



# Policy & Procedure

## Chapter 105

### *Body Worn and Mobile Video Recorders*

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#### 105.0 BODY WORN AND MOBILE VIDEO RECORDERS

##### 105.1 PURPOSE

- A. The purpose of this policy is to direct deputies and supervisors in the proper use and maintenance of **Body Worn Video Recorders (BWV)** and **Mobile Video Recorders (MVR)** as well as directing how video will be utilized as a quality control mechanism and evidence.

##### 105.2 POLICY

- A. The policy is to provide deputies with body worn and mobile video recording devices in an effort to collect evidence to be used in the prosecution of those who violate the law, for deputy evaluation and training, and to provide accurate documentation of law enforcement and citizen interaction. However, videos may not always provide a complete representation of an event. Therefore, further investigation of the event may be warranted.
- B. Deputies assigned to the use of these devices shall adhere to the operational objectives and protocols outlined herein so as to maximize the effectiveness and utility of the BWV, MVR and the integrity of evidence and related video documentation. The BWV system may also serve to improve the accuracy of deputies' reports and testimony in court.

PROCEDURE

- A. The intent of this policy is that all deputies who utilize BWV equipment and a vehicle outfitted with MVR shall be trained on the manner in which the BWV and MVR should be tested, maintained, used and how the recorded events will be properly documented and maintained as evidence in future judicial or administrative proceedings.
- B. It is the responsibility of each individual deputy to test the BWV and MVR equipment at the beginning of each tour of duty. Deputies equipped with the BWV should ensure that the unit is charged prior to the beginning of their shift or special event.
- C. In the event that the equipment is found to be functioning improperly, deputies shall report the problem to their immediate supervisor as soon as practicable so that the information can be documented, and arrangements made for repair.
- D. Uniformed deputies assigned BWV cameras will wear them at all times while on duty or working a detail in any type of uniform. BWV will be worn as shown or demonstrated in training. Deputies will make every reasonable effort to ensure that the BWV recording equipment is capturing events by positioning and adjusting the BWV to record the event.
- E. Deputies are authorized to utilize body worn video recorders during law enforcement events when the deputy is a party to the conversation.
- F. The policy is to record with audio and video the following incidents:
  - 1. All calls for service in which citizen contact is made.
  - 2. All traffic stops.
  - 3. All citizen transports (excluding ride-along).
  - 4. All investigatory stops.
  - 5. All foot pursuits; and

6. Dispatched calls for service that are requested to be handled by telephone.

Examples of these incidents include, but are not limited to:

- a. Arrest of any person.
  - b. Searches of any kind.
  - c. Seizure of any evidence.
  - d. Request for consent to search.
  - e. Miranda warnings and response from in custody suspects.
  - f. Statements made by citizens and suspects.
  - g. Department canine use.
  - h. Issuance of written violations.
  - i. Arriving at law enforcement events and/or citizen contacts initiated by other deputies or law enforcement officers; and
  - j. Other incidents that the deputy reasonably believes should be recorded for law enforcement purposes.
- G. The recording shall continue until the law enforcement event or citizen contact is completed and the citizen involved departs or until the deputy, who is recording the event through a BWV and/or MVR discontinues his or her participation in the law enforcement event, completes the investigation or completes the citizen contact by leaving the scene.
- H. In the event a deputy deems it necessary to stop either audio and/or video recording, s/he will make a verbal statement of his/her intent to stop the recording and the reason.

- I. At the conclusion of an incident wherein a BWV and/or MVR was utilized, the deputy should “tag” the incident to assist in its possible future retrieval and to assist in management of its storage. “Tagging” is the categorization of an event by the recording deputy. “Tagging” is done by an approved method as soon as practicable. “Tagging” helps determine the length of time a video will be maintained based on the retention schedule.
- J. When “tagging” a video, the deputy will determine whether the purpose of the recording was for evidentiary or non-evidentiary purposes. Evidentiary purposes include circumstances where the deputy knows, or has reason to know, that the video contains material information that would tend to prove or disprove a fact in a subsequent judicial or administrative proceeding, including exculpatory information. Video of an arrest would be an example of evidentiary purpose. The following categories will be used for tagging videos:

1. Evidentiary (KDLA Records Retention Schedule 6948)

- a. Arrest
- b. Criminal Citation/Charges to be filed
- c. DUI (KDLA Records Retention Schedule L6950)
- d. Traffic Citation
- e. Traffic Collision
- f. Crisis Intervention (CIT)
- g. Non-Criminal Death
- h. Warrant Arrest
- i. Felony Report
- j. Misdemeanor Report

k. Missing Person Report

l. Detail

2. Non-Evidentiary (KDLA Records Retention Schedule L6949)

a. All others

K. If a deputy assigned BWV and/or MVR equipment participates in a law enforcement event or citizen contact and becomes aware that the event was not recorded using the BWV equipment, the deputy shall notify their immediate supervisor as soon as practicable that the event was not recorded and document the failure to record in the *Performance Monitoring Program*, Chapter 45.

L. A supervisor investigating a Response to Resistance or Show of Force shall ensure that the videos of all deputies who were on scene are uploaded into the Body Worn Video Management System. Once uploaded, the investigating supervisor shall confirm all classification details are accurate, consistent across all videos, and add a secondary classification of either "Response to Resistance" or "Show of Force".

105.4 PRIVACY

A. The BWV should not be activated when the deputy is on break, engaged in personal activities or when the deputy is in a location where there is a reasonable expectation of privacy, such as a restroom or locker room, except during an active incident.

B. For safety and confidentiality reasons, encounters with undercover contacts or confidential informants should not be recorded.

C. Undercover contacts or plainclothes contacts are exempt from this policy where utilizing a camera may create a dangerous

Chapter 105

Body Worn and Mobile Video Recorders

situation or otherwise diminish the investigative success of the operation.

- D. BWV activation is limited to situations involving official law enforcement activities authorized by law or court order, including consensual citizen encounters and investigation of law violations.
- E. The purposeful-intentional activation of BWVs during personal conversations between deputies and between deputies and supervisors involving counseling, guidance sessions, or personnel evaluations is prohibited by this policy unless all parties present agree to be recorded.
- F. Deputies may de-activate the audio and/or video function of the BWV and/or MVR when consulting another individual, including but not limited to, other law enforcement officers, supervisors, legal advisors, EMS or dispatchers, regarding the event. However, the deputy will remove him/herself from the immediate scene to the extent practicable and also make a verbal statement of his/her intent and the reason for stopping the recording.
- G. The BWV should not be activated in any medical treatment facility or hospital facility (when confidential information could be recorded) or inside of a building during an active religious ceremony or rite, except during an active incident (e.g. disorderly subject).
- H. The BWV should not be activated in PSCC or other communications locations unless engaged in an active law enforcement event.
- I. Video and audio recordings are not intended to be used for biometric technologies, including but not limited to, facial recognition, voice recognition, or photo arrays. Any such use must have prior approval of the Sheriff.

#### 105.5 VIDEO COORDINATOR RESPONSIBILITY, MEDIA STORAGE AND MANAGEMENT

- A. The original digital files from BWV recorders and MVRs will be downloaded and stored on a designated storage location to

### Chapter 105

Body Worn and Mobile Video Recorders

prevent destruction. Deputies will make every reasonable attempt to download video and audio files at the end of their work week, allowing files to be downloaded over their regular days off. If storage capacity is reached prior to a deputy's regular days off, the body worn video recorders will be downloaded as soon as possible.

- B. Non-evidentiary video and audio recordings will be retained on the designated storage location for sixty (60) days, after their creation (KDLA Records Retention Schedule L6949).
- C. Certain evidentiary videos will require the BWV Coordinator to review the case status of the video for further retention or for purging. Other evidentiary videos will be designated for automatic purging.
- D. Evidentiary video and audio recordings will be retained as listed below:

|                                |         |
|--------------------------------|---------|
| 1. Arrest:                     | 5 years |
| 2. Criminal Citation:          | 5 years |
| 3. DUI:                        | 5 years |
| 4. Report-Felony:              | 5 years |
| Report-Misdemeanor:            | 1 year  |
| 5. Traffic Citation (Non-DUI): | 1 year  |
| 6. Traffic Collision           | 1 year  |
| 7. Crisis Intervention (CIT)   | 1 year  |
| 8. Non-Criminal Death          | 1 year  |
| 9. Warrant Arrest              | 1 year  |
| 10. Missing Person Report      | 1 year  |
| 11. Detail                     | 60 days |

- |     |                                          |                                                                        |
|-----|------------------------------------------|------------------------------------------------------------------------|
| 12. | Response to Resistance/<br>Show of Force | 5 years or until all litigation<br>is complete, whichever is<br>longer |
| 13. | All Other                                | 60 days.                                                               |

- E. This media will be subject to the same restrictions and chain of evidence safeguards as detailed in the agency evidence control procedures.
- F. The Public Information Officer is responsible for making copies as needed by private attorneys for court purposes. Requests will be made on the appropriate form per the Open Records Act.
- G. Media will be released to another criminal justice agency for trial or other reasons by having a duplicate copy made. Requests shall be made on the appropriate form to the BWV Coordinator or the Public Information Officer. All recording media, recorded images and audio recordings are the property of this agency. Dissemination outside the agency, other than for court proceedings, is strictly prohibited without specific authorization of the Sheriff or designee.
- H. 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 Video Coordinator.
- I. Unauthorized and/or malicious destruction, editing, or deletion of video and audio files is prohibited.
- J. All digital video and audio files are subject to open records requests as permitted by Kentucky law. Recordings that are the subject of a denied open records request must be maintained until the dispute between the agency and the person or entity requesting the recordings is resolved. Video files may be open to review by an individual prior to filing an administrative complaint with the department, as permitted by Kentucky law.
- K. Digital media from the BWV and MVR should be stored on a secured cloud server with access limited to supervisory, Criminal Investigations, or other personnel designated by the



Sheriff. A non-supervisory deputy only has access to a recording that s/he has stored.

- L. At least once every sixty (60) day period, supervisors should review a recorded event of each deputy, including the access history. The supervisor will document this review under the deputy's name on the department BWV supervisor review worksheet.
- M. Supervisors should use these reviews as a quality control measure. Following such a review, the supervisor will hold a meeting with the deputy and provide the deputy with either positive reinforcement or constructive criticism with respect to the activity reviewed. Constructive criticism may relate to safety concerns, demeanor, policy issues or legal issues related to the event, as well as any other supervisory observation relative to performance. Results of the review should be documented on the monthly inspection.
- N. In cases of infractions, the reviewing supervisor shall determine proper disciplinary or corrective action.
- O. The video coordinator will quarterly audit the history of a random sample of recordings for any unauthorized access or improper purpose.

105.6      USE OF BWV RECORDINGS AS EVIDENCE IN  
CRIMINAL/MOTOR VEHICLE PROSECUTIONS

- A. When a deputy makes a recording of any action covered by this policy and a citation is issued or an arrest is made, the deputy shall note on the uniform citation that a video has been made. Unless otherwise prohibited (see section 105.7, Special Considerations) video may be viewed by the deputy for report documentation and preparation for prosecution.
- B. When a copy of a video is needed by a deputy for a court proceeding, a written request on the designated BWV request form shall be forwarded to the video coordinator to allow for its production.

- C. Where there is any indication that the BWV may contain “*Brady*” or exculpatory material, that recording must be saved and turned over to the prosecutor assigned to the case.
- D. Only the Sheriff, appropriate Sheriff’s Office personnel not otherwise prohibited herein, and appropriate prosecutorial authorities shall be allowed to review recordings except as: approved by the Sheriff or their designee; through the process of judicial evidentiary discovery; through court order; and/or by proper open records request pursuant to Kentucky law. The Department/Office reserves the right to deny any open records request as permitted or required by Kentucky law.

105.7

#### SPECIAL CONSIDERATIONS

A. **Recordings of Field Sobriety Tests; Pursuits and Traffic Stops (K.R.S. 189A.100):** Law enforcement agencies may record by visual and audible means the pursuit of a violator or suspected violator, the traffic stop, or field sobriety tests administered at the scene of an arrest for violation of KRS 189A.010 or such tests at a police station, jail, or other suitable facility subject to the following conditions:

1. The testing is recorded in its entirety (except for blood alcohol analysis testing).
2. The entire recording of the field sobriety tests and the entire recording of such portions of the pursuit and traffic stop as were recorded is shown in court unless the defendant waives the showing of any portions not offered by the prosecution.
3. The entire recording is available to be shown by the defense at trial if the defendant so desires regardless of whether it was introduced by the Commonwealth.
4. The defendant or his counsel is afforded an opportunity to view the entire recording a reasonable time before the trial to prepare an adequate defense; and
5. Recordings shall be used for official purposes only, which

shall include:

- a. Viewing in court.
- b. Viewing by the prosecution and defense in preparation for a trial.
- c. Viewing for purposes of administrative reviews and official administrative proceedings. Recordings shall otherwise be considered as confidential records; and
- d. The recording taken in accordance with this section shall, upon order of the district court, be destroyed after the latter of the following:
  - 1) Fourteen months, if there is no appeal of any criminal or traffic case filed as a result of the recording, or if the recording does not record the actual happening of an accident involving a motor vehicle.
  - 2) Fourteen months after a decision has been made not to prosecute any case upon which an arrest has been made or a citation issued as a result of the recording, if the recording does not record the actual happening of an accident involving a motor vehicle.
  - 3) Twenty-six months, if there is no appeal of any criminal or traffic case filed as a result of the recording, if the recording records the actual happening of an accident involving a motor vehicle.
  - 4) After all appeals have been exhausted arising from any criminal or traffic case filed as a result of the recording.
  - 5) At the conclusion of any civil case arising from events depicted on the recording; or

## Chapter 105

Body Worn and Mobile Video Recorders

- 6) At the conclusion of the exhaustion of all appeals arising from any law enforcement agency administrative proceedings arising from events depicted on the recording; and
  - e. Public officials or employees utilizing or showing recordings other than as permitted in this chapter or permitting others to do so shall be guilty of official misconduct in the first degree.
  - 6. Public officials or employees utilizing or showing recordings other than as permitted in this chapter or permitting others to do so shall be guilty of official misconduct in the first degree.
- B. **Recording in Schools and/or Educational Facilities:** BWV should only be activated or limited to when deputies are responding to criminal complaints/activity; or violations of school policy as limited by federal Family Educational Rights and Privacy Act (FERPA) guidelines. (NOTE: No release to or viewing by outside entities of this video shall be made unless authorized by a judicial order).
- C. **Recording of Critical Incidents:** If a deputy is involved in a critical incident, deputy involved shooting, response to resistance resulting in injury or where allegations of serious wrongdoing are made, the Department reserves the right to limit or restrict a deputy from viewing a video and the BWV device may be seized by a supervisor.
- D. **Improper Viewing of Recordings:** At no time shall BWV recordings be utilized as a source of entertainment or be viewed for any reasons not official.
- E. **Supervisory Oversight:** Circumstances may occur where the prolonged recording of an event would provide limited or no benefit to the stated purpose of this policy. These include, but are not limited to, extended, stationary traffic details, community events such as festivals, fairs, and sporting events and other similar, off-duty details. The activation of the BWV during these types of events is not required except in the specific event of an incident as indicated in section 105.3 above. A deputy may otherwise request permission from a supervisor to not have the BWV activated during an event,

## Chapter 105

except in the specific event of an incident as indicated in section 105.3 above.

## Chapter 105

Body Worn and Mobile Video Recorders