

## **I. BODY WORN CAMERA (BWC) POLICY**

The Kensington Police Department (KPD) recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and KPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individuals in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved parties. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved Officer and that the involved Officer may see and hear information that may not have been captured by the BWC.

BWC use is limited to enforcement and investigative activities. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

Officers shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the Officer that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the Officer determines that the circumstances no longer fit the criteria for recording

- A. All BWC recording media, images, audio and video are the property of the KPD and shall not be released, copied or disseminated in any form or manner outside the parameters of this policy, without the written consent of the Chief of Police.
- B. This policy is applicable to KPD personnel operating Mobile Audio Video (MAV) or Body-Worn Camera (BWC) recording systems. Such systems are used to record Officers in the performance of their duties by providing a visual and/or audio record of their activities, as outlined in this policy. Video recordings are intended to provide an objective visual/audio record of the incident and to augment the Officer's report.
- C. The purpose of this equipment is to accurately document the events, actions, conditions and statements made during vehicle stops, pedestrian stops, arrests, emergency medical responses and other critical incidents in order to verify the accuracy of crime reports, collection of evidence, and testimony in court. Recordings also enhance the ability to review procedures for the purpose of employee evaluation and training.
- D. Officers will make every reasonable effort to record such contacts and incidents listed in section C above. If circumstances prevent an Officer from recording such a contact, then this must be documented with the explanation in any subsequent report.

## II. DEFINITIONS

- A. MOBILE AUDIO VIDEO (MAV) & BODY WORN CAMERA (BWC) RECORDING SYSTEMS. For purposes of this policy, these systems refer to equipment mounted on a movable object, such as a dashboard camera in a vehicle, or may also refer to video equipment affixed to a person, such as body-worn or lapel cameras. References in this policy to video recording systems are in regard to all types of mobile systems, including vehicle and body-worn cameras.

## III. LEGAL ISSUES

- A. Body-worn camera equipment and all data, images, video and metadata captured, recorded, or otherwise produced by the equipment is the property of the Kensington Police Department. Use of body-worn cameras for any purpose other than in accordance with this policy is prohibited.
  - 1. BWC equipment purchased and maintained by the Kensington Police Department shall remain the property of KPD.
  - 2. BWC and MAV equipment shall be operated in accordance with this policy.
- B. Employees shall not **surreptitiously** record department personnel without their expressed permission.

## IV. TRAINING & ASSIGNMENT

- A. Officers shall not use a recording system until they have been trained in its proper use and care.
- B. Training will be provided by a qualified trainer, will be documented, and will consist of a review of the recording system, its functions, usage, and recommended activation.
- C. Officers who have been assigned to a vehicle equipped with a MAV recording system shall use it and the portable audio transmitters pursuant to the provisions outlined in this policy.
- D. Officers who have been assigned a BWC recording system shall wear and use it pursuant to the provisions outlined in this policy.

## V. OFFICER RESPONSIBILITIES

- A. Employees are responsible for the reasonable care and maintenance of recording equipment issued or assigned for their use.
- B. The systems will be operated according to the manufacturer instructions and recommendations.
- C. Officers shall be certain that their MAV/BWC recording system is fully charged at the start of their shift. At the conclusion of their shift, Officers shall ensure their

MAV/BWC system is powered down and no longer recording.

- D. At the beginning of each shift, Officers shall determine whether their recording equipment is working satisfactorily. If a MAV/BWC system malfunctions or becomes inoperable during the Officer's shift, this shall be noted in all written reports in which a recordable incident occurs. The Officer shall immediately report the malfunctioning equipment to their supervisor. The Officer will make every reasonable effort to acquire a replacement BWC once it is discovered to be inoperable.
- E. Officers shall only use those devices issued by the Kensington Police Department.
- F. Officers shall wear body-worn cameras above the midline of their torso and in position designed to produce an effective recording.

## **VI. SUPERVISOR RESPONSIBILITIES**

- A. Patrol vehicles with MAV recording systems shall be deployed whenever possible and should be utilized prior to a vehicle without a video camera system.
- B. The shift supervisor is responsible for issuing BWC recording equipment and logging the assignments during lineup or at the beginning of the shift.
- C. The shift supervisor shall ensure issued BWC equipment is returned at the end of the shift.
- D. Supervisors are responsible for ensuring Officers download video files and recharge the equipment from the previous shift as early in their shift as practical, to ensure it will be ready for the following shift.
- E. Supervisors shall, upon learning a MAV/BWC is inoperable, make arrangements to have the device fixed or replaced.
- F. Supervisors who are made aware an Officer's BWC has become inoperable during the Officer's shift will make a reasonable effort to provide a working device to the Officer, if one is available.
- G. Supervisors may review video recordings at any time for approved purposes, such as training, reviewing an Officer's performance, resolving citizen complaints, or during any necessary administrative inquiry. If, after reviewing a recording, a supervisor has developed cause for further inquiry (officer safety, use of proper procedures, or other administrative or operational issues), the recording may be used for such authorized inquiries or investigations.

## **VII. ACTIVATION**

- A. MAV or BWC recording systems can be activated either automatically (depending on the device specifications and settings) or manually. The systems need not be recording during normal shift activity; however, if either system is intentionally activated (either automatically or manually) to record an incident, it shall remain on until the incident has reached a conclusion.

1. For a primary Patrol unit, the term “conclusion” in this context means when the Officer places the arrestee into the Patrol vehicle, releases an involved subject, or turns the subject over to a third party.
2. For assisting Patrol units, the term “conclusion” in this context means the assisting Officer has left the scene.
3. Once activated, the member may mute or deactivate their BWC, in the following limited circumstances:
  - a. Discussion of tactical or confidential information with other law enforcement personnel.
  - b. Where members are on a perimeter or assigned to a static post where the member’s direct participation in the incident is complete and they are not actively part of an investigation.
  - c. If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
  - d. In the member’s judgment, a recording would interfere with their ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, and in the incident/crime report.

- B. The MAV/BWC recording systems **shall** be activated as soon as practical and safe to record the following incidents:
1. All vehicle stops, including DUI’s.
  2. All pursuits, or suspects attempting to evade arrest.
  3. Major incidents (fires, explosions, protests, rescues via helicopter, critical incidents, etc.), any Code 3 response or when responding to an emergency or “in progress” type of crime or incident (Felony or Misdemeanor).
  4. Suspect(s) held or transported in the rear of the patrol car. The recording of suspects shall continue through the pre-booking process, or until the suspect is turned-over to jail staff. Additionally, all transports or courtesy transports shall be recorded.
  5. Major traffic accident investigations. (Officers may use discretion during lengthy accident investigations and turn off the camera once the scene has been stabilized).
  6. Investigative contacts such as Field Interviews, In-Field show-ups, and suspicious subject contacts.

7. Any other incident where the Officer deems it necessary to gather and retain evidence.
8. Officers should make every reasonable effort to record non-enforcement contacts should the situation become confrontational, assaultive, or enforcement-oriented.

At no time is a member expected to jeopardize their safety in order to activate BWC; however, the BWC shall be activated in the situations described above as soon as practicable.

- C. Officers are not required to advise or obtain consent from a citizen when:
  1. In a public place; or
  2. In a detention facility or temporary holding facility;
  3. In a location where there may be an expectation of privacy, but the Officer is lawfully present.
- D. Officers will notify the supervisor as soon as practical, of any recorded sequences that may represent significant evidence. The supervisor will determine if a copy of the recording should be made and placed into evidence.
- E. No employee shall modify, alter, erase or record over any portion of an audio/video recording.
- F. Officers shall not be required to activate body-worn cameras when engaged in conversations with individuals with whom the officer is in a privileged relationship (e.g., spouse, attorney, police peer counselor, labor representative, minister, etc.).
- G. In general, Officers should not activate BWC equipment and/or use caution when entering a public locker room, changing room, restroom, jail showers, doctor or lawyer offices or interviews, or other places where individuals unrelated to the law enforcement incident are present and would have a heightened expectation of privacy
- H. Officers **shall not** engage in any of the following activities involving the use of BWCs:
  - (a) Record sexual assault and child abuse victims during preliminary investigations.
  - (b) Record strip searches.
  - (c) Make or create recordings for personal use.
  - (d) Personally retain recordings of activities or information obtained while on-duty.
  - (e) Duplicate or distribute recordings except for authorized business purposes.

- (f) Record any personal conversation between department members.
  - (g) Record meetings with Confidential Informants.
  - (h) Use any recording for the purpose of embarrassment, intimidation or ridicule.
- I. No recording or portion thereof may be copied or released without the approval of the Chief of Police. Requests for copies made pursuant to the Public Records Act shall be handled in accordance with Section XI. C. and D. Copies may be made for court or at the request of the District Attorney's Office and District Counsel. Copies of recordings for training purposes require prior approval from the Chief of Police.

## **VIII. REVIEW OF RECORDINGS**

- A. All recording media, recorded images and audio recordings are the property of the Kensington Police Department. Dissemination outside of the agency is strictly prohibited, except to the extent permitted by law. When preparing written reports, members may review their recordings as a resource; however, members shall not retain personal copies of recordings. Officers should not use the fact that a recording was made as a reason to write a less detailed report.

To prevent damage to, or alteration of, the original recorded media; it shall not be copied, viewed or otherwise inserted into any device not approved by the department BWC technician. When reasonably possible, a copy of the original media shall be used for viewing (unless otherwise directed by the courts) to preserve the original media.

Once uploaded to the storage server, officers may review their own audio/video data at a department desktop computer. Officers shall document the reason for access in the system prior to viewing any data. Access is automatically time and date stamped and the system records the name of the accessing party.

- B. Recordings may be reviewed in any of the following situations:
1. By a supervisor reviewing an Officer's performance.
  2. By a department detective who is engaged in an official investigation.
  3. An Officer may review their BWC files only as it relates to their involvement in:
    - (a) Completing or assisting in a criminal investigation.
    - (b) Preparing official reports.
    - (c) Preparing for courtroom testimony.

An Officer involved in a law enforcement fatal incident may only review BWC files in a manner consistent with the "Contra Costa County Law Enforcement Involved Fatal Incident Protocol."

4. Recordings may be shown for the purposes of training value with prior

review and approval of the Chief of Police. If an involved Officer objects to the showing of a recording, their objection will be submitted through the Chain of Command to determine if the training value outweighs the Officer's objection to showing the recording.

5. Officers desiring to view any recording that is not their own shall submit a request in writing to the supervisor.
6. By authorized Departmental personnel for purposes of potential or actual litigation review and preparation, and District Counsel.
7. In no event shall any recording be used or shown for the purpose of entertainment or ridicule.
8. Recordings will not be posted to any social media internet site without the approval of the Chief of Police.

#### **IX. DOCUMENTING USE**

- A. Any incident recorded by a MAV or BWC system shall have a notation in the synopsis of the report indicating that there is video/audio evidence. If a citation is issued during a citizen contact of which a recording was made, the front of all copies shall have the notation, "VIDEO ON FILE" indicating there is video/audio evidence.
- B. The Department recognizes that video images cannot always show the full story nor do video images capture an entire scene. The use of body-worn cameras does not reduce the requirement to provide thorough written documentation of an incident. Persons reviewing recordings must also be cautious before conclusions are reached about what the recordings show.

#### **X. VIDEO MEDIA STORAGE AND INTEGRITY**

- A. Evidence videos may be booked in hard copy formats (e.g., DVD, Thumb Drive) or "soft" copy format into a server solution (cloud or local) that is CJIS compliant and approved by the Chief of Police. The method of booking the videos shall be documented in the incident or crime report.
- B. All video/audio recordings that are not booked into evidence in a "hard" copy format will be retained in approved storage for a period of two years, after which they will be deleted if no longer needed for an ongoing proceeding. Recordings relevant to on-going criminal or civil proceedings must be retained for so long as the proceedings are pending.

#### **XI. COPIES OF VIDEO/AUDIO RECORDINGS**

- A. MAV/BWC recordings shall not be used for any purpose other than as outlined in this policy.

- B. Stored recording media copies may be released in response to:
1. A Public Records Act Request (but see C and D, below);
  2. A valid court order or subpoena (see Section XIII, below);
  3. To the District Attorney's Office for purposes of prosecution;
  4. To authorized Departmental personnel for purposes of review, investigation, training, or potential or actual litigation defense;
  5. To District Counsel; or
  6. Upon approval by the Chief of Police.
- C. MAV/BWC recordings are subject to the Public Records Act and shall be released except where an exemption, such as the "investigations" exemption (Govt. Code 6254(f)), applies. Generally, investigative video recordings shall not be released pursuant to a Public Records Act request, but a release may be authorized under the provisions set forth in "D" below.
- D. MAV/BWC recordings may be released to the public and to the media upon the specific approval of the Chief of Police where such release will assist the interests of justice as set forth in this section.
1. A recording that was created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording, shall not be released except upon the approval of the Chief of Police. If a decision is made not to release such video, the denial letter provided to the requester shall justify withholding such a video or audio recording by demonstrating, pursuant to Section 6255, that on the facts of the particular case, the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording.
  2. A recording that is defined as confidential under Section 832.7(a) of the California Penal Code shall not be released except where mandated under Section 832.7(b)

## **XII. RECORDINGS AS EVIDENCE**

- A. If a hard copy of a MAV/BWC recording is booked into evidence, it shall be packaged and labeled and a Chain of Custody Label is to be affixed to the outside of the packaging in the same manner as other property and the collection and disposition of such evidence shall be referenced in the crime report (see Section IX.A).
- B. If a soft copy of a MAV/BWC recording is booked into a digital evidence storage solution, it shall be identified by the case number and the retention status will be changed to an evidence category allowing for indefinite storage until the evidence is no longer needed and manually deleted.

**XIII. EXTERNAL REQUESTS - PROCEDURE FOR DISCOVERY OF EVIDENCE AND CITIZEN REVIEW**

- A. Upon receipt of a subpoena, a supervisor or designated Custodian of Records will be responsible to make a copy of the requested recording or segment thereof as ordered by the court or other authorized party. The procedure to complete the discovery recording copy process will be as follows:
1. A supervisor will make a copy of the identified video recording from video recording storage.
  2. The supervisor will forward the discovery copy of the recording to the court pursuant to established procedures.
  3. Recordings shall not be released under informal discovery requests, i.e. without a subpoena.

**XIV. INTERNAL REQUESTS - PROCEDURES FOR DISCOVERY OF EVIDENCE**

- A. Upon written or email request by an Officer or other staff member who requires a copy for court or administrative purposes (other than an Departmental Personnel specifically authorized to view the video pursuant to Sections VIII and XI), a supervisor or designated Custodian of Records will be responsible to make a copy of the requested recording. The procedure to complete the recording copy process will be as follows:
1. A supervisor will make a copy of the identified video recording(s) from video recording storage.
  2. The supervisor will then forward the copy of the original recording(s) to the Deputy or staff member.

**XV. 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, the Officer may request the deletion of the accidentally recorded BWC video file by submitting a written request to the Chief of Police. If the Chief of Police determines the BWC recording meets the above criteria, the video file may be deleted after 30 days.
- B. In the event of an accidental activation of a BWC where the Chief of Police determines a BWC recording contains the personal and/or private conversations or images of any other individual unrelated to an ongoing criminal or Internal Affairs investigation, or otherwise has no valid purpose, and which has no apparent evidentiary or investigatory value, it may be deleted after 30 days by direction of the Chief of Police.

**XVI. BWC COORDINATOR**

- A. The Chief of Police shall appoint a member of the Department to coordinate the use and maintenance of BWC devices and the storage of recordings, including the directives in Penal Code § 832.18:
1. Establishing a system for downloading, storing, and securing recordings.
  2. Designating persons responsible for downloading recorded data.
  3. Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
  4. Establishing a system for tagging and categorizing data according to the type of incident captured.
  5. Establishing a system to prevent tampering, deleting, and copying recordings.
  6. Establishing a system to ensure chain of custody and evidence integrity.
  7. Working with District Counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
  8. Maintaining logs of access and deletions of recordings.
  9. Establishing a department liaison with the District Attorney's Office