

**MARIN COUNTY SHERIFF'S OFFICE  
GENERAL ORDER**

**CHAPTER 5 – OPERATIONS**

**DATE: 2-2-17**

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**BODY WORN CAMERAS**

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**POLICY**

The purpose of this policy is to provide guidelines for the use of body worn cameras ("BWC") by sworn deputies of the Marin County Sheriff's Office.

The purpose of BWCs is to assist law enforcement personnel in the performance of their duties by obtaining documentary evidence for criminal investigations. BWC recordings may also prove valuable in related civil litigation, citizen complaints, and administrative matters arising from law enforcement activity.

The Sheriff's Office will provide a working BWC to all sworn personnel assigned to the Field Services Bureau. A BWC may be provided to sworn personnel assigned to other Bureaus within the Department at the discretion of a sergeant or higher authority.

**TRAINING**

Deputies shall not use a BWC until they have been trained in its proper use and care. Training will be provided by a qualified trainer, will be documented in the deputy's Training File maintained by the Professional Standards Unit (PSU), and will consist of a review of the BWC system, its functions, usage, and the types of incidents it should be used to record. Additionally, deputies will be trained on applicable documentation procedures required to ensure that recorded events are preserved and included with the appropriate arrest report, incident report, citation, etc.

**PROCEDURE**

Uniformed personnel assigned to the Field Services Bureau shall obtain a BWC prior to the beginning of his/her shift. Personnel who are issued a BWC are responsible for ensuring the BWC is in good working order. If the BWC is not in good working order, or malfunctions at any time during the deputy's shift, that fact will be reported to a supervisor and a functioning device shall be obtained as soon as practicable thereafter. Uniformed personnel shall wear the BWC above the midline of their torso and in a forward-facing position to produce an effective recording.

Sworn personnel assigned to the Field Services Bureau and working in a non-uniformed capacity may carry and use an approved BWC whenever directed to do so by a supervisor, or when a deputy believes using a BWC would prove useful. Unless open display of the BWC would compromise an investigation and/or create a safety issue for the non-uniformed deputy, the BWC should be worn in a conspicuous manner.

Deputies are encouraged to advise persons they encounter they are being recorded on a BWC if such an advisement might help gain compliance and/or otherwise assist in the investigation. However such an advisement is not necessary if giving it will interfere with the investigation or create a safety risk to the deputy.

At the conclusion of the deputy's shift, or when practical, the BWC will be placed into a charging dock and the

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recorded media will be uploaded to the Department's on-line media storage system.

Any uniformed deputy who wishes to carry an audio/digital recorder in addition to the BWC may do so for the purpose of surreptitiously recording conversations or activities that are otherwise legal to record. An example of this could include, but not be limited to placing an audio recorder near the back seat of a patrol car to record a suspect or suspects, or to record a conversation when the subject of a BWC recording has insisted, consistent with the requirements of this policy, that the BWC be turned off.

Uniformed deputies are not allowed to carry an audio digital recorder in place of their issued BWC.

The wearing or use of any personal video recorder, other than the department issued BWC, is not authorized. However, during an encounter with high evidentiary value where the BWC is either unavailable or becomes inoperable, a deputy who has access to an alternative means of recording the incident, such as a cell phone or other video device, may record the incident on that alternate recording device. In such cases, a copy of the video recording shall be entered into evidence and the deputy's supervisor shall be notified that the recording was made and why it was made on a device other than the department issued BWC. This applies to both uniformed and non-uniformed deputies.

### **ACTIVATION OF BODY WORN CAMERAS**

California Penal Code Section 633 allows law enforcement officers to surreptitiously record any conversation they might engage in while acting within the scope of their law enforcement authority. Unless unsafe, impossible, or impractical, uniformed deputies are required to activate their BWC prior to any law enforcement related encounter or activity that occurs while the deputy is on duty. Examples of these encounters or activities include, but are not limited to:

- All pursuits, whether in a car or on foot
- All vehicle stops
- Crowd management services, including demonstrations and protests
- All self-initiated activity that would normally require a deputy to notify his/her dispatcher.
- All enforcement and investigative contacts, including suspicious persons, detentions, and/or field interview situations.
- During any use of force or tactical intervention.
- During suspect and witness interviews, Miranda advisements, and while obtaining a verbal consent to search.
- During probation or parole searches.
- During the service of a search and/or arrest warrant.

Personnel who are assigned to the Sheriff's Office Special Response Team (SRT) and are engaged in an active SRT incident shall defer to the SRT supervisor or tactical commander for direction about the need to wear or utilize a BWC during the course of that incident.

Once activated, the BWC should remain on continuously until the deputy's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Deputies may also deactivate the recording during significant periods of inactivity, such as report writing, assignments that include outer perimeter or static post positions, or when a deputy is not in contact with citizens and is no longer an active part of the investigation.

Under very limited circumstances a deputy may decide to terminate a BWC recording before the conclusion of a law enforcement encounter. Examples of when it might be appropriate to terminate a BWC recording include, but are not limited to:

- During sensitive interviews with crime victims and/or witnesses who insist the BWC be turned off, such as cases that involve child abuse, sexual assault, etc.
- During interviews with confidential informants.
- During conversations that involve case strategies or tactical planning.
- In most cases, it may not be necessary to continue recording an interaction with an arrestee during transport to a detention facility unless the transporting deputy believes such a recording may be of evidentiary value.

Although the 4<sup>th</sup> Amendment places a higher expectation of individual privacy within a private residence, that does not preclude the use of BWC's inside a subject's home. Deputies engaged in an official duty who have a lawful right to be in the home may use the BWC to record that encounter.

If a subject asks the deputy not to record an encounter while inside a private residence, the deputy should use good judgment and weigh the legitimacy of the law enforcement interest in having that encounter recorded against the legitimacy of the request from the citizen to cease the recording. In such cases, the deputy may choose to terminate the BWC recording and surreptitiously record the encounter using an audio/digital recorder instead.

Deputies should not activate a BWC, or should exercise extreme discretion in deciding to activate a BWC, when entering a public locker room, changing room, restroom, doctor's office, lawyer's office, or other place where individuals unrelated to a law enforcement incident are present and would have a heightened expectation of privacy.

Deputies are not required to activate the BWC when engaged in conversations with individuals that the deputy shares a privileged relationship with, including, but not limited to a spouse, attorney, police peer counselor, labor representative, minister, etc.

#### **PROHIBITED USE OF BODY WORN CAMERAS AND DATA**

It will be a violation of this policy for any deputy to fail to activate their BWC, or to intentionally terminate a BWC recording in order to commit a violation of law or policy.

The BWC shall not be used to record non-work related activity and shall not be activated in department work places where a reasonable expectation of privacy exists, such as inside a department locker room or restroom.

Deputies are prohibited from making personal copies of recordings, including utilizing secondary/personal recording devices to create a duplicate recording. Deputies shall not duplicate or distribute recordings except for authorized official Sheriff's Office business.

Recordings shall not be used by any employee of the Sheriff's Office for the purpose of entertainment, embarrassment, intimidation, or ridicule.

Recordings shall not be accessed or released for any unauthorized purpose. Employees are prohibited from accessing recorded data for personal use and from uploading recorded data onto public and social media Internet web sites.

Deputies shall not remove, dismantle or tamper with any hardware and/or software component of the BWC system.

No employee shall modify, alter, erase, or record over any portion of a BWC recording, unless otherwise authorized pursuant to this Policy.

## DOCUMENTATION AND RETENTION OF RECORDINGS

Deputies shall document the existence of a recording made by a BWC in any report, on any citation, or in any other official record made of his/her activity(s). Should the deputy decide to deactivate the BWC prior to the conclusion of the law enforcement event, or should the BWC malfunction prior to the conclusion of that event, the deputy shall note that decision or malfunction in the report, on the citation, or in any other official record made to record his/her activity(s).

Deputies using a BWC shall identify each recording made using one of the categories described below. In the event a recording has no apparent evidentiary or administrative value and it does not fall into a listed category, the deputy may leave the recording as "uncategorized."

Retention periods are established by the Sheriff in accordance with state and federal mandates, and the County of Marin's Records Retention Schedule.

Non-evidentiary recordings shall be retained for a minimum of 60 days.

Evidentiary recordings that include but are not limited to the below described circumstances shall be retained for a minimum of 2 years:

- The recording of an incident involving the use of force by a deputy or a deputy involved shooting.
- The recording of an incident that leads to the detention or arrest of an individual.
- The recording is relevant to a formal or informal complaint against a deputy or the Marin County Sheriff's Office.

The following categories are to be used to identify the nature of each BWC recording. Each category has a corresponding records retention schedule, so accurately categorizing each recording is required.

- Arrests and Citations: This category will be used any time an arrest takes place or a citation has been issued.
  - a. Felony Arrest: This category will be used any time a felony arrest takes place or a citation has been issued. Minimum retention period of 3 years.
  - b. Misdemeanor/Infraction Arrest or Citation: This category will be used any time a misdemeanor arrest takes place or a citation has been issued. Minimum retention period of 2 years.
  - c. 5150 W&I: Any detention resulting in a person being placed on a 72 hour hold pursuant to 5150 W&I. Minimum retention period of 2 years.
- Enforcement Contacts: This category will be used anytime an enforcement contact has been made that did not result in an arrest or citation, including, but not limited to traffic stops, bicycle stops and suspicious persons/pedestrian contacts. Minimum retention period of 60 days.
- Citizen's Complaint: This category will be used by supervisors who are investigating a citizen complaint. Minimum retention period of 5 years.
- Critical Incidents: This category will be used in the event of a critical incident or an incident likely to hold significant interest for the Department or the public. Minimum retention period of 3 years.
- Reports: This category shall be selected for all reports taken that do not include an arrest or citation.
  - a) Felony: Any felony report taken. Minimum retention period of 3 years.
  - b) Misdemeanor/Infraction: Any misdemeanor or infraction report taken. Minimum retention period of 2 years.
- Homicide: This category will be used for any incidents involving a homicide. Minimum retention period will be indefinite.

- DA Request: This category will be used by the Evidence Control Technician when a video has been requested by the District Attorney's Office to be used for prosecution. Minimum retention period will be indefinite.
- Training: This category may be selected by the user to document training recordings. Minimum retention period of 2 years.
- Use of Force: This category will be used anytime there is a use of force captured by the BWC. Minimum retention period of 3 years.
- Uncategorized: This category may be used anytime a recording is uploaded to the Department's on-line media storage system where another more specific category does not exist. Minimum retention period of 60 days.

### **DEPUTY PRIVACY EXPECTATION**

All recordings made by a deputy acting in his/her official capacity shall remain the property of the Marin County Sheriff's Office. Deputies shall have no expectation of privacy, nor any ownership interest in the content of those recordings. Use of BWC's for any purpose other than in accordance with this policy is prohibited.

### **REQUESTS FOR DELETION OF A RECORDING**

In the event of an accidental activation of a BWC, for recordings made for training purposes alone, and for recordings that do not have any evidentiary value, the recording employee may request the BWC file be deleted by submitting a written request to the BWC System Administrator. The request must contain sufficient information to aid in locating the BWC file and include the specific reason why the file should be considered for deletion.

### **REVIEW OF BWC RECORDINGS: GENERALLY**

Although the data captured by a BWC is not considered Criminal Offender Record Information (CORI), it shall be treated in the same manner. All access to the system is logged and subject to audit at any time. Access to data contained within the system is permitted on a "right to know/need to know" basis only.

Deputies and employees may review video recordings maintained within the BWC system only as authorized by this policy.

Once uploaded to the Department's on-line media storage system, deputies may review their own audio/video recordings at a department computer and/or other Internet enabled device, but only after documenting the reason for that access in the "Notes" section of the system. Each access to the Department's on-line media storage system automatically records the name and ID number of the deputy making access, as well as the time and date each access was made.

BWC recordings may be viewed in any of the following situations:

- By the recording deputy who needs to review his/her own recordings for report preparation, to prepare for sworn testimony, or to prepare for an administrative investigation.
- In the above-referenced circumstances, deputized personnel who appear in a video captured by a BWC worn by a different deputy shall also be entitled to review those applicable recordings.
- In the above-referenced circumstances, deputized personnel who are not seen or heard in a video if they had a similar perspective or were in close proximity to the deputy whose BWC captured the video.
- By department personnel who are engaged in an official investigation.

- By a supervisor reviewing an incident, however, supervisors may not randomly access BWC recordings for arbitrary or capricious purposes.
- In response to court orders, subpoenas, Public Records Act requests, etc., a deputy's BWC recording(s) may be viewed by Sheriff's Office members who have a legitimate law enforcement reason to review the BWC recording (Custodian of Records, BWC System Administrator, Command Staff, etc.)
- Recordings may be shown for training purposes with prior review and approval of the Field Services Bureau Captain. If an involved deputy objects to the showing of a recording, his/her objection will be submitted through the Chain of Command to the Field Services Bureau Captain in order to determine if the training value outweighs the deputy's objection to showing the recording.

### **REVIEW OF BWC RECORDINGS: CRITICAL INCIDENTS**

In the event a deputy is involved in an incident that results in an in-custody fatality, or when a deputy discharges his/her firearm, except at an approved range or when killing an injured or dangerous animal, the public safety statement should take place as soon as practicable regardless of an employee's ability to review a BWC recording.

An involved deputy(s) will be given an opportunity to review any applicable BWC recordings after the initial public safety statement and prior to providing a criminal or administrative statement.

Investigators should be mindful that audio/video recordings have limitations and may depict events differently than the events recalled by an involved deputy. The investigator should admonish the deputy about the limitations of audio/video recordings, which include, but are not limited to:

- Video has a limited field of view and may not capture events normally seen by the human eye.
- The camera's frame rate may limit the ability to capture movements normally seen by the human eye.
- Lighting in the video may be different than seen by the human eye.
- Video is two-dimensional and may not capture depth, distance, or positional orientation as well as the human eye.
- The audio recording may capture auditory information (e.g., voices, words, statements, noises) not heard by the deputy.
- The audio recording may not capture auditory information heard by the deputy.

Investigators should advise involved personnel that it is expected there maybe differences between the employee's perception and/or recollection, and the BWC recording. Investigators should offer involved personnel the opportunity to identify visual and audio information that is inconsistent with their perception and/or recollection.

### **REVIEW OF BWC RECORDINGS: ADMINISTRATIVE INVESTIGATIONS**

Investigators conducting an administrative investigation (i.e., an internal affairs investigation) shall provide each subject employee with a copy of relevant BWC recording files, including but not limited to the employee's own recording, at the time the employee is served with a notice of the investigation.

### **RELEASE OF RECORDINGS**

Video recordings made by a BWC are presumed to constitute evidentiary records and may be released only under the following circumstances:

- Law enforcement and allied agency requests:

Request from a law enforcement agency, the District Attorney's Office, or the County Counsel's Office, for the release of a recording made by a BWC shall be made in writing to the BWC System Administrator and shall include sufficient information to aid in locating the BWC file. A decision to grant the request for release of the BWC video shall be made in accordance with this policy and all other applicable Federal and State statutes.

- Court requests:

Upon receipt of a court subpoena, the BWC System Administrator and/or his/her designee will be responsible for making a copy of the requested recording, or segment thereof, as ordered by the Court and/or other authorized entity.

Videos requested by the District Attorney's Office to be used for prosecution shall be sent by the Evidence Clerk via a restricted link with a viewing period of 10 days. Once a video has been requested, the Evidence Clerk will add the category "**DA Request**" to the video(s) which will retain the video(s) until such time that the clerk receives notice from the District Attorney that said video(s) are no longer needed. The Evidence Clerk will then remove the "**DA Request**" category from the video(s) which will allow the video(s) to be purged according to its original retention values assigned when recorded.

- Non-Law Enforcement Requests:

Requests from media outlets and/or a member of the public for the release of a BWC recording shall be processed in accordance with Department policy(s) and all applicable Federal, State, and local laws. Any recording that is released to the media or other external source shall require the approval of the Undersheriff or his/her specific designee. The Documentary Services Manager may act as a resource in helping to determine whether the media and/or any specific individual has a right to view a specific recording, consistent with law and/or policy.

Whenever practical, all personnel involved in a recorded event will be notified prior to the release of that recording to the media or other external source.

Deputies who are conducting open criminal or internal investigations may advise the BWC System Administrator to restrict access to, or public disclosure of, any relevant BWC files until the criminal or internal investigation has been completed.

### **SUPERVISORY RESPONSIBILITIES**

Supervisors will ensure deputies are using their BWC's in accordance with this policy, which can include periodic audits of BWC recordings in furtherance of that objective.

Supervisors shall ensure recorded media files related to critical incidents are uploaded to the Department's on-line media storage system as soon as practical after the critical incident has concluded.

Supervisors may have the ability to immediately resolve citizen complaints by reviewing recorded media files that have been captured by a BWC. In circumstances where a complaint has been resolved with no further action needed, supervisors shall add the additional category of "Citizen Complaint" to the recording and enter any appropriate comments in the "Notes" section of the Department's on-line media storage system.

Deputies will have the ability to audit the Department's on-line media storage system at their discretion to

determine whether or not any of their BWC recordings have been reviewed. Deputies may contact the System Administrator if they feel videos were viewed in violation of this policy.

#### **ADMINISTRATOR RESPONSIBILITIES**

The BWC System Administrator is a Lieutenant who has been assigned responsibility for the Sheriff's Office BWC program. The System Administrator has oversight responsibilities that include, but are not limited to the following:

- Overall operation of the system.
- User administration of the system.
- System evaluation.
- Training.
- Policy and procedure review and evaluation.
- Coordination with TSU staff with regard to system related issues.
- Ensuring BWC recordings are secure and retained per this policy.
- Ensuring BWC recordings are reviewed, preserved, released, and/or deleted in accordance with Federal and State law, the County of Marin's retention schedule and this Policy.

#### **REPAIR PROCEDURE**

Personnel should immediately report any problems with a BWC to their immediate supervisor. Upon notification, that supervisor shall contact the System Administrator, advising him/her of the problem or malfunction and asking that the unit be replaced or repaired. A replacement or repaired unit will be provided by the System Administrator as soon as practical.

#### **RELATED STANDARDS**

Penal Code Section 633

Penal Code Section 832.18

Assembly Bill No. 69

#### **AFFECTED DIVISIONS:**

All

#### **REVISIONS**

8-9-16

By order of:

  
ROBERT T. DOYLE  
SHERIFF-CORONER