

## Body Worn Camera

### 447.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to Department Members of the responsibilities and procedures for the use of Body Worn Cameras (BWC) during the pilot testing phase. The use of BWC is intended to:

1. Collect evidence for use in criminal investigations, prosecutions, and civil litigation;
2. Deter criminal activity and uncooperative behavior during police-public interactions;
3. Accurately capture statements and interactions between Department Members and the public, including interviews with suspects, victims, and witnesses;
4. Promote accountability;
5. Assess allegations of Departmental wrongdoing;
6. Enhance officer safety by providing a record for possible future training needs and continuous improvement;
7. Supplement an Member's report;
8. Enhance the recollection and accuracy of reports.

While recordings obtained by BWC provide an objective record of events, it is understood those recordings do not necessarily reflect the experience or state of mind of the Member in a given incident. Moreover, the recording has limitations and may depict events differently than the event is perceived or recalled by the involved Member. It is understood the BWC may capture information that may not have been heard and/or observed by the Member and may not capture information which was heard and/or observed by the Member. BWC systems provide a limited view of an investigation or incident which may, in its totality, not give a complete view into an incident.

BWC recordings shall be considered with all other available evidence, such as witness statements, personnel interviews, forensic analysis, and documentary evidence, when evaluating the appropriateness of a Member's actions. BWC recordings shall not be used as the sole source when vetting an incident for training, corrective measures, or policy violations.

BWC are not a replacement for the usage or activation of the Patrol Video System (PVS). Members are required to utilize the PVS as described in Policy 446.

The Department shall not install, activate, or use any biometric surveillance system in connection with the use of or data collected by BWC (CPC 832.19 (b)). Biometric surveillance system includes any computer software or application that performs facial recognition or other biometric surveillance.

### 447.2 MEMBER RESPONSIBILITIES

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#### 447.2.1 TRAINING REQUIRED

All Members who are authorized to use BWC equipment must complete mandatory training provided by the Department to familiarize themselves with the recording system and Departmental procedures prior to its use.

Training requirements will need to be established and listed once actual product is determined, and shall include the manufacturer's recommended training.

#### 447.2.2 INSPECTION AND TESTING OF EQUIPMENT

Prior to going in service, each Member shall be responsible for making sure they are equipped with a Department issued BWC. The Member shall test the BWC to make sure it is operable and that all prior recordings are downloaded prior to going into service.

Testing requirements will need to be established and listed once actual product is determined.

If the BWC equipment is damaged, malfunctions, or is inoperable prior to going into service, the Member shall submit the equipment for maintenance and obtain a properly functioning BWC.

#### 447.2.3 DAMAGED, MALFUNCTIONING, OR INOPERABLE EQUIPMENT

If the BWC equipment becomes damaged, malfunctions, or inoperable while deployed in the field, the Member shall notify his or her immediate supervisor as soon as practicable. The supervisor shall determine whether or not to continue utilizing the Member in the field or remove them temporarily so the Member can submit the equipment for maintenance and obtain a properly functioning BWC. The Member shall document this action in the Daily Activity Report, and appropriate Incident or Crime Report.

#### 447.2.4 BWC PLACEMENT

BWC equipment generally consists of a body-mounted camera with a built-in microphone and a handheld viewing device. The BWC camera is to be worn upon the Member in a forward facing position. Proper body placement of the BWC shall be established once the actual product is determined.

### **447.3 PROCEDURES FOR THE USE OF THE BWC AND ITS RECORDINGS**

#### 447.3.1 REQUIRED ACTIVATION OF THE BWC

This policy is not intended to describe every possible situation where the BWC may be used, as there are many situations where its use is appropriate. A Member may activate the system any time the Member believes it would be appropriate and valuable to document the investigation and/or incident. Consistent with this policy, Members may lawfully record in any location where the Member has the legal right to be present. Members are not required to turn off the BWC if a member of the public requests it.

**MEMBERS ISSUED BWC ARE REQUIRED TO ACTIVATE BWC FOR THE FOLLOWING:**

1. All calls for service until the call is completed. This shall include all Members who arrive to a call for service whether or not he/she was assigned to the call

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2. Vehicle stops
3. Arrests
4. DUI observations and field balance and coordination tests
5. Pedestrian stops, including officer-initiated consensual encounters
6. Searches
7. Witness and victim interviews (except as described in 447.3.2)
8. Crowd management and control

#### 447.3.2 EXCEPTIONS TO REQUIRED ACTIVATION OF THE BWC

Members shall not activate and record investigative or enforcement encounters with the public when:

1. In the Member's judgment, a recording would interfere with his/her ability to conduct an investigation or may be inappropriate, because of the victim or witness's physical condition, emotional state, age, or other sensitive circumstances (e.g., nudity, a victim of sexual assault). Members must also consider Policy 317, Victim Confidentiality, with the use of a BWC;
2. In the Member's judgment, recording would risk the safety of a confidential informant or investigative technique (as authorized by California Evidence Code sections 1040, 1041, and 1042), citizen informant or undercover officer;
3. In patient-care areas of a medical facility, hospital, sexual assault treatment center, or other healthcare facility where persons are receiving treatment, unless escorting an arrestee, or taking or anticipating an enforcement action related to a crime in progress, a criminal investigation, or an encounter with an uncooperative person in these areas;
4. Inside restrooms, dressing rooms, or locker rooms, unless responding to an emergency, crime in progress, or other circumstance which takes precedence over elevated privacy concerns;
5. When a Member reasonably believes there is no legitimate law enforcement purpose.

#### 447.3.3 EXPLOSIVE DEVICES

Many portable recorders, including BWC and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

#### 447.3.4 INABILITY TO ACTIVATE THE BWC PRIOR TO INITIATING ENFORCEMENT OR INVESTIGATIVE ACTIVITY

If a Member is unable to activate the BWC prior to initiating enforcement or investigative activities due to officer safety, public safety, or any other critical circumstance, the Member shall activate the device as soon as it is safe and practicable to do so.

Members shall also document in a written report or Daily Activity Report reasons why the Member failed to or was unable to activate the BWC, if a malfunction occurred, if the recording was

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terminated, or interrupted for any reason. Those reasons should be thoroughly narrated in the details of the documentation.

A Member who believed that he/she had activated the BWC, when in fact the BWC had not been activated, shall not be subject to discipline unless the belief was not objectively reasonable.

If a written report results from an incident, the Member shall document in the report the existence of his/her BWC recording. (e.g., this incident was recorded by BWC and kept on the Department server). Members shall also document in their report whether or not they reviewed their BWC video prior to writing their report. This shall be documented in the Member's Daily Activity Report if an Incident or Crime Report was not taken.

BWC recordings are not a replacement for written reports, Daily Activity Reports, or CAD updates.

#### 447.3.5 ACCIDENTAL ACTIVATION OF THE BWC

An immediate supervisor should be notified as soon as possible following incidents of accidental or inadvertent recordings of personal events and/or conversations with no evidentiary/business purpose. These events shall be tagged as accidental by the Member. If the Member requests the accidental recording be redacted or deleted, the Assistant Sheriff of the Professional Services Command shall review the recording and make a determination as to whether the recording was accidental.

1. If the Assistant Sheriff determines the recording was accidental, with no evidentiary/business purpose, the recording shall be **deleted** within 30 business days from the date of the Assistant Sheriff's determination unless deletion of the recording would violate the law. The Member shall be notified of the Assistant Sheriff's determination. A recording determined to be accidental by the Assistant Sheriff, with no evidentiary/business purpose, shall not be shared with anyone absent a court order.
2. If the Assistant Sheriff determines the recording was accidental, but a portion is of evidentiary/business purpose, the portion of the recording containing the personal event or conversation shall be **redacted** within 30 days from the date of the Assistant Sheriff's determination unless redaction of the recording would violate the law. The Member shall be notified of the Assistant Sheriff's determination. The portion of the recording determined to be accidental by the Assistant Sheriff, with no evidentiary/business purpose, shall not be shared with anyone absent a court order.

If the Assistant Sheriff determines the recording was not accidental, and/or shall not be deleted or redacted, the Member may appeal that determination to the Sheriff.

#### 447.3.6 TAGGING RECORDED VIDEOS

Following a recorded event, Members shall tag the event with the appropriate I.D., category and title.

1. I.D. Section: The CAD incident number should be entered in the ID Section.
2. Category and Title Sections: The appropriate category and title should be entered from the drop-down menus.

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### 447.3.7 CESSATION OF RECORDING

Once the BWC is activated it shall remain on and shall not be turned off until the nature of the contact or incident has concluded. In any instance in which cessation of the recording prior to the conclusion of the contact or incident occurs, a supervisor shall be notified and the reason of the termination of the recording shall be documented. Prior to the deactivation of the audio and video recording, Members shall verbally note the date, time, and reason for the deactivation on the recording itself.

In the event of an extended event such as traffic control or an accident scene, Members may deactivate the BWC to conserve recording time. In such cases, the Member shall orally document the reason while the BWC is recording prior to deactivation.

Members shall cease recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor, or licensed physician, unless there is explicit consent from all parties to the conversation (Penal Code sections 636 and 851.5(b)(1)).

### 447.3.8 UPLOADING OF RECORDINGS

At the end of each shift, the Member shall dock the device at an approved location.

Approved locations will need to be established and listed once actual product is determined.

### 447.3.9 EVIDENCE PRESERVATION

Members are required to ensure that BWC recordings of evidentiary value are properly tagged for the necessary retention period.

Any Sheriff's report related to a recording saved as evidence, in the manner described above, should indicate in the evidence section of the report that a digital recording of the incident was preserved and saved as evidence.

### 447.3.10 VIEWING OF BWC RECORDINGS

See Orange County Sheriff's Department **Policy 303 - Department Media**, for policy on viewing all Department media.

### 447.3.11 NO MEMBER EXPECTATION OF PRIVACY

All BWC recordings are the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### 447.3.12 CONFIDENTIAL NATURE OF BWC RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, and other proceedings protected by confidentiality and Department Policy 215, Confidential Information. Members shall comply with all applicable laws and policies regarding confidential information. Unauthorized release of BWC recordings may compromise ongoing criminal and administrative investigations or violate privacy rights of those recorded.

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### 447.3.13 PROHIBITED USE OF BWC RECORDINGS

Members shall not use BWC for personal use

Members shall not duplicate, copy, edit, alter, erase, or otherwise modify in any manner BWC recordings except as authorized by law or Department policy.

### 447.3.14 SURREPTITIOUS USE OF THE BWC

Penal Code section 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief the conversation was private or confidential. Penal Code section 633 provides law enforcement an exception to the normal prohibition against surreptitious recording of certain conversations. This includes the Sheriff, Undersheriff, Deputy Sheriffs, or any other person acting pursuant to the direction of one of these law enforcement officers.

No Department Member may surreptitiously record a conversation of any other Department Member without the expressed knowledge and consent of all parties. This prohibition does not apply to any criminal investigation involving a Department Member.

### 447.3.15 RECORD KEEPING REQUIRMENTS

See Department Policy 303.5 for Department Media record keeping requirements.

### 447.3.16 BWC PROGRAM COORDINATOR

The Department shall designate Body Worn Camera Program Coordinators who have program oversight including, but not limited to:

1. Documenting system malfunctions and equipment failures related to Body Worn Cameras;
2. Providing training to administrative and investigative staff regarding BWC use, media file retention, and confidentiality of video records;
3. Maintaining digital video files and equipment in a secure and confidential environment;
4. Ensuring media files are only released in accordance with Department Policy and applicable laws.
5. Coordinating issuance of BWC devices;
6. Providing training and instruction to BWC users on device usage and operation;
7. Providing Department management recommendations on policy development and equipment integrity;
8. Conducting audits as outlined in this policy.

### 447.3.17 BWC CUSTODIAN OF RECORDS

During the testing phase of the BWC program, the Director of Support Services shall be the Custodian of Records.