

Body Worn/Audio/Video Equipment

450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn (BWC), hand held or integrated into portable equipment.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes or to mobile audio/video recordings (see Investigation and Prosecution policies).

450.2 POLICY

The West Valley-Mission Community College District Police Department provides members with access to body-worn cameras (BWC), portable recorders, 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 Department by accurately capturing contacts between members of the Department and the public. Uniformed members who are issued a BWC will wear them at all times while on-duty and use them in the performance of their duties.

450.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Department regardless of whether those recordings were made with department-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a BWC issued by the Department, and that it is in good working order. If the BWC 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. If an officer cannot use a BWC during their shift, this shall be noted in CAD-"Police Info" and an email written to their supervisor explaining the circumstances (e.g., a BWC malfunction with no replacement). Uniformed members should properly wear the BWC to record events.

Any member assigned to a non-uniformed position may carry an approved BWC at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should properly wear the BWC in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably possible.

When using a BWC, the assigned member shall record his/her WVMPD badge number and the BWC serial number in CAD at the beginning and the end of the shift or other period of use,

West Valley-Mission Community College District Police Department

West Valley Mission CC District PD Policy Manual

Body Worn/Audio/Video Equipment

regardless of whether any activity was recorded. This procedure is required, even though the recording device and related software captures the user's unique identification and the date and time of each recording.

Members shall document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members should include the reason for deactivation.

450.4.1 SUPERVISOR RESPONSIBILITIES

Supervisors should take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving the use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

450.5 ACTIVATION OF THE PORTABLE RECORDER

This policy is not intended to describe every possible situation in which the BWC should be used, although there are many situations where its use is appropriate. Members should activate the BWC any time the member believes it would be appropriate or valuable to record an incident.

The BWC should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity involving investigative or enforcement contacts in which a member would normally notify CountyCommunications
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion.

The BWC should not generally be activated in the following situations:

- (a) When entering a doctor's or lawyer's office
- (b) When entering locker rooms or restrooms
- (c) When participating in and or attending meetings which are purely administrative/disciplinary in nature (e.g., Student Code of Conduct).
- (d) Any other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy.

West Valley-Mission Community College District Police Department

West Valley Mission CC District PD Policy Manual

Body Worn/Audio/Video Equipment

Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as practicable.

450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

450.5.2 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident, including when it is necessary to discuss issues or concerns with an officer or supervisor in private.

Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

Anytime a recording is stopped, the member will verbally state their action (Example: "I am turning off the recorder...") before switching off the device. Once the recording is re-activated, the member will verbally state their action (Example: "I am turning the recorder back on...")

450.6 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

Body Worn/Audio/Video Equipment

450.7 COORDINATOR

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

450.8 RETENTION OF RECORDINGS

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files and document the existence of the recording in the related case report. Transfers should occur by the end of the member's shift, or any time the storage capacity is nearing its limit.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

450.8.1 RETENTION REQUIREMENTS

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule (minimum of one year, except accidental recording which are retained for thirty days) and the Santa Clara County Body Worn Camera Protocol.

450.9 REVIEW OF RECORDINGS

When preparing written reports, members should review their recordings as a resource. However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Body Worn/Audio/Video Equipment

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.
- (e) Nothing in these guidelines shall supercede the current Santa Clara County Body Worn Camera Protocol regarding the review or release of data.

Recordings may be shown for the purposes of training value. If an involved officer objects to the showing of the recording, his/her objection will be submitted to the Chief of Police or designee to determine if the training value outweighs the officer's objection and basis for not showing the recording.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

450.10 DELETION OF ACCIDENTAL RECORDINGS

In the event of an accidental activation of a BWC where the resulting recording has no official purpose and is of no investigative or evidentiary value, the recording employee may request that the BWC file be deleted by submitting an email request to the Lieutenant or designee with sufficient information to locate the file. He/she shall either approve or deny the request and notify the employee vial email of the outcome. If the request has been denied, the requesting employee may appeal the decision to the Chief of Police whose decision is final. If approval to delete the file has been given, the file will be deleted within forty-five days. The recording employee will be notified via email once the file has been deleted.