

Portable Audio/Video Recorders

424.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and management of portable audio/video recorders and recorded data by Members of this Office while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

The purpose of this program is to enhance the mission of the Office by providing a method of recording contacts between members of the Office and the public. Portable recorders/body worn cameras increase the accountability of Members and citizens, improve community relations, and provide transparency for the Office.

EPSO adopts this policy with the awareness that a recording from a portable recorder/body worn camera does not capture the full context of a police-citizen contact, nor does it have the capability of capturing an entire scene of an incident. The body worn camera selected by this Office has a field of vision of approximately 90 degrees. The recording is incidental to the contact and the focus of the Member must remain on fulfilling the law enforcement duty, not on the efficacy of the video. Because of the limitations of the camera, and the placement of the camera, a recording may capture different information and stimuli than is perceived by a Member, and may record more information than a Member retains or observes under the stress of a law enforcement contact. Members must make decisions with respect to any incident based on the totality of the circumstances at the moment the decision is made, using information that is perceived and available to the Member.

No member shall jeopardize his/her safety, or the safety of others, in order to activate a portable recorder/body worn camera, or to allow the camera to have a better "view" of the incident.

This policy does not apply to the interception of communications for authorized investigative purposes or to mobile audio/video recordings.

424.1.1 DEFINITIONS

MEMBER: An employee or volunteer of the Office, sworn or non sworn, irrespective of rank.

BODY WORN CAMERA (BWC): An electronic device, provided by the Office, capable of capturing audio, video, or both in a self contained, rechargeable unit.

CITIZEN: A person who is not a Member. This definition does not encompass citizenship, either nationally or locally. It is the policy of the EPSO that all persons are treated with

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respect, and receive the full protection of the law. EPSO does not discriminate or make decisions based on race, color, religion, gender, age, national origin or ancestry, genetic information, disability, or sexual orientation.

DIGITAL AUDIO RECORDER: An electronic device used to capture audio recordings electronically and capable of storing the recording on the device. The manufacturers and models of these devices are not currently restricted by the Office and can be purchased by members for use.

DIGITAL EVIDENCE MANAGEMENT SYSTEM: A CJIS-certified software package (such as AVAILWEB) for the management and access of recordings.

LAW ENFORCEMENT CONTACT: Contact, or the actions resulting from contact, that involves the Member's duty as a law enforcement officer with respect to response and investigation of a criminal matter.

PORTABLE RECORDER: An electronic device, provided by the Office, capable of capturing audio, video, or both in a self contained, rechargeable unit.

424.2 POLICY

The El Paso County Sheriff's Office may provide members with access to portable recorders/body worn cameras, either audio or video, or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Office by providing a visual or audio recording of contacts between members of the Office and the public. Portable recorders/body worn cameras will be used primarily in contacts deemed to be law enforcement encounters. However, the member may apply discretion and may record contacts with citizens regarding non-law enforcement issues. In applying discretion, Members will balance the need for the recording against the privacy concerns of the citizen(s) and other sensitive matters. At no time is a member expected to jeopardize his/her safety, or the safety of others, in order to activate a portable recorder/body worn camera.

The BWC program and the associated policy and SOPs will be reviewed at least annually to ensure they meet the needs of the public, the Office, and associated criminal justice partners, agencies, and organizations.

424.3 NO EXPECTATION OF PRIVACY FOR MEMBER

All recordings made by Members acting in an official capacity shall remain the property of the Office. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

Members may request deletion of accidental recordings of personal business or personal conversations through the submission of a memorandum through their chain of command.

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Only the division commander may delete an accidental recording. Recordings related to law enforcement contact and performance of the Member's official duty shall not be deleted.

424.4 MEMBER RESPONSIBILITIES

Body worn cameras will be assigned to uniformed deputies who have routine contact with the public in their duty assignment. All BWCs will be assigned by the Office. No personally owned BWCs will be permitted for use. Prior to beginning each shift, each member assigned a BWC will be responsible for ensuring the recorder is in good working order, to include video, audio, and power functionality.

Uniformed members, unless necessary to the investigation and approved by a supervisor, will wear the recorder in a conspicuous manner on the front of their shirt, tactical vest, or jacket. Members will never intentionally obscure or cover the BWC's view of events.

Any member assigned to a non-uniformed position may carry an approved portable recorder/body worn camera when they believe such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity or for approved investigative reasons, non-uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons they are being recorded, whenever possible. If asked, and safety is not compromised, members shall inform those inquiring that a portable recorder/body worn camera is in use.

Members are responsible for their assigned portable recorder/body worn camera and will treat it with care. If a portable recorder/body worn camera is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable.

When using a portable recorder/body worn camera, the assigned Member shall record his/her name, EPSO identification number, the date, time, location, and type of incident. This shall be done at the beginning and end of an incident, where practical. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

Members will document the existence of a recording in any report, citation, FIR card, or other official record of the contact. Documentation will include instances where the recorder malfunctioned or the member deactivated the recording. Members will also include in their report, or citation notes, the names of other members present with activated portable recorder/body worn cameras. If other members at the scene write a supplemental report, they will document in a written supplement whether they were wearing a portable recorder/body worn camera and whether it was activated. Reasons the recorder was not activated or was deactivated must be documented in a supplement.

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Recordings from portable recorder/body worn camera must only be transferred/saved to the secure digital evidence management system authorized by EPSO. Uploading of a BWC shall be done in accordance with manufacturer specifications and Office training. The product used by the Office employs a secure, cloud-based storage platform. The system has an internal audit system that shows when BWC recordings have been viewed, shared, or redacted. Other recordings shall be preserved as evidence in accordance with Office policy.

Members shall follow all procedures with respect to transfer, and documentation of recordings designated for retention. Location, date and time of incident will be documented by the Member as part of the digital evidence management system. Members must use their best judgment when activating/deactivating the portable recorder/body worn camera and should provide required documentation at the completion of the incident, if time permits.

Members shall not edit or redact recordings in any fashion. Recordings are of evidentiary value and shall be maintained without interference, change, or alteration by any member of the EPSO.

Alteration of a recording will result in disciplinary action. A criminal investigation regarding the alteration of evidence may also be initiated.

Members will be trained in the use, management, and maintenance of portable recorder/body worn cameras and will maintain familiarity with this policy. Additional training may be required when equipment or policies are updated, changed, or revised, and to ensure the effective operation of portable recorder/body worn cameras. Portable recorders/body worn cameras will not be issued to members who have not received the required training.

424.5 ACTIVATION OF THE PORTABLE RECORDER/BODY WORN CAMERA

This policy is not intended to describe every possible situation in which the portable recorder/body worn camera should be used. Members shall activate the recorder any time they believe it would be appropriate or valuable to record an incident, i.e. for evidentiary purposes, for mutual accountability of the member and citizen, or to preserve visual/audio information. If a member is unsure whether or not the portable recording device should be activated, the device will be activated.

Recordings do not replace written reports or evidence photographs, which will be generated in accordance with policy and in the same manner as they were before the implementation of the BWC program. Members shall not use the existence of a recording as a reason to write a less detailed report.

At no time is a member expected to jeopardize his/her safety, or the safety of others, in order to activate a portable recorder/body worn camera. However, the recorder will be activated prior to arrival on scene, or as soon as practicable, in the following situations:

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- (a) All law enforcement and investigative contacts including stops, calls for service, disturbances and fights, mental health calls, field interview (FI) situations, the giving of Miranda advisement and questioning of suspects, and the interviewing of witnesses and victims. However;
1. Members will use discretion when interviewing victims of violent crimes or confidential informants, or when in contact with undercover officers. If a request is made to deactivate the recorder, members will consider the potential evidentiary value of a recorded interview against the reasons for the request before making a decision.
 2. Discretion will also be used when recording in the patient areas of medical/mental health facilities or ambulances, in schools, or in locker rooms, dressing rooms, or restrooms.
 3. In certain circumstances, such as when an interviewee or juvenile is uncomfortable with videotaped recording, members may direct the camera away from the individual and record audio only. This request should be clearly explained on the recording and in the associated report.
 4. The recording of security procedures and security measures of citizens, residences, or organizations should be avoided, where possible.
 5. When inside private residences, and exigent circumstances do not exist (i.e. an invite or permission was needed to enter the residence), members should advise those present that the portable recorder/body worn camera is activated. In these situations, the recorder may be deactivated upon request.
- (b) Traffic contacts including, but not limited to, traffic violations, pursuits, motorist assists, traffic accidents, DUIs (including field sobriety maneuvers), and crime interdiction contacts.
- (c) Officer-initiated activity for which a member would normally notify Dispatch, such as suspicious incidents, suspicious vehicles, or citizen contacts.
- (d) The execution of search or arrest warrants, consensual searches of persons or vehicles, K9 searches, and searches performed as the result of exigent circumstances. When possible and practical, conversations regarding consent should be captured.
- (e) Any contact that becomes adversarial.
- (f) During the transport of detainees and arrestees who are combative, volatile, or non-compliant. The camera will be deactivated upon arrival in the booking area of the Criminal Justice Center (CJC). The member will note on the recording that the arrestee/detainee has been transferred into the custody of CJC personnel.
- (g) Members have full discretion to activate the portable recorder/body worn camera any time they believe it would be appropriate or valuable to record an incident.
- (h) Members will activate their portable recorder/body worn cameras when ordered to do so by a supervisor.

Members who repeatedly or continuously fail to activate and/or prematurely deactivate their portable recording device in situations such as those listed above may be subject to further training and/or disciplinary action.

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EPSO is aware that some incidents may not begin as ones which would normally be recorded (for example, a business check may become a citizen contact or report of a crime). It is also understood, therefore, that recordings may not always have a clear starting point. The lack of a clear starting point does not indicate that the recording was purposefully or negligently delayed.

EPSO is also aware that a pursuit of a vehicle or person is likely to happen very quickly, and may not be predictable. Further, it is unlikely a body worn camera will provide evidentiary value as it will be blocked by the dashboard/steering wheel of the vehicle.

Members are advised that the safety of the public, and safety of Members is paramount.

Members shall not compromise safety, or the necessity of a pursuit, in order to activate a BWC.

Colorado Revised Statute § 18-9-303 permits either a sender or a receiver to record any conversation, provided that one party to the conversation gives consent. Therefore, a citizen need not consent to the recording. Members should remain sensitive, however, to the dignity of individuals being recorded. Members will exercise sound discretion with respect to privacy by discontinuing recording whenever it reasonably appears that privacy concerns outweigh the legitimate law enforcement interest in recording. Recording should resume when privacy is no longer an issue unless the circumstances no longer fit the criteria for recording.

424.5.1 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER

Colorado law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (CRS § 18-9-303). Members may surreptitiously record any conversation during the course of a criminal investigation when the recording is lawful and the member reasonably believes such a recording will be beneficial to the investigation.

It should be noted that the purpose of this program is to collect evidence and to protect the safety and property of members and the citizens of El Paso County. Accordingly, unless there is a beneficial investigative reason, BWCs should not be concealed or hidden, but should be worn in an obvious position on the front of the member's shirt, tactical vest, or jacket, when required by this policy.

424.5.2 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

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424.6 DEACTIVATION OF THE PORTABLE RECORDER/BODY WORN CAMERA

Once activated, the portable recorder/body worn camera should remain on continuously until the Member's participation in the incident is complete or the situation no longer fits the criteria for activation. Prior to deactivation, Members should announce the reason for termination of the recording. Recording may be stopped during significant periods of inactivity, such as report writing, extended driving time, or other breaks from direct participation in the incident (traffic control, etc.). The portable recorder/body worn camera will also be deactivated when members are in briefings or they are discussing investigative matters, tactics, or strategy with supervisors, other Members, or with a training officer or trainee.

If a citizen requests that a recorder be deactivated, the member should consider the potential evidentiary value of the recording against the request before making a decision. Members will refrain from terminating recordings of confrontational or adversarial interactions, unless continued recording could potentially jeopardize the safety of the Member or others present. Requests for termination of a recording should, where possible, be recorded. Members should announce the request and the termination of the recording prior to deactivation.

424.7 PROHIBITED USE OF PORTABLE RECORDERS/BODY WORN CAMERAS

Members are prohibited from using Office-issued portable recorder/body worn cameras for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity. Members shall not duplicate or distribute recordings, except for authorized and legitimate purposes. All recordings shall be retained by the Office. Intentional misuse of equipment or copying of recordings may result in disciplinary action, and will be investigated as a Level I complaint.

Members shall not use portable recorders/body worn cameras while employed in an off-duty capacity or during operations where the recording will likely capture security procedures, unless ordered by a supervisor or with prior approval from their division commander.

Members shall not surreptitiously record another office member without a court order or unless lawfully authorized by the Sheriff or the authorized designee (see EPSO Policy 313(48)).

Portable recorder/body worn cameras should not be activated in situations where citizens are peacefully picketing or protesting in exercise of First Amendment rights. An exception would be a situation where a violation of criminal law is occurring or members have legitimate law enforcement reasons to be recording in the vicinity of the protestors.

424.8 RETENTION OF RECORDINGS

Any time a Member records any portion of a contact the member reasonably believes constitutes evidence in a criminal case, the Member shall label the recording with the related case number.

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The file shall be uploaded and stored in accordance with the digital evidence management system, applicable manufacturer specifications, Office policy and procedures .

If a Member reasonably believes a recorded contact may be beneficial in a non-criminal matter (for example, a hostile contact), the member should promptly notify a supervisor of the existence of the recording. A member may retain a recording without supervisor approval if the Member believes it is in the best interest of the Office, or the Member. Recordings will be labeled according to appropriate categories with case number when available (e.g. Misdemeanor Citation, Felony Case Report, Use of Force, etc.). Labels will be used to ensure appropriate retention of recordings according to the retention requirements listed in 424.8.1.

424.8.1 RETENTION REQUIREMENTS

All recordings shall be maintained according to the EPSO video retention schedule. Retention periods are determined based on the type of law enforcement contact, and with consideration of criminal/ civil statute of limitations, and possibility of administrative review. Any member, supervisor, professional standards representative, or citizen may request that a recording be retained. See 424.8.2 for procedures regarding citizen request to retain recording. Recordings will be deleted or destroyed as soon as practical pursuant to this section.

Evidentiary recordings relating to criminal incident: Recordings that are kept as evidence in a law enforcement encounter shall be retained pursuant to the retention schedule approved by the Office of the District Attorney, and utilized by the evidence unit of EPSO (See Attachment A). Destruction of evidence shall be done in accordance with policy and procedures of the evidence unit. Any recording relating to an incident where an individual or member incurs serious bodily injury or death shall be preserved as evidence, regardless of whether criminal charges are filed. These recordings will be made available to the Office of the District Attorney for discovery purposes.

Recordings relating to Adverse Citizen Contact: Recording that does not relate to an incident involving serious bodily injury or use of force and is a non-criminal event will be retained for a period of 90 days. The member, a supervisor, professional standards representative, or the citizen may request the recording be held as evidence and not destroyed for a period of two years.

Recordings relating to use of force, where EPSO policy requires documentation and tracking: Recordings shall be held for three years. If a criminal charge is filed related to the use of force, either against the member or the citizen, the recording shall be uploaded and made available for discovery and retained according to the retention schedule approved by the Office of the District Attorney (see retention schedule). This retention schedule, depending on the crime alleged, may require the retention of the item for a period longer than three years.

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Recordings related to vehicle pursuit, where EPSO policy requires documentation and tracking: Recordings shall be held for a minimum of two years. If a criminal charge is filed related to a use of force, either against the member or the citizen, the recording shall be uploaded and retained according to the retention schedule approved by the Office of the District Attorney (see retention schedule). This retention schedule, depending on the crime alleged, may require the retention of the item for a period longer than two years.

Recordings related to citizen complaint: When a citizen makes a complaint (to include verbal or written), the supervisor receiving the complaint shall mark the recording relating to the complaint, if available at the time of the complaint, for retention. The supervisor shall document the retention of the recording. Recordings retained pursuant to a citizen complaint shall be retained for a minimum of 180 days.

Other Recordings:

All other recordings will be maintained according to the EPSO video retention schedule unless member, supervisor, professional standards representative, or citizen requests that recording be retained. Policy or form regarding citizen request for retention of recording shall be located on the website of EPSO. Officers are encouraged to notify citizens a request to retain a recording must be made within 45 days and to refer to the website for more information.

424.8.2 PROCEDURE FOR CITIZENS TO REQUEST RETENTION OF A RECORDING

A citizen may request retention of recording either via the website, or by filling out a form and mailing/bringing the form into the Office of the Sheriff. The body camera administrator is responsible for maintaining a database of all requests, and the documentation that the request was able to be filled or not filled.

If the request is made via the web, the following procedure will occur:

Citizen will click on link from the website. A form will open that will allow the citizen to fill in the relevant information. Once the citizen fills out the form, and the form is sent, the form will be received by the body camera administrator. Upon receipt, the form will be assigned an individual request number. Upon receipt, the citizen will receive an email back confirming receipt and giving the request number and the name and number of the body camera administrator. The body camera administrator shall then mark the video for a two year retention period, and send communication back to the citizen that this was completed. If it is unable to be completed, a communication shall be sent to the citizen stating why the request was unable to be completed.

If the request is made via a paper form, the following procedure will occur:

The citizen may print a form from the website or receive a form in the lobby of the Office of the Sheriff. When the completed form is received by the Office, it will be date stamped and

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initialed by the employee receiving the request. The completed form will be given to the body camera administrator who will log the request, assign it a request number, and mark the video for a two year retention period. A communication will be sent to the requestor that the video was marked for a two year retention period. If the request is unable to be completed, a communication shall be sent to the citizen stating why the request was unable to be completed.

424.9 REVIEW OF RECORDINGS

All recordings collected using portable recorder/body worn cameras are considered criminal justice records pursuant to C.R.S. 24-72-301 et seq. Access and review of recordings will be allowed by authorized users and for official purposes only. Access or review of recordings for purposes other than official purposes is strictly prohibited. People not employed by the Office will not be allowed to view recordings, except when review of a recording is permitted by a supervisor, as part of a Professional Standards investigation, pursuant to court order or as required for litigation purposes.

Recordings shall not be used by any Member for the purpose of embarrassment, intimidation, or ridicule. Recordings shall never be placed on social media by a Member. Should a recording be used for training purposes, focus shall remain on the actions of the member. Disparaging or disrespectful comments shall not be allowed or tolerated.

Members may review their own recordings when creating reports, preparing for court, or for other law enforcement purposes. However, Members shall not create or retain copies of recordings, nor shall they attach portable recorder/body worn cameras to any device not approved by the Office for that specific use. Members shall not save any recording to any system/device/cloud that is not approved by the Office. There are no circumstances that allow tampering, editing, or deletion of any part of a recording relating to a Member's official duty.

Members may choose to alert a supervisor if they believe a recording may be useful for training, a tactical debrief, or for administrative purposes. Recordings identified as potential training tools will be reviewed and approved for use by the Member(s) present in the recording and the respective bureau chief(s) before being made available to the training unit.

If a Member(s) is involved in a critical incident, necessitating the response of the Deadly Force Incident Team (DFIT), the Member will not review the recording unless authorized by the DFIT team. Best practice indicates that the BWC will be immediately provided to a member of the DFIT team, or an EPSO supervisor, while on scene, if safe. The BWC and the recording will be placed into evidence by the DFIT team. This procedure allows for the Member to be interviewed based on his/her perceptions and observations at the time of the action. This allows the Graham v. Connor use of force standards to be consistently applied.

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424.9.1 SUPERVISOR AND COMMAND AUTHORITY REVIEW

Supervisors are authorized to review relevant recordings under the following circumstances. Reviews outside the scope of these categories are not permitted.

ADMINISTRATIVE REVIEW:

A supervisor/member may review specific BWC media or data for the purpose of investigating a personnel complaint, administrative investigation, or criminal investigation. These reviews may also be used to identify useful training videos and identification of videos for recognition of meritorious service. Videos for training will not be used without the consent of the member recording the video.

PERFORMANCE REVIEW:

Supervisors will conduct random monthly reviews of twelve recordings pertaining to his/her area of responsibility in order to assess a member's performance as well as to identify videos that may be appropriate for training. These reviews will be used to enhance the annual performance review of members and allow for the additional monitoring of members on a probationary status.

COMPLIANCE REVIEW:

Monthly, supervisors will randomly review twelve recordings pertaining to his/her area of responsibility to ensure that the equipment is operating properly and that members are using the cameras appropriately and in accordance with this policy and training.

COMMAND REVIEW:

Lieutenants will randomly conduct quarterly reviews of reports and video which have been previously reviewed as a result of Administrative, Compliance and Performance reviews.

Recordings may also be reviewed:

- (a) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (b) In compliance with a criminal justice record request, after consultation with a member of the Office of the County Attorney. Recordings with respect to active investigations shall not be released. Should a recording be released pursuant to CRS 24-72-301 et seq, a copy of the recording may be redacted or edited pursuant to the Criminal Justice Records Act (CRS 24-72-301 et seq)
- (c) Any request for BWC media made from outside the Office will comply with both the records disclosure and records management policies of the Office, as well as the Colorado Open Records Act (CORA) and the Colorado Criminal Justice Records Act (CCJRA). Criminal justice system partners, such as the District Attorney's Office, will have limited access to the BWC system to download and view recorded evidence pertaining to a specific case.

Accessing of recordings will be tracked to ensure policy compliance and accountability. AVAILWEB software has audit trails for all transactions and will be monitored to ensure compliance with this policy.

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