarily included in the regulation of vehicular pedestrian traffic.
  - c. portion of the hospital in which a prisoner or prisoners are confined under police jurisdiction.
  - d. A special post is a temporary post. The purpose, location, boundaries and time during which it is to be covered must be specified and approved by the Chief of Police or Acting Chief of Police.
14. issue written and verbal orders to attain Department goals.
15. when a burglary or other serious crime is committed, or a serious accident occurs under circumstances which indicate that the member of the Force on post might have prevented it, the Chief of Police shall cause an investigation to be made, and if the investigation reveals neglect on the part of the member, he shall prefer written chargers against the member.
16. evaluate programs; draft specifications for equipment, uniform and insignia
17. Develop plans to meet Department needs.
18. Control Department expenditures.
19. maintain suitable relations with mass communications media;
20. cooperate with all law enforcement agencies and officers in matters of mutual interest;
21. Provide leadership and guidance in developing loyalty and dedication to the police profession.
22. He/she shall cause the directing, supervising and evaluating of members in their assigned duties. Recommend remedial or disciplinary action for inefficient, incompetent or unsuitable members.
23. sustain a member of his command who is properly performing his duty;
24. correct subordinates in a dignified manner.
25. insure the security and care of prisoners and sick, injured or unconscious persons and will obtain medical care when needed.
26. deal fairly and equitably with subordinates.
27. at all times conduct himself/herself in a manner which will provide leadership and guidance to the members of his Department and enhance the public image of police in general.

2.3 The Chief of Police may, at his/her discretion, may suspend from duty and report to the Village Board any member or employee of the Department for any violation of the Rules and Regulations or for any violation of section VL8-804, or section 75 of civil service law. The Village board may suspend with pay, or without pay for up to 30 days, pending the trial and determination of the charges, any member of the police department for neglect or dereliction in the performance of official duty, or violation of the Rules and Regulations, or

disobedience, or incompetency to perform official duty, or an act of delinquency seriously affecting his general character or fitness for office, on the recommendation of the Chief of Police or an officer working in such capacity.

## ARTICLE III

### DUTIES OF LIEUTENANT

#### 3.1 General Duties:

The Lieutenant shall be designated a superior officer and shall serve as Department's Executive Officer. As the Executive Officer, the Lieutenant shall be responsible for Department Operations, which shall include patrol investigations and support services. The Lieutenant shall be responsible to the Chief of Police regarding his duties and activities and shall be considered second in command and Officer-in-Charge during prolonged absences or the unavailability of the Chief of Police.

#### 3.2 Specific Duties

As Executive Officer, the Lieutenant shall be responsible for:

1. Performing specific duties as assigned by the Chief of Police.
2. The enforcement of all Department orders, rules, policies, and procedures.
3. The quality of performance and meeting of standards and goals of the department by all members of the department.
4. The maintenance of discipline and positive morale within the Department.
5. Recommending the policy or procedural changes based on internal and external input or recommendations.
6. Evaluation and supervision of Sergeant(s), Detective(s) and or Police Officer's in the event of a prolonged absence of the Sergeant assigned to their supervision.
7. Reviewing for accuracy, completeness, adherence to Department rules and procedures and approval all reports submitted by Sergeant(s) and Detective(s).
8. The responsibilities of the Department Quartermaster and as such the care, maintenance and inventory of all Department equipment and supplies pursuant to Department rule and procedures.
9. The responsibilities of E-Justice portal Security Officer and as such executing the duties thereof pursuant to Department Rules and procedures.
10. The responsibilities of the Freedom of Information Officer ensuring compliance to Federal, State and Local laws regarding such and ensuring correct and accurate records of Department operations.
11. The responsibilities of the Property/Evidence and Impound Officer executing such duties pursuant to Department rules and procedures.
12. The responsibilities of Training Officer pursuant to Department rules and procedures and, as such, recommend, develop, conduct, coordinate, identifying and

- maintaining records of the mandated and in-service training needs of all subordinates.
13. Ensuring and maintaining records of attendance and leave requests by all subordinates.
  14. Approval or denial of leave requests pursuant to Department rules and procedures and existing contractual agreements.
  15. Establishing and submitting to the Chief of Police by June 1 of each year a vacation schedule for all subordinates pursuant to Department rules and procedures and existing contractual agreements.
  16. Ensuring the timely submission and review for approval payroll records of all subordinates.
  17. Evaluations and recommendations to the Chief of Police of purchases of equipment and supplies necessary and conducive to meeting the goals, objectives and the efficient operation of the Department.
  18. Coordinating or conducting, as instructed by the Chief of Police, any special operation, activity or function of the Department.
  19. Any other duties properly assigned by the Chief of Police.

## ARTICLE IV

### DUTIES OF SERGEANTS

#### 4.1 General Duties

The Sergeants shall be primarily responsible for duties of patrol. The Sergeants shall be designated as superior officers and serve as Squad Supervisors. The Sergeants will be responsible for the supervision and proper conduct of personnel assigned to his/her squad or coming under his/her control whenever on duty. The Sergeant shall be directly responsible to the Lieutenant and, if so directed by the Chief of Police, assume the duties of the Lieutenant during his/her prolonged absences or unavailability.

#### 4.2 Specific Duties

As a superior officer and Squad Supervisor, the Sergeant shall be responsible for;

1. Performing specific duties as assigned by the Chief of Police or the Lieutenant.
2. The maintenance of discipline and positive morale among personnel assigned to his/her supervision.
3. Providing leadership to and recommending training for subordinates to insure all assignments are conducted properly.
4. The enforcement of all Department orders, rules, policies and procedures of personnel assigned to his/her supervision or coming under his/her control whenever on duty.
5. Review for accuracy, correctness and adherence to Department orders, rules, policies and procedures and approval all reports or case files submitted by personnel assigned to his/her squad.
6. Whenever on duty, periodic inspections of subordinates' sectors and submitting sector inspection reports in accordance with Department procedures.

7. Evaluating performance of personnel assigned to his/her supervision and implementing individual programs to correct any deficiencies.
8. Submitting fitness and evaluation reports for all personnel assigned to his/her supervision in accordance with Department policies and procedures or as directed by the Chief of Police or Lieutenant.
9. Submitting monthly reports pursuant to Department orders regarding his/her activities and those of personnel under his/her supervision.

## ARTICLE V

### DUTIES OF DETECTIVES

- 5.1 General - Detective(s) - The Chief of Police may assign a qualified member or members as Detectives who have demonstrated abilities as qualified for the position.
- 5.2 The Chief of Police is authorized to assign or detail members of the Department as plainclothes personnel for the purpose of executing warrants, undercover assignments, stake-outs, police surveillances and investigations of misdemeanors and felonies.
- 5.3 General - The Detectives are responsible, but not limited to, the investigation of all offences, all sex and gambling offenses and those selected offences as enumerated in Section 160.10 of the Criminal Procedure Law. This responsibility does not preclude the Detective Section or the uniformed members from mutually assisting each other in any or all other police duties assigned to them.

The Detectives shall be responsible for:

1. Investigation of all unattended deaths occurring within the Village.
2. Investigation of all motor vehicle accidents occurring within the Village that result in death or serious physical injury that might result in death or motor vehicle accidents involving Village owned vehicles.
3. Being on call, and will be available and respond when called upon.
4. Maintaining intelligence, arrest, photo and fingerprint files.
5. Responding when necessary to crime scenes in order to obtain evidence or to photograph and secure the crime scene.
6. Enforcing local misdemeanor and infraction warrants and maintaining a system for controlling same.
7. Enforcing felony warrants and being responsible for entering and canceling same in the E-Justice portal and NCIC systems.
8. Processing of all juvenile arrests and felony arrests that will most likely result in mass media notoriety.
9. Recovering of Departmental issued equipment from personnel who resign or are discharged.
10. Maintaining a Crime Prevention Unit and conduct periodic seminars for the community.

11. Maintaining the property and evidence in the department. Maintaining the property room and keep a chain of evidence.

## ARTICLE VI

### DUTIES OF SENIOR OFFICER

#### 6.1 General Duties:

The senior officer on duty for a particular tour will be determined by department seniority (Article 1, 1.7).

A senior officer will be responsible for the enforcement of all laws and ordinances, Department Rules and Regulations, orders, procedures, discipline, punctuality and attendance, appearance, good order and efficiency of members within his assigned jurisdiction.

#### 6.2 Specific Duties

A senior officer will:

1. Perform specific duties and functions as assigned by Commanding officers.
2. Obey all lawful orders.
3. Perform assigned tasks.
4. Provide leadership and guidance in developing loyalty and dedication to the police profession.
5. Recommend remedial or disciplinary action for violation of the law or Rules and procedures.
6. Communicate orders, information and instructions.
7. Inform relief of all necessary police matters.
8. Be present at prescribed roll calls.
9. Report to his commanding officer absentees and any deficiencies in staff/personnel and equipment.
10. Ensure that Department resources are used effectively.
11. Ensure that recovered property is handled in accordance with Department Rule and Procedures.
12. Account for all monies and valuables received, processed and disbursed in conformance with department orders.
13. Inquire into the circumstances of all arrests to assure that all persons are handled in conformance with Department orders.
14. Know and conform to the current bail provisions of the Criminal Procedure Law, State of New York and act as designated desk officer for the purpose of issuing appearance tickets and affirming court informations.
15. Report promptly matters of police importance to his Commanding Officer.
16. Insure that all appropriate Village Departments are informed of emergencies which require their attention.
17. Perform those duties of the members of the Force that are applicable to him.
18. When in uniform, maintain a professional bearing and render professional courtesy to Ranking officers.

19. Assemble and remove details in a professional manner.

## ARTICLE VII

### DUTIES OF MEMBERS OF THE FORCE

#### 7.1 General Duties

A member of the Force will be responsible at all times for the prevention of crime, enforcement of all laws and ordinances, preservation of public peace, protection of life and property, arrest and prosecution of law violators and professional adherence to Department rules and regulations.

#### 7.2 Specific Duties

A member of the Force will:

1. Know and conform to Department rules and regulations, orders and procedures.
2. Perform assigned duties in a professional manner.
3. Obey all lawful orders.
4. Be in attendance for those hours specifically assigned and will be considered on duty at all times for the purpose of rendering emergency police service.
5. Participate in formal details and roll calls in a professional manner.
6. When in uniform, maintain a professional bearing and render professional courtesy to superior officers.
7. Members shall treat superior officers, subordinates and associates with respect. They shall be courteous and civil at all times with their relationship with one another. When on duty, and particularly in the presence of other members, employees or the public, officers will be referred to by rank.
8. Identify self by name, rank and shield number when so requested.
9. Have a residence as provided by laws of the State of New York and the Village.
10. Report immediately any incapacity or inability to perform Department duties in the manner prescribed by the rules and regulations.
11. Report any change of marital status, address, selective service rating or other matter affecting the administration of the Department.
12. Receive record and service immediately all complaints and requests for service. Refer and transfer complaints and requests only in accordance with Department order.
13. Possess a valid State of New York operator's or chauffeur's license. If lost or revoked, immediately report same to the Chief of Police.
14. Remain on his duty assignment and leave only for police or personal necessity. If required to leave, he will record the time of departure and the reason and report this information to the Communications Officer as soon as possible and make a note of the same on his daily activity sheet.
15. Provide security and care for prisoners and others delivered to his/her custody.
16. Search all male prisoners.

17. Have female police officers or female jail attendants conduct a search of female prisoners. When this is not possible with Village staff a request for Mutual Aid will be done.
18. Help secure medical attention for all sick and injured persons.
19. When assigned to a motor vehicle.
  - a) Inspect it for damage.
  - b) Report to supervisory officer any defects observed or incurred.
  - c) Protect it from possible damage or theft.
20. When operating a motor vehicle:
  - a) Use skill, good judgment and care for the safety of persons and property.
  - b) Obey all traffic regulations unless on emergency assistance.
21. Submit transfer requests (change of duty tour) in conformance with Department procedures.

## ARTICLE VIII

### PATROL RESPONSIBILITIES

- 8.1 Patrol Officers shall perform duties and functions as assigned.
- 8.2 Patrol Officers shall be responsible for the diligent and conscientious performance of the duties imposed upon them by law, by the rules and regulations of the Department, and the lawful orders of their Superior Officers and the law.
- 8.3 Patrol Officers, unless otherwise directed, shall constantly and alertly patrol their areas, giving particular attention to those locations most vulnerable to the commission of crime.
- 8.4 Patrol Officers shall thoroughly acquaint themselves with their assigned areas of patrol, and do all in their power to prevent any breach of the peace, or violation of law.
- 8.5 Patrol Officers shall familiarize themselves with the location of all Police, Fire, and other communication facilities in the Village.
- 8.6 Patrol Officers shall continually check the security of the business places on their posts after closing hours.
- 8.7 Patrol Officers shall continually, inspect their patrol areas carefully noting any condition requiring Police attention and shall take whatever action is necessary in the situation.
- 8.8 Frequent occurrence of crime on any post may indicate lack of ability or attention to duty by the Officer assigned, and shall be the subject of review, and possible disciplinary action.
- 8.9 Patrol Officers shall make a memorandum of current complaints, and all matters of Police interest relating to their posts, and give proper attention to the same.
- 8.10 Patrol Officers shall keep a memorandum of all occurrences, or information received, which may be of interest to any branch of the Department or other agency, or upon which he may be required to report, and promptly transmit the same.
- 8.11 Patrol Officers shall give particular attention to premises where liquor, vice, or gambling laws may be violated, and shall do all in their power to prevent such activity. They shall promptly report their observations and actions taken, to their Ranking Officer.
- 8.12 Patrol Officers shall carefully observe conditions which could lead to development of crime or criminal opportunities, take such preventive action as the condition may indicate, and report their observations, actions, or recommendations, to their Ranking Officers.
- 8.13 Patrol Officers shall give particular attention to streets of heavy traffic, signalized intersections, and traffic control signs. The responsibility of the Patrol Officers in the enforcement of traffic violations, is as great as in the enforcement of their laws. Members

failing to take appropriate action upon view of a traffic violation are subject to the disciplinary action as for other neglect of duty.

- 8.14 Patrol Officers shall not leave the village during their tours of duty except: (1) on official business; (2) as a result of an official request of mutual aid.
- 8.15 Patrol Officers shall not remain at Headquarters for unnecessary or prolonged periods of time except when authorized or performing official duties.
- 8.16 Patrol Officers shall complete all appropriate reports and paperwork in a complete and professional manner before completing their tour of duty.

## ARTICLE IX

### AUTHORITY AND COMMAND

- 9.1 Command is exercised by virtue of Office or special assignment of Officers who are eligible by Law to exercise command. Subject to direction from higher command, a commanding officer has direct control over all members and employees within his/her command.
- 9.2 When officers of equal rank are present, and in the performance of the same operation, the senior ranking officer shall be in command, unless otherwise directed.
- 9.3 A member, who succeeds to any command or duty, stands in regard to his/her duties, in the same situation as his predecessor. The member relieved shall turn over to his successor all orders relating to that position in force at the time, and all funds and properties pertaining to it. He/she shall receive, upon request, receipts showing the condition of each article so transmitted.
- 9.4 An Officer relieving or temporarily filling the position of a superior, in an acting capacity, shall be vested with all the authority and responsibilities of the superior, but the acting officer shall not interfere with, countermand, or modify the orders previously issued by the superior, except in extreme emergency.
- 9.5 Members acting in the capacity to a higher rank shall be accorded the same obedience and respect as the permanent ranking officer.
- 9.6 Should an order conflict with any previous order issued by any other ranking officer or with any department or provision of the Department Rules and Regulations, the member of whom such order is issued shall respectfully call attention to the conflict; responsibility for the countermanding the original order then rests with the individual issuing the second order. If so directed, the latter command shall be obeyed.
- 9.7 Issuance of orders to a subordinate does not relieve a Ranking Officer from the responsibility to see that the orders are obeyed.
- 9.8 Ranking Officers shall not perform the duties regularly assigned to a subordinate, when the subordinate is available to perform them.
- 9.9 Adherence to the Chain of Command shall not be by-passed except in an emergency.
- 9.10 Ranking Officers may exercise command over subordinates not of their regular command whenever, in their judgment, such action is necessary in order not to jeopardize the police purpose or the reputation of the Department.
- 9.11 Ranking Officers in command of the various branches of the Department shall establish methods, techniques and procedures best suited for the accomplishment of the functional objectives of their particular bureaus. Such procedures and techniques shall be subject to

the approval of the Chief of Police, and shall not be in conflict with the law, or any rule or order of the Department.

- 9.12 Whenever authority is delegated to a member of the Department, he shall be held accountable for the proper use of such authority.

## ARTICLE X

### RULES OF CONDUCT

- 10.1 A member of the Department shall not violate either by commission or omission any of the following acts:
1. Conduct which brings discredit upon the Department.
  2. Failure to perform a duty.
  3. Disobedience of an order.
  4. Insubordination or disrespect toward a Superior Officer.
  5. Inattention of duty.
  6. Lounging or sleeping on duty.
  7. Being absent from duty without proper authorization.
  8. Leaving duty assignment without being properly relieved or without proper authorization.
  9. Incompetency or inefficiency in performance of duty.
  10. Entering any tavern, liquor store or bar in uniform or any part thereof except when it is necessary for inspection or for the immediate performance of a police duty.
  11. Drinking alcoholic beverages while on duty.
  12. Drinking alcoholic beverages while in uniform or any part thereof whether on or off duty.
  13. Drinking of any alcoholic beverage while off duty to an extent which would make him/her unfit to report to duty at any hour of the day or night, or bring discredit on the department.
  14. Violation of any duly constituted law.
  15. Disorderly conduct.
  16. Immoral conduct.
  17. Using coarse, profane or insolent language to any person.
  18. Failure to treat any person civilly and respectfully.
  19. Willful maltreatment of any person.
  20. Knowingly make a false report, written or oral.
  21. Failure to wear the regulation uniform when on duty or on official business unless otherwise authorized by the Chief of Police.
  22. Failure to maintain a neat and clean appearance of self, uniform and equipment.
  23. The use of any tobacco while in uniform in public except while on meal period, an authorized break.
  24. Standing or walking with hand in pocket of uniform.
  25. Receiving or attempting to receive a fee, gift, present or other thing of value from a person under arrest or from someone else on behalf of the arrested person.
  26. Receiving, soliciting or attempting to solicit a bribe in any form.
  27. Publicly criticizing the official actions of a Department member.

28. Disseminating or releasing any information contained in a Department record except in conformance with Department orders.
29. Failure to pay a just indebtedness within a reasonable amount of time.
30. Failure to identify self by name, rank and shield number when requested.
31. Failure to seize, record, process and dispose of recovered or prisoner's property in conformance with Department orders and procedure.
32. Failure to handle stray or dead animals in conformance with Department orders and procedure.
33. Failure to notify a Superior Officer that a member of the Department is violating a rule or order of the Department.
34. Deliberate violation of Laws or Regulations pertaining to police management and control.
35. Possessing or transporting when on duty or on Department property any intoxicating liquor, dangerous drugs or narcotics except when in performance of police duty or when authorized by competent medical authority. In the latter instance the Chief of Police will be notified in writing of the need for such prescription by the member concerned.
36. Defacing or neglecting to protect and preserve Department property.
37. Failure to obey Department orders concerning other employment, occupations or professions.
38. Engaging directly or indirectly in the forbidden ownership, maintenance or operation of a tavern or retail liquor establishment.
39. Allowing the publication of any photograph of oneself in the regulation uniform which advertises any commodity or commercial enterprise without the permission of the Chief of Police.
40. Communicating or corresponding with other police agencies or individuals concerning police matters except as provided by departmental procedures.
41. A member of the Department shall not publically criticize any action of any Judge, Justice, or other officer of any court, or any member of the Village Board of Trustees.
42. Failure to keep Department vehicle in public view while assigned to general patrol duty except when authorized by a Superior Officer.
43. Concealing Department vehicle for the sole purpose of apprehending traffic violators except authorized by a Superior Officer.
44. Permitting any person not on official business to ride in a Department vehicle unless specifically authorized.
45. Riding in or on a non-department vehicle during duty hours except when authorized by a Superior Officer or in pursuit of official police business.
46. Operating a Department vehicle out of the Village except in immediate pursuit to law violators or when on official police business authorized by the Chief of Police.
47. Operating a Department vehicle without proper authorization or on other than official police business.
48. Pulling, pushing or towing any vehicle with a Department vehicle except as authorized by the Chief of Police.
49. A member of the department when operating any department vehicle is responsible for its proper appearance, maintenance and upkeep, including all items needed for emergency service. No member of the department will go off duty leaving emergency equipment in need of replacement or repair.

50. Altering Department equipment in any way except as authorized by the Chief of Police.
51. Carrying any rifle, shotgun, machine gun, gas gun or substituting for the regulation service weapon any weapon, not authorized by the Chief of Police or adding a concealed auxiliary hand gun while on duty not authorized by the Chief of Police.
52. Unlawful or unnecessary use or display of a weapon.
53. Failure to report the discharge of a weapon.
54. Selling, giving, lending or disposing of a dangerous weapon as outlined in section 265.05 of the Penal Law of the State of New York contrary to the provisions of Section 265.10 of the Penal Law and the Rules and Regulations of the Department.
55. Giving an opinion as to bail except by those specifically authorized to admit bail.
56. Failure to take, record and act upon complaints except as prescribed by department orders.
57. Removing, altering or changing any official Department record except as provided for in Department orders.
58. Issuing any device which purports to grant special privileges to the holder.
59. Displaying in any manner non-departmental or departmental posters or pictures in or on any Department property or equipment except in conformance with Department orders or procedures.
60. Obligating the Department financially in any manner except as authorized by the Chief of Police or Village Board.
61. Recommending to any citizen any bondsman, lawyer, undertaker, physician, hospital, towing or repair service, or other professional or commercial service.
62. Failure to report any information of a police nature in conformance with Department orders and Rules and Regulations.
63. Failure to obtain official permission to participate in public discussions of police or Department business except as provided in Department orders.
64. Entering any police lock-up except on official police business.
65. Associating or fraternizing with known criminals or persons of ill repute except in the immediate discharge of official duties or with authorization of the Chief of Police.
66. Soliciting or accepting a gift, present, reward, gratuity or other thing of value for any service rendered as a Department member, excluding gifts received from relatives or close friends upon appropriate occasions, without the consent in writing, of the Chief of Police.
67. Seeking or soliciting contributions of any kind from anyone, by any means, for any purpose, under any circumstances, including collections for charitable purposes by any member, group of the members of their agent, except as specifically authorized by the Chief of Police.
68. Accepting any food or beverage or other valuable consideration without cost or at reduced cost at any time because of his official position as a member of the Department.
69. Receiving any gift, present or gratuity from any subordinate, for the purpose of providing special favors or considerations in connection with departmental business.
70. Giving any gift, present or gratuity to a superior for the purpose of seeking special favors or considerations in connection with departmental business.

71. Failure to submit a written report that he is under investigation by another law enforcement agency to the Chief of Police within 24 hours of becoming aware of such investigation.
72. Refusal to sign an immunity waiver when so ordered in a matter connected with his official duties.
73. Refusal to testify on grounds of possible self-incrimination.
74. Participation by Department members or urging the participation by other members in any strike, slow-down, or other concerted action which is in any degree adverse to the maintenance of the public safety or welfare.
75. Affiliation with any organization or body, the constitution or regulations of which would in any way exact prior consideration, and prevent him from performing his duties
76. No member of the Department may seek the influence or intervention of any person outside the Department for the purpose of personal preferment, advantage, transfer or advancement.
77. No member or members of the Department shall contact the Village Board or members thereof on police problems except through regular channels with the permission of the Chief of Police.
78. No member of the Department, unless authorized by the Chief of Police, shall possess keys to any premises, not his own, on or near his beat.
79. No member of the Department, will conduct any other outside employment while on duty.
80. No member of the Department will use habit forming or dangerous drugs or narcotics unless properly prescribed by a dentist or physician. In such instance the Chief of Police will be notified in writing of such need.
81. No member of the Department shall play games of cards or chance in a Department building or engage in illegal gambling anywhere.
82. A member violating any of the provisions of this article shall be subject to disciplinary action as provided by law.

## ARTICLE XI

### GENERAL RULES

All members of the Police Department shall be subject to the Rules and Regulations. Members of the Department are not merely employees, but are officers of this State and Village charged with specific duties in maintaining public order and administering justice. Therefore, every member's sole responsibility must be to the Chief of Police, and through him to the public.

- 11.1 It is the duty of the Police Department and the members of the Force, at all times of the day and night, to protect life and property, prevent crime, detect and arrest offenders, preserve the public peace and enforce all laws and ordinances over which the Police Department has jurisdiction.
- 11.2 A police officer, regularly performing patrol duty, shall proceed to their designated post or relieving point without unnecessary delay, inspect their post immediately, remain constantly alert and observant, note any condition thereon requiring police attention and take appropriate action:

1. He/she is charged with the enforcement of all laws and ordinances, especially with those relating to public morals, vice, gambling, intoxicating liquors; also with the proper condition and maintenance of departmental equipment, traffic control equipment of all types, street lights, public highway, curb and sidewalk conditions within the boundaries of the post of which he is assigned; he shall promptly report through official channels any condition requiring attention and shall provide safeguards when necessary.
- 11.3 A member of the Force or Department shall be fit for duty and subject to duty at all times except when on sick report. They shall not engage in any other occupation except when suspended from duty without pay; or when, having filed an application for retirement, or he/she is on continuous vacation or other authorized leave, or when having made application, he/she has been granted a work permit by the Chief of Police.
- 11.4 Members of the Force shall be held strictly accountable for all information acquired by them on or off duty, regarding all suspicious persons or places within the Village.
- 11.5 A member of the Force or Department shall treat as confidential the official business of the Police Department. They shall not talk for publication, nor be interviewed, nor make public speeches, nor shall they impart information relating to the official business of the Department to anyone except under due process of law and as directed, or with the permission of the Chief of Police.
- 11.6 Firearms: The indiscriminate and careless use of firearms is strictly prohibited. The Department's rules and procedures regarding firearms and the use of force and deadly physical force will be strictly adhered to.
- 11.7 A member of the Department found guilty of violating a rule or regulation of the Department, or of the provisions of any order or orders, or of disobedience of orders, or of conduct unbecoming of an officer, or of making a false official communication, record or statement, or a member of the Department convicted in a court having criminal jurisdiction, may be dismissed from the Department, or suffer such other punishment as a result of a command discipline or as the Village Board may direct.
- 11.8 Disorder or neglect to the prejudice of good order, efficiency or discipline, though not specifically mentioned in the Rules and Regulations, shall be taken cognizance of by the Department, and members of the Department found guilty thereof will be punished by means of command discipline or at the discretion of the Village Board.
- 11.9 A member of the department awaiting a hearing on charges against him/her, if ordered by the Chief of Police, shall turn into the Chief of Police for safe keeping his/her/ credentials, shield, service weapon, and other department property, pending the hearing or findings of such hearing. During this period, he/she shall not wear the uniform of the department.
- 11.10 A member who becomes a defendant in a criminal action in any court, if so ordered shall comply with the provisions of regulation number eleven - nine (11.9).
- 11.11 A member of the department, who in the performance of his official duties, acts in such a manner that the Chief of Police or superior officer of that member deems him/her to be incompetent in the performance of his/her duties, or while on duty or off duty, engages in any misconduct that would tend to bring discredit on the member, or other members of the department, shall be subject to disciplinary action by the Village Board of Trustees, after a hearing upon written stated charges.

## ARTICLE XII

### PENALTIES BY VILLAGE BOARD

- 12.1 A member of the Department found guilty of violating the Rules and Orders is subject to one of the following actions: reprimand; forfeiture and the withholding of salary or compensation for not more than 20 days; suspension from duty for not more than 20 days and the withholding of salary or compensation during that suspension; or dismissal from the department.

## ARTICLE XIII

### DUTIES OF PUBLIC SAFETY DISPATCHERS

- 13.1 Dispatch emergency calls to appropriate sectors, posts, Fire department, ambulance, or other police jurisdictions.
- 13.2 Notify the Department of Public Works, tow company, or proper utility company as needed.
- 13.3 Log all Traffic and Parking Tickets.
- 13.4 Maintain registry and billing for burglary alarm permits
- 13.5 Complete administrative paperwork as needed
- 13.6 Issue of handicap permits
- 13.7 Pull incident report numbers upon receiving call.
- 13.8 Initial contact for all citizen complaints received at headquarters
- 13.9 Have access to items of value belonging to the Department and deliver currency from bail transactions to the appropriate location

## ARTICLE XIV

### DUTIES OF CROSSING GUARDS

- 14.1 Trained in proper techniques in how to assist children across the road by using a portable "Stop Sign", and proper techniques in slowing traffic.
- 14.2 Wearing of a reflective vest and/or other safety equipment.
- 14.3 Reporting any hazardous conditions that could impact on the safety of the crossing guard or children.
- 14.4 Calling in when unable to cover a crossing at least 30 minutes prior to the start of their shift.
- 14.5 Be responsible for knowing school schedule changes such as conference days and early dismissals

## ARTICLE XV

### DUTIES OF CIVILIAN MEMBERS

#### General Duties

- 15.1 A civilian member shall be responsible for the proper and efficient performance of their duties.
- 15.2 The Chief of Police or his designee shall be in charge of all civilian employees and shall fix civilian duties and responsibilities.

#### Specific Duties

- 15.3 Obey all lawful orders of a superior;
- 15.4 Be bound by the Rules and Regulations, orders and procedures of the department insofar as they apply;
- 15.5 Report promptly to a superior officer any violation of any law or Rules and Regulation of which you have knowledge.
- 15.6 Shall be responsible for the proper care of Village owned or leased equipment and shall immediately report any damages or defects to the Chief of Police or his designee in writing;
- 15.7 Safeguard all police intelligence and information from unauthorized people and treat all police matters and all documents as confidential

By Order Of

*Crazer C. Gonce*  
Chief of Police

## APPENDIX 2



**GENERAL ORDERS**

**Body-Worn Cameras Policy**

<b>General Order</b>		<b>Reference:</b>
<input type="checkbox"/> rescinds:		<b>accreditation standard:</b>
<input type="checkbox"/> amends:		
<b>effective date:</b> 7/1/2019	<b>amend date:</b> 5/29/2020	

**PURPOSE:**

To establish a policy regarding the use and maintenance of body-worn cameras and captured data.

**POLICY:**

This policy will provide the Village of Westhampton Beach Police Department with guidelines on recording, storing, retaining, releasing and maintaining data from body worn cameras which are used to document an officer's enforcement related activities. Body-worn cameras will also assist in gathering evidence, promote transparency and provide an objective record of an incident. This policy applies to all uniform members of service issued a BWC as well as personnel responsible for supervising, supporting and maintaining the use of BWCs. This policy does not govern the use of surreptitious recording devices used in undercover operations.

**DEFINITIONS:**

- A. **"Body-Worn Cameras"** (BWC) - small video cameras, typically attached to an officer's clothing, helmet, or sunglasses that maximizes the camera's ability to capture video and audio data of the officer's law enforcement related activities.
- B. **"Agency Administrator"** - An agency administrator has full access to and user rights within the data storage system. He or she can assign and track equipment, control passwords, oversee needed repairs, delete non-evidentiary recordings, conduct audits and quality control reviews, and act as a liaison with BWC representatives.

**PROCEDURE:** When a uniformed member of the service is assigned a Body-Worn Camera (BWC):

*I Prior to start of shift:*

- A. Retrieve a Body-Worn Camera from the docking station.
- B. Inspect the BWC to ensure the battery is charged and the device is operational.
- C. Place the BWC into the single pairing dock. If the Versus upload application doesn't open up automatically select the Upload Station icon on the desktop.
- D. Select Unit/Vehicle number you are assigned. If not assigned to a unit and using a BWC as a standalone unit, select No Vehicle. Once Unit/Vehicle number or No Vehicle has been selected, you will enter your Verus login. Once you enter your Verus login you will receive a message stating, Checkout complete and is assigned, now remove the BWC from the pairing dock.
- E. Position the BWC to facilitate the optimal recording field of view. This will normally entail attaching it to the outermost garment in the center of the chest using the mounting hardware provided.
- F. Police personnel shall only use BWCs issued or approved by the agency. The use of any non-Department issued recording device is strictly prohibited.
- G. All agency personnel who will use or otherwise be involved with BWCs shall receive training to include, but not limited to: activation; deactivation; upload procedures; proper maintenance; and the agencies policy and procedures on covered practices of a BWC.

## **II *Mandatory Activation of BWC***

Activate BWC prior to engaging in, or assisting another uniformed member of the service with the following police actions:

- A. Potential crime-in-progress assignments, including:
  - 1. Suspicious Incidents (e.g. suspicion persons, shots fired, person selling drugs, etc.)
  - 2. Disorderly Person or Group
  - 3. Violent Crimes (e.g. Robbery, Burglary, Assaults, other crimes)
  - 4. Any incident involving a Weapon
  - 5. Pd Assistance calls
  - 6. Active Domestic
- B. Public Interactions that escalate and become adversarial
- C. Interactions with an emotionally disturbed person
- D. Interactions with person suspected of criminal activity
- E. A search of an individual and/or his/her belongings, except for strip searches
- F. Vehicle Stops
- G. Summonses, except for Parking summons, unless owner/operator is present
- H. Use of Force
- I. Arrests

\*\* Notify a Patrol Supervisor when there is a failure to record a mandatory event. Document notification on activity log.

## **III *BWC Activation, Notice of Recording and Exigent Circumstances***

- A. Begin recording prior to or immediately upon the arrival at the incident location. (BWC are synced with In-Car Mobile camera system and will activate when the MVR is triggered)

- B. In the event of an unanticipated or exigent occurrence, activate the BWC as soon as it is feasible and safe to do so after taking the necessary police action to preserve human life and safety. At no time should proper tactics be compromised to begin recording.
- C. NOTICE OF RECORDING: As soon as reasonably practical, notify members of the public that an interaction is being recorded, unless notification could compromise the safety of any person or impede an investigation.
  - 1. Suggested notification: "Sir/Ma'am, I am wearing a body- camera and this encounter is being recorded."
  - 2. Consent from a subject is not required to start or continue recording.

#### *IV Discretionary activation of BWC*

- A Uniformed members of the service may record other official activities when, in the uninformed members judgement, it would be beneficial to record, so long as it is not one of the prohibited recordings described under VI PROHIBITED RECORDINGS.

#### *V Deactivation of BWC*

- A Once the BWC has been activated, continue recording until the investigation, enforcement, or police action is concluded.
  - 1. In the case of an arrest, continue recording until the prisoner has arrived at Head Quarters for arrest processing.
  - 2. The uniformed member of the service may choose to deactivate the BWC upon the request of a member of the public if the suspect is not present, and it is safe and advisable to so after considering all the circumstances, including the requester's desire for privacy or confidentiality.

#### *VI Prohibited BWC Recordings*

- A Do not activate the BWC for any of the following:
  - 1. Performance of administrative duties or non-enforcement functions
  - 2. Routine activities within the Department facilities
  - 3. Departmental meetings or Training
  - 4. Off-duty employment security details
  - 5. Interviewing a current or potential confidential informant
  - 6. Undercover officers
  - 7. Interviewing the victim of a sex crime, as soon as the nature of the offense becomes apparent
  - 8. Strip Searches
  - 9. When present in a court facility, except for immediate lodging of a prisoner
  - 10. Inside a medical facility

\*\*Notify a patrol supervisor if a prohibited event described above was recorded. Document notification on the activity log.

## ***VII Recording Statements***

- A. Proper documentation shall be made anytime the BWC captures a video statement from a suspect. The video statement shall not take the place of a written statement where applicable.
- B. Documentation to include:
  - 1. All required agency reports; and
  - 2. CPL 710.30 form, when necessary. Failure to notify the prosecutor
  - 3. of the recorded interview could prevent its use in court.

## ***VIII Failure to Record When Legitimate Law Enforcement Interest is Present***

- A. If an officer fails to activate, chooses to terminate the BWC recording or the BWC malfunctions, the officer will articulate in written report:
  - 1. Why a recording was not made;
  - 2. Why a recording was interrupted;
  - 3. Why a recording was terminated.
- B. Sergeants will review all necessary documentation of an officer's failure to record an incident.

## ***IX Storage & Retention***

- A. Downloading procedures
  - 1. BWC data shall be download to the server through the in-car camera system automatically.
  - 2. All BWC data relating to a criminal incident should be considered digital evidence and processed in accordance with departmental policy.
  - 3. Each data file will include searchable information including, but not limited to: date and time the video was captured; incident number if applicable; and BWC identifier of assigned officer.
  - 4. Any time an officer reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a confrontational citizen contact): the officer should promptly notify a supervisor of the existence of the recording.
- B. Measures to prevent data tampering
  - 1. All video, audio and data captured by the BWC, irrespective of the content, are at all times the property of the individual agency. Officers may not copy, publish, share or disseminate any audio, video, image or data to anyone except as authorized. Furthermore, officers may not edit, delete or alter any video or audio captured by the BWC.
  - 2. An audit system that monitors who accesses recorded data, when and for what purpose is systematic.
  - 3. A third-party authorized by the agency to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, delete, view or alter any video footage without the express written consent of the agency administrator or agency head.

C. Retention Schedule:

1. Agencies retention schedules shall be in compliance with the minimum standards required by the New York State Archives. This shall include the minimum retention dates as follows.
  - (a) Evidentiary data shall be retained for a minimum of 6 months.
    - (i) If a determination is made that video data has evidentiary value in an on-going investigation, court proceeding or appeals process, the data shall be retained through the pendency of the case.
    - (ii) The established retention schedule can be extended beyond the 6-month minimum as necessary.
  - (b) Non-evidentiary data shall be retained for a minimum of 6 months.
  - (c) If a video contains evidence of a felony but no arrest is made, it shall be retained for five years in accordance with the statute of limitations.
  - (d) If a video contains evidence of a misdemeanor but no arrest is made, it should be retained for three years in accordance with the statute of limitations.
  - (e) Video containing certain footage, such as when there has been a use of force, a death in custody, serious injury in custody, or an accident involving a police vehicle shall be retained for three years in order to comport with statutes of limitations.
2. BWC recordings are the property of the Village of Westhampton Beach Police Department and shall be treated as official records and handled pursuant to existing Police Department policies and procedures. BWC recordings shall not be duplicated, shown or released, except for official purposes.
3. Any BWC data determined to have value in long term investigative, administrative or civil proceedings should be appraised for archiving in accordance with applicable statutory timeframes.
4. If no extension of video data retention is required, the recordings may be destroyed in accordance with the agency's retention procedures and with approval from the agency administrator.
5. If recording is deemed to be useful as a training tool, the recording may be kept for as long as practicable.

X Access

A. Permitted review of footage

1. Officers will be permitted to review only video footage of an incident in which they were involved for purposes of:
  - (a) Conducting a criminal investigation;
  - (b) Preparing for courtroom testimony or courtroom presentation;
  - (c) Providing testimony pursuant to an administrative inquiry; and
  - (d) Assisting the officer in professional development.
2. In addition to the permitted access listed in Section I, supervisors may also review recordings as it pertains to:
  - (a) Investigating alleged misconduct reports or meritorious conduct;
  - (b) Whenever such recordings would be beneficial in reviewing an officer's

performance; and

(c) Recordings that are of value as training tools;

3. Prosecutors will be permitted to review video footage as it pertains to their investigations.

B. Public disclosure of data

1. Any and all disclosure of BWC data must be consistent with the agency's record release policy and applicable statutes regarding, but not limited to, evidence discovery and disclosure pursuant to the Freedom of Information Law (FOIL).

2. When BWC data is disseminated outside of the agency, the reason and identity of the authorized requesting person or agency and the rationale used for determining why or why not data is released shall be documented.

3. Civilians shall not be allowed to review the recordings at any scene.

C. Unauthorized use:

1. Unauthorized access or release of data is prohibited outside the permitted review of footage detailed in Section A.

***XI Agency administrator duties:***

A. The Chief of Police shall designate an agency administrator to have oversight of responsibilities to include, but not limited to:

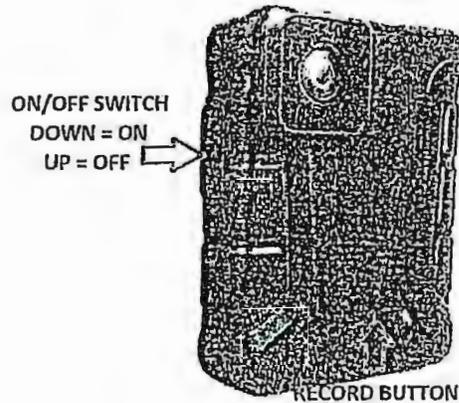
1. Ensuring proper procedures are followed in the downloading, review, release and retention of BWC data;
2. Conducting periodic reviews of retained video data to ensure it has not been tampered with;
3. Coordinating with IT regarding system related issues;
4. Coordinating maintenance and repairs for the BWC;
5. Conducting annual review of the policy and procedures contained herein and for making recommendations for any necessary amendments thereto; and
6. Coordinating review of videos scheduled for destruction.

By the Order of,

Trevor T. Gonca  
Chief of Police

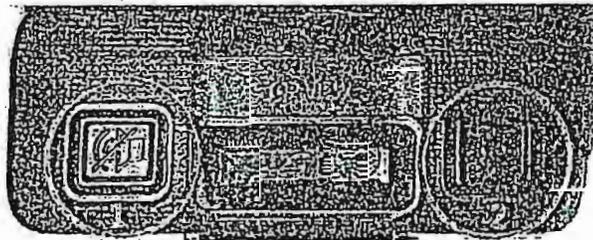
# BMS | Data911

## BX2 User Guide



**ON/OFF:** Down is on, up is off.

**Record Button:** While screen is on, press once to begin recording. Press twice to end recording. While recording front LED will be RED. Standby will illuminate GREEN, BLUE indicates charging. (NOTE: Pre-release version user must push record button twice. Once to turn on the screen, another to start recording)



**Button 1:** Tap button to mute audio. Tap again to resume recording audio. Press & hold for 2 seconds to record audio only. Press and hold for 2 seconds again to resume audio and video recording.

**Button 2:** Tap to turn on display. With display on, hold for 2 seconds to put camera in "stealth" mode. Camera will turn off lights, and beep. The user must refer to the screen to identify if recording. With display on, hold down again for 2 seconds to bring out of "stealth" mode.

**NOTE:** Camera will turn itself off when either docked, or battery depleted.

**Beeps:**

Long beep, followed by two quick = ON

Long single beep = OFF

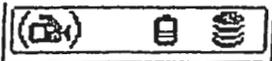
2 = Initiated recording



7 = Recording ended

**ICONS:**

Screen displaying: Recording (left icon) 50% battery (middle icon) Full storage (Right icon):



Audio is muted:



Video is not being recorded:



Low storage available!



No storage available!



**LED indicators:**

Green = Standby mode

Red = Recording

Blue = Charging.

**Data911 Support:**

Email: [DVSupport@data911.com](mailto:DVSupport@data911.com)

Phone: (510) 865-9100 EXT 2

12305 Crosthwaite Circle

Poway, CA 92064

## APPENDIX 3



GENERAL ORDERS

<b>In-Car Mobile Camera Policy</b>	
<b>General Order</b>	
<input type="checkbox"/> rescinds: 08-04, ALL PREVIOUS VERSIONS	
<input type="checkbox"/> amends:	
<b>effective date:</b> 12/5/2016	<b>amend date:</b>
<b>Reference:</b>	
accreditation standard:	

**PURPOSE:**

To establish a policy regarding the use and maintenance of in- car mobile video and audio cameras and captured data.

**POLICY:**

This policy will provide the Village of Westhampton Beach Police Department with guidelines on recording, storing, retaining, releasing and maintaining data from in-car cameras which are used to document an officer's enforcement related activities. In-car mobile cameras will also assist in gathering evidence, promote transparency and provide an objective record of an incident. This policy does not govern the use of surreptitious recording devices used in undercover operations.

**DEFINITIONS:**

- A. **"In-Car Camera System and Mobile Video Recorder" (MVR):** These are synonymous terms and refer to any system that captures audio and video signals capable of installation in a vehicle, and that includes at minimum, a camera, microphone, recorder, and monitor.
- B. **"Agency Administrator"** - An agency administrator has full access to and user rights within the data storage system. He or she can assign and track equipment, control passwords, oversee needed repairs, delete non-evidentiary recordings, conduct audits and quality control reviews
- C. **"Enforcement Related Activity"** - Situations during an officers official duties that include, but are not limited to:
  - 1. Traffic stops (to include, but not limited to traffic violations, stranded motorist assistance and all crime interdiction stops)
  - 2. Emergency responses
  - 3. Vehicle pursuits
  - 4. Prisoner transports
  - 5. Crimes in progress

6. Arrests
7. Investigatory activities (MVA)
8. Any situation or incident that the officer, through training and experience, believes should be audibly and visually recorded.

**PROCEDURE:**

**I. Program Objectives**

- A. The agency has adopted the use of MVRs to accomplish the following objectives:
  1. To enhance officer safety.
  2. To accurately capture statements and events during the course of an incident.
  3. To enhance the officer's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.
  4. To provide an impartial measurement for self-critique and field evaluation during recruitment and new officer training.
  5. To capture visual and audio information for use in current and future investigations.

**II. Operation**

- A. It shall be the responsibility of this department to ensure that the data 911 audio-video
  1. MVR equipment shall automatically activate when emergency equipment (lights) or a wireless transmitter is operating. The system may also be activated manually from the control panel affixed to the interior of the vehicle or when any other triggers are activated.
  2. Placement and operation of system components within the vehicle shall be based on officer safety requirements.
- B. All agency personnel who will use or otherwise be involved with MVRs shall receive training to include, but not limited to: activation; deactivation; upload procedures; proper maintenance; and the agencies policy and procedures on covered practices of a MVR.

**III. Officers' Responsibilities**

- A. Inspection and general maintenance of MVR equipment installed in departmental vehicles shall be the responsibility of the officer assigned to the vehicle.
  1. MVR equipment shall be operated in accordance with the manufacturer's recommended guidelines and departmental training and policies.
  2. Prior to beginning each shift, the assigned officer shall perform an inspection to ensure that the MVR is performing in accordance with the manufacturer's recommendations covering the following matters.
    - a. Remote Audio Transmitter functional:
      - (i) Adequate power source
      - (ii) Connected to the recording equipment
      - (iii) Remote activation of system via transmitter
    - b. Camera Lens:
      - (i) Windshield and camera lens free of debris
      - (ii) Camera facing intended direction
    - c. Recording mechanism capturing both audio and video information:
      - (i) System plays back both audio and video tracks

3. Members shall wear the MVR's System wireless microphone, activated, on their persons at all times that the MVR systems are required to be activated.
- B. Malfunctions, damage or theft of in-car camera equipment shall be reported to the immediate supervisor prior to placing the unit into service.
  1. A subsequent written report shall include information on the suspected cause(s) of equipment failure, as available, and any recommendations for corrective action.
  2. The supervisor shall determine if the unit shall be placed in service. If the vehicle is placed in service without an operating MVR, the officer will note on daily activity log.

#### **IV. Supervisors Responsibilities**

- A. Supervisors shall conduct periodic reviews of officer assigned media in order to periodically
  1. assess officer performance;
  2. assure proper functioning of MVR equipment;
  3. determine if MVR equipment is being operated properly; and
  4. Identify recordings that may be appropriate for training.
- B. Supervisors shall conduct bi-weekly reviews of personnel who are newly assigned MVR equipment in order to ensure compliance with departmental policy. Supervisors shall thereafter conduct quarterly reviews.
- C. Minor infractions (not criminal in nature) discovered during the routine review of recorded material should be viewed as training opportunities and not as routine disciplinary actions. Should the behavior or action become habitual after being informally addressed, the appropriate disciplinary or corrective action shall be taken.

#### **V. Recording**

- A. **NOTICE OF RECORDING:** Officers are encouraged to advise members of the public that they are being recorded as soon as it is safe and practicable to do so. Consent from a subject is not required to start or continue recording. Suggested notification: *Sir/Ma'am, I want to advise you that our interaction is being recorded by an in-car camera systems as well as a body-camera.*
- B. When to activate the MVR camera:
  1. **Mandatory Recordation**
    - a. Traffic stops (to include, but not limited to traffic violations, stranded motorist assistance and all crime interdiction stops)
    - b. Emergency responses
    - c. Vehicle pursuits
    - d. Prisoner transports
    - e. Crimes in progress
    - f. Arrests
    - g. Investigatory activities (MVA)
    - h. Any situation or incident that the officer, through training and experience, believes should be audibly and visually recorded.
  2. Officers will document in all reports, the presence of video captured by a MVR during the course of any enforcement related activity.
  3. Members shall activate the rear-facing camera of the MVR system whenever any person of the opposite sex (other than Employee or law enforcement agent) is seated in the rear of the MVR equipped vehicle and same shall not be deactivated until such person has left the vehicle.

- C. Deactivation of recording
  - 1. Officers shall have the discretion to terminate the recording when the enforcement related activity has concluded.
  - 2. If a MVR has been activated and during the course of enforcement related activity the legitimate law enforcement interest for recording no longer outweighs an individual's privacy, the officer shall document either in writing or verbally on camera the reason for deactivating.
- D. Recording Statements
  - 1. Proper documentation shall be made anytime the MVR captures a video statement from a suspect. The video statement shall not take the place of a written statement where applicable.
  - 2. Documentation to include:
    - a. All required agency reports; and
    - b. CPL 710.30 forms, when necessary. Failure to notify the prosecutor of the recorded interview could prevent its use in court.
- E. Failure to record when legitimate law enforcement interest is present
  - 1. If an officer fails to activate, chooses to terminate the MVR recording or the MVR malfunctions, the officer will articulate in written report:
    - a. Why a recording was not made;
    - b. Why a recording was interrupted;
    - c. Why a recording was terminated.
  - 2. Sergeants will review all necessary documentation of an officer's failure to record an incident.

## **VI. Storage & Retention**

- A. Downloading procedures
  - 1. Data shall be downloaded in accordance with current procedure for storing digital files. Downloads should occur anytime the police unit enters the parking lot of Police Headquarters, the MVR will automatically download through a secure WIFI connection directly to the Police Department data 911 server.
  - 2. Each officer shall classify data based upon the type of event or incident captured in the recording.
  - 3. All MVR data relating to a criminal incident should be considered digital evidence and processed in accordance with departmental policy.
  - 4. Each data file will include searchable information including, but not limited to: date and time the video was captured; incident number if applicable; and MVR identifier of assigned officer.
  - 5. Any time an officer reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a confrontational citizen contact); the officer should promptly notify a supervisor of the existence of the recording.
- B. Measures to prevent data tampering
  - 1. All video, audio and data captured by the MVR, irrespective of the content, are at all times the property of the individual agency. Officers may not copy, publish, share or disseminate any audio, video, image or data to anyone except as authorized. Furthermore, officers may not edit, delete or alter any video or audio captured by the MVR.

2. The data 911 system MVR systematically creates an audit system that monitors who accesses recorded data, when and for what purpose.
- C. Retention schedule:
1. Agencies retention schedules shall be in compliance with the minimum standards required by the New York State Archives. This shall include the minimum retention dates as follows 1.
    - a. Evidentiary data shall be retained for a minimum of 6 months.
      - i. If a determination is made that video data has evidentiary value in an on-going investigation, court proceeding or appeals process, the data shall be retained through the pendency of the case.
      - ii. The established retention schedule can be extended beyond the 6 month minimum as necessary.
    - b. Non-evidentiary data shall be retained for a minimum of 6 months.
    - c. If a video contains evidence of a felony but no arrest is made, it shall be retained for five years in accordance with the statute of limitations.
    - d. If a video contains evidence of a misdemeanor but no arrest is made, it should be retained for three years in accordance with the statute of limitations.
    - e. Video containing certain footage, such as when there has been a use of force, a death in custody, serious injury in custody, or an accident involving a police vehicle shall be retained for three years in order to comport with statutes of limitations.
  2. MVR recordings are the property of the Village of Westhampton Beach Police Department and shall be treated as official records and handled pursuant to existing Police Department policies and procedures. MVR recordings shall not be duplicated, shown or released, except for official purposes.
  3. Any MVR data determined to have value in long term investigative, administrative or civil proceedings should be appraised for archiving in accordance with applicable statutory timeframes.
  4. If no extension of video data retention is required, the recordings may be destroyed in accordance with the agency's retention procedures and with approval from the agency administrator.
  5. If recording is deemed to be useful as a training tool, the recording may be kept for as long as practicable.

## VII. Access

- A. Permitted review of footage
1. Officers will be permitted to review only video footage of an incident in which they were involved for purposes of:
    - a. Conducting a criminal investigation;
    - b. Preparing for courtroom testimony or courtroom presentation;
    - c. Providing testimony pursuant to an administrative inquiry; and
    - d. Assisting the officer in professional development.
  2. In addition to the permitted access listed in Section 1, supervisors may also review recordings as it pertains to:
    - a. Investigating alleged misconduct reports or meritorious conduct;

- b. Whenever such recordings would be beneficial in reviewing an officer's performance; and
    - c. Recordings that are of value as training tools;
  - 3. Prosecutors will be permitted to review video footage as it pertains to their investigations.
- B. Public disclosure of data
  - 1. Any and all disclosure of MVR data must be consistent with the agency's record release policy and applicable statutes regarding, but not limited to, evidence discovery and disclosure pursuant to the Freedom of Information Law (FOIL). Any requests for such data should be reviewed by the agency's legal advisor.
  - 2. When MVR data is disseminated outside of the agency, the reason and identity of the authorized requesting person or agency and the rationale used for determining why or why not data is released shall be documented.
  - 3. Civilians shall not be allowed to review the recordings at any scene.
- C. Unauthorized use:
  - 1. Unauthorized access or release of data is prohibited outside the permitted review of footage detailed in Section A.

**VIII. Agency administrator duties:**

- A. The Chief of Police shall designate an agency administrator to have oversight of responsibilities to include, but not limited to:
  - 1. Ensuring proper procedures are followed in the downloading, review, release and retention of MVR data;
  - 2. Conducting periodic reviews of retained video data to ensure it has not been tampered with;
  - 3. Coordinating with IT regarding system related issues;
  - 4. Coordinating maintenance and repairs for the MVR;
  - 5. Conducting annual review of the policy and procedures contained herein and for making recommendations for any necessary amendments thereto.

By the Order of,

*Trevor T. Gonce*  
Chief of Police

## APPENDIX 4



**GENERAL ORDERS**

**GO 19-07**

**USE OF FORCE/DEADLY PHYSICAL FORCE**

<b>General Order</b> <input checked="" type="checkbox"/> rescinds: 95-5, 12-01 <input checked="" type="checkbox"/> amends: 19-07		<b>Reference:</b>  <b>accreditation standard:</b> NYS L.E.A.P.: 20.1, 20.4, 20.6, 20.7, 21.1, 21.2, 32.4
<b>effective date:</b> 10/10/19	<b>amend date:</b> 10/13/20	

**I. PURPOSE**

The purpose of this order is to establish for the Westhampton Beach Police Department policies and procedures for the use of physical force and deadly physical force.

**II. POLICY**

Members of the Service shall use only the force necessary to effect lawful objectives. Members shall use the least amount of force necessary to effect cooperation and control of a situation which requires police intervention, then only when all other reasonable alternatives have been exhausted or are not available. This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force to protect the public welfare requires a careful balancing of all interests.

**III. DEFINITIONS**

**Objectively Reasonable** – An objective standard used to judge an officer's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.

**Deadly Physical Force** - means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

**Physical Force** - means a level of force less than deadly physical force

**Serious Physical Injury** - means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. NYPL, § 10.00-10.

**Physical Injury** - means impairment of physical condition or substantial pain. New York State Penal Law

**IV. USE OF FORCE**

- A. In general terms, force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody, or in the defense of one's self or another.

- B. Under the 4<sup>th</sup> Amendment, a police officer may use only such force as is “objectively reasonable” under the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene.

## V. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

- A. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
- B. Factors that may be used in the determining the reasonableness of force include, but not limited to:
  - 1. The severity of the crime or circumstance;
  - 2. The level and immediacy of the threat or resistance posed by the suspect;
  - 3. The potential for injury to the citizen, officers, suspects;
  - 4. The risk or attempt of the suspect to escape;
  - 5. The knowledge, training, and experience of the officer;
  - 6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;
  - 7. Other environmental conditions or exigent circumstances.

## VI. DUTY TO INTERVENE

- A. Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
- B. An officer who observes another officer use force that exceeds the degree of force described in subdivision A of this section should promptly report these observations to a supervisor.

## VII. USE OF DEADLY PHYSICAL FORCE

- A. Deadly physical force may be used by an officer to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death.
- B. Deadly physical force may be used to stop a fleeing suspect where:
  - 1. The officer has probable cause to believe the suspect has committed a felony involving the infliction or threat of serious physical injury or death; and
  - 2. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
  - 3. Where feasible, some warning should be given prior to the use of deadly physical force.
- C. Chokeholds and Obstruction of Breathing or Blood Circulation  
Any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce intake of air or obstruct blood

circulation, is prohibited unless deadly force is authorized. NYS PL 121.13a Aggravated Strangulation.

## VIII. PROHIBITED USES OF FORCE

A. Force Shall not be used by an officer for the following reasons:

1. To extract an item from the anus or vagina of subject without a warrant, except where exigent circumstances are present;
2. To coerce a confession from a subject in custody;
3. To obtain blood, saliva, urine or other bodily fluid or cells, from an individual for the purpose of scientific testing in lieu of a court order where required;
4. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.

## IX. REPORTING & REVIEWING THE USE OF FORCE

- A. Members having custody of a person must provide attention to the medical and mental health needs of a person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith. NY Civil Rights Law 28.
1. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
  2. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in a serious harm to themselves or others. NY Mental Hygiene Law 9.41
- B. Members involved in the use of force incidents as described below shall notify a supervisor as soon as practicable and shall complete a departmental use of force report.
1. Use of force that results in physical injury
  2. Use of force incidents that a reasonable person would believe is likely to cause and injury.
  3. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from complainant handcuffing.
  4. Incidents where a conducted energy device was intentionally discharged or accidentally discharged after being displayed.
  5. Incidents where a firearm was discharged at subject.
- C. A standardized use of force form should be used to document any reportable use of force incident.

## X. RULES AND REGULATIONS

a. Physical force, when used, shall be the minimum force necessary for a given situation and shall be reasonable in degree to the extent that it is necessary to effect cooperation and control of the situation.

1. No member of the Service shall exceed the limits of his/her authority under Article 35 of the New York State Penal Law known as the Defense of Justification.

B. Only issued or approved equipment shall be used when applying physical force, except in emergency situations when it may be necessary to use any instrument at the disposal of the officer(s) involved.

C. Whenever a person or persons are engaged in passive resistance demonstrations, "Pain Compliance" come-along holds shall not be used unless specific authorization has been given to use such holds by a member of the Service holding the rank of Sergeant or above. This limitation applies only to passive resistance demonstrations and is not a restriction upon an officer's authority to use reasonable force when the officer is any way endangered, is the subject of an attack or is confronted by someone actively resisting arrest as opposed to passive non-cooperation.

## **XI. TRAINING**

A. All officers will receive training and demonstrate their understanding on the proper application of force.

B. Training topics will include use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies, including, but not limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.

## **XII. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS**

### **PROCEDURE**

A. Physical force may be used when it is lawful and when the exercise of persuasion, advice and/or warning is found to be insufficient to obtain cooperation and control.

B. If it is necessary to use physical force, the officer shall immediately determine if the subject requires medical attention. If the subject suffered a physical injury and/or complains of injury or pain, the member of the service involved shall transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation.

C. Where practical, a supervisor should respond to the scene to begin the preliminary force investigation. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time such as:

1. Respond to the scene and conduct a preliminary investigation.
2. Ensure the member receives medical treatment, if necessary, and the Injured Employee Report is completed.
3. Ensure the subject receives medical treatment, if necessary.
4. Interview the officer involved as described in section 3 if Public Safety Statement is appropriate for said use of force.
5. Notify the Detective as appropriate.
6. Notify the Executive Officer or Chief of Police.
7. Interview the physician or qualified health care provider concerning the subject's

- injuries sustained and their consistency with uses of force reported.
8. Ensure that all evidence is collected and preserved.
  9. Identify and interview witnesses.
  10. Summarize his or her investigation and findings in a completed supervisor's investigation report.

**D. Use of Force Reporting** - Except for those use of force cases investigated by the Suffolk County Police Homicide Section (i.e., police shootings resulting in physical injury or death, death in custody, etc.), when a member of the service uses physical force, including deadly physical force, whether an arrest is made or not and/or in any case where a person is charged with Resisting Arrest (205.30 N.Y.S. P.L.) wherein any level of force is used, all involved officers shall, prior to the end of their tour, prepare use of force Report, to detail their respective involvement and submit this report for supervisory approval. If a member is incapacitated, his or her immediate supervisor shall prepare and submit the Use of Force Report.

1. In the event an involved officer is unable to complete the required paperwork prior to the end of the tour due to injury or other exigent circumstances, the officer may, upon approval of a supervisor, complete it during his or her next tour.
2. In the event an involved officer's unavailability to complete the required paperwork extends beyond his or her next tour, the Supervisor will ensure that a designated member of the Service completes all required reports.

**E. Submission of the Use of Force Report** - The supervising sergeant of the officer shall review the Report from said officers and is responsible for submission to the Executive Officer, as soon as possible or practical.

1. The Executive Officer shall review and forward to the Chief of Police.
2. The Chief of Police shall review the Use of Force Report and the findings of the investigating supervisor. The Chief of Police shall approve said report if no deficiencies are identified.
3. The Chief of Police or his designee, shall report all uses of force to DCJS.

**F. Photographs** - Photographs will be taken if a person is subjected to any force in excess of restraining force, or is charged with Resisting Arrest, whether or not the person is injured or alleges injury. In addition, photographs will be taken whenever a person subjected to restraining force is injured, alleges injury, or is arrested. The required photographs are taken in addition to mug shots.

1. The photographs will clearly depict the following body areas of the person:
  - a. Overall front and back areas.
  - b. Close-ups of all exposed areas.
  - c. Close-ups of all injured areas.
  - d. Close-ups of all areas alleged by the person to be injured.
  - e. Upon consent of the person, close-up photographs of the following unclothed body areas: front and rear torso (male), rear of torso (female), legs and feet. **No efforts shall be made to compel or force a person to submit to any photographs of the foregoing body areas.**
2. Photographs will be taken of the scene and any evidence pertaining to the person's

injury / alleged injury, if applicable.

3. The photographs of the person subjected to force will be documented on a photo log, and a Supplementary Report by the officer taking the photographs.

**g. Use of Force Investigations Conducted by the Suffolk County Police Homicide Squad** - In cases when an investigation is being conducted by the Homicide Section concerning the use of force by a member of the Service, the **Use of Force Report shall not be completed** by the member of the service. Instead, the Commanding Officer of the Homicide Section, or the Commanding Officer's designee, shall prepare and submit an Internal Correspondence to the Chief of the Westhampton Beach Police Department. The correspondence shall include the following information:

1. The name, rank, and command of the officer.
2. The date and time of occurrence.
3. Type of force used.
4. Pedigree of the Use of Force subject.
  - a. Date of birth.
  - b. Personal Identification Number (PIN).
  - c. Gender and race.
  - d. Address, home and cell phone numbers.
5. Indicate if the subject was engaged in unlawful activity and if so, what type.
6. Describe the subject's injury
  - a. Physical injury.
  - b. Serious physical injury.
  - c. Death – Has the Medical Examiner determined the manner and cause of death?

#### **Use of Force Reporting Definitions:**

For reporting purposes, Executive Law 837-t requires each police department, county sheriff, and the state police to report any occurrence in which a police officer or peace officer employs use of force as listed below:

- When one of the following is initiated by an officer:
  - Display a chemical agent- to point chemical agent at a person or persons.
  - Use/Deploy a chemical agent – the operation of the chemical agent against a person or persons in a manner capable of causing physical injury as defined in PL article
  - Brandishes a firearm – to point a firearm at a person or persons.
  - Uses/Discharges a firearm – to discharge a firearm at or in the direction of a person or persons.
  - Brandishes an electronic control weapon – to point an electronic control weapon at a person or persons.
  - Uses/Deploys electronic control weapon – the operation of an electronic control weapon against a person or persons in a manner capable of causing physical injury as defined in PL article 10.
  - Brandishes an impact weapon – to point an impact weapon at a person or persons.
  - Uses/Deploys an impact weapon – the operation of an impact weapon against a person or persons in a manner capable of causing physical injury as defined in PL

article 10.

- o Uses a chokehold or similar restraint – any application of a sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air.

Serious bodily injury – bodily injury that creates or causes:  
a substantial risk of death; or  
unconsciousness; or  
serious and protracted disfigurement; or  
protracted loss or impairment of the function of any bodily member, organ or  
mental faculty.

- o Reports are submitted to DCJS using the link below.

<https://www.surveygizmo.com/s3/5075589/NYS-Use-of-Force-Reporting>

EXC §840(4)(d)(2)(vi) EXC §840(4)(d)(2)(vii)

EXC 837-t

### XIII. USE OF FORCE REPORT

When a member of the Service is completing the Use of Force Report, all sections are to be completed. In accordance with New York State Executive Law 837-t specific Mandatory data points must be included within the boxes or narrative of the report:

1. Age, Ethnicity, Race and Gender of the Reporting Officer
2. Age, Ethnicity, Race and Gender of the Involved Subject  
**NOTE:** Ethnicity shall be reported as Hispanic or Non- Hispanic. Race shall be reported as American Indian/Alaskan Native, Asian, Black, Native Hawaiian/Pacific Islander, Unknown/Not reported or refused or White.
3. Whether the Officer or Subject sustained serious physical injury or death. (see exceptions in Section 1 D.)
4. **FORCE USED BY OFFICER:**
  - a. Firearm- Brandished, Discharged, or Used
  - b. Impact Weapon- Brandished, Deployed or Used
  - c. Conducted Energy Device (Taser)- Brandished, Deployed or Used
  - d. Flash Bomb- Brandished, Deployed or Used (ES Operators)
  - e. Chemical Agent – Displayed, Deployed or Used
  - f. Chokehold and Obstruction of Breathing or Blood Circulation – Used
  - h. Conduct that Resulted in Death or Serious Physical Injury- Used

**NOTE:** “Brandished and Displayed” shall refer to the act of pointing a weapon at a subject. “Discharged and Deployed” shall refer to the act of firing a weapon or striking a subject with an impact weapon. “Used” shall refer to the act of taking a weapon out of its holster or carrier.

If additional space is needed for any section of the Use of Force Report, members are to use a Continuation Report, that will be attached to the Use of Force Report.

Narrative: Members must provide details of the incident in the narrative section of the Incident Report or Arrest Report. The use of broad terms, such as “combative” and “resisting”, to

describe a subject's actions should be avoided. Instead members should provide details that describe "how" a subject resisted or was combative, "pulled away", "Swung his arms", "kicked at Officer", stated "I'm not going with you", as examples.

#### **XIV. USE OF FIREARMS AND DEADLY PHYSICAL FORCE**

##### **I. PURPOSE**

This order establishes the limits within which the use of deadly force, particularly the use of firearms, by members of the Westhampton Beach Police Department is permitted, and outlines certain situations in which the use of firearms, or other means of deadly force, is not permitted. These rules have been developed, not to restrict officers from properly performing their duty, but rather to make it incumbent upon them to use good judgment before using deadly force. They thus are intended to reduce inappropriate uses of deadly force including shooting incidents, and consequently protect life and property.

##### **II. POLICY**

The value of human life in our society is immeasurable. Police officers have been delegated the substantial responsibility to protect life and property and to apprehend criminal offenders. Thus, there is probably no more serious act that a law enforcement officer can engage in than the use of deadly force. The occasions for such use are, literally, life and death situations which are invariably confused and complex, affording precious little time for mediation or reflection. It is imperative then, that the officer, through training and absorption of these rules, be able to respond quickly, confident that he or she is acting within the limits of Departmental rules. This enables the officer to act, without hesitation, to protect himself or another, and it also serves to protect the public from unlawful and unreasonable use of force.

##### **III. DEFINITIONS**

**A. *Deadly Force*** - for the purposes of this order "deadly force" is defined as physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

**B. *Serious Physical Injury*** - Means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

**C. *Reasonable Cause to Believe*** - Reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable, discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonable likely that such offense was committed and that such person committed it. Except as otherwise provided in Article 70 of the Criminal Procedure Law, such apparently reliable evidence may include or consist of hearsay.

##### **IV. REFERENCES**

New York State Penal Law, Article 10, Section 10.00, Article 35, Sections 35.10 to 35.30  
New York State Criminal Procedure Law, Article 690, Section 690.50

v. RULES AND REGULATIONS

A. *Use of Firearms* - An officer may discharge a firearm only in the following situations:

1. Confrontational Situations

a. When reasonable and necessary to defend an officer or another from what the officer reasonably believes to be the use, or imminent use, of deadly force.

2. Apprehension in Pursuit Situations

a. To effect the arrest or prevent the escape of a person when:

- (1) there is no other reasonable means to effect the arrest, and
- (2) the discharge creates no foreseeable risk to innocent bystanders, and
- (3) if practicable and consistent with personal safety, the officer has identified himself or herself by voice and warned the fleeing subject to "STOP", without success, before firing, and the officer has reasonable cause to believe that:
  - (a) the subject has committed or attempted to commit a felony involving the use, or attempted use or threatened imminent use of physical force against a person, and
  - (b) the subject poses a significant threat of death or serious physical injury to the officer or another if not immediately apprehended.

3. Vicious/Injured Animal

a. To put to death an animal which presents an immediate serious physical threat to the officer or a third party, or an animal that is so seriously injured that humaneness demands the immediate cessation of its further suffering. All reasonable alternatives to the use of the firearm must be exhausted before shooting the animal, and all applicable Department procedures must be followed.

4. Firearms Practice

a. Firearms practice, for target practice at an approved range, or by members of the Firearms Training Section to test weapons as required.

B. Specific Prohibitions

1. Moving Vehicles

- a. Discharging a firearm at or from a moving vehicle is prohibited, except as the ultimate measure of self defense or defense of another when the officer reasonably believes the occupants are using deadly force against the officer, or another, by means other than the vehicle. (see VI. Deadly Force Emergency Measure)
- 2. Warning Shots
  - a. No "warning shots" shall be fired.
- 3. Firing Shots for Alarm
  - a. Firearms shall not be discharged to summon assistance, except where the officer's safety or that of another is endangered, and there is no reasonable alternative. Extreme care must be exercised in such situations to prevent injury to other persons.
- 4. Drawing or Displaying Firearms
  - a. An officer shall unholster or display a firearm only if authorized by these procedures, directed by competent authority, or there is reason to believe such may be necessary for the safety of the officer or others.
  - b. To reduce the potential for accidental discharge, an unholstered or displayed firearm will not be cocked, if applicable to the function of said weapon.
  - c. "Dry firing" or snapping the action of an unloaded firearm is prohibited in view or presence of the public, or in or on any Departmental premises, except by or under the direction of a firearms instructor or armorer, or when necessary to clean and lubricate a weapon.

## PROCEDURES

### A. Deadly Force Emergency Measure

1. Since all possible combinations of circumstances cannot be envisioned, notwithstanding any provisions of these Rules and Procedures, a police officer may use deadly force as an emergency measure to avoid the imminent unlawful use of deadly force which is about to occur by reason of a situation occasioned or developed through no fault of the officer; and, which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability of avoiding such injury clearly outweighs the desirability of avoiding the conduct sought to be prevented by these Rules and Procedures.

### B. Legal Disclaimer

1. This directive regarding the use of force and firearms is for Departmental administrative use only and, to the extent that it constrains conduct otherwise permissible under law, shall not apply in any criminal or civil proceeding. The

Westhampton Beach Police Department rules regarding the use of deadly force should not be construed as creating a higher standard of safety or care, in an evidentiary sense, with respect to third party claims. Violations of these rules will only be used as the basis for Departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in recognized judicial settings.

C. Sanctions

1. In all cases where an officer's action is determined to be a violation of these rules but not a violation of law, this distinction shall be made clear in all public discussion of such incidents and any disciplinary action which may result. An officer found to have acted in violation of this order shall be subject to internal discipline ranging from reprimand up to and including dismissal, in addition to any criminal sanctions which may be imposed in the courts.

D. *Reporting Procedures*— Reporting requirements for the use of force, including the use of deadly physical force, are contained within section IX, of this General Order.

1. When a use of force case is being investigated by the Suffolk County Police Homicide Section, the Use of Force Report, shall not be completed.

E. Supervisors Responsibilities

1. Immediately respond to and secure the scene.
2. Ensure that officers and citizens receive appropriate medical attention.
3. Notify the Executive Officer and/or Chief of Police
4. If the officer fires his firearm, the supervisor shall obtain a public safety statement. This information is obtained by a supervisor at an officer-involved incident using questions intended to determine existing threats to public safety and identify transitory evidence that must be preserved. The scope of the statement is limited to the collection of such critical fleeting information in the immediate aftermath of these critical incidents. The supervisor shall direct the involved officer to answer limited questions of an exigent nature. These questions include but are not limited to:

- ✓ Did you fire your weapon?
- ✓ Is anyone injured? Where are they?
- ✓ Are there any outstanding suspects? If so, can you provide a description, direction, mode of flight? How long ago?
- ✓ What weapons are they armed with?
- ✓ Did the suspects(s) fire at you? Where was the suspect? Where were you?
- ✓ Where were you when you fired at the suspect? Where was suspect?
- ✓ Did you move during the encounter? From where to where?
- ✓ Are you aware of anyone else firing a weapon?
- ✓ Are you aware of weapons or evidence that needs to be secured? Where?
- ✓ Are you aware of any witnesses? Where are they?

Every Officer-involved incident is unique, and there may be other appropriate and necessary Public Safety questions that you need to ask not listed above.

**F. Reassignment of Member Pending Review**

1. On the occasion when a member's use of force results in the death of another person, that member will be assigned to administrative duties. The length of time of said assignment shall be determined by the Chief of Police.

**XV. USE OF PHYSICAL FORCE / LESS LETHAL WEAPONS AND EQUIPMENT**

**I. PURPOSE**

To establish guidelines for the use of physical force involving less lethal weapons and equipment.

**II. POLICY**

Members of the Service shall use less lethal weapons and equipment only to affect lawful objectives. Members shall use the least amount of force necessary to effect cooperation and control of a situation which requires police intervention, and then only when all other reasonable alternatives have been exhausted or are not available. As in any use of force incident, verbal direction and the opportunity to comply should be given to the subject to minimize the need for the continuation or escalation of force.

**III. DEFINITIONS**

**A** Instrument - Any article, device, object, apparatus, implement or tool used to effect cooperation and control by forceful means.

**B** Restraining Force - Is the use of a minimal amount of physical strength or energy exerted to hold, restrain, control etc., required to overcome resistance or reluctance to obey the direction of an officer.

**C** Physical Force - Is the striking, kicking, fighting or any other physical or violent confrontation and force greater than restraining force not amounting to deadly physical force.

**D** Deadly Physical Force – Physical force which is readily capable of causing death or other serious physical injury.

**E** Physical Injury – Is the impairment of physical condition or substantial pain.

**F** Serious Physical Injury – Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

**IV. REFERENCES - Article 35 of the New York State Penal Law.**

**V. RULES AND REGULATIONS**

**A** Less lethal weapons and equipment, when used, shall be the minimum force necessary for a given situation and shall be reasonable in degree to the extent that it is necessary

to effect cooperation and control of the situation.

1. No member of the Service shall exceed the limits of his/her authority under Article 35 of the New York State Penal Law known as the Defense of Justification.

B. Only issued or approved less lethal weapons and equipment shall be used when applying physical force, except in emergency situations when it may be necessary to use any instrument at the disposal of the officer(s) involved.

C. Whenever a person or persons are engaged in passive resistance demonstrations, "Pain Compliance" come along holds shall not be used unless specific authorization has been given to use such holds by a member of the Service holding the rank of Sergeant or above. This limitation applies only to passive resistance demonstrations and is not a restriction upon an officer's authority to use come along holds and less lethal weapons and equipment when the officer is any way endangered, the subject of an attack or is confronted by someone actively resisting arrest as opposed to passive non-cooperation.

## VI. PROCEDURE

A. Less Lethal Weapons and Equipment - shall be used only as prescribed in Departmental training. These items, or other authorized equipment, shall never be converted or used in such a way as to represent the use of deadly force unless the officer reasonably believes such is necessary to repel imminent use of deadly force against the officer or another. Members of the Service are required to obtain Department authorized training in the proper use of less lethal weapons and equipment. All members of the Service using these less lethal weapons and equipment must successfully complete a Department approved initial training course prior to issuance, and receive annual training thereafter which is accomplished by the required annual viewing by members of the Service of the Decentralized Individualized In-Service Training (DIIT) video entitled "Deadly Physical Force/Physical Force-Less Lethal".

### 1. Pepper Mace/O.C.

a. The use of Pepper Mace/O.C. is controlled by the sections of the Penal Law that control the use of other issued weapons and the use of physical force. Pepper Mace/O.C. is not used on a subject unless the member of the service reasonably believes that the use of Pepper Mace/O.C. is necessary to effect an arrest, or for self-defense, or the defense of a third party against unlawful physical force.

b. When Pepper Mace/O.C. is used, the member of the Service involved will transport the subject, or cause the subject to be transported to the nearest medical facility for examination and treatment as soon as possible. The medical facility will decontaminate the subject according to proper medical treatment prior to processing by the arresting officer.

c. When a Pepper Mace/O.C. weapon is discharged against another to affect an arrest, for self-defense, or in the defense of a third party against unlawful physical force, a supervisor must be notified and will respond to the scene as soon as possible. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time. The supervisor will ensure a Use of Force Report is completed by the member using Pepper Mace/O.C. The reviewing supervisor shall distribute copies of the report as indicated in section XII of this General Order.

d. When Pepper Mace/O.C. which was issued to a member of the Department is lost or stolen, the member will comply with that section of the Rules and Procedures regarding Department property lost/stolen.

## 2. Tasers - (Conducted Energy Devices [CED])

- a. The use of the Taser is controlled by the same sections of the Penal Law that control the use of physical force. The Taser is not to be used on a person unless the member of the Service reasonably believes that the use of the Taser is necessary to affect an arrest, for self-defense, or the defense of a third party against unlawful physical force.
- b. Unless a person presents an immediate threat of injury to himself/herself or to others, the Taser shall not be used if the person is:
  - (1) obviously pregnant
  - (2) apparently under 16 years of age
  - (3) apparently over 65 years of age
  - (4) running away to escape
  - (5) in an elevated position above ground level from which the person might fall and injury is likely, unless safety precautions have been taken (example: airbag deployment).
  - (6) operating a vehicle or machinery
  - (7) in a flammable environment
  - (8) in water unless additional personnel are available for possible rescue
  - (9) obviously frail or infirmed
  - (10) handcuffed, unless they are exhibiting active aggression, and/or to prevent individuals from harming themselves or others.
- c. The Taser is considered a use of force and it is not to be used merely to persuade an individual who is simply not complying with an officer's orders.
- d. Under all circumstances if possible, when deploying the Taser members of the Service should attempt to avoid the sensitive areas of the body; the head, throat, frontal chest/breast area or known pre-existing condition areas. Taser use causes Neuromuscular Incapacitation (NMI) and beyond its intended purpose may exacerbate medical conditions in persons taking certain medications and/or drugs or who have other cardiac conditions and/or implanted electronic medical devices such as pacemakers and defibrillators.
- e. After a Taser has been deployed on a person, the member of the Service involved shall transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation and removal of the Taser darts.
- f. When a Taser device is used against a subject, whether a shock is administered or not, a supervisor must be notified and shall respond to the scene as soon as possible. The supervisor shall investigate the circumstances and take any other measures deemed appropriate at the time. The supervisor shall ensure a Use of Force Report is completed by the member using a Taser, and the Taser used is

put out of service until a department Taser Instructor can download the data from the device.

- g. When a Taser device is used in the Drive-Stun (dry- stun, dry tasing, contact tasing, drive tasing) mode, the member of the Service involved shall immediately transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation.
- h. Each discharge of a Taser on an individual is considered a separate use of force which must be justified and documented. If after the third 5- second discharge the subject is not yet controlled, the officer should consider other force options or techniques. If extenuating circumstances justify additional discharges of the Taser, those circumstances must be fully documented on a Use of Force Report and Arrest or Incident report. NOTE: The entire use of multiple Taser discharges can be documented on a single Use of Force Report.

### 3. Baton - Impact Weapon

a. The use of the Baton is controlled by the same sections of the Penal Law that control the use of physical force. The Baton is not to be used on a subject unless the member of the Service reasonably believes that the use of the Baton is necessary to affect an arrest, for self-defense, or the defense of a third party against unlawful physical force.

b. If it is necessary to strike a subject with a Baton, the officer shall immediately determine if the subject requires medical attention. If the subject suffered a physical injury and/or complains of injury or pain, the member of the Service involved shall transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation.

c. When a subject is struck with a Baton, a supervisor must be notified and will respond to the scene as soon as possible. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time. The supervisor will ensure a Use of Force Report is completed by the member using the Baton. The officers Supervisor shall ensure the distribution of copies of the report as indicated in section 1 of this General Order.

d. Unless deadly physical force is justified, avoid strikes to the head and spine. Baton strikes should be directed at the subject's arms and legs which present the greatest threat to a member of the Service. Verbal direction and the opportunity to comply should be given to the subject to minimize the need for repeated strikes.

4. *Spit Sock Hood* - The hood controls spitting while allowing an officer to observe the subject's face. The medical filtration fabric helps limit exposure to a variety of viruses, bacteria and infectious diseases. Fitting loosely over the head of the subject, the Spit Sock Hood, used in place of other protection methods that may cause unintentional harm, is safer and reduces the risk of injury to the subject.

a. Whenever the Spit Sock Hood is used on a subject, officers are required to complete a Use of Force Report.

5. *Handcuffs & Restraints* - The purpose of handcuffs, flex-cuffs, or transport handcuffs is to restrain the movements of a subject in a manner that provides a safe means of transportation for officers. Restraints also prevent further physical resistance from a subject. The application of handcuffs and restraints with no report of injury does not create the need for the completion of a Use of Force Report.

The departmental policies for the use of restraints are as follows:

a. All subjects taken into custody should be handcuffed behind their back. This is to ensure the safety of the officer or other citizens. The exceptions to this rule are; when the subject has an injury that does not permit his/her arms to move behind the back or, when the subjects age, physical condition, or physical limitations may also indicate a change in this procedure. If handcuffs are applied with the subject's hands in front, a handcuff belt should also be applied.

b. When handcuffs are applied, they should be double locked.

By Order of

*Trevor T. Gorse*

Chief of Police

## APPENDIX 5



**GENERAL ORDERS**

**Recording of Custodial Interrogations**

**General Order**

rescinds:

amends:

**effective date:**

03/22/19

**amend date:**

**Reference:**

**accreditation standard:**

NYSLEA 50.1

**I Purpose**

New York State Criminal Procedure Law (CPL) § 60.45(3)(e) sets forth that any video recording of a custodial interrogation, required by law, be conducted in accordance with standards established by rule of the Division. This document was developed to meet that requirement. In 2017, Criminal Procedure Law was amended to require the video recording of custodial interrogations conducted by a public servant at a detention facility when the interrogation involves a qualifying offense.

This policy meets the statutory mandates set forth in CPL 60.45 and is grounded in evidence-based principles. Electronically recording custodial suspect interrogations will enhance the investigative process, ensure the admissibility of evidence, and will assist in defending against civil litigation and allegations of officer misconduct. The policy is intended to meet the needs of all police departments in New York State regardless of size or resource limitations.

The Municipal Police Training Council supports the standards set forth in this policy and recommends that all police agencies have written policies in order to comply with the statutory requirements of CPL 60.45.

This policy is established to provide guidelines for electronic recording and the associated use, management, storage, and retrieval of recording of custodial interviewing. This policy is intended to reduce the risk of wrongful conviction of innocent persons and to ensure that the highest quality evidence possible is obtained from custodial interviews.

Policy Electronic recording can provide persuasive documentary evidence and helps defend against civil litigation and allegations of officer misconduct. To maximize the effectiveness of electronic recording and the integrity of the electronic documentation, officers assigned the use of recording devices shall adhere to the operational objectives and protocols outlined in this policy.

## II Definitions

- A. **Custodial interrogation:** *Custodial:* The objective standard for determining a suspect's custodial status is whether a reasonable person, innocent of any wrongdoing, would have believed that he or she was not free to leave. *Interrogation:* Interrogation refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally associated with arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.
- B. **Detention facility:** A police station, correctional facility, holding facility for prisoners, prosecutor's office, juvenile room designated by the Chief Administrator of the Courts as a suitable place for the questioning of juveniles in compliance with the requirements of 22 N.Y.C.R.R. 205.20 or any other facility where persons are held in detention in connection with criminal charges that have been or may be filed against them.
- C. **Electronic recording:** A digital, electronic video or other recording on electronic media.
- D. **Electronic media:** Video signals recorded on any of several storage media, including, but not limited to, analog tape (VHS, S-VHS, Hi 8), digital recording (DVD) or other portable digital storage media (CD, MP3 player, hard drive, etc.).
- E. **Recording room:** For the purpose of this policy, includes any designated room outfitted with audio-video recording equipment, and any police vehicle similarly equipped.

## III Qualifying Offenses

- A. An electronic recording of a custodial interrogation should be made when the subject to be interviewed is reasonably suspected in the commission of the following, including but not limited to:
  - 1. All A-I non-drug felonies;
  - 2. All A-II felonies codified in Sections 130.95 and 130.96 of the New York State Penal Law;
  - 3. All B violent felonies codified in Section 125 of the New York State Penal Law;
  - 4. All B violent felonies codified in Section 130 of the New York State Penal Law.
  - 5. Any offense, while subject is in custody at a facility specified in Section 305.2 (4) of the New York State Family Court Act.

- B. An electronic recording of a custodial interrogation should be made when the subject makes a confession, admission or other statement with respect to the subject's participation or lack of participation in an offense.
- C. Nothing in this policy prohibits the use of electronic recording equipment for any other interview or offense at the discretion of the police

#### **IV Exceptions**

It is understood that recording may not always be possible. Upon a showing of good cause by a prosecutor, the custodial interrogation need not be recorded. Good cause shall include, but not be limited to:

- A. Electronic recording equipment malfunctions.
- B. Electronic recording equipment is not available because it was otherwise being used.
- C. Statements that are made in response to questions that are routinely asked during arrest processing.
- D. Statements that are made spontaneously and are not in response to police questioning.
- E. Statements that are made during a custodial interrogation at a time when the interviewer is unaware that a qualifying offense occurred.
- F. Statements that are made during a custodial interrogation at a location other than the "interview room" because the defendant cannot be brought to such room, e.g., the suspect is in a hospital or is out of state and that state is not governed by a law requiring the recordation of an interrogation.
- G. Statements that are made after a suspect has refused to participate in the interrogation if it is recorded and appropriate effort to document such refusal is made.
- H. Statements that are not recorded as a result of an inadvertent error or oversight, not the result of any intentional conduct of law enforcement personnel.
- I. If it is law enforcement's reasonable belief that such recording would jeopardize the safety of any person or reveal the identity of a confidential informant.
- J. Statements that are made at a location not equipped with a recording device, and the reason for using that location is not to subvert the intent of this policy or relevant law.

## V Field Interviews

This policy is not meant to discourage field interviews. Gathering “real time” information in the field can be critical for an investigation. For example, information is often immediately needed to locate a weapon, to find victims or accomplices, or to secure a crime scene. If information is gathered from the suspect in the field regarding a qualifying event, efforts should be made to memorialize the statements at the earliest practicable time.

## VI Miranda Warnings

Any custodial interrogation must be preceded by the reading of Miranda Warnings. This does not preclude pre-interrogation discussions with the subject before Miranda Warnings are read and the actual interrogation commences. In cases involving qualifying offenses where the interrogation is to be recorded, all conversations that occur inside the recording room must be recorded, including pre-interrogation discussions and the administration of the Miranda Warnings.

## VII Prior to Recording

- A. **Record entire interview:** The BWC recording equipment should be turned on prior to the subject being placed within the recording room and should only be turned off after the subject has left the room after the interrogation is completed. All discussions in the recording room, including any pre-interrogation discussions, even if they occur before the reading of Miranda Warnings, must be included in the recording. Should the need arise for either the subject or the interrogating officer to leave the recording room; recording devices should continue to operate without interruption. If the recording is temporarily stopped, the reason for stopping the recording and the duration should be documented.
- B. **Suspect search:** Prior to the interview, the interviewing officer should be certain that the suspect, who is in custody, was searched for weapons, contraband, evidence, electronic devices or telephones and that all relevant items were removed.
- C. **Covert Recording:** If an agency chooses to make the electronic recording equipment covert, the officer shall not inform the subject that the interrogation is being recorded, nor discuss the topic of recording. If the subject asks about the recording, the department shall determine protocols for responding within the confines of the law.
- D. **Eavesdropping:** Article 250 of the Penal Law must be followed to avoid any circumstance in which conversations are recorded in which no party

thereto is aware of the recording. To legally record a conversation, at least one party must be aware of, and have consented to, the recording.

- E. **Juveniles:** Questioning of youth must take place in age-appropriate settings. So that juveniles (over seven and less than seventeen years old as of October 1, 2018, over seven and less than eighteen years old as of October 1, 2019) and adults can be questioned in the recording room, the room may also be designated a juvenile room, where practical.

When questioning a juvenile, who will be prosecuted as a juvenile delinquent under the Family Court Act, the interview should take place in a designated juvenile room.

The officer should be aware of other considerations, including the parental notification requirements and the requirement that the parent or guardian of the child be given Miranda Warnings of Family Court Act Section 305.2 (applicable to the questioning of juvenile delinquents), and Criminal Procedure Law Section 140.20(6) (requiring the arresting officer to notify the parent or guardian of a juvenile offender arrested without a warrant of the arrest and the location where the juvenile is detained). The officer may also consider using simplified Miranda Warnings when questioning a juvenile.

- F. **Recording Device Responsibility:** At least one officer conducting the interrogation shall be responsible for operating the BWC recording device used during the interrogation and should know the Department's electronic recording protocols.
- G. **Recording Time and Date:** Date and time stamping of the electronic recording is encouraged. If the equipment cannot digitally time stamp the video, the video camera should be positioned to also capture in frame an analog clock, preferably with a sweeping second hand to show the linear and uninterrupted passage of time. The clock should be positioned out of the suspect's line of sight so as not to serve as a distraction.
- H. **Camera Position and Field of View:** To the extent practicable, the camera positioning and field of view should be set to capture as much of the room and occupants as possible while still maintaining a frontal high angle view of the interrogated subject.
- I. **Document Equipment Challenges:** The time and nature of any irregularities that occur with the equipment should be documented by the officer in writing. Even if there is a problem with the electronic media, the electronic media must be preserved.

## VIII During Recording

- A. **Attorney Visit:** If the subject of a recorded interrogation has an attorney visit, the subject and attorney shall be offered a separate, private area in which to confer if one is available. The recording of the empty room can continue during their absence to memorialize the event until such time that the interrogation is either resumed or terminated. Alternatively, a record can be made of when the recording was discontinued for the attorney visit. If the interrogation re-commences after the attorney visit, then there should be documentation of the attorney's agreement to allow the questioning to continue and the time that the recording began again. In no event shall the visit between the attorney and the suspect be recorded.
- B. **Written Statements:** After the subject of the recorded custodial interrogation has provided all of the pertinent information, a written statement may be obtained from the subject. If the officer opts to obtain a written statement, that procedure should also be recorded.
- C. **Identification of Parties:** All persons within the recording room should be identified on the recording, whether by the interviewing member or by the subjects themselves.
- D. **Acknowledgement of Provisions to Subject:** Where possible, it should be made clear on the recording when a subject is or has previously been provided with food, drink, cigarettes, access to toilet facilities, etc.

## IX After Interview

- A. **Label Recording Media:** After the custodial interrogation, the officer(s) conducting the interrogation, or an employee designated by the Department, shall label all applicable documents, recorded media and notes according to Department protocols.
- B. **Avoid Altering Media:** No person shall alter the operation of the electronic recording equipment. No person shall, in any manner or for any purpose, alter the original "master" electronic recording of a custodial interrogation.

- C. **Copies:** Reproductions of the recorded interrogation should be made according to Department protocols. Any defense request for a copy of the interrogation should be referred to the District Attorney's Office.
- D. **Originals:** The original of the electronic media should be appropriately vouch-ered in accordance with Departmental evidence procedures. The original should be retained according to the Department's retention policy. Accordingly, electron-ic media may be utilized to create an authoritative original of the recording for systems that write and maintain the video file on a hard drive or server.
- E. **Dissemination of Recordings:** Any dissemination of any recording shall be carried out according to documented Department rules and procedures. Policies for the viewing of recordings should be developed to allow for training, related investigations, quality control, supervision, and the like.
- F. **710.30 Notice:** Complete either a 710.30 CPL Notice of Statement or a Felony Interview Reporting Form, and indicate that an electronic recording was made, or conversely, was not made, of a custodial interrogation. The substance of all oral admissions must also be documented on the 710.30 CPL form from all involved members regardless of whether there was a subsequent recorded and/or written statement. Note: Failure to notify the prosecutor of the recorded interview could prevent its use in court.

By the Order of

*Trevor T. Gonce*  
Chief of Police

