

BWC Working Group suggestions for additions are in BOLD, and deletion suggestions are noted in strikethrough text. (Presented 8/7/2017)

450 – Body Worn Cameras and Audio Recorders

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450.1 PURPOSE AND SCOPE

The purpose is to provide policy and procedures for the use of portable audio/video recording devices by sworn members of the Sonoma County Sheriff's Office while in the performance of their official duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment. The purpose of body worn cameras (hereinafter referred to as BWC) and audio recorders is to **instill and maintain public trust through transparency and accountability, while providing** ~~provide~~ documentary evidence for criminal investigations, internal or administrative investigations and civil litigation. Members shall utilize the BWCs and audio recorders in accordance with the provisions in this policy to maximize the effectiveness of the audio/video documentation to achieve operational objectives and to ensure evidence integrity. While BWC recordings can provide an objective record of events, it is understood that video/audio recordings may not necessarily reflect the entire experience or state of mind of the individual employee(s) in a given incident. In some circumstances, the BWC will capture information that may not have been heard and/or observed by the involved employee(s). Similarly, there will be situations where the BWC will not capture information that was heard and/or observed by the involved employee(s). This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes.

450.2 POLICY

The Sonoma County Sheriff's Office Law Enforcement Division will provide sworn personnel BWC's for use during the performance of their official duties.

450.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Sheriff's Office regardless of whether those recordings were made with Office-issued or

personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

450.4 MEMBER RESPONSIBILITIES

The Sonoma County Sheriff's Office Law Enforcement Division will issue sworn deputies and sergeants BWC's. (a) Uniformed personnel will be responsible for making sure that he/she is equipped with a BWC prior to going into service and for ensuring the BWC is in good working order. If the BWC is not in good working order or malfunctions at any time, the member shall report the failure to his/her supervisor and obtain a functioning device as soon as practicable. (b) Uniformed members shall wear the recorder in a conspicuous manner. **The BWC will ideally be worn in the following pre-approved locations so that it is clearly visible to the person being recorded and have maximum effectiveness: Epaulet/TAC Vest Mount, Collar Mount, Helmet Mount, Cap Mount, or Shirt Mount. If the BWC is not worn in one of the pre-approved locations mentioned above, notification that "Camera in Use" will be affixed to the Officer's name tag.** (c) Extra help Deputy Sheriff's will not be issued BWC's unless they are assigned to the Civil Bureau or unless approved by the BWC administrator Lieutenant. (d) Non-uniformed personnel may carry, and use, an approved BWC any time the member believes such a device may be useful. Non-uniformed field training officers who are in the final phase of training are required to wear BWC's. (e) Members are encouraged to advise private persons they are recording if the advisement may gain compliance or assist in the investigation, and it will not interfere with the investigation or officer safety. i.e., a hostile contact during a traffic stop. (f) All specialty units are required to use BWC's as set forth in this policy, except the following units: 1. Explosive Ordnance Detail Unit 2. Helicopter Unit 3. Honor Guard (g) Any BWC that contains recordings shall be docked and uploaded daily. Practically speaking, this can occur within a 24 hour period of time. Case by case exceptions may be made with the prior approval of a supervisor. (h) Any uniformed member who desires to carry an audio digital recorder (in addition to the BWC) may do so for the purpose of surreptitiously recording if the member determines it would be beneficial for the investigation. An example of this could be placing an audio recorder in the back seat of a patrol car to record a suspect, etc. Uniformed members are not allowed to carry an audio digital recorder in place of the Office issued BWC. (i) If an audio recording of evidentiary value is obtained from an audio digital recorder from either a uniformed, or non-uniformed member, a copy of the recording shall be entered into evidence. (j) The wearing or use of any other personal video recorder, other than the BWC, is not authorized. However, during an exigent circumstance with a high evidentiary value, where the BWC is either unavailable or becomes non-functional, and the member has access to an alternative means of recording the incident (Cell phone, etc.), the member may use his or her discretion to record the incident on the alternate recording device. In this case, a copy of the video recording shall be entered into evidence and the member's supervisor shall be notified of the recording. This section applies to both uniformed and non-uniformed members. (k) Members shall document the existence of a recording in any report, citation, or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. The reason for not recording an incident required by this policy shall be documented in the report. (l) Only trained personnel shall operate BWC equipment.

450.4.1 BWC ADMINISTRATOR RESPONSIBILITIES

The system administrator is the designated Lieutenant responsible for the Sheriff's Office's BWC program. The administrator will have oversight responsibilities to include the following: (a) Operation and user administration of the system. (b) Training. (c) Policy development, implementation, review, and evaluation. (d) Coordination with IT and Taser regarding system related problems. (e) Ensuring the recorded media files of evidentiary value are secure and retained per this policy. (f) Ensuring the recorded media files are reviewed, preserved, and released in accordance with federal, state, and local statutes and in accordance to the retention schedule and policy of the Sheriff's Office. (g) Establishing and setting roles and permissions in Evidence.com for members of the Sheriff's Office based on their job assignment/classification.

450.4.2 SUPERVISORY RESPONSIBILITIES

Supervisors will ensure that members are using their BWC's according to the policy of the Sheriff's Office. (a) Supervisors are to review the recorded media files according to the provisions set forth in this policy. (b) Supervisors shall ensure recorded media files related to critical incidents are uploaded to Evidence.com. (c) Supervisors may have the ability to immediately resolve citizen complaints by reviewing recorded media files captured on the BWC. In those circumstances where a complaint is resolved with no further action needed, supervisors shall add an additional category of citizen complaint to the recording and make appropriate notes in the notes section of Evidence.com. (d) Supervisors may not randomly access BWC recordings for arbitrary or capricious purposes, however, supervisors may conduct periodic audits of BWC recordings to verify adherence to this policy. Accordingly, during such periodic audits, minor policy infractions (not criminal in nature) discovered during routine review should be viewed as training opportunities and not intended to initiate disciplinary actions. However, should the behavior or action continue after being informally addressed by a supervisor, the appropriate disciplinary or corrective action should be pursued.

450.5 ACTIVATION OF THE PORTABLE RECORDERS

This policy is not intended to describe every possible situation in which the BWC should be used, although there are many situations where its use is appropriate for legitimate law enforcement interests. Unless, it would be unsafe, impossible, or impractical for the situation, members are required to activate their BWC prior to making contact when responding to all calls for service, and during any law enforcement related encounters and activities that occur while the member is on duty. Examples include, but are not limited to: (a) All enforcement and investigative contacts including arrests, pursuits, suspicious persons, detentions, and field interview (FI) situations. (b) Traffic stops including, traffic violations, traffic collisions and stranded motorist assistance. (c) Probation or parole searches. (d) Service of search or arrest warrants. (e) Self-initiated activity in which a member would normally notify the Dispatch center. (f) During suspect interviews, Miranda Rights advisement, and obtaining verbal consent to search. (g) During building searches, searches for suspects, and building checks at alarms. (h) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording. (i) Any use of force or tactical intervention. **Cameras must be turned on at the request of a member of the Public.** Exceptions to activating BWC: (a) During interviews with crime victims, confidential informants, or witnesses who do not wish to be

recorded. Examples of this can include witness interviews or victim interviews on sensitive cases (sexual assault, child abuse, etc.). ~~(b) Generally, in most cases, it may not be necessary to record a prisoner transport to a detention facility. However, it is discretionary on the part of the member on whether to record, or not record, the transport. The evidentiary need combined with the actions and demeanor of the suspect are factors to consider when making this decision.~~ (c) It is not expected that the BWC be activated during conversations involving case strategies or tactical planning. ~~(d) Members are not required to record if they are in positions where the recordings are reasonably anticipated to be fruitless, e.g., long-rifle team members in prone position, etc.~~ **During the recording of an incident, Department members will not disengage the BWC until the entire incident has been recorded. An officer who is found to have purposely failed to activate the BWC during an interaction with a member of the Public or who has a pattern of not recording interactions with the Public or who intentionally interferes with a body camera's ability to accurately capture video footage, or otherwise manipulates the video footage captured by a body camera during or after its operation, will be subject to disciplinary action.**

450.5.1 SURREPTITIOUS USE OF BODY WORN CAMERAS

Members of the Sheriff's Office may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (Penal Code § 633). Members shall not surreptitiously record another Office member, or any other law enforcement agency member, without a court order unless lawfully authorized by the Sheriff or an authorized designee.

450.5.2 CESSATION OF RECORDING

An officer shall continue to record until the cessation of the incident or if the incident results in an arrest, until the detainee has been fully transported to the booking facility. Once activated, the BWC should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation, ~~i.e., prisoner in custody and seated in a patrol car.~~ Members can deactivate the recording for purposes of exchanging confidential information (e.g., operational tactics and strategies) or conducting interviews with crime victims, confidential informants, or witnesses who do not wish to be recorded. Examples of this can include witness interviews or victim interviews on sensitive cases (e.g., sexual assault, child abuse, etc.). Members ~~should~~ **must** include the reason for the deactivation in their **written** report. Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should typically resume once the identified privacy concern has been addressed and/or resolved. ~~Recording may be stopped during significant periods of inactivity such as report writing, assignments include perimeter or static post positions, and members who are not in contact with citizen's and they are not actively part of the investigation.~~

450.5.3 PRIVATE PARTY RESIDENCES

Although private residences are protected under the fourth amendment, this does not preclude the use of BWC's. Members who are lawfully inside a private residence have a lawful right to record the encounter. If a citizen asks the member not to record an encounter inside a private residence, the member should use good judgment and reason while weighing the legitimacy of the law enforcement interest, including, but not limited to, the investigative importance of the recording versus the legitimacy of the request from the citizen to cease the recording.

450.6 PROHIBITED USE OF BODY WORN CAMERAS

(a) It will be a violation of this policy for any member who fails to activate their BWC or intentionally terminates a recording in order to commit a violation of law or policy. (b) Members shall not remove, dismantle, or tamper with any hardware and/or software component of the BWC. (c) The BWC shall not be used to record non-work related activity and shall not be activated in places where a reasonable expectation of privacy exists such as locker rooms, restrooms, and dressing rooms. (d) Members are prohibited from making personal copies of recordings, including utilizing secondary/personal recording devices to create a duplicate recording. Members shall not duplicate or distribute such recordings, except for authorized Sheriff's Office business purposes. (e) Members are prohibited from retaining recordings of activities or information obtained. (f) Recordings shall not be used by any member for the purpose of embarrassment, intimidation, or ridicule. **(g) This policy shall not allow for any kind of systematic surveillance or tracking of the public. The policy should sharply limit the use of biometric technologies (e.g., facial recognition) to identify individuals in footage.**

450.7 CATEGORIES AND RETENTION OF RECORDINGS

Members using the BWC's shall identify each recording by category as outlined below. Not all BWC recordings will be required to be categorized in evidence.com. However, if a case number is attached to the event, the event shall be recorded and the metadata associated with that event shall be entered into Evidence.com. In the event a recording does not fall into a listed category and has no apparent evidentiary or administrative value, the member may leave the recording as uncategorized. Retention periods are established by the Sheriff in accordance with state and federal mandates as outlined in the County of Sonoma's records retention schedule. The retention of all recordings will be a minimum of three years and 1 day unless deleted by the BWC Administrator prior to the retention period expiring. Examples of this can include accidental BWC activations, training recordings that do not contain evidentiary value, etc. The following categories are available on Evidence.com: (a) Arrests and Citations: If an arrest or citation occurs, the user shall choose this category and complete the necessary information in Evidence.com. (b) Enforcement Contacts This category may be selected for any enforcement contact that the user wants to document. Enforcement contacts includes, traffic stops, bicycle stops, suspicious persons, etc. (c) Citizen's Complaint This category will typically be used by supervisors who are investigating a Citizen's Complaint. The user should complete the necessary data within Evidence.com. (d) Critical Incidents In the event of a Critical Incident, a supervisor shall upload the recording to Evidence.com as soon as practical. The supervisor should select the Critical Incident category and complete the necessary data. All Critical Incidents will be "Flagged". (e) Reports This category shall be selected for all reports taken and

the necessary information shall be entered into Evidence.com. (f) Training This category can be selected by the user to document training recordings. (g) Use of Force Anytime there is a Use of Force captured on recording, the user shall select this category and complete all the data in Evidence.com. (h) Uncategorized 450 - Body Worn Any recording that is uploaded where a category is not selected will automatically default to the uncategorized category. Note: Members should notify their supervisor and “flag” any recording that the member believes may result in a citizen’s complaint. **Citizens are able to request that a recording be flagged and retained without having to file a complaint.**

450.8 REVIEW OF RECORDINGS

Access to the recordings is managed on a need to know, right to know basis. All access to the system at Evidence.com is logged and available for audit purposes. Members authorized under this policy may review recordings according to the provisions of this policy. Once uploaded to Evidence.com, members may only view recorded data at Sheriff’s Office authorized computers or MDC’s. The member will need to document the reason for access in the “Notes” section prior to viewing any data. Evidence.com automatically time/date stamps and records each access by employee name. **For all incidents, in order to provide more thorough reports, members are required to file a preliminary written report or statement before relevant BWC footage is viewed. After viewing the relevant BWC footage, members may choose to issue a final written report or statement.** A member may review recorded files as it relates to: (a) Their involvement in an incident for the purposes of completing a criminal investigation and preparing official reports. Members should not use the fact that a recording was made as a reason to write a less detailed report. (b) Prior to courtroom testimony or for courtroom presentations. (c) Providing a statement during an administrative inquiry. (d) For potential training purposes. (e) Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct. (f) Generally, non-supervisory personnel will not have access to other employees’ BWC recordings unless requested for a legitimate law enforcement investigation or purpose. (g) In response to court orders, subpoenas, public records act (PRA) requests, etc., a member’s BWC recording(s) may be reviewed by Sheriff’s Office members who have a legitimate law enforcement reason to view the BWC recording (Custodian of Records, BWC Administrator, Command Staff, etc.). Exception: Administrative users of Evidence.com may access Evidence.com from a computer or device outside of the Sheriff’s Office for the purpose of completing administrative tasks such as viewing recordings on sensitive cases when a Sheriff’s Office computer is not available, locking or unlocking users, etc.

450.9 RELEASE OF RECORDINGS

(a) Law Enforcement Agency requests All requests shall be in writing to the Custodian of Records with sufficient information to locate the BWC recording to the discovery clerk at the Sheriff’s Office. (b) Non-Law Enforcement requests Media requests, as well as all other requests for a BWC recording shall be processed in accordance with federal, state, and local statutes and Office policy (court cases, subpoena’s, public records act, etc.). Any recording that is released to the media or other external sources, shall require the approval of the Sheriff or designee. When practical, personnel involved in the recording will be notified prior to release. (c)

A BWC recording may be utilized as a training tool for individuals, specific units, and the Office as a whole. 1. If an involved member objects to the showing of a recording, his/her objection will be submitted to the Sheriff or designee to determine if the employee's objections outweigh the training value. 2. The Sheriff or designee shall review the recommendation and determine how best to utilize the BWC recording considering the identity of the person(s) involved, sensitivity of the incident, and the benefit of utilizing the recording versus other means (e.g., General Order, Training Bulletin, Officer Safety Bulletin, briefing or other training). **Individuals who are the subject of a recording that is being used for investigative purposes shall be permitted to review the camera footage as part of the process of giving a statement to the investigators. Just as the recollections of Law Enforcement Officers are sharpened by viewing the footage as part of giving their reports on incidents, so too are the recollections of citizens sharpened by viewing the footage. Where permitted within California state laws, the Sonoma County Sheriff's office will permit any member of the public, parent or legal guardian of a minor, or a deceased subject's next of kin or legally authorized designee who is the subject of video footage or any defense counsel who claims, pursuant to a written affidavit, to have a reasonable basis for believing a video may contain evidence that exculpates a client to review that specific video footage during a confidential citizen complaint investigation.**

450.10 REQUESTS FOR DELETION OF A RECORDING

In the event an employee becomes aware of an accidental or inadvertent activation of the BWC, or training recordings that do not contain evidentiary value, the recording employee shall request that the BWC file be deleted by submitting an e-mail request with sufficient information to locate the BWC file to the system administrator who shall review the file and approve or deny the request.

450.11 CRITICAL INCIDENTS

In the event of a critical incident: (a) All BWC recordings shall be uploaded to the server as soon as practical. (b) The initial investigative interview of an involved deputy should occur before the officer has reviewed any audio/video recordings of the incident. An involved deputy will have the opportunity to review recordings after the initial statement has been taken. Investigators may decide to allow the involved deputy(s) attorney(s) an opportunity to view the recordings prior to the initial interview. Investigators should be mindful that audio/video recordings have limitations and may depict events differently than the events recalled by an involved deputy. If the Investigator shows any audio/video recordings to an involved officer after the initial interview, the Investigator should admonish an involved deputy about the limitations of audio/video recordings. The following is an example of an appropriate admonishment in a case involving video evidence: "In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the event differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The frame rate of video may limit the camera's ability to capture movements normally seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as

the human eye. Remember, the video evidence is intended to assist your memory and ensure that your initial statement explains your state of mind at the time of the incident”.

REVISION HISTORY

02/03/2014 Interim Policy

07/10/2015

01/21/2016 03/25/2016

References:

Watching the Watchmen: Best Practices For Police Body Cameras

<https://www.cato.org/publications/policy-analysis/watching-watchmen-best-practices-police-body-cameras>

Body Worn Cameras- A Policy Scorecard <https://www.bwcorecard.org/>

ACLU A Model Act For Regulating The Use Of Wearable Body Cameras By Law Enforcement

<https://www.aclu.org/other/model-act-regulating-use-wearable-body-cameras-law-enforcement>

President’s Report on 21st Century Policing

https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

Salt Lake City Police Department Policies and Procedures

<http://www.slcdocs.com/police/ppm.pdf>

Sonoma County CALLE Task Force Recommendations

Developing Body Worn Camera Policies in Corrections

<https://www.powerdms.com/blog/developing-body-worn-camera-policy-in-corrections/>