



San Jose Police Body Worn Camera Policy

1. Background, Scope and Purpose

The Department adopts the use of body-worn cameras to visually and audibly record specific categories of interactions between officers and the public and to retain associated video for a period of time. Officers shall utilize the device in accordance with the provisions of this policy.

2. User Training

The Department shall ensure that each officer is trained in the use of the body-worn camera prior to issuance and deployment. The training shall include:

- A. Training on operation (including when to activate and deactivate), maintenance and care;
- B. Training on mandatory, discretionary and non-permissible uses of body-worn cameras;
- C. Periodic training on significant changes in the law pertaining to body worn cameras;
- D. Additional training at periodic intervals to ensure continued effective use of the body-worn camera equipment, performance, and to incorporate changes, updates or other revisions in policies and equipment.

3. Officer Responsibilities

Each uniformed officer assigned a body-worn camera and working a patrol assignment, including pay cars, is responsible for ensuring that they are equipped with a Department-issued body-worn camera and that the camera is fully charged and in good working order at the beginning of their shift. If a device is in need of repair, members will notify their supervisor and turn the body-worn camera into Central Supply for repair or replacement. Actual time spent testing or reporting damage to a body-worn camera shall be regarded as time worked.

Uniformed officers should wear the camera on their uniform at a location that will facilitate an optimum recording field of view.

Officers shall not deliberately remove, dismantle or tamper with any hardware and/or the evidence management software component of the body-worn camera.

Each officer is responsible for ensuring that their assigned body-worn camera is downloaded/ uploaded during their shift as needed or at the completion of their shift, or at any time the device's memory is deemed to be full. Actual time spent downloading/uploading the body-worn camera files at the completion of an officer's shift shall be considered booking evidence and regarded as time worked.

Media captured via the body-worn camera shall only be downloaded/ uploaded to Department-approved secure storage. Since the content of the recording may be considered evidence, and are considered Department records of investigation, officers will comply with all sections in the Duty Manual regarding the handling of evidence and official Department records.

4. Supervisor Responsibilities

Supervisors will ensure that officers utilize the body-worn camera according to these policy guidelines.

Supervisors shall ensure videos related to Officer-Involved Incidents, as defined in Section 16, are uploaded/downloaded as soon as possible following the event or as requested by a supervisor.

Supervisors completing a Use of Force investigation where a body-worn camera was used should review the video and follow procedures set forth in Duty Manual Section L 2605 (Supervisor's Responsibilities).

Supervisors may have the ability to immediately resolve citizen complaints by viewing video captured by the officer's body-worn camera prior to contacting the citizen. At no time, except at the direction of the Chief or designee, shall the supervisor allow the citizen to view the file footage. In those circumstances where a complaint is resolved with no further action needed, supervisors shall make notes in the CAD event.

5. When to Activate

There are many situations when to activate the body-worn camera, however, this policy is not intended to describe every possible circumstance.

The safety of officers 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 and officer safety. Additionally, the Department recognizes human performance limitations during particularly stressful, critical situations.

Officers shall make every effort to record non-enforcement contacts should they become confrontational, assaultive or enforcement-oriented. In addition to the required conditions, personnel may activate the system any time they feel its use would be appropriate and/or valuable to document an incident. Also, officers shall not be required to activate or deactivate

their body-worn camera based solely on the requests or demands of a citizen, but rather rely on their training and this policy to direct their use of the body-worn camera.

During their shift, officers shall make every reasonable effort to activate the body-worn camera prior to initiating, or as soon as practical after initiating, the following police actions:

- A. All enforcement encounters where there is at least reasonable suspicion the person(s) has committed, is committing or may be involved in criminal activity. This includes, but is not limited to:
 - a) Detentions, vehicle stops, pedestrian stops and consensual encounters
 - b) Probation, parole, post-release community supervision, mandatory supervision or consent searches, 'knock and talks.'
- B. Taking or attempting to take a person into custody (e.g., arrests, protective custody of mentally disturbed person, etc.).
- C. Enforcement encounters where there is reason to believe that the individual is committing a violation for which a citation may be issued.
- D. All incidents involving a use of force.
- E. All public interaction, regardless of context, that escalates and becomes adversarial.
- F. Service of search or arrest warrants.
- G. Suspect statements.
- H. Witness/Victim statements (when practical).
- I. Pursuits (when practical).
- J. Response to complaints or calls for service.

6. When to Deactivate

Body-worn camera recordings shall not be intentionally terminated until the conclusion of the encounter, except for tactical or safety reasons, or the encounter no longer holds evidentiary or investigative value.

Anytime the recording is terminated prior to the end of the encounter, the reason(s) should be documented both on the body-worn camera recording before deactivation and in the subsequent police report. If no police report is filed for the recorded encounter, then the reason(s) for the early termination should be recorded on the citation, CAD event or Street Check.

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. (Example: An officer is assigned to an outer perimeter position for an extended period of time and has no verbal or visual contact with involved parties.) (Example: Officers have secured a prisoner and are completing paperwork outside the presence of the prisoner, unless the prisoner is combative, agitated or otherwise uncooperative.)

Keeping in mind that static situations may change rapidly, officers need to recognize it may be necessary to re-activate their body-worn camera unexpectedly. (Example: Officers are assigned to an outer perimeter position with their cameras turned off, and a suspect exits the residence to surrender or run from police.)

Officers shall deactivate the body-worn camera 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.) Officers will verbally indicate why the body-worn camera is being deactivated and will reactivate the body-worn camera at the conclusion of the private conversation if the need for recording the police encounter or investigation still exists.

7. Advisements and Consent

Generally, officers are **not** required to advise or obtain consent to utilize the body-worn camera from a private person when:

- A. In a public place; or
- B. In a location where there is an expectation of privacy (e.g., inside a building or dwelling) but the officer is lawfully present.

However, when initiating a police action as described in Section #5 (When to Activate), officers **shall make a reasonable effort to** advise persons they are being recorded with the body-worn camera, unless the officer has reason to believe that doing so will endanger the safety of the officer or another officer or a member of the public or will interfere with the conduct of an investigation.

When an officer's legal grounds for a search of a residence is based solely on **consent**, they are required to both advise **and** obtain consent to record with a body-worn camera from the person, with legal standing, who is being recorded and/or searched. This does not apply to crimes in progress or other circumstances that would allow the officer to be lawfully present without a warrant.

8. When Not to Activate

Personnel are not required to activate the camera system during routine, incidental contact with a citizen, (i.e. giving directions or lunch breaks).

Officers will not knowingly activate the body-worn camera in the following circumstances:

- A. A potential witness who requests to speak to an officer confidentially or desires anonymity (See Section 9, Victim and Witness Statements).

- B. A victim or witness who requests that he or she not be recorded and the situation is not confrontational (See Section 9, Victim and Witness Statements).
- C. A victim who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation (See Section 9, Victim and Witness Statements).
- D. During tactical briefings, or the discussion of safety and security procedures.
- E. Undercover officers, except in the course of criminal investigation.
- F. Strip Searches.
- G. Public or private locker rooms, changing rooms, restrooms, unless taking the police actions stated in 5(A)-(F), and (I).
- H. Doctor's or lawyer's offices, unless taking the police actions stated in 5(A)-(F), and (I).
- I. Medical or hospital facilities, unless taking the police actions stated in 5(A)-(F), and (I).
- J. Other places where individuals unrelated to the investigation are present and would have a reasonable expectation of privacy, unless taking the police actions stated in 5(A)-(F), and (I).
- K. 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. (Duty Manual Section L 4513)
- L. The monitoring of persons based solely upon the person's political or religious beliefs or upon the exercise of the person's constitutional rights to freedom of speech and religious expression, petition and assembly under the United States and California Constitutions, or because of the content or viewpoint of the person's protected speech is prohibited.

9. Victim and Witness Statements

When conducting an investigation, the officer shall attempt to record the crime victim or witness' statement with the body-worn camera. The recording may be valuable evidence that contributes to or compliments an investigation. While evidence collection is important, the Department also recognizes it is important for officers to maintain credibility with people wanting to share information with law enforcement.

On occasion, an officer may encounter a reluctant crime victim or witness who does not wish to make a statement on camera. In these situations, the officer should continue to develop rapport with the individual while balancing the need for evidence collection with the individual's request for privacy.

Should the officer use discretion and not record the crime victim or witness statement with the body-worn camera, the officer should document the reason for not fully recording the statement with the body-worn camera. In these instances, officers may still record with an audio recorder as outlined in Duty Manual Section L 4513.

Refer to When Not to Activate (Section 8), for circumstances not when to record a victim or witness statement.

10. Unauthorized Access and Use

All body-worn camera recordings shall remain the property of the Department and constitute official records of investigation of the Department.

Unauthorized access to, or use, duplication, and/or distribution of body-worn camera files is prohibited. Personnel shall not make copies of any body-worn camera file for their personal use and are prohibited from using a recording device such as a phone camera or secondary video camera to record body-worn camera files.

The body-worn camera shall not be used to record:

- A. Encounters not directly related to official activities in the proper performance of police duties.
- B. Performance of non-enforcement functions or administrative duties within a Department facility.

Personally owned body-worn cameras shall not be used while on duty.

11. Accidental Recordings

In the event of an accidental activation of the body-worn camera where the resulting recording is of no investigative or evidentiary value, the recording officer may request that the body-worn camera file be deleted. The officer will submit a request for deletion via email, with sufficient information to locate the body-worn camera file, to their direct supervisor.

The email will be forwarded through the officer's chain of command to their Lieutenant. The receiving Lieutenant shall review the file and approve or deny the request. Prior to deleting an accidental activation, the Lieutenant will ensure the file is not associated with a police contact or CAD event. No files associated with an official police contact, CAD event, or any pending litigation or complaint is eligible for deletion.

12. Documenting use of the Body-Worn Camera

Personnel should not substitute a body-worn camera recording for a detailed and thorough report. Personnel should continue to prepare reports as outlined in the Duty Manual.

Exception: Officers involved in an Officer-Involved Incident (Section 16).

Officers will document on a report when a body-worn camera file is made associated with an incident. If no report is filed, the officer will ensure the use of the body-worn camera is noted on the citation, CAD event or Street Check.

13. Review of Body-Worn Camera Files

All file viewing is for law enforcement use only and subject to a right to know and need to know basis [Refer to Duty Manual Sections C 2002-2004, C 2007, C 2011, and Chapter C 2100]

Department personnel may review body-worn camera files according to the provisions of this policy and Duty Manual requirements.

Access to the body-worn camera system is logged automatically with the date, time and name of person viewing the files.

An officer should review body-worn camera files, including those of other officers, in the following instances:

- A. For the purposes of completing criminal investigations and preparing official reports with the exception of Officer-Involved Incidents. See Officer-Involved Incidents (Section 16).
- B. Prior to courtroom testimony or for courtroom presentations, or as part of preparation by the San Jose City Attorney's Office for litigation in which a police officer is a party or a witness and the City Attorney's Office is representing the City and/or officers who are parties to the litigation.
- C. For potential training purposes see Training (Section 15).
- D. For preparation of an Internal Affairs interview, including review with officer representative, outside the presence of any investigator or supervisor.
- E. For other reasons as specified with the permission of the Chief of Police.

Exception: Department members identified as Administrative Users may access body-worn camera files from a computer or device outside of the Department for the purpose of completing administrative tasks, such as locking or unlocking users, etc.

14. Administrative Review of Body Worn Camera Files

It is not the intent of the Department to review body-worn camera files for the purpose of general performance review of individual officers or to proactively discover policy violations.

Supervisors and Internal Affairs personnel may, however, access body-worn camera files for administrative investigations limited to the specific complaint against the officer. Supervisors should, however, on a reasonable basis; review body-worn camera files to ensure that body-worn camera equipment is functioning properly and officers are adhering to Department body-worn camera procedures. Inadvertent discovery of other allegations during this review shall

require the supervisor or Internal Affairs personnel to articulate the reason for expanding the scope of the investigation.

Supervisors who inadvertently discover minor, non-criminal policy violations will continue to have discretion to resolve the violation with training or informal counseling. Should the policy violation rise to the level of more formal discipline, the supervisor will adhere to policies set forth in the Duty Manual.

Exception: Field Training Officers (FTO) and the FTO Commander may view body-worn camera files to evaluate the performance of an officer in the Field Training Program.

15. Training with Body-Worn Camera Files

A body-worn camera file may be utilized as a training tool for individuals, specific units, and the Department as a whole with the involved officers' permission. Department members recommending utilization of a body-worn camera file for training purposes will submit the recommendation through the chain of command to the Training Unit Commander.

Exception: Field Training Officers may use body-worn camera files to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR).

16. Officer Involved Incidents

The Department recognizes that the video images captured on the body-worn camera files are two dimensional and cannot always capture the entire scene due to a number of limiting factors. The body-worn camera files should be considered but one piece of evidence collected from a scene or incident and not a singularly inclusive piece of evidence.

An Officer-Involved Incident includes:

- A) Officer-involved shootings,
- B) In-custody deaths, and
- C) Any intentional act by an officer which proximately causes injury likely to produce death to another.

Following an Officer-Involved Incident involved officers, herein defined as both involved officers and witness officers to the incident, personnel and their representative(s) shall not view their video, or any video capturing their image or the incident on any device.

The initial interview of an officer involved in an Officer-Involved Incident should occur before the officer has reviewed any audio/video recordings of the incident. Once an involved officer has provided an initial statement, he will have an opportunity to review any available recordings with his representative. The officer shall then be afforded an opportunity to provide a follow-up statement after having reviewed the recording(s). The Chief or designee shall have discretion to permit officers to review video files prior to the initial interview.

Investigators will be mindful that audio/video recordings have limitations and may depict events differently than the events recalled by the involved officer. When the investigator shows any audio/video recordings to an involved officer **after** the initial interview, the investigator will admonish the involved officer about the limitations of audio/visual recordings.

The following is an example of an admonishment that would be appropriate in a case involving video evidence that is shown to the involved officer after he/she has provided an initial statement. In these situations, the showing of a body-worn camera file to an officer will be documented in the investigator's report:

In this case, there is video evidence that you will have an opportunity to view after you have given your initial statement. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and recollection.

In those situations where a Crime Scene supervisor is charged with the collection of evidence, the Crime Scene supervisor will, as soon as safe and practical, retrieve the body-worn camera from the involved officer at the scene. The Crime Scene supervisor will be responsible for assuring the body-worn camera file is uploaded/ downloaded.