



OFFICE OF THE COUNTY SHERIFF
Montgomery County, Maryland
Darren M. Popkin, Sheriff



GENERAL OPERATIONAL PROCEDURES

<u>Subject:</u>	<u>Number:</u>	<u>Effective Date:</u>
Body Worn Camera System	3.51	07/08/21

Purpose: It is the policy of Montgomery County Sheriff’s Office to utilize a Body-Worn Camera System (BWCS) for the purpose of documenting evidence and accurately recording, through video and audio, interactions that occur between deputies, during the course of their regular duties, and members of the public. All BWCS equipment and recordings are the property of the Montgomery County Sheriff’s Office.

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I. Definitions

- A. Body Worn Camera System (BWCS) - A camera system worn on the person of a uniformed deputy, or a deputy prominently displaying their badge, that is capable of recording video and audio.
- B. Deputy – All sworn Montgomery County deputy sheriffs.
- C. Employee – All employees of the Sheriff’s Office (both sworn and non-sworn).

II. Legal Considerations

- A. Pursuant to the “State Wiretap Act”, MD. Code, Courts and Judicial Proceedings Article, §10-401 - §10-403, it is unlawful for any person to willfully intercept, endeavor to intercept, disclose, endeavor to disclose, use, or endeavor to use any oral communications, subject to certain exceptions. “Oral communication” is defined as any conversation or words spoken to or by any person in private conversation.

- B. The State Wiretap Act makes it lawful for a law enforcement officer, in the course of the officer's regular duty, to intercept an oral communication with a body-worn digital recording device or an electronic control device, capable of recording video and oral communication if:
- (1) The law enforcement officer is in uniform or prominently displaying the officer's badge;
 - (2) The law enforcement officer is making reasonable efforts to conform to standards in accordance with § 3-511 of the Public Safety Article for the use of body worn digital recording devices;
 - (3) The law enforcement officer is a party to the oral communication;
 - (4) The law enforcement officer notifies, as soon as is practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and
 - (5) The oral interception is being made as part of a videotape or digital recording.
- C. The State Wiretap Act also makes it lawful for a law enforcement officer to intercept an oral communication where the officer is party to the communication and where all parties to the communication have given prior consent to the recording.

III. Implementation

- A. The BWCS program is instituted for deputies below the rank of captain. The BWCS will be used to document events, actions, conditions and statements made during law enforcement related encounters and activities as authorized under this program.
- B. Deputies assigned to the Criminal Section, or detailed to a task force, may be exempt from the mandatory utilization requirement upon approval from their section supervisor, and only under the following limited conditions:
- (1) Utilization of the body worn camera would cause an articulable safety risk to the deputies involved in a pre-planned assignment.
 - (2) Wearing of the body worn camera while interacting with a potential arrestee or any other involved person would compromise an ongoing criminal investigation being conducted in conjunction with another law enforcement agency.
 - (3) The deputy's assignment is of an undercover nature requiring their identity to be concealed; utilization of the body worn camera would compromise their concealed identity as a law enforcement officer.
 - (4) The deputy is assigned to a task force, with a documented policy prohibiting the wearing of a body worn camera, while carrying out specified task force assignments.

- C. The Sheriff's Office will provide training to deputies prior to use of the BWCS. Training will include, operation of the BWCS and a review of policy, as well as alternative methods for effective notification of recording to persons with special needs or limited English proficiency.
- D. Participating deputies will use the BWCS in accordance with their training and this policy.

IV. Operational Protocol

- A. Only deputies trained in the proper use of the BWCS may use the system.
- B. All BWCS recordings and recording devices will be used for official Montgomery County Sheriff's Office business only. Use of the BWCS will comply with all applicable laws, rules, regulations and this policy.
- C. Prior to the beginning of each shift, deputies will perform a function test of the BWCS in accordance with their training and manufacturers recommendations to ensure that the BWCS is operating properly. Deputies discovering a BWCS malfunction will promptly report the malfunction to a supervisor.
- D. The BWCS will be worn in a manner consistent with Maryland Law, Sheriff's Office training and this policy.
- E. Deputies are only authorized to use a BWCS in the course of their regular duties while in uniform or prominently displaying the deputy's badge.
- F. Deputies may not use the BWCS while engaged in secondary employment.
- G. Deputies will only wear and use a Sheriff's Office issued BWCS.

V. Activation of the Body Worn Camera System

- A. Deputies will only activate the BWCS while carrying out law enforcement activities.
- B. Except as otherwise exempted by law, deputies will notify individuals that they are being recorded as soon as practicable, unless it is unsafe, impractical, or impossible to do so.
 - (1) This notice provision is satisfied even if another individual becomes a party to the communication after the initial notice has been provided.
 - (2) Examples of potential notification language include:
 - (a) "You are being audibly and visually recorded"; or
 - (b) "Our interaction is being recorded by my body camera".
- C. The BWCS must be activated during all law enforcement related encounters and activities such as, but not limited to, the following examples;
 - (1) At the initiation of a call for service or other activity that is investigative or enforcement in nature.
 - (2) All enforcement and investigation related public contacts.

- (3) Documentation of evidence that can be used in the prosecution of criminal and traffic offenses.
- (4) Arrests.
- (5) Transports.
- (6) Traffic stops.
- (7) Priority responses.
- (8) Foot pursuits.
- (9) Suspicious situations.
- (10) All searches (persons, vehicles, structures, effects and all canine searches), except strip searches.
- (11) Interviews and interrogations.
- (12) Mental health interventions.
- (13) Evictions.
- (14) Property seizures conducted while serving or enforcing court orders.
- (15) Service of all domestic violence court orders.
- (16) Any contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording.

D. Once the BWCS has been activated, deputies will continue to record until:

- (1) The deputy has left the scene and anticipates no further involvement in the event;
- (2) A supervisor has directed that recording must cease;
- (3) The deputy is no longer engaged in a related investigative or enforcement activity; or
- (4) The event has concluded. An event will be deemed “concluded” when:
 - (a) All arrests have been made and arrestees have been transported and/or released from custody;
 - (b) All witnesses and victims have been interviewed;
 - (c) The continued recording will not serve to obtain additional evidence; and
 - (d) No further law enforcement action is likely to occur.

- E. Whenever the BWCS equipment is deactivated, the deputy must record a brief verbal explanation for the deactivation prior to turning off the recording.
- F. There may be instances in which deputies are unable to activate their BWCS due to circumstances making it unsafe, impossible, or impractical to do so. In these exigent circumstances, deputies must begin recording with the BWCS at the first reasonable opportunity to do so and document the reason for the delayed start in the incident report and/or as part of the recording.
- G. In situations when community members, witnesses, crime victims or other parties wish to share information related to criminal activity, but refuse to do so while being recorded, deputies will have the discretion to turn off the BWCS during the interview. The preference is to record such statements; however, it is recognized that such persons may be hesitant to provide information while being recorded due to a fear of retaliation, privacy concerns or a feeling that the information is sensitive. In these situations, deputies may decide that obtaining the information is more important than recording the conversation. In such situation, the deputy must record a brief verbal explanation for the deactivation prior to turning off the recording.
- H. The BWCS may be deactivated during conversations with law enforcement officers or supervisors during information sharing sessions or when discussing tactics and strategy.
- I. Deputies are required to obtain consent prior to recording an interview with a victim of a sex offense. Consent in these cases must be documented/recorded on camera.

VI. Prohibited Use

- A. A deputy must not activate a BWCS to create recordings in locker rooms, dressing rooms, and restrooms unless part of a criminal investigation.
- B. A BWCS must not be used to create recordings of strip searches.
- C. A BWCS must not be used to record routine administrative activities.
- D. Deputies must not intentionally record undercover officers or confidential informants without their consent.
- E. Deputies must not record non-work related personal activity.
- F. Deputies must not activate the BWCS during non-law enforcement activities.

VII. Reporting and Required Documentation

- A. Whenever a BWCS recording is made of an event that results in an Incident Report (MCSO9), the reporting deputy must note in the report that the recording exists, if known.
- B. All BWCS recordings must be uploaded by the deputy at the end of his or her assigned shift, unless an exception is authorized by a supervisor. The deputy will be responsible for properly categorizing and tagging the recording at the time of the upload.

- C. In a critical incident, such as a deputy involved shooting, in-custody death or other deputy involved incident that results in serious injury or death, a supervisor must immediately take custody of the BWCS and, in such case, will be responsible for the upload.

VIII. Internal Access, Review and Use of Recordings

- A. The BWCS recording may be reviewed by the recording deputy for any work-related reason, including but not limited to:
 - (1) Ensuring the BWCS system is working properly.
 - (2) Assisting with the writing of a report or other official document.
 - (3) Reviewing or critiquing his or her own performance.
 - (4) Reviewing or preparing for court.
- B. Recordings may also be reviewed, for official business, by:
 - (1) The recording deputy's direct supervisor, and the highest ranking on-duty supervisor.
 - (2) A Sheriff's Office supervisor at the rank of Lieutenant or above, for official business, including, but not limited to:
 - (a) The review of evidence.
 - (b) An official investigation such as a personnel complaint, administrative inquiry, or a criminal or civil investigation.
 - (c) Assessing training value.
 - (3) Designated Information Technology Specialists.
 - (4) The Accreditation manager or their designee.
- C. Deputies are not permitted to view another deputy's recording(s) except for a work-related reason which is authorized by a supervisor at the rank of Lieutenant or above.
- D. A supervisor at the rank of Lieutenant or above must review the BWCS recording of an incident when:
 - (1) A deputy is involved in a reportable use of force incident.
 - (2) A deputy is injured during the performance of his or her duty.
 - (3) A complaint is filed concerning the deputy's actions.
- E. An electronic log will be automatically generated by the BWCS software to document access to, copying or distribution of all recordings. The log will include the:

- (1) Name of the employee accessing the recording;
 - (2) Reason for access;
 - (3) Date recording was accessed;
 - (4) Length of time it was reviewed;
 - (5) Any copying or editing;
 - (6) Person to whom the recording was distributed; and
 - (7) Supervisor authorizing access to the recordings.
- F. A BWCS recording of a constitutionally protected activity may not be used to identify persons present at the activity who are not suspected of being engaged in illegal activity or in need of assistance.
- G. The stored video and audio data from a BWCS recording may not be:
- (1) Used to create a database or pool of mug shots;
 - (2) Used as fillers in photo arrays; or
 - (3) Searched using facial or voice recognition software. However, this does not prohibit the use of recognition software to analyze the recording of a particular incident when a sworn supervisor has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording.
- H. Employees must not access, obtain, attempt to obtain, copy or convert for their personal use, any recording produced by a BWCS. Except as authorized by the Sheriff, employees must not:
- (1) Upload BWCS recordings to public and/or social media websites or,
 - (2) Share the recordings for any private, non-work related purpose.
- I. Except as authorized by the Sheriff or designee, employees must not copy, delete, alter, release, reuse, modify, share or tamper with BWCS recordings or data in any manner.
- J. A deputy will have access to their BWCS recording that is directly related to any administrative or formal internal investigation, complaint investigation, criminal investigation or civil suit where the deputy is named as a defendant. The deputy will have the ability to review their BWCS recording of the subject incident prior to making a statement.
- K. In an Administrative investigation, access to incident related BWCS recordings will be granted at least five (5) days prior to being interrogated.

- L. The Montgomery County State Attorney's Office (SAO) has access to the Montgomery County Sheriff's Office Evidence.com site for official purposes.

IX. Retention of Data

- A. All law enforcement related BWC data will be retained pursuant to the following schedule.

1	<i>Uncategorized</i>	<i>30 Weeks</i>	<i>No Restrictions</i>
2	<i>Traffic Stop (No Arrest)</i>	<i>3 Years</i>	<i>No Restrictions</i>
3	<i>Misdemeanor</i>	<i>3 Years</i>	<i>No Restrictions</i>
4	<i>Felony</i>	<i>3 Years</i>	<i>No Restrictions</i>
5	<i>Traffic Collisions (Non-Fatal)</i>	<i>3 Years</i>	<i>No Restrictions</i>
6	<i>Sex Offenses</i>	<i>7 Years</i>	<i>No Restrictions</i>
7	<i>Rape</i>	<i>50 Years</i>	<i>No Restrictions</i>
8	<i>Homicide</i>	<i>50 Years</i>	<i>No Restrictions</i>
9	<i>Traffic Collisions (Fatal)</i>	<i>7 Years</i>	<i>No Restrictions</i>
10	<i>Evidence/Custody</i>	<i>3 Years</i>	<i>No Restrictions</i>
11	<i>Non-Evidence</i>	<i>30 Weeks</i>	<i>No Restrictions</i>
12	<i>Restricted</i>	<i>Until Manually Deleted</i>	<i>Restricted</i>
13	<i>Unintended Recorded</i>	<i>Until Manually Deleted</i>	<i>Restricted</i>
14	<i>OIS/In Custody Death (Secondary Category)</i>	<i>Until Manually Deleted</i>	<i>Restricted</i>
15	<i>CEW Device Logs</i>	<i>Until Manually Deleted</i>	<i>Restricted</i>
16	<i>Pending Review</i>	<i>30 Weeks</i>	<i>No Restrictions</i>
17	<i>Until Manually Deleted</i>	<i>Until Manually Deleted</i>	<i>No Restrictions</i>
18	<i>Attachment/Seizure</i>	<i>3 Years</i>	<i>No Restrictions</i>
19	<i>Duress Alarm</i>	<i>3 Years</i>	<i>No Restrictions</i>
20	<i>Emergency Evaluation Petition</i>	<i>3 Years</i>	<i>No Restrictions</i>
21	<i>Eviction</i>	<i>3 Years</i>	<i>No Restrictions</i>
22	<i>Peace Order</i>	<i>3 Years</i>	<i>No Restrictions</i>
23	<i>Prisoner Transport</i>	<i>3 Years</i>	<i>No Restrictions</i>
24	<i>Protective Order</i>	<i>3 Years</i>	<i>No Restrictions</i>
25	<i>BWC Training/Demo/Test</i>	<i>30 Weeks</i>	<i>No Restrictions</i>
26	<i>Use of Force</i>	<i>3 Years</i>	<i>No Restrictions</i>
27	<i>Warrant Service</i>	<i>3 Years</i>	<i>No Restrictions</i>
28	<i>Service of Process (Other)</i>	<i>3 Years</i>	<i>No Restrictions</i>

- B. All original BWCS recordings are the property of the Montgomery County Sheriff's Office and will be securely stored and retained according to the retention schedule and consistent with state law and existing evidence protocols, unless a specific request is made to store them for a longer period of time by a person authorized by the Sheriff.
- C. BWCS recordings that can be used in an investigation or captures a confrontational encounter between a deputy and a member of the public will be deemed "evidentiary" and categorized and tagged according to the type of incident. Recordings that do not contain evidence or capture routine, non-confrontational encounters will be deemed "non-evidentiary".
- D. Non-evidentiary recordings will not be retained longer than established by the Sheriff's Office retention schedule, unless the Sheriff or designee deems it necessary to retain the recording.
- E. If a deputy activates a BWCS generating a recording of a prohibited use or that is not a law enforcement related encounter or activity, the deputy must notify his or her supervisor promptly. Recordings deemed by the Sheriff to have been recorded inadvertently and have no legitimate purpose to the Sheriff's Office, will be deleted promptly. An appropriate log entry will be created documenting the reason for the deletion of the data.

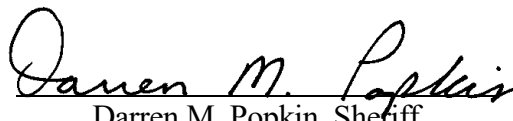
X. Release of BWCS Recordings and Data

- A. The release of BWCS recordings and data will be conducted in accordance with applicable public records laws, civil/criminal discovery rules and court process.
- B. The release of recordings of a deputy's death or injury is not permitted, unless there is a compelling law enforcement related reason to release the recording or in situations where the release of these recordings is required by law.
- C. Recordings may not be disseminated without written permission from the Sheriff or his designee.
- D. The redaction of the BWC data will be conducted by a Sheriff's Office employee designated by the Sheriff, an approved contractor or an approved employee of the Montgomery County Department of Police.
- E. BWC data that is released pursuant to a Freedom of Information Act (FOIA) request must be reviewed by the Assistant Sheriff of Administration prior to dissemination. This review is intended to ensure that proper redactions have been made with respect to non-involved or otherwise protected parties.

XI. Cancellation

This General Operational Procedure cancels and replaces General Operational Procedure 3.51, effective date 11/12/20

AUTHORITY:


Darren M. Popkin, Sheriff

07/08/2021