

MEMORANDUM FOR: Chief of Police

SUBJECT: Body Worn Camera Policy and Procedures

The introduction of Body Worn Cameras (BWCs) into our agency requires the drafting of policy and procedures governing use of the equipment, collection, and storage data evidence. There are primary concerns that need to be addressed:

1. Camera Activation (when to record vs. when not to record)

All law enforcement contacts should be recorded, to include all consensual encounters whether officer or citizen initiated. Regarding privacy concerns either in a private home, or in public, there is no reasonable expectation of privacy when officers are lawfully present and performing their duties. This includes all fourth waiver and warrant searches. An exception to this rule may be officers conducting plain clothed operations when wearing of a BWC would compromise their investigation.

Often, complaints of misconduct stem from everyday routine contacts. Multiple agencies have reported a marked decrease in complaints of misconduct and a significant increase the ability to close cases as unfounded. If officers are conducting routine foot patrol, I don't believe BWCs must be activated unless an observation is made and officers choose to initiate contact with a citizen or investigate a suspicious occurrence. In such cases, most of the BWCs available have a pre-record feature that will preserve the 30 seconds of footage prior to the activation of the camera. Provided the officer activates the camera upon observation, the incident should be captured on the recording.

There are few instances when officers should be cautious not to record. The first is patient privacy and protection of HIPAA sensitive information. This would come into play when officers make contact with individuals receiving medical care, either suspects, victims, or witnesses. Care should be taken to only initiate recording once in the room and the evaluation is complete. This includes mental health evaluations, either by PERT or by psychiatric services at the hospital.

There may also be the occasion that a victim or witness refuses to make a statement while being video recorded. In these situations, the camera may be shut off, or lens covered, if audio recording is authorized. Any time the camera is shut off, the officer should make a verbal annotation on the recording, prior to shutting the camera off, as well as annotate in the report the duration and reason for the break in recording.

2. Review of Footage

The recorded footage is evidence and should be available for viewing just as with any other article of evidence. Officers are expected review third party surveillance prior to writing their reports. Officers are also allowed to confer with their partners and involved parties regarding the incident. This ensures thorough understanding and report accuracy. It will also better serve

to refresh the officer's memory of the incident prior to testifying in court. There is no reasonable justification to deny officers the ability to review the recorded material.

3. Retaining Digital Evidence

Assembly Bill 69, passed in October 2015, added Section 832.18 to the California Penal Code and identified the duration of time for recorded material to be retained as:

A minimum of 60 days for non-evidentiary data, unless pending the outcome of a citizen complaint.

A minimum of 2 years for evidentiary data regarding a use of force, officer involved shooting, detentions and arrests, any recording that is relevant to any formal or informal complaint against law enforcement or the agency.

It also states: "Records or logs of access and deletion of data from body-worn cameras should be retained permanently."

With this law as our guide, I recommend that all recorded data related to active cases be stored until all criminal proceedings are complete and maintained for an additional 2 years, pending appeals, prior to disposal or deletion.

4. Discovery of Officer Misconduct

In the event that policy violations are discovered upon review of BWC recordings, appropriate notifications to the officer's supervisor shall be made. It is not the intent to punish officers for minor acts of misconduct, however, if the offense warrants attention, or if patterns of misconduct are discovered, the violation is to be documented and the officer is to be counseled and/or remediated as appropriate to rectify the behavior. Significant violations will be handled as per policy and procedure.

In closing, it would be beneficial to host a pilot program to test potential equipment and the proposed P&P. As feedback is received, revisions should be completed to allow a thorough and finalized policy prior to launching the program agency wide.

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Resources:

California Legislative Information. Assembly Bill No. 69, Chapter 461.
http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB69

San Diego County Sheriff's Department Interim Policy and Procedure Test and Evaluation Phase. September 16, 2015.
<http://www.voiceofsandiego.org/wp-content/uploads/2016/01/SDSO-BWC-Interim-Policy.pdf>