

Body Worn Computer

449.1 PURPOSE, SCOPE & AUTHORITY

A. Purpose

To provide policy and procedures for use of the body worn computer (BWC).

B. Scope

This policy and its prescribed procedures apply to any department employee assigned a BWC.

C. Authority

The provisions of this policy are subject to all applicable federal, state, local laws and ordinances.

D. Definition-Body Worn Computer Device

For the purpose of this policy the terms body worn camera and body worn computer are synonymous. A body worn computer device consists of a small body worn cell phone with an integrated camera/audio system. BWC files, including photographs, audio recordings and video footage are stored digitally on the device until the system connects to the server. The device offers two recording options. The first option which will be used under normal circumstances is an audio/video combination. The second option is an audio only function which shall be used in limited situations as outlined in this policy. The device will also be used as a digital camera and department audio recorder.

449.2 PURPOSE & OBJECTIVES OF BWC PROGRAM

The department recognizes that audio and video recording of contacts between department personnel and the public provides an objective record of these events. The BWC system complements field personnel in the performance of their duties by providing a digital record of enforcement and investigative field contacts.

While recordings obtained from a BWC provide an objective record of these events, it is understood video recordings captured by a BWC and all other recording devices do not necessarily reflect the experience or state of mind of the individual employee(s) in a given incident. Moreover, the video recording has limitations and may depict events differently than the events recalled by the involved employee. Specifically, it is understood the BWC may capture information that may not have been heard and/or observed by the involved employee(s) and may not capture information observed or heard by the employee(s).

BWC recording perspectives must be considered with all other available evidence, such as officer statements, witness/suspect statements, involved party interviews, forensic analysis, and all other documentary evidence when evaluating the recorded incident.

The purpose and objectives of the department's BWC program are as follows:

- Collect evidence for use in criminal investigations.

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- Enhance the quality of cases submitted and evidence collected by the department for prosecution.
- Reduce officer case preparation and court time.
- Provide a resource to employees in completing reports and testifying in criminal proceedings.
- Enhance officer safety by reducing the incidents of criminal activity, violent public interactions, and interference with employees in the performance of their duties.
- Promote accountability, enhance public trust and confidence in the performance of employees.
- Deter and minimize the incidents of false complaints and false allegations of misconduct by members of the public against the department.
- Provide data to assist the department in evaluating and improving department practices, tactics, strategy, officer training and safety practices, and police-community relations.

449.3 RIGHTS OF THE DEPARTMENT

The rights of the department include:

- BWC equipment and all data collected using a BWC is considered a confidential investigative record and is property of the department.
- BWC equipment and all data files are for official use only and shall not be utilized for personal use.
- BWC data shall not be copied, released, or disseminated in any form or manner outside the requirements of this policy.
- Only authorized employees shall use or be in possession of a BWC device, data, or files.
- The BWC "Remote Activation" feature may be used with approval of a supervisor. If a supervisor is not available, any employee may activate this feature during an emergency situation.

449.4 PROCEDURES

A. Employee and Citizen Safety

Employee and citizen safety shall be an employee's primary consideration, not the ability to record an event.

B. General

- BWCs can only be used for official law enforcement purposes.
- Other than the System Administrator, employees shall not copy, edit, alter, erase or otherwise modify in any manner BWC data, except as authorized by law or department policy.

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- Employees shall not remove, dismantle or tamper with any hardware or software components of the BWC system unless specifically directed to do so by the System Administrator.
- Accessing, copying, forwarding or releasing any BWC data for any purpose other than for release to the District Attorney's Office or official law enforcement use is strictly prohibited.
- Release of BWC data to any person outside the department by any means or public release by any means is prohibited, unless prior express permission is given by the Chief of Police or a designee, except as stated otherwise in department policy.
- Personal computer equipment and software programs shall not be utilized when making copies of BWC data. Using a secondary recording device such as video camera, cell phone or any other electronic device to record or capture BWC data or files is strictly prohibited.
- Employees are required to delete phone call logs, text messages and any other information imported into the BWC system at the end of each shift.
- The use of any personal recording device for the same purpose as a BWC is not authorized.

449.5 BWC SYSTEM ADMINISTRATION

The BWC System Administrator(s) shall be sworn members of the department assigned to the Administrative Services Division. BWC System Administrators are responsible for performing the following duties:

- Maintain, troubleshoot, and conduct minor repairs on the BWC units.
- Conduct system evaluations.
- Maintain a record of assigned BWC and related equipment and maintenance records.
- Arrange the warranty and non-warranty repair for the BWC units.
- Repair and replace BWC components.
- Ensure the software and system settings are updated as necessary.
- Train officers on current policy and proper use of the BWC units.
- Provide technical assistance and subject matter expertise related to investigations.
- Non-sworn members in the Information Technology Department may assist the System Administrator with technical issues as it relates to the BWCs and applicable hardware/software.

449.6 TRAINING

The department shall ensure personnel assigned a BWC and related equipment are trained before use in the field. The training shall include:

- Policy overview

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- Operation, activation, deactivation, maintenance and care.
- Mandatory, discretionary and non-permissible uses of body worn computers.
- Significant changes in the law pertaining to body worn cameras.
- GPS function incorporated in each BWC device.
- Supervisory authorization or emergency employee activation for remote turn on.
- Report writing.
- Additional training at periodic intervals to ensure continued effective use of the BWC equipment, performance, and to incorporate change, updates or other revisions in policies and equipment.

449.7 PERSONNEL & ASSIGNMENTS TO DEPLOY BWCS

The following department personnel are required to deploy the BWC system daily:

- All uniformed personnel of Lieutenant rank and below who deploy in the field shall wear a BWC, unless otherwise directed by a supervisor.
- Sworn personnel serving a search warrant should utilize a BWC unless the use of the BWC compromises the identity of undercover officers, places an officer or member of the public in significant risk, harm, or jeopardizes tactics. The decision on activation in these circumstances will be up to the supervisor on scene.
- Detectives assigned to a non-uniformed position should carry and activate the BWC in the field, when the activation would be required under policy or would be beneficial to the situation.
- Officers actively engaged in an undercover operation are exempt from deploying a BWC unless otherwise directed by a supervisor.
- Community Service Officers and Code Enforcement Officers shall carry and activate the BWC in the field, when the activation would be required under this policy or would be beneficial to the situation.
- Animal Service Officers and Field Evidence Technicians who deploy in the field will carry the BWC on their person and activate it when the activation would be beneficial to the situation.
- Any other employee as deemed appropriate when their supervisor reasonably believes such use would be beneficial and within all policies, state, and federal laws.

449.8 OPERATIONAL PROCEDURES

449.8.1 DEVICE STORAGE & CARE

When not in use, the BWC and related equipment shall be kept in a secure area. It is the employees responsibility to ensure the listed items are kept in an area which will prevent the items from being damaged, lost or stolen. The BWC device is water resistant and shall be kept in a dry area on the

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employees person during inclement weather. Officers should ensure the BWC device is not left in a hot vehicle for an extended period of time.

449.8.2 PRE-SHIFT INSPECTION

The following pre-shift inspection checks shall be completed prior to the deployment of a BWC by employees:

- BWC equipment is the responsibility of the assigned officer and will be used with reasonable care to ensure proper functioning and reliability.
- Employees should inspect their assigned BWC devices daily to ensure there is no visible damage and the device is in working order.
- Visual damage or loss shall immediately be reported to a supervisor upon discovery.

449.8.3 CAMERA POSITION

Employees shall wear the BWC above the belt line of the torso, facing forward, in a location that will facilitate a useable field of view.

449.8.4 EQUIPMENT REPAIR, REPLACEMENT AND MAINTENANCE

An employee with a BWC in need of repair, replacement or maintenance will turn the device into their immediate supervisor or the system administrator. The supervisor will send the System Administrator an email explaining the malfunction. The employee will obtain a spare BWC from their supervisor before going into service and conduct a pre-shift inspection of the device as outlined in this Policy section 451.8.2.

449.8.5 ADVISEMENTS WHEN RECORDING

As a general rule, employees are encouraged to advise private persons they are being recorded if the advisement may gain compliance, assist in the investigation, and will not interfere with the investigation or employee/officer safety. Employees, however, are not required to obtain consent to record from members of the public when the officer is lawfully in the area where the recording takes place.

Residents have a reasonable expectation of privacy in their homes. However, when employees are lawfully present in a home (warrant, consent, or exigent circumstances) in the course of official duties, there is no reasonable expectation of privacy, and recording is lawful.

If a resident objects to the recording by the BWC inside of a private residence entered based on consent, the officer may turn off the device. Before terminating a recording for reasons of privacy or other concerns, the officer should document audibly on camera and later in writing, when applicable.

Officers are not required to initiate or cease lawful recording of an event, situation, or circumstances solely at the demand of a citizen or when the officer is lawfully in the area where the recording takes place.

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449.8.6 WHEN TO ACTIVATE

This policy is not intended to describe every possible situation in which a BWC should or should not be used. Officers should follow the below guidelines, but activate the BWC anytime the officer believes it would be legal, appropriate, and valuable to record an incident. The activation should be prior to contact, or as soon as safely possible to do so, and continue until the contact or event is concluded. If the contact resumes, so should the BWC recording. Officers should not turn the BWC on and off during a single incident as it will create an incomplete or edited recording of the incident, except as stated otherwise in this policy.

The safety of employees and members of the public is the highest priority, and the department acknowledges there may be situations in which operation of the device is impractical or may be an impediment to public or employee safety.

Investigative or Enforcement related contacts:

Employees should activate the BWC to record any investigative or enforcement related contacts.

Some examples are as follows:

- All enforcement encounters where there is at least reasonable suspicion the persons(s) has committed, is committing or may be involved in criminal activity or any enforcement encounter where there is reason to believe that the individual is committing a violation for which a citation may be issued.
- Traffic or vehicle stops, stranded motorists, crime interdiction stops.
- Pedestrian stops, field contacts/interviews, consensual encounters, and detentions.
- Calls for service, complaints, and self-initiated activity.
- Backing another city employee or law enforcement officer during any investigative enforcement related contact or any other situation where activation is required.
- Code 3 responses, vehicle pursuits, and foot pursuits.
- Uses of force
- During the execution of a search warrant, an arrest warrant, a Fourth Amendment waiver search, or consent search in which the officer is looking for evidence or contraband and any other situation deemed appropriate.
- Detentions and arrests (arrests, protective custody of mentally disturbed, etc.)
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- Probation, parole, post-release community supervision, mandatory supervision or consent searches.
- Suspect, victim and witness statements unless otherwise stated under this policy.
- Special events

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- As a general policy, employees should not record peaceful demonstrations.
- Employee use of a BWC to record a special event, such as a political event, demonstration, or protest is at the discretion of the supervisor in charge of the event given no other requirements to record with a BWC have attached.
- During demonstrations, officers should record if the officer witnesses crimes occurring among demonstrators and/or believes enforcement action will be necessary and /or an arrest is likely.
- All public interaction, regardless of context, that escalates and becomes adversarial.

Lawful Surreptitious Recording

An officer may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be for a lawful investigative purpose (Penal Code 633).

449.8.7 CESSATION OF RECORDING

Officers will use reasonable judgment in determining when to deactivate the body worn camera, such as when the purpose for activation is no longer present. When officers are on lengthy incidents and are not going to be contacting involved parties or the public they can stop recording. An example is a lengthy crime scene once the scene is secured.

Any start/stop exceptions should be documented audibly on camera or in writing when applicable in a report.

Department BWC's have a manually operated audio mute function. Employees are permitted to mute their BWC's when discussing sensitive and/or confidential information, such as administrative, tactical, or investigative matters, away from the public. Employees should not mute their BWC's during normal enforcement activities. Employees should document the mute activation audibly on camera or in writing when applicable.

449.8.8 ACTIVATION NOT REQUIRED OR NOT PERMISSABLE

A. Activation not Required or not Permissible:

- Employees are not required to activate the BWC during routine, incidental contact with a citizen, to include but not limited to, giving directions, casual conversation during lunch breaks, etc.
- Employees are not required to record while they are conferring on a call, during tactical briefing and debriefings or during safety and security procedures. Supervisors are not required to record while performing supervisory duties.
- BWCs shall not be activated anywhere within the department where a reasonable expectation of privacy exists, including, but not limited to, locker rooms, dressing rooms, sleep room, restrooms, briefings, lunchrooms, etc. unless such presence is directly relevant to a criminal investigation.
- BWCs shall not be activated during non-work related activity.

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- BWCs shall not be activated to surreptitiously record any department member without their consent, a court order, or unless lawfully authorized by the Chief of Police or designee for the purposes of a criminal investigation.

B. Discretionary Video Recording:

Employees shall remain sensitive to the dignity of all individuals being video recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the employee that such privacy outweighs any legitimate law enforcement interest in recording.

Employees should also be mindful of HIPPA laws and consider the audio only option on the BWC device in sensitive situations and all situations mentioned below. Requests to stop recording by the public should be considered using the same criterion. Recording should start or resume when privacy is no longer an issue unless the circumstances no longer fit the criteria for recording.

Discretionary Recording is authorized when:

- A witness or victim verbally or in any manner unequivocally refuses to provide a statement if recorded with the BWC or requests confidentiality and the encounter is a non-confrontational one. These interviews **may** be audio recorded with the BWC audio only recording option.
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- Recording is found to be inappropriate because of a victim or witness age, physical condition, emotional state, or other sensitive circumstances.
- Recording would risk the safety of a confidential informant, citizen informant, or an undercover officer.
- Recording would violate federal HIPPA laws, such as when the recording would occur at an in-patient care area of a hospital, mental health facility, emergency rooms or other health care facility, or medical or psychological evaluations are taking place, unless an enforcement action is taking place.
 - If a BWC is activated, care should be taken to record only the person you are speaking with.
 - Avoid recording exposed areas of the body that could cause embarrassment or humiliation unless such condition is relevant to the criminal investigation.
- Employees should not record while inside a jail, detention, or prison facility unless the employee is engaged in an enforcement activity other than that related to booking, detention, or incarceration of the suspect at the facility. Employees are exempt when in our holding facility.

449.9 DOCUMENTATION OF RECORDED EVENTS

A BWC recording is not a substitute for a detailed report and a report shall not list "refer to BWC video" in lieu of writing a detailed report. Employees will document the use of the BWC in some format to include, but not limited to CAD entries, citations, reports, field interview cards, and gang cards.

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449.10 ENTERING TAGS/ANNOTATIONS

Recorded segments may require "Tags/annotations" (case numbers, incident numbers, and other descriptions used to identify digital evidence). "Tags/annotations" should be added at the conclusion of each event. In the case of delay, "Tags/annotations" should be added as soon as possible or by the end of shift. Employees are required to tag all BWC data/files related to an incident where a case number was taken. In all cases, "Tags/annotations" should be added to BWC data by the end of the employees shift, on the day the data was created.

449.11 UPLOADING & STORAGE OF RECORDINGS

All BWC recordings are automatically uploaded to the server. Employees shall make their immediate supervisor aware of data uploading problems as soon as possible.

In the event an employee is involved in an incident where the employee is incapacitated for any reason, the officer's supervisor shall take control of the BWC as soon as possible and assume all responsibility for storage and safekeeping.

449.12 CATEGORIZING AND RETENTION

A. Categorization

All tagged BWC data shall contain the case number and should be categorized with one of the tag options listed in Visual Labs.

B. Retention

All recordings related to criminal proceedings, claims filed, pending litigation, or personnel complaints, shall be preserved in accordance with the law. All other recordings not governed by legal statute shall be retained for 120 days, 60 months, or indefinitely.

449.13 ACCESSING, REVIEWING & RELEASING BWC DATA

A. Accessing

Department employees authorized by this policy may review BWC data on authorized equipment. All access to the system is automatically logged, subject to an audit, and is for official use only. Authorization levels vary dependent upon rank/assignment and are assigned by the BWC System Administrator.

B. Reviewing

Employee Reviewing Allowed:

- An employee may review his or her own BWC recordings at any time, including in connection with an administrative inquiry.
- An employee may review a BWC recording with other employees as it relates to their involvement in an incident or to continue the investigation.
- Detectives are responsible for reviewing, updating, and tracking digital evidence associated with their assigned cases.

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- Any situation not addressed by this policy, but approved by the Chief of Police or his designee.

Administrative Reviewing Allowed:

BWC recordings may be viewed by a supervisor at the rank of Corporal and above or an employee designated by the Chief of Police for the following limited administration purposes:

- Any incident in which a member of the department is injured or killed during the performance of their duties.
- Any incident involving the use of force by a member of the department, including canines, which results in injury or death.
- Any in-custody death
- Any police pursuit
- When any member of the department intentionally or unintentionally discharges a firearm at a person regardless of whether an individual is struck.
- When any member of the department not involved in training intentionally or unintentionally discharges a Conductive Energy Weapon at a person.
- Officer-involved traffic collisions
- During report review, prior to supervisor approval.
- Prior to the release of recordings in response to a proper legal request (e.g., in response to a subpoena or other court order).
- In preparation for a civil deposition or responding to an interrogatory.
- When preparing to testify in a criminal, civil, or administrative proceeding.
- For investigations undertaken by the department, for the purpose of proving or disproving specific allegations of misconduct.
- For administrative proceedings, when digital evidence is used by the department for the purpose of proving or disproving allegations of misconduct, only relevant to the investigative scope shall be reviewed and retained by investigators.
 - Information relevant to the recordings viewed and seized as evidence by the investigators shall be documented as part of the chronological summary of any investigation undertaken by the department.
- To assist the department in evaluating and improving department practices, tactics, strategy, officer training and safety practices, and police-community relations.
 - When a recorded incident is found to be of value for training purposes, the supervisor may allow viewing by the officers involved or other employees who may benefit.

Reviewing Prohibited:

- BWC recordings shall not be reviewed solely for the purpose of the discovery of policy violations.

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- Review by non-department personnel unless at the direction of the Chief of Police or the Chief's designee, with the exception of the District Attorney's Office and Fontana City Attorneys regarding litigation.

C. Release Outside the Department

BWC data shall be treated as official records and handled pursuant to existing department policies and procedures for release.

BWC recordings will be considered exempt as investigative records per Government Code Section 6254(f). The department will comply fully with the Public Records Act as it applies to BWC footage, but considers all footage exempt from disclosure, except as is determined otherwise by department officials or a court of law. All Public Records Act requests will be processed pursuant to Department Policy 810 pertaining to Records Maintenance and Release. Any release of BWC footage is at the discretion of the Chief of Police and must be authorized by the Chief of Police prior to release.

449.14 REDACTION, FREEZING AND DELETION OF BWC RECORDINGS, DATA & FILES

In the event of an accidental activation of a BWC where the resulting recording is of no investigative or evidentiary value, the recording employee may request that a portion of the BWC data be redacted, frozen or the entire BWC data be deleted by contacting their direct supervisor and then requesting this action through the System Administrator.

The supervisor will notify the Division Commander via the chain of command requesting the deletion/redaction. If approved, the Division Commander will notify the System Administrator requesting the deletion/redaction.

449.15 CRIMINAL JUSTICE SYSTEM COORDINATION

All discovery requests will be made through the San Bernardino County District Attorney's Office, pursuant to policies as adopted and in effect within that office. The District Attorney is responsible for notifying the department of evidentiary discovery requests for both the prosecution and defense. The District Attorney's Office will accept all body worn camera digital data as a result of a discovery request, and route the file to the appropriate attorney, defendant, or other third party.

449.16 AUDIT

BWC recordings may be audited during the employee's annual evaluation period by their direct supervisor. Each audit will consist of random samplings to ensure compliance with the purpose, scope, and adherence to this policy. Additional audits may occur if a policy violation is noted.

The BWC program, in its entirety, shall be audited annually to ensure fulfillment of the purpose and objectives of the program, compliance with operational procedures, retention policy, storage, data security, access, use, and release of BWC recordings, data and files specified in this policy and applicable laws and ordinances.

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449.17 USE OF DATA FOR TRAINING PURPOSES

Officers and supervisors may find it useful and are encouraged to review recordings of incidents when beneficial for the purposes of conducting a tactical debrief or other training.

449.18 DISCOVERY OF MISCONDUCT

Employees reviewing event recordings should remain focused on the incident(s) in question and review only recordings relevant to their investigative scope. If improper conduct is discovered during any review of digital data, the person who discovered the conduct in question shall notify a supervisor immediately.