

	<b>SHERBURNE COUNTY SHERIFF'S OFFICE</b>  <b>SHERIFF'S OFFICE POLICY AND PROCEDURE MANUAL</b>	<b>703</b>  Revised: 08/11/2022
	Title: <b>USE OF BODY-WORN CAMERAS</b>	Pages: 7

### 703.1 PURPOSE AND SCOPE

The primary purpose of using body-worn-cameras (BWCs) is to capture evidence arising from police-citizen encounters. This policy sets forth guidelines governing the use of BWCs and administering the resulting data. Compliance with these guidelines is mandatory, but it is recognized that deputies must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain, and rapidly evolving.

This policy governs the use of BWCs in the course of official duties. It does not apply to the use of squad-based (dash-cam) recording systems. The sheriff or sheriff's designee may supersede this policy by providing specific instructions for BWC use to individual deputies, or providing specific instructions pertaining to particular events or classes of events, including but not limited to political rallies and demonstrations. The sheriff or designee may also provide specific instructions or standard operating procedures for BWC use to deputies assigned to specialized details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities.

### 703.2 POLICY

It is the policy of this office to authorize and require the use of department-issued BWCs as set forth below, and to administer BWC data as provided by law.

### 703.3 DEFINITIONS OF PHRASES USED IN THIS POLICY

**MGDPA or Data Practices Act** - Refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.

**Records Retention Schedule** - Refers to the General Records Retention Schedule for Minnesota Counties.

**Law Enforcement-Related Information** - Information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

**Evidentiary Value** - The information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or deputy.

**General Citizen Contact** - An informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a wrecker, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

**Adversarial** - A law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing,

yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

**Unintentionally Recorded Footage** - A video recording resulting from a deputy's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in station house locker rooms, restrooms, and recordings made while deputies were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

**Test Recording Footage** - A momentarily check of the BWC system conducted by a deputy to ensure the system is functioning correctly.

**Official Duties** - For purposes of this policy, means that the deputy is on duty and performing authorized law enforcement services on behalf of this office.

#### **703.4 USE AND DOCUMENTATION**

- (a) Deputies may use only department-issued BWCs in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this office.
- (b) Deputies who have been issued BWCs shall operate and use them consistent with this policy. Deputies shall make sure their BWC is working properly at the beginning of each shift. Deputies noting a malfunction shall promptly report the malfunction to the deputy's supervisor and shall document the malfunction with an ICR. Supervisors shall take prompt action to address malfunctions and document the steps taken in the ICR.
- (c) Deputies should wear their issued BWCs on their uniform shirt or jacket (if worn) in a position near their upper chest area.
- (d) Deputies must document BWC use and non-use as follows:
  - 1. Whenever a deputy makes a recording, the existence of the recording shall be documented in an incident report if a case is generated or in the CAD notes if only a call is generated.
  - 2. Whenever a deputy fails to record an activity that is required to be recorded under this policy or captures only a part of the activity, the deputy must document the circumstances and reasons for not recording in a supplement report to the original ICR if a case is generated, or in the CAD notes if only a call is generated. Supervisors shall review these reports and initiate any corrective action deemed necessary.
- (e) The sheriff's office will maintain the following records and documents relating to BWC use, which are classified as public data:
  - 1. The total number of BWCs owned or maintained by the agency;
  - 2. A daily record of the total number of BWCs actually deployed and used by deputies;
  - 3. The total amount of recorded BWC data collected and maintained; and
  - 4. This policy, together with the Records Retention Schedule.

#### **703.5 GENERAL GUIDELINES FOR RECORDING**

- (a) Deputies shall activate their BWCs when anticipating that they will be involved in, become involved in, or witness other officers of this agency involved in a pursuit, *Terry* stop of a motorist or pedestrian, search, seizure, arrest, use of force, adversarial contact, and during other activities likely to yield information having evidentiary value.

However, officers need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Use and Documentation guidelines, part 703.4(d)(2).

- (b) Deputies have discretion to record or not record general citizen contacts.

- (c) Deputies have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.
- (d) Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. The deputy having charge of a scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, deputies shall state the reasons for ceasing the recording on camera before deactivating their BWC. If circumstances change, deputies shall reactivate their cameras as required by this policy to capture information having evidentiary value. A statement on camera such as, "Everything has settled down and the action appears to be over" should often suffice as a statement of reasons for stopping to record.
- (e) Deputies shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy, except as allowed in 703.6 (c).
- (f) Notwithstanding any other provision in this policy, deputies shall not use their BWCs to record other agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

### **703.6 SPECIAL GUIDELINES FOR RECORDING**

Deputies may, in the exercise of sound discretion, determine:

- (a) To use their BWCs to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.
- (b) To use their BWCs to take recorded statements from persons believed to be victims of and witnesses to crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.
- (c) To momentarily mute the BWC microphone for the purpose of strategic consultation amongst deputies.

In addition:

- (a) Deputies need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWCs shall be activated as necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.
- (b) Deputies need not use their BWC to record their transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails. In-squad cameras will suffice for these types of transports.

Deputies should not record with BWC's in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident. Deputies may want to restart BWC at the time subject is removed from the car and transferred to the custody of another.

In addition, for Transport/Court Security functions:

- (a) Deputies shall activate their BWCs when responding to an assigned call for service or when handling a self-initiated call for service such as a traffic stop, walk-in complaint, or any other self-discovered activity requiring involvement or interaction.
- (b) Deputies shall not activate their BWCs within any correctional or secure detention facility.

- (c) Deputies shall not activate their BWCs in an active courtroom unless responding to a disturbance within the courtroom or taking someone into custody.
- (d) Deputies shall not activate their BWCs during the course of scheduled inmate or detainee medical appointments or medical guard details unless there is an active disturbance or hostile conduct involving the inmate or detainee.

### **703.7 DOWNLOADING AND LABELING DATA**

- (a) Each deputy using a BWC is responsible for assuring the proper transfer of the data from his or her BWC system during his or her shift without incurring overtime. The intent is to prevent an excessive buildup of data on the BWC DVR. However, if the BWC DVR contains data that is likely to be needed immediately for an ongoing criminal investigation or is of a serious nature, the deputy shall download the data prior to the end of his or her shift.
- (b) Deputies shall categorize the BWC data files by choosing the category that best describes the event within the provided menu options at the time of video capture.
- (c) Upon a data request, Records shall forward notification of the request to the investigating deputies. Deputies shall then make an attempt to identify those persons whose image may have been captured in the BWC video footage. The identity of these persons is important in order to comply with MGDPA requirements related to data subjects. This data should be documented and added to a narrative report or CAD notes. At times it will be impractical to identify every individual at a scene, but special attention should be given to identifying the following: Victims, undercover deputies, informants, mandated reporters, juvenile witnesses (if the nature of the event or activity justifies protecting their identity) and juvenile delinquents, and individual complainants.
- (d) School Resource Officers should transfer data each week or before end of shift if data is likely to be needed immediately for an investigation or is of a serious nature.

### **703.8 ADMINISTERING ACCESS TO BWC DATA**

- (a) **Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:
  - 1. Any person or entity whose image or voice is documented in the data.
  - 2. The deputy who collected the data.
  - 3. Any other deputy whose voice or image is documented in the data, regardless of whether that deputy is or can be identified by the recording.
- (b) **BWC data is presumptively private.** BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
  - 1. BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.
  - 2. Some BWC data is classified as confidential (see c. below).
  - 3. Some BWC data is classified as public (see d. below).
- (c) **Confidential data.** BWC data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the “private” classification listed above and the “public” classifications listed below.
- (d) **Public data.** The following BWC data is public:
  - 1. After an investigation is complete, BWC data are public if they document the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous.
  - 2. After an investigation is complete, BWC data are public if they document the use of force by a peace officer that result in substantial bodily harm.
  - 3. Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release

must be redacted [*if practicable*]. In addition, any data on undercover deputies must be redacted.

4. Data that documents the final disposition of a disciplinary action against a public employee.

However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveals protected identities under Minn. Stat. § 13.82, subd. 17 (e.g., certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories listed above.

#### 703.8.1 ACCESS TO BWC DATA BY NON-EMPLOYEES

Deputies shall refer members of the media or public seeking access to BWC data to the records supervisor who shall process the request in accordance with the MGDPA and other governing laws. In particular:

- (a) An individual shall be allowed to review recorded BWC data about him- or herself and other data subjects in the recording, but access shall not be granted:
  1. If the data was collected or created as part of an active investigation.
  2. To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal identities protected by Minn. Stat. § 13.82, subd. 17.
- (b) Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction:
  1. Data on other individuals in the recording who do not consent to the release must be redacted.
  2. Data that would identify undercover deputies must be redacted.
  3. Data on other deputies who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.

#### 703.8.2 ACCESS BY PEACE OFFICERS AND LAW ENFORCEMENT EMPLOYEES

No employee may have access to the department's BWC data except for legitimate law enforcement or data administration purposes:

- (a) Deputies may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.
- (b) Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.
- (c) Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.

#### 703.8.3 OTHER AUTHORIZED DISCLOSURES OF DATA

Deputies may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Deputies should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video.

In addition:

- (a) BWC data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of the disclosure.

- (b) BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

### **703.9 DATA SECURITY SAFEGUARDS**

The Sherburne County Sheriff's Office IS will provide storage designed to back up all recordings.

- (a) Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view agency BWC data.
- (b) Deputies shall not intentionally edit, copy, alter, or erase any BWC recording unless otherwise expressly authorized by the sheriff or the sheriff's designee.
- (c) As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this office shall obtain an independent biennial audit of its BWC program.

### **703.10 AGENCY USE OF DATA**

- (a) Each time a BWC video is reviewed within the WatchGuard, the employee shall note the reason why for auditing purposes. Until the WatchGuard system is updated to include a data field for this purpose, employees shall document the reason for viewing in the comment section of the call in ProPhoenix RMS (e.g. "Viewed BWC for monthly audit," "Viewed BWC for report writing purposes," etc). If a case has more than one BWC video file, employees shall identify each video file reviewed and list a reason for viewing them.
- (b) At least once a month, supervisors will randomly review BWC usage by each deputy to ensure compliance with this policy.
- (c) In addition, supervisors and other assigned personnel may access BWC data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about deputy misconduct or performance.
- (c) Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline.
- (e) Deputies should contact their supervisors to discuss retaining and using BWC footage for training purposes. Deputy objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training deputies may utilize BWC data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

### **703.11 DATA RETENTION**

- (a) BWC data shall be retained for a minimum period of 90 days
- (b) Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.
- (c) Certain kinds of BWC data must be retained for six years:
  1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review.
  2. Data documenting circumstances that have given rise to a formal complaint against a deputy.
- (d) Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.
- (e) Subject to Part f. (below), all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.
- (f) Upon written request by a BWC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The office will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.
- (g) The office shall maintain an inventory of BWC recordings having evidentiary value. The inventory will be kept in the BWC management system.

(h) The office will post this policy, together with its Records Retention Schedule, on its website.

**703.12 COMPLIANCE**

Supervisors shall monitor for compliance with this policy. The unauthorized access to or disclosure of BWC data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. § 13.09.