

Model Body Worn Camera Policy for Police: An Aid for Prosecutors

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Prosecutors' Center
for Excellence



CALIFORNIA
DISTRICT
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INTRODUCTION

This model policy is created as a guide to prosecutors who are working with law enforcement agencies to implement body worn cameras. The policy includes “*Use Notes*,” which present and consider viable alternative policies that may exist for a particular issue. Also accompanying the model policy is a checklist outlining the many issues that should be addressed in a body worn camera policy.

The model evolved from a policy originally created by David Angel of the Santa Clara County District Attorney’s Office. David Angel, Damon Mosler (San Diego County District Attorney’s Office), Shawn Randolph (Los Angeles County District Attorney’s Office), Julie Selsberg (past Chair of the Colorado Prosecutors’ Best Practices Committee) and Kristine Hamann (Executive Director and founder of Prosecutors’ Center for Excellence) contributed to the creation of the policy.

This policy is still under review. It will be finalized at the CDAA Body Worn Camera and Technology Summit on February 22-24, 2016 in Anaheim, California. If you have comments or suggestions, please contact Mark Zahner at: mzahner@cdaa.org prior to the summit.

MODEL POLICY FOR BODY WORN CAMERAS

PURPOSE AND SCOPE

Law enforcement agencies electing to employ Body Worn Cameras (BWC) should use a consistent protocol. The purpose of this protocol is to provide recommendations and guidance. It recognizes that each law enforcement agency is unique and that this policy is only intended to be used as a foundation from which individual policies may be derived. All departments are strongly encouraged to have a policy and to review the policy with their local prosecutors.

BWCs will assist and complement officers in the performance of their duties. When BWC's are used to record certain enforcement activities, they can provide a valuable visual and audio record of the incident. It is anticipated that these recordings will:

1. Provide evidence regarding an incident to which the officer responded.
2. Assist in report writing.
3. Provide a more transparent record of encounters with law enforcement and enhance community trust.
4. Hold officers accountable for their conduct and protect officers from unfounded allegations of misconduct.
5. Reduce litigation in the criminal justice system.

USE OF BODY WORN CAMERAS

1. Before Going Out on Patrol

- a. **Care of the Camera:** Care of the issued BWC is subject to individual departmental policy, and they shall be operated and maintained according to the manufacturer's instructions and recommendations.
- b. **Testing Equipment:** At the beginning of each shift, officers shall determine whether their recording equipment is working satisfactorily. If a problem is found, the officer shall arrange for repair or adjustment. The officer shall also ensure that the recorder has sufficient memory and battery power to complete his or her shift. If the system is malfunctioning, the officer shall immediately report this to his or her supervisor.
- c. **Inoperable Camera:** If a BWC malfunctions or is inoperable and the officer cannot utilize a BWC during his or her shift, this shall be noted in all written reports so that there is a contemporaneous record.

- d. **Positions of the Camera:** Each officer shall ensure that the BWC is properly worn and positioned to record events.

2. Use of the Camera During a Shift:¹

- a. **Mandatory Recording Starting Prior to an Incident:** Every officer shall make every reasonable effort to activate the BWC **prior** to making contact in any of the following incidents where recording shall be the rule and not the exception. If circumstances prevent an officer from recording, they must be noted along with an explanation in any subsequent report. If the officer decides to turn off a camera during an incident, the officer should state the reason on the recording when possible.
 - i. Any enforcement-oriented or investigative encounters to confirm or dispel a suspicion that the person may be involved in criminal activity. This includes detentions, vehicle stops, pedestrian stops and consensual encounters.
 - ii. Searches pursuant to probation, parole, post-release, community supervision, mandatory supervision or consent.
 - iii. Service of search warrants or arrest warrants.
 - iv. All suspect statements pursuant to departmental policy regarding the recording of suspect statements.²
- b. **Other Mandatory Recordings:** Officers shall make a reasonable effort to record non-enforcement contacts should they become confrontational, assaultive, or enforcement-oriented.
- c. **Discretionary Recording:** It is recommended that officers record:
 - i. Witness interviews, pursuant to departmental policy on recording witness interviews and mindful of witness safety.
 - ii. Non-enforcement events when an audio/video record could have value as evidence.
- d. **Unauthorized Uses:** Body worn cameras should not be used:
 - i. Outside the scope of official business.
 - ii. When entering a public locker room, changing room, restroom, doctor's or lawyer's office or other place where individuals unrelated to the investigation are present and would have an expectation of privacy. However, exigency, consent or other factors may allow recording.
 - iii. To document conversations with other officers unless incidental to authorized recordings.

- e. **Terminating the Recording:**³ Once activated, the recording should not be intentionally terminated until the conclusion of the encounter unless tactical, safety or practical reasons dictate otherwise. Anytime the recording is terminated early, the reasons shall be documented in writing or on the recording. If no police report is filed for the recorded encounter, the reasons for the early termination of the recording shall still be documented contemporaneously in some manner.

¹ *USE NOTE: There is a range of legitimate policies for deciding when an agency should require recording. Most departments will want to begin recording at the beginning of any enforcement-oriented encounter. Others will opt for an even broader policy of recording. Some may even want to record all events based upon invariable objective criteria, such as every time an officer leaves the squad car. However, as the police officer's discretion is reduced, the risk of interfering with beneficial police interactions increases. If the camera is always running, civilians may feel very reluctant to approach the police. Furthermore, interaction between officers will be disrupted if they know that every word they say is recorded. On the other hand, no policy and too much discretion can result in inconsistencies between officers and the failure to record important events.*

² *USE NOTE: Departments will have a range of policies governing when suspect statements should be recorded. In general, suspect statements should be recorded, but there may be circumstances when that is inadvisable. For example, some suspects will agree to give a statement only if it is not recorded. In other circumstances, public safety will weigh against recording the statement. It is important that the officer comply carefully with the departmental policy, so that the absence of a recording can be explained by reference to that policy.*

³ *USE NOTE: There is a range of legitimate options concerning when an agency should allow the termination of recordings. Some agencies may wish to limit officer discretion and mandate recording until the encounter has officially terminated. For example, some agencies may wish to mandate recording until a suspect is either released or booked. However, this practice could be very expensive and restrictive. If multiple officers are at the same event, such as maintaining a perimeter around an empty home while awaiting a search warrant, it is probably unnecessary to mandate every officer to record.*

- 3. **Consent for Recording:**⁴ Officers are not required to advise or obtain consent for recording a person provided the recording is:
 - a. In a public place.
 - b. In a location where there is an expectation of privacy but the officer is lawfully present, for example, in a home being searched pursuant to a search warrant.

⁴ *USE NOTE: Individual states may have laws that limit recordings without informing or attaining consent from all parties. In addition, many agencies may decide that even though their officers are not required to inform and gain consent prior to recording, it may be a best practice to do so in appropriate conditions.*

4. Uploading Data:

- a. The BWC data should be uploaded in a timely manner by properly trained and authorized personnel according to departmental policy.
- b. No person shall tamper with or alter the BWC data except as authorized by this protocol.
- c. No stored image or other data may be copied, destroyed or disseminated for unauthorized reasons.
- d. The data shall be stored in a secure manner with all reasonable precautions taken to prevent unauthorized access and tampering.⁵

⁵ *USE NOTE: BWC recordings are real evidence and may often be the most important evidence in a case. Agencies must take the same care to secure the integrity of this evidence as any other form of evidence in a criminal case. Particular care must be taken if using private vendors to provide off-site storage to ensure that this evidence is as secure as if the agency were storing the evidence itself. One solution might be to immediately transfer BWC recordings that are being used for criminal cases to a local file.*

5. Documenting Recordings:⁶

- a. Officers shall note in arrest and other reports when BWC records were made associated with that incident.
- b. The BWC identifier shall be noted in the report for any incident where a report is taken and a BWC was activated.
- c. The uploaded BWC data must be tagged in such a manner so that it can be accurately associated with any associated police report.
- d. The uploaded BWC recording must be associated with the date and time of recording and location to assist in later retrieval.

⁶ *USE NOTE: Prosecutors must have the ability to gather all recordings related to a criminal incident or investigation. Special care must be taken when multiple agencies and multiple BWC vendors are involved in the same investigations to ensure that all recordings are accounted for.*

6. Review and Dissemination of the Body Worn Camera Data

- a. Recordings may be reviewed in any of the following situations:
 - i. By officers viewing their own recordings pursuant to departmental policy.⁷
 - ii. By a supervisor investigating a specific incident.
 - iii. By a department detective or investigator who is participating in an official investigation, such as a criminal investigation, a personnel complaint or an administrative inquiry.
 - iv. By others with the permission of a supervisor if they are participating in an official investigation or for other official reasons.

- v. By media personnel in accordance with the law and with the permission of the chief of police, sheriff or his or her designee.⁸
 - 1. Due to the heightened privacy concerns associated with video recording, any BWC recording disclosed to the media may be edited to preserve the privacy of individuals unrelated to the case who were captured by the BWC recording when they had a reasonable expectation of privacy.
- b. BWC recordings related to criminal charges shall be treated the same as other forms of direct evidence which must be provided to the prosecution and are subject to discovery and disclosure in accordance with law. Prosecuting agencies must be made aware of their existence when they pertain to any criminal case so they can comply with their discovery obligations.
- c. Any person authorized to review the recording can only copy or disseminate it for official purposes pursuant to department policy.⁹
- d. Due to the heightened privacy concerns associated with video recording, when appropriate, court orders and/or redaction limiting the public dissemination of the BWC recording may be secured prior to distribution.

⁷ USE NOTE: *There is divergent opinion as to when officers should be allowed to review recordings when there has been an officer-involved shooting or any use of force resulting in serious injury. Many departments prohibit officers from reviewing such footage until after they have given an initial statement. It is vital that the department have a transparent policy on the viewing of an officer's recording.*

⁸ USE NOTE: *The dissemination to the media of recordings from BWC can play a vital role in reassuring the public after a controversial enforcement action. Great care must be taken to ensure that recordings are not released pre-maturely in a manner that could jeopardize on-going investigations and prosecutions. However, agencies must have a consistent policy so that they are not accused of only releasing the recordings that they deem helpful.*

⁹ USE NOTE: *In general, all data associated with a criminal or civil case should only be disseminated in a manner consistent with existing policy on the dissemination of evidence. In some cases, an agency may wish to disseminate footage from a BWC to the general public in order to confirm or dispel public concern about a police action. An agency should consider a policy of when, and if, they will release footage in non-criminal cases.*

7. Retention and Purging¹⁰

- a. Recordings relating to incidents where criminal charges are filed shall be retained for the period set by the departmental policy on evidence retention.¹¹
- b. BWC recordings relating to potential criminal charges that are not filed shall be retained for at least one year after the statute of limitations has expired.

- c. BWC recordings relating to complaints against an officer, whether externally or internally generated, shall be retained in accordance with applicable law or until the matter has been resolved, whichever is later. Note: a civil action against an officer may trigger additional retention requirements.
- d. BWC recordings of routine events that are not associated with either a criminal investigation or an Internal Affairs Complaint shall be retained for 90 days.¹²
- e. BWC recordings shall be systematically purged after the retention period has expired.

¹⁰ *USE NOTE: Different jurisdictions will have different rules governing retention. However, in general, it is advised to distinguish data from a BWC that is associated with a case and data that is not. Data that is associated with a case should be attached to that case and kept in accordance with how other evidence is retained. Data that is not associated with a case could be kept for a much shorter period of time.*

¹¹ *USE NOTE: In general, recordings from a BWC that are associated with a criminal case should be attached to the criminal file and kept according to departmental policy on the retention of evidence. A good guideline would be to keep the evidence for some period of time until the last of these events has occurred:*

1. *The matter is resolved;*
2. *The defendant has been released from custody due to the completion of the sentence and completed any term of post-custody supervision such as probation, parole, mandatory supervision or post-release community supervision;*
3. *The appeal and post-conviction motions are final; or*
4. *The BWC recording may be destroyed earlier than this provided that the district attorney or other prosecuting agency, all defendants and the relevant counsel for legal representation for the law enforcement agency which made the BWC recording are notified and given time to object prior to any destruction of the BWC recording related to a criminal incident.*

¹² *USE NOTE: Some jurisdictions may have laws governing the minimum and maximum time a recording made by a government agent must be retained.*

8. Request for Deletion of Accidental Recordings

- a. In the event of an activation of a BWC where the resulting recording contains personal and/or private conversations of an officer unrelated to any ongoing criminal or internal affairs investigation, or otherwise has no valid official purpose, and which has no apparent evidentiary or investigatory value, an officer may request for the deletion of the accidentally recorded BWC file by submitting a written request to the system administrator. If the chief of police, sheriff or his or her designee, determines that a BWC recording contains personal and/or private conversations of an officer unrelated to an ongoing criminal or internal affairs investigation, or otherwise has no valid official purpose, and which has no apparent evidentiary or investigatory value, it may be deleted after thirty days.

- b. In the event of an activation of a BWC where the chief of police, sheriff or his or her designee, determines that a BWC recording contains personal and/or private conversations or images of any individual unrelated to an ongoing criminal or internal affairs investigation, or otherwise has no valid official purpose, and which has no apparent evidentiary or investigatory value, it may be deleted after thirty days.

Checklist for Prosecutors to Review Body Worn Camera Policies

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The Law Enforcement Agency Policy contains:

- A “Purposes and Scope” section
 - Limits BWC to law enforcement purposes
 - Prohibits unauthorized use
- Training Officers
 - Policy and use of BWCs
- Pre-use Requirements
 - Check BWC’s operability
 - Document any problems or inoperability
 - Decide who will wear the BWC’s and how they will be assigned
 - Placement of cameras
- Camera Usage Specifications
 - When is recording mandatory
 - Upon leaving squad car?
 - Upon any enforcement or investigative encounter?
 - Upon all citizen contacts?
 - When is recording discretionary?
 - Upon all citizen contacts or only adversarial citizen contacts?
 - Upon citizen contacts with agitated or disturbed citizens?
 - Consent recordings
 - Is consent required prior to activation?
 - When is recording prohibited?
 - Locker rooms and changing areas
 - Doctors’ and lawyers’ offices
 - Fellow officers without official cause
 - When unauthorized
 - When to terminate recording
 - Upon completion of arrest?
 - Upon return to station?
 - When no reason to expect further incidents of evidentiary value?

- Upon citizen request?
 - Requirement to document reasons for terminating recording?
- Other areas for usage policies to cover:
 - Discretion for officer to deviate from policies when articulable exigencies exist
 - Documenting deviations required
 - Recording witness statements
 - Recording suspect statements
 - Recording victim statements
 - Special considerations for sexual assault, domestic violence and juvenile victims
- Uploading data
 - How and when data gets uploaded from BWC
 - Prohibit unauthorized editing, copying and distribution
- Data Storage
 - Anticipate data storage demands
 - Provide adequate security for the data
 - Ensure the storage plan allows LE complete access to the data
- Documenting Recordings
 - All officers required to document use of BWC at any given incident or scene
 - Provide a mechanism for ensuring that prosecutors receive all recordings of a particular incident or scene
- Reviewing BWC Recordings
 - When officers are allowed to review their own recordings
 - When officers are allowed to review others' recordings
 - When supervisors are allowed to review recordings
 - Policy for incidents involving officer-involved shootings or other use-of-force incidents
 - Treat BWC recordings consistently with how other physical evidence is treated
 - Prohibit unauthorized review
- Dissemination/Discovery for Prosecutors
 - Recordings from criminal cases must be secured and provided to the prosecution as is any other real evidence

- Allow the agency's prosecutor's offices full access to evidence associated with a criminal case that is submitted for prosecution
- Process for prosecutors to obtain the information
- Dissemination for Others
 - Clear rules for disclosure and dissemination to the media and general public
 - Redaction
 - Conforming to state open records laws
 - Prohibit unauthorized disclosure, reproduction or editing
- Retention
 - Clear retention policy consistent with evidence retention policies
 - Specified retention periods for:
 - Criminal cases
 - Civil cases
 - Internal investigations
 - Clear guidelines for destruction of recordings
 - When it is not evidence in criminal, civil or internal investigation
 - When inadvertent recording that captures private encounter has no evidentiary value