

Memorandum

TO: ALL SWORN PERSONNEL

FROM: Edgardo Garcia
Chief of Police

**SUBJECT: DUTY MANUAL REVISIONS
L 4433 - L 4446 BODY WORN
CAMERA**

DATE: June 25, 2020

Approved

Memo # 2020-031

BACKGROUND

In 2015, the City of San Jose and the San Jose Police Officers' Association entered into an initial agreement approving the San Jose Police Department Body Worn Camera Policy. This comprehensive policy was a result of extensive research including: review of sample policies; related reports; law enforcement best practices; dialogue with Department stakeholders and ongoing external outreach. The policy took effect in July 2015 during the Body Worn Camera Field Test and Evaluation. The parties agreed to periodically revisit the policy to ensure best practices were being followed.

The San Jose Police Body Worn Camera Policy has been incorporated into the San Jose Police Duty Manual and will regulate the use and management of body worn cameras, the body worn camera evidence management system as well as related body worn camera video evidence.

ANALYSIS

Revisions to the Department's Duty Manual involving procedures pertaining to the use of Body Worn Cameras are reflected below. Additions are shown in *italics and underline*. Deletions are shown in "strike through" form.

L 4433 OFFICER RESPONSIBILITIES

Every ~~Each~~ uniformed officer assigned a body worn camera ~~and~~ working a uniformed or plain-clothes assignment in the City of San Jose, to include secondary employment and the Main Lobby, ~~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.

Note: This section is inclusive of all uniform types (i.e. school resource officer, bicycle patrol, secondary employment, etc.), but is not meant to include Bureau of Investigation detectives, other Bureaus, or secondary employment where officers are not in uniform, unless otherwise engaged in the service of a search or arrest warrant (see Duty Manual Section L 4435, item #6.)

Uniformed officers ~~should~~ will wear the body worn camera on their uniform at a location that will facilitate an optimum recording field of view. This location may vary from officer to officer based upon his/her specific uniform and body composition.

Officers will 'power on' the body worn camera before going into service and keep it powered on for the remainder of his/her shift, with the exception of bathroom breaks or those times when an officer is entering a Department locker room. The officer will only 'power off' his/her body worn camera at the conclusion of his/her shift prior to placing it in a camera dock to upload.

Note: An exception to this rule are Officer-Involved Incidents, as outlined in Duty Manual Section L 4446.

Officers shall not deliberately remove, dismantle or tamper with any hardware, video evidence, 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.

Exception: If an officer is working a uniformed secondary employment (i.e. school pay job, airport pay job, traffic control, etc.) on a regularly-scheduled day off, he/she will upload the video evidence at the earliest opportunity on their first day back to work. In the interim, the officer will ensure the safety of the camera and its contents until such time it can be uploaded. A supervisor may direct an officer to upload sooner should the event or investigation require the video evidence sooner. In these situations, the officer will ensure his/her video evidence is uploaded in accordance with the supervisor's instruction.

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.

L 4434

SUPERVISOR RESPONSIBILITIES

Supervisors ~~will~~ shall utilize their body worn camera and ensure that officers utilize their body worn cameras according to these policy guidelines. Refer to Section L 4444.

Supervisors shall ensure videos related to Officer-Involved Incidents, as defined in Duty Manual Section L 4446, 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~~ address citizen ~~complaints~~ concerns 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~~ concern is ~~resolved~~ addressed with no further action ~~needed~~ required, supervisors shall make notes in the CAD event. This allowance is independent of the complaint process, and supervisors are reminded to abide by Duty Manual Section C 1700 (Allegations, Complaints and Non-Misconduct Concerns Internal Affairs Unit).

Supervisors should also utilize body worn camera files when handling a Supervisory Referral as outlined in Duty Manual Section C 1707.5 (Supervisory Referral Complaint Defined).

L 4435

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. As such, officers shall activate their body worn camera while enroute, and prior to arrival, to a call for service. This will ensure the entire event is captured on the body worn camera.

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 due to officer safety reasons, as soon as practical after initiating, the following police actions:

1. 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.'~~
2. Taking or attempting to take a person into custody (e.g., arrests, foot pursuits, protective custody of mentally disturbed person, etc.).
3. Enforcement encounters where there is reason to believe that the individual is committing a violation for which a citation may be issued.

4. All incidents involving a use of force.
5. All public interaction, regardless of context, that escalates and becomes adversarial.
6. Service of search or arrest warrants (regardless of assignment).
7. Suspect statements.
8. Witness/Victim statements (~~when practical~~ refer to L 4439 Victim and Witness Statements).
9. Code 3 driving and vehicle pPursuits (when practical).
10. Response to ~~complaints or~~ calls for service (regardless if the suspect, victim, or witness is present at the scene).
11. Assist visitors and members of the public while assigned to the Main Lobby (regardless if the contact occurs inside or outside the Lobby).

L 4436

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.~~

Exception: Officers may deactivate while still assigned to a call or investigation as long as he/she has cleared the scene; is no longer involved in the care and/or custody of a prisoner or another person; or no longer actively involved in an investigation, including collecting physical evidence.

Anytime the recording is terminated prior to the end of the encounter, the reason(s) ~~should~~ shall be documented ~~both~~ on the body worn camera recording before deactivation and or in the subsequent police report. If the reasons are not documented on the BWC and no police report is filed for the recorded encounter, then the reason(s) for the early termination ~~should~~ shall 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.~~

L 4437 ADVISEMENTS AND CONSENT

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

1. In a public place; or
2. 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 Duty Manual Section L 4435 (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.

L 4438 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:

1. A potential witness who requests to speak to an officer confidentially or desires anonymity (See Duty Manual Section L 4439, Victim and Witness Statements).
2. A victim or witness who requests that he or she not be recorded and the situation is not confrontational (See Duty Manual Section L 4439, Victim and Witness Statements).
3. 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 Duty Manual Section L 4439, Victim and Witness Statements).
4. During tactical briefings, or the discussion of safety and security procedures that occur away from the scene of an investigation or enforcement encounter (e.g. a nearby staging location or Command Post).
5. Undercover or plain clothes officers, except while serving arrest or search warrant(s), Duty Manual Section L 4435 Subsection 6 in the course of criminal investigation.
6. Strip Searches.
7. Public or private locker rooms, changing rooms, restrooms, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
8. Doctor's or lawyer's offices, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.

9. Medical or hospital facilities, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
10. 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 Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
11. 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, Recording of Statements).
12. 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.
13. While officers are 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.).
Note: A privileged conversation does not include a conversation with another officer or supervisor while still actively engaged in a call for service, investigation, or enforcement encounter.
14. When entering the Santa Clara County Main Jail's main facility.
15. Surveillance operations until the point where enforcement will be taken (i.e. covert surveillance of suspect prior to arrest.)

L 4439 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~~ shall document the reason for not fully recording the statement with the body worn camera. In these instances, officers ~~shall~~ may still record with an audio recorder as outlined in Duty Manual Section L 4513 (Recording of Statements).

~~Refer to Duty Manual Section L 4438 (When Not to Activate), for circumstances not when to record a victim or witness statement.~~

L 4440 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, 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:

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

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

Note: All activity related to body worn camera video files are automatically tracked in the evidence management system's audit trail. This information includes: the person accessing the file(s), the date and time of access, the activity that was performed, and the specific IP address from which the file(s) were accessed.

L 4441

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 video 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, t~~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. Should the Lieutenant approve the request, he/she will send an email to the Body Worn Camera Admin Unit with enough information to locate the file(s). Only members of the Body Worn Camera Admin Unit with Administrative privileges shall delete the file(s). The reason for the deletion, including the authorizing authority, will be documented in the notes of the videos. These notes are retained by the evidence management system's audit trail. Deletions and requests for deletion are tracked by the Body Worn Camera Administrative Unit.

Officers will not request deletion of body worn camera files that are not the result of an accident. Should the officer knowingly or unknowingly record something of a confidential nature (i.e. conversation with a confidential informant, critical intelligence, specific tactics, etc.), the officer will do the following:

- Place an electronic Marker within the video (via the body worn camera's Function Button) or within Evidence.com after uploading the video, AND
- Change the Title of the video file(s) to "SENSITIVE/CONFIDENTIAL.". This will indicate to the Body Worn Camera Admin Unit, the Santa Clara County

District Attorney's Office, and/or the City Attorney's Office that the file(s) contains something of a sensitive nature that may need to be redacted prior to disclosure should release occur. In these situations, further discussion between the officer and the Body Worn Camera Admin Unit may be required for coordination.

- Officers are also encouraged to provide additional information in Evidence.com as to the sensitive or confidential nature of the video by adding notes within the video file. This will assist the Body Worn Camera Admin Unit with proper identification of the sensitive/confidential evidence.

L 4442 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. Body worn camera video cannot substitute the collection of physical evidence such as fingerprints, documents, photographs, or other important evidentiary items that are considered part of the criminal investigation. These items must be properly collected and booked into evidence.

If an officer is required to write a report or citation, the officer will also document in the report or citation the fact that a BWC was used to record the incident. If the BWC was not activated as per policy, the officer shall document in the report or citation the reason and/or justification for not activating his/her camera.

Exception: Officers involved in an Officer-involved incident. Refer to Duty Manual Section L 4446 (Officer-Involved Incidents).

~~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.~~

L 4443 REVIEW OF BODY WORN CAMERA FILES

All file viewing and sharing 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 Chapter C 2000 (Obtaining Criminal Records/Information), and Chapter C 2100 (Juvenile Records)).

Department personnel may review body worn camera files according to the provisions of this policy and Duty Manual requirements- and are reminded that all activity related to body worn camera video files are automatically tracked in the evidence management system's audit trail. This information includes: the person accessing the file(s), the date and time of access, the activity that was performed, and the specific IP address from which the file(s) were accessed.

~~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:

1. For the purposes of completing criminal investigations and preparing accurate official reports with the exception of Officer-Involved Incidents. Refer to Duty Manual Section L 4446 (Officer-Involved Incidents) and R 1108 (Accuracy and Brevity).
2. 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.
3. For potential training purposes refer to Duty Manual Section L 4445 (Training with Body Worn Camera Files).
4. For preparation of an Internal Affairs interview, including review with officer representative, outside the presence of any investigator or supervisor.
5. 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.

L 4444 ADMINISTRATIVE REVIEW OF BODY WORN CAMERA FILES

It is not the intent of the Department to review body worn camera files, without cause, 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 the requirements of this policy ~~Department body worn camera procedures~~. Inadvertent discovery of evidence of policy violations ~~other allegations~~ during this review shall require the supervisor or Internal Affairs personnel to articulate the reason for expanding the scope of the original audit or 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 C 1700 (Allegations, Complaints and Non-Misconduct Concerns Internal Affairs Unit).

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

L 4445 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 to their supervisor for

approval and contact the Body Worn Camera Admin Unit for assistance as needed 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).

L 4446 OFFICER INVOLVED INCIDENTS

The Department recognizes that the video images ~~captured~~ recorded on the body worn camera files are two-dimensional and cannot always capture the entire scene, as seen or heard by the officer, due to a number of limiting factors. ~~The~~ However, the body worn camera files file(s) are still should be considered important but one piece of evidence collected from an Officer-Involved Incident ~~a scene or incident~~ and not a singularly inclusive piece of evidence.

An Officer Involved Incident includes:

1. Officer-involved shootings,
2. In-custody deaths, and
3. Any act by an officer, including but not limited to any use of any deadly or dangerous weapon by an officer, which proximately causes injury likely to produce death to another ~~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.

In most circumstances, officers shall keep their body worn camera on their uniform following an Officer-Involved Incident. The supervisor assigned to the involved officer will 'power off' the involved-officers' body worn camera to safeguard the evidence after the officer has provided the public safety statement at the scene. If the involved officer does not have a supervisor assigned to him/her, the officer will 'power off' his/her body worn camera to safeguard the evidence. Prior to deactivation of the body worn camera, the officer shall verbally indicate the reason why he/she is deactivating the camera.

Once the involved officer has been photographed by the Crime Scene Unit, a member of the Crime Scene Unit will collect the officers' body worn camera and upload the video evidence to the Department's secure storage.

The initial interview of an officer involved in an Officer-Involved Incident should occur before the officer has reviewed any audio/video body worn camera recordings of the incident. Once an involved officer has provided an initial statement to detectives, which should not be confused with a public safety statement at the scene, he/she will have an opportunity to review any available body worn camera recordings with his/her 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.~~

Note: The Chief or designee shall have the discretion to permit officers to review video files prior to the initial interview. In the extraordinary circumstance an officer is allowed to view his/her video file(s) prior to the initial interview, the authorizing authority will first consult with the Santa Clara County District Attorney's Office and document the reason(s) in a police report.

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 first 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 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.~~

ORDER

Effective immediately, all sworn personnel will adhere to the revised San Jose Police Department Duty Manual Sections L 4433 - L 4446, collectively known as the Body Worn Camera Policy.



Edgardo Garcia,
Chief of Police