

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

**CHAPTER 5 – OPERATIONS**  
GO- 05-33  
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**DATE: 9-16-18**

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**USE OF AXON CAPTURE FOR PHOTOGRAPHIC EVIDENCE**

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**POLICY**

The purpose of this policy is to provide guidelines for the use of the Axon Capture application by all sworn personnel assigned to the Field Services Bureau of the Marin County Sheriff's Office.

The purpose of Axon Capture is to assist law enforcement personnel in the performance of their duties by obtaining digital documentary evidence for criminal investigations.

The Sheriff's Office will provide a working smart phone, or similar device, with the Axon Capture application installed on it to all sworn personnel assigned to the Field Services Bureau.

**TRAINING**

Deputies shall not use the Axon Capture application until they have been trained in its proper use and care. Personnel will be provided with a training manual for Axon Capture to learn how to operate the system. Training will be documented in the deputy's Training File maintained by the Professional Standards Unit (PSU), and will consist of a review of the Axon Capture application, its functions, usage, and the types of incidents it should be used to document digital evidence. Additionally, personnel will be trained on applicable documentation procedures required to ensure that digital evidence is preserved and included with the appropriate arrest report, incident report, citation, etc.

**PROCEDURE**

Personnel assigned to the Field Services Bureau shall ensure their assigned smart phone is sufficiently charged prior to the beginning of his/her shift. Personnel who are issued a smart phone or similar device are responsible for ensuring the phone or device is in good working order. If the phone or device 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.

Personnel are not allowed to use any personal devices to use the Axon Capture application or to take photographic evidence in place of their department issued device. Although the Axon Capture application has the ability to record audio and video media, the Axon 2 body worn camera will be the preferred means of recording video and audio media. Audio and video evidence may be captured using Axon Capture in the event the assigned BWC fails or if the situation calls for discretion that can be provided by using the department issued smart phone or device.

Digital evidence shall be taken according to the Axon Capture application user manual. This manual explains the process by which digital evidence is taken and subsequently uploaded into the Sheriff's Office cloud storage system maintained at Evidence.com.

## PROHIBITED USE OF AXON CAPTURE AND DATA

The Axon Capture application shall not be used to record non-work related activity. Personnel are prohibited from making personal copies of digital evidence, including utilizing secondary/personal recording devices to create a duplicate recording. Personnel shall not duplicate or distribute digital evidence except for authorized official Sheriff's Office business.

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

Photographs or 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, unless authorized to do so by a bureau commander or higher ranking official.

Personnel shall not remove, dismantle or tamper with any hardware and/or software component of the issued smart phone or device, or the Axon Capture application.

## DOCUMENTATION AND RETENTION OF DIGITAL EVIDENCE

Personnel shall document the existence of photographs taken via the Axon Capture application in any ARS report, on any citation, or in any other official record made of his/her activity(s).

Personnel using Axon Capture to document photographic evidence shall identify such photographs in Evidence.com using one of the categories described below. Personnel will enter the photographs into the Property tab of their ARS report as a separate item of evidence. If any other digital evidence is obtained and stored in Evidence.com, it will also be listed as a separate piece of evidence in the Property tab of the ARS report.

When taking multiple photographs via the application only the ID Number and Category are required to submit the photographs into Evidence.com. If a photograph needs a Title it can be entered via Evidence.com.

Retention periods are established by the Sheriff in accordance with state and federal mandates.

The following categories are to be used to identify the nature of each photograph or series of photographs for each individual incident. Each category has a corresponding records retention schedule, so accurately categorizing each recording is required.

- o 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.
- o 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.
- o 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.
- o Sex Report: This category will be used in the event of any report regarding a sexual assault or similar offense. Minimum retention period of 3 years.
- o Reports: This category shall be selected for all reports taken that do not include an arrest or citation. Minimum retention period will be indefinite.
- o Felony Report: Any felony report taken. Minimum retention period of 3 years.
- o Misdemeanor/Infraction Report: Any misdemeanor or infraction report taken. Minimum retention period of 2 years.
- o Homicide: This category will be used for any incidents involving a homicide. Minimum retention period will be indefinite.

- o DA Request: This category will be used by the Evidence Control Technician when digital evidence has been requested by the District Attorney's Office to be used for prosecution. Minimum retention period of indefinite.
- o Training: This category may be selected by the user to document training recordings. Minimum retention period of 2 years.
- o Coroner: This category will be used to document death cases investigated by patrol personnel on behalf of the Coroner's division. Minimum retention period of indefinite.

### **REVIEW OF PHOTOGRAPHIC OR DIGITAL EVIDENCE: GENERALLY**

Although the data captured by Axon Capture 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.

Personnel may review digital evidence maintained within the Evidence.com system only as authorized by this policy.

Once uploaded to the department's on-line media storage system, personnel may review their own photographic evidence at a department computer and/or other internet enabled device. Each access to the department's on-line media storage system automatically records the name and ID number of the employee making access, as well as the time and date each access was made.

Digital evidence 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.
- By department personnel who are engaged in an official investigation.
- By a supervisor reviewing an incident, however, supervisors may not randomly access digital evidence for arbitrary or capricious purposes.
- In response to court orders, subpoenas, Public Records Act requests, etc., a deputy's digital evidence may be viewed by Sheriff's Office members who have a legitimate law enforcement reason to review the digital evidence (Custodian of Records, BWC System Administrator, Command Staff, etc.)

### **RELEASE OF PHOTOGRAPHIC OR DIGITAL EVIDENCE**

Digital recordings created using Axon Capture are presumed to constitute evidentiary records and may be released only under the following circumstances:

- Law enforcement and allied agency requests:

Requests from a law enforcement agency, the District Attorney's Office, or the County Counsel's Office, for the release of digital evidence documented using the Axon Capture application shall be made in writing to the Evidence Clerk and shall include sufficient information to aid in locating the digital evidence. A decision to grant the request for release of the digital evidence shall be made in accordance with this policy and all other applicable Federal and State statutes or Sheriff's Office policies and procedures.

- Discovery requests:

Digital evidence requested by the District Attorney's Office to be used for prosecution shall be sent by the Evidence Clerk via the agency sharing process via Evidence.com. Once digital evidence has been requested, the Evidence Clerk will add the category "**DA Request**" to the evidence which will

retain the evidence until such time that the clerk receives notice from the District Attorney that said evidence is no longer needed for prosecution. The Evidence Clerk will then remove the “**DA Request**” category from the evidence allowing the evidence to be deleted according to the pre-established retention period assigned.

### **SUPERVISORY RESPONSIBILITIES**

Supervisors will ensure deputies are using their issued smart phone or device, and the Axon Capture application in accordance with this policy, which can include periodic audits of digital evidence in furtherance of that objective.

### **ADMINISTRATOR RESPONSIBILITIES**

The Body Worn Camera (BWC) and Axon Capture programs are administered by a Lieutenant who has been assigned responsibility for the Sheriff's Office BWC and Axon Capture programs. The program 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 and photographs are secure and retained per this policy.
- Ensuring BWC recordings and photographs 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 smart phone, device, or the Axon Capture application to their immediate supervisor. Upon notification, that supervisor shall contact the program 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 program administrator as soon as practical.

### **RELATED STANDARDS**

Axon Capture User Manual  
California Penal Codes 799, 801 and 802

### **AFFECTED DIVISIONS:**

All

### **REVISIONS**

None

By order of:

  
**ROBERT T. DOYLE**  
**SHERIFF-CORONER**