

<b>DOUGLAS COUNTY SHERIFF'S OFFICE</b>		<b>Policy and Procedure</b>
<b>Specific Policies</b>		<b>P&amp;P-B-173</b>
<b>Mobile Video Recorder, Audio Recording and Body Worn Camera Policy</b>		
Effective Date: 08-16-21 Supersedes: 01-19-21	Approval: Sheriff	Number of Pages: 20
References: SB20-217,24-31-901; 24-31-902	Reevaluation Date: Annually	Standards: CALEA LE 41.3.8

**I. PURPOSE**

The purpose of this policy is to provide direction for the use of audio, visual and imaging recording devices, including Mobile Video Recording (MVR) devices installed in vehicles and Body Worn Camera (BWC) systems, and allows officers to use dedicated audio recording devices. The use of office approved body worn camera systems and mobile video recording devices can provide powerful evidence of criminal activity, thereby creating a visual and/or audio record of the incident as a supplement to the officer's report. In general, MVR and BWC recordings will fall into one of two categories of focus, evidentiary and mutual accountability. These devices have proven to be a valuable tool for law enforcement in documenting the public's interaction with law enforcement and documenting the public's and member's honesty, integrity, courtesy, and a member's professionalism. <LE 41.3.8a>

It is the purpose of this policy to provide officers with guidelines for the use of these recording devices. This policy is not intended to describe every possible situation where the system may be used; however, there are many situations where the use of an MVR or BWC device is recommended.

**II. STATUTES**

**24-31-901 DEFINITIONS**

As used in this part 9, unless the context otherwise requires:

- (1) "Contacts" means an interaction with an individual, whether or not the person is in a motor vehicle, initiated by a peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law. "Contacts" do not include routine interactions with the public at the point of entry or exit from a controlled area.
- (2) "Demographic information" means race, ethnicity, sex, and approximate age.
- (3) "Peace officer" means any person employed by a political subdivision of the state required to be certified by the P.O.S.T. board pursuant to section 16-2.5-102, a Colorado state patrol officer as described in section 16-2.5-114, and any noncertified deputy sheriff as described in section 16-2.5-103 (2).
- (4) "Physical force" means the application of physical techniques or tactics, chemical agents, or weapons to another person.
- (5) "Serious bodily injury" has the same meaning as in section 18-1-901 (3)(p).

(6) "Tamper" means to intentionally damage, disable, dislodge, or obstruct the sight or sound or otherwise impair functionality of the body-worn camera or to intentionally damage, delete, or fail to upload some or all portions of the video and audio.

#### 24-31-902 Incident Recordings – Release – Tampering – Fine

[Editor's note: This section is effective July 1, 2023.] (1) (a) (I) By July 1, 2023, all local law enforcement agencies in the state and the Colorado state patrol shall provide body-worn cameras for each peace officer of the law enforcement agency who interacts with members of the public. Law enforcement agencies may seek funding pursuant to section 24-33.5-519.

(II) (A) Except as provided in subsection (1)(a)(II)(B) or (1)(a)(II)(C) of this section, a peace officer shall wear and activate a body-worn camera or dash camera, if the peace officer's vehicle is equipped with a dash camera, when responding to a call for service or during any interaction with the public initiated by the peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law.

(B) A peace officer may turn off a body-worn camera to avoid recording personal information that is not case related; when working on an unrelated assignment; when there is a long break in the incident or contact that is not related to the initial incident; and in administrative, tactical, and management discussions.

(C) A peace officer does not need to wear or activate a body-worn camera if the peace officer is working undercover.

(D) The provisions of this subsection (1)(a)(II) do not apply to jail peace officers or staff of a local law enforcement agency if the jail has video cameras; except that this subsection (1)(a)(II) applies to jail peace officers when performing a task that requires an anticipated use of force, including cell extractions and restraint chairs. The provisions of this subsection (1)(a)(II) also do not apply to the civilian or administrative staff of the Colorado state patrol or a local law enforcement agency, the executive detail of the Colorado state patrol, and peace officers working in a courtroom.

(III) If a peace officer fails to activate a body-worn camera or dash camera as required by this section or tampers with body-worn- or dash-camera footage or operation when required to activate the camera, there is a permissive inference in any investigation or legal proceeding, excluding criminal proceedings against the peace officer, that the missing footage would have reflected misconduct by the peace officer. If a peace officer fails to activate or reactivate his or her body-worn camera as required by this section or tampers with body-worn or dash camera footage or operation when required to activate the camera, any statements sought to be introduced in a prosecution through the peace officer related to the incident that were not recorded due to the peace officer's failure to activate or reactivate the body-worn camera as required by this section or if the statement was not recorded by other means creates a rebuttable presumption of inadmissibility. Notwithstanding any other provision of law, this subsection (1)(a)(III) does not apply if the body-worn camera was not activated due to a malfunction of the body-worn camera and the peace officer was not aware of the malfunction, or was unable to rectify it, prior to the incident, provided that the law enforcement agency's documentation shows the peace

officer checked the functionality of the body-worn camera at the beginning of his or her shift.

(IV) (A) In addition to any criminal liability and penalty under the law, if a court, administrative law judge, hearing officer, or a final decision in an internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or dash camera or tampered with any body-worn or dash camera, except as permitted in this section, the peace officer's employer shall impose discipline up to and including termination, to the extent permitted by applicable constitutional and statutory personnel laws and case law.

(B) In addition to any criminal liability and penalty under the law, if a court, administrative law judge, hearing officer, or a final decision in an internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or dash camera or tampered with any body-worn or dash camera, except as permitted in this section, with the intent to conceal unlawful or inappropriate actions or obstruct justice, the P.O.S.T. board shall suspend the peace officer's certification for a period of not less than one year and the suspension may only be lifted within the period of the suspension if the peace officer is exonerated by a court.

(C) In addition to any criminal liability and penalty under the law, if a court, administrative law judge, hearing officer, or a final decision in an internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or dash camera or tampered with any body-worn or dash camera, except as permitted in this section, with the intent to conceal unlawful or inappropriate actions, or obstruct justice, in an incident resulting in a civilian death, the P.O.S.T. board shall permanently revoke the peace officer's certification and the revocation may only be overturned if the peace officer is exonerated by a court.

(b) A local law enforcement agency and the Colorado state patrol shall establish and follow a retention schedule for body-worn camera recordings in compliance with Colorado state archives rules and direction.

(2) (a) For all incidents in which there is a complaint of peace officer misconduct by another peace officer, a civilian, or nonprofit organization, through notice to the law enforcement agency involved in the alleged misconduct, the local law enforcement agency or the Colorado state patrol shall release all unedited video and audio recordings of the incident, including those from body-worn cameras, dash cameras, or otherwise collected through investigation, to the public within twenty-one days after the local law enforcement agency or the Colorado state patrol received the complaint of misconduct.

(b)

(I) All video and audio recordings depicting a death must be provided upon request to the victim's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or other lawful representative, and such person shall be notified of his or her right, pursuant to section 24-4.1-302.5 (1)(j.8), to receive and review the recording at least seventy-two hours prior to public disclosure. A person seventeen years of age and under is considered incapacitated, unless legally emancipated.

(II) (A) Notwithstanding any other provision of this section, any video that raises substantial privacy concerns for criminal defendants, victims, witnesses, juveniles, or informants, including video depicting nudity; a sexual assault; a medical emergency; private medical information; a mental health crisis; a victim interview; a minor, including any images or information that might undermine the requirement to keep certain juvenile

records confidential; any personal information other than the name of any person not arrested, cited, charged, or issued a written warning, including a government-issued identification number, date of birth, address, or financial information; significantly explicit and gruesome bodily injury, unless the injury was caused by a peace officer; or the interior of a home or treatment facility, shall be redacted or blurred to protect the substantial privacy interest while still allowing public release. Unredacted footage shall not be released without the written authorization of the victim or, if the victim is deceased or incapacitated, the written authorization of the victim's next of kin. A person seventeen years of age and under is considered incapacitated, unless legally emancipated.

(B) If redaction or blurring is insufficient to protect the substantial privacy interest, the local law enforcement agency or the Colorado state patrol shall, upon request, release the video to the victim or, if the victim is deceased or incapacitated, to the victim's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or other lawful representative within twenty days after receipt of the complaint of misconduct. In cases in which the recording is not released to the public pursuant to this subsection (2)(b)(II)(B), the local law enforcement agency shall notify the person whose privacy interest is implicated, if contact information is known, within twenty days after receipt of the complaint of misconduct, and inform the person of his or her right to waive the privacy interest.

(C) A witness, victim, or criminal defendant may waive in writing the individual privacy interest that may be implicated by public release. Upon receipt of a written waiver of the applicable privacy interest, accompanied by a request for release, the law enforcement agency may not redact or withhold release to protect that privacy interest. The hearing shall be considered a critical stage pursuant to section 24-4.1-302 and gives victims the right to be heard pursuant to 24-4.1-302.5.

(III) Any video that would substantially interfere with or jeopardize an active or ongoing investigation may be withheld from the public; except that the video shall be released no later than forty-five days from the date of the allegation of misconduct. In all cases when release of a video is delayed in reliance on this subsection (2)(b)(III), the prosecuting attorney shall prepare a written explanation of the interference or jeopardy that justifies the delayed release, contemporaneous with the refusal to release the video. Upon release of the video, the prosecuting attorney shall release the written explanation to the public.

(c) If criminal charges have been filed against any party to the incident, that party must file any constitutional objection to release of the recording in the pending criminal case before the twenty-one-day period expires. Only in cases in which there is a pending criminal investigation or prosecution of a party to the incident, the twenty-one-day period shall begin from the date of appointment of counsel, the filing of an entry of appearance by counsel, or the election to proceed pro se by the defendant in the criminal prosecution made on the record before a judge. If the defendant elects to proceed pro se in the criminal case, the court shall advise the defendant of the twenty-one-day deadline for the defendant to file any constitutional objection to release of the recording in the pending criminal case as part of the court's advisement. The court shall hold a hearing on any objection no later than seven days after it is filed and issue a ruling no later than three days after the hearing.

### **III. POLICY**

Members assigned MVR/BWC equipment, office issued or reimbursed smart phones, that have audio, video and image capturing technology, and all other recording and imaging devices, shall use them in compliance with manufacturer's operational guidelines, office training, and this policy. It is the policy of this Office to authorize the use of MVR and BWC to collect audio-visual evidence of criminal activity, and to record enforcement members' interactions with the public. An MVR/BWC recording is to be used when there is a clear benefit to such a recording. These recordings can also be used as a training tool for members. The evidence obtained in the use of the MVR/BWC is a useful tool in assisting in prosecution.

### **IV. TRAINING REQUIREMENTS** <LE 41.3.8f>

Anyone operating an MVR/BWC must complete training in its inspection, maintenance, operation, and policy requirements prior to using the system. A training course satisfying this requirement for BWC is covered in Week 1 of the FTO Program and posted on PoliceOne Training. Training satisfying this requirement for MVR will be covered in Week 5 of the FTO program. Additionally, users shall receive training in the use of Evidence.com. Evidence.com training may take the form of on-the-job training from an FTO or supervisor familiar with its operation.

### **V. OPERATION REQUIREMENTS** <LE 41.3.8e>

Prior to going into service, each Patrol Division deputy and each Detention Division deputy will check out the appropriate equipment, if required. Members and supervisors issued MVR/BWC equipment shall test their assigned MVR/BWC system making sure it is operational in accordance with manufacturer specifications and office training at the start of each shift. Testing includes:

- (a) That the camera/recording device is functional.
- (b) Verifying the device has an adequate power source.
- (c) Ensuring that the device properly placed/affixed for optimal use.
- (d) Documentation of officer information if system being used requires it.
- (e) At the end of duty period, the MVR/BWC will be docked and charged accordance with manufacturer specifications and office training.
- (f) If at any time, the MVR/BWC is found to be not functioning properly, it is to be removed from service and the appropriate supervisor and Sheriff's Technology staff will be notified as soon as reasonably possible.

### **VI. ACTIVATION/DEACTIVATION OF THE MVR OR BWC** <LE 41.3.8b>

Once activated the MVR/BWC with some exceptions, shall remain on and not be turned off until the initial incident that caused the activation has concluded. For purposes of this section, conclusion of the incident occurs when the gathering of evidence or exchange of communication related to enforcement activities are concluded. It is understood that not all incidents will clearly start out as needing documentation by an MVR/BWC recording or having a clear ending when the MVR/BWC is no longer needed. Officers will be expected to use good discretion and common sense when deciding in what circumstances to activate and deactivate the MVR/BWC.

**Any incident that is recorded with any video or audio system shall be documented in the officer's case report or incident report, F.I., accident and citation. If a traffic citation is issued, the officer shall make a notation on the citation's notes section indicating that the incident was recorded.**

24-31-902 (Incident Recordings)

All Peace Officers in the State of Colorado shall have body worn cameras by 2023.

A peace Officer shall activate a BWC or Dash Camera (MVR) if the vehicle is equipped, when responding to a call for service or during any interaction with the public initiated by the peace officer, whether consensual or non-consensual, for the purpose of enforcing the law or investigating possible violations of the law.

## **VII. PROCEDURES – MVR**

A. MVR equipment installed in vehicles is the responsibility of the member assigned to that vehicle and must be maintained according to manufacturer's recommendations. Prior to each shift, members shall determine whether their MVR equipment is working satisfactorily and shall bring any problems to the attention of their immediate supervisor as soon as feasible.

B. MVR and all BWC equipment within 30 feet from the car will automatically activate when the vehicle's emergency overhead lights are moved into operation to position two when an Axon Signal Device is installed in the vehicle.

C. Members shall use their MVR equipment, to include video and audio, if vehicles are equipped with MVR devices, in the following situations:

1. Traffic stops to include but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops. If the circumstances of the traffic stop indicate the MVR is no longer needed, then it is the officer's discretion to end the recording and document the reason why.
2. Priority responses. (Code 3)
3. Vehicle pursuits.
4. High-Risk traffic stops.
5. Suspicious person/vehicle contacts.
6. When responding to in-progress calls or critical incidents when there is a possibility of capturing images of fleeing suspects/vehicles, or any other evidence.
7. When placing a person in custody or under detention, when feasible.
8. Vehicle searches.
9. Physical or verbal confrontations or use of force situations.
10. Domestic Violence Calls.
11. DUI investigations including field sobriety maneuvers.
12. Any call for service involving a crime where a recording would clearly aid in the apprehension and/or prosecution of a suspect.
13. Any contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.
14. When transporting any person other than a ride-along, members will ensure that the

camera is positioned in a manner to collect video on the subject being transported. The member will also keep in mind that any audio interference needs to be kept to a minimum, such as radio traffic, music or other noises that may prohibit the in-car camera microphone from collecting spontaneous statements made by the transporting person.

15. All field contacts involving actual or potential criminal conduct within video or audio range.

D. Any time the MVR equipment is activated, the commissioned officer should do the following:

1. Check that the video recorder is positioned and adjusted to record events;
2. Check that the MVR is not deactivated until the enforcement action is completed; and
3. Check that the wireless microphone is activated in order to provide narration with the video recording.

E. Stopping of a recording can occur under the following circumstances:

1. Upon completion of the initiating event/activity.
2. Upon completion of a custodial transport.
3. Traffic accident investigations in which there is little probability of additional evidence being captured.
4. Traffic control details when there is little probability of relevant video being captured.

## **VIII. PROCEDURES – BODY WORN CAMERAS - BWC** <LE 41.3.8b>

Members will be assigned BWC based upon their assignment. BWC's should be worn in a location and manner that maximizes the camera's ability to capture video footage of the member's activities. Body worn cameras will be attached to the uniform in the center of the chest but placed low enough that when the officer's hands are raised holding a handgun in the high ready position the camera can see under the hands.

### A. EXTRA-DUTY ASSIGNMENTS

Members assigned a BWC that are working in an extra-duty assignment, typically with the Deputy Sheriff's Association, shall adhere to this policy while fulfilling the extra-duty obligation in any capacity for this Office.

### B. ACTIVATION OF BWC

Members should activate the BWC at the inception of all investigative or enforcement contacts, until the contact has concluded, and the member has left the scene. This includes but is not limited to; pedestrian stops, consensual encounters, non-consensual encounters, calls-for-service, and on-view events.

The enforcement member should activate the BWC at the first reasonable opportunity to do so, unless an immediate threat to the enforcement member's life or safety makes activating the BWC impossible or dangerous, in which case the enforcement member should activate the BWC as soon as it is safe to do so.

Additional, arriving enforcement members that are equipped with BWC should activate their cameras and begin recording the situation upon their arrival until the enforcement member leaves the scene.

The Axon Signal device located in the trunk of Sheriff's patrol cars transmits a Bluetooth signal in a 30-foot radius when the overhead emergency lights are moved to position one (1). Any Axon BWC or Axon Fleet cameras inside the radius that are powered on and in the buffering mode, should turn on automatically if the Bluetooth signal reaches the Axon device.

The Taser 7 has a built in Axon Signal device that emits a Bluetooth signal when the Taser's switch is moved to the armed position (the "on" position). The taser will transmit this Bluetooth signal in a 30-foot radius for thirty seconds. All Axon Body Worn cameras within this radius that are in the buffering mode will be activated and recording will start.

#### 24-31-902 (Incident Recordings)

All Peace Officers in the State of Colorado shall have body worn cameras by July 1, 2023. A Peace Officer shall activate a BWC or Dash Camera (MVR) if the vehicle is equipped, when responding to a call for service or during any interaction with the public initiated by the peace officer, whether consensual or non-consensual, for the purpose of enforcing the law or investigating possible violations of the law.

24-31-902(1)(a)(II)(B) A peace officer may turn off a body-worn camera to avoid recording personal information that is not case related; when working on an unrelated assignment; when there is a long break in the incident or contact that is not related to the initial incident; and in administrative, tactical, and management discussions.

#### C. CONSENSUAL and NON-CONSENSUAL ENCOUNTERS

During consensual encounters in locations where members of the public have a reasonable expectation of privacy, such as a residence, an enforcement member shall inform the member of the public they are being recorded. If the enforcement member is asked to stop recording by the member of the public, and the investigation is for a crime, the body camera will remain on. Explain to the member of the public that the BWC is a powerful tool in documenting their statements accurately and can assist in the prosecution of the suspect when in court and is required by Colorado law, 24-31-902.

When interacting with an apparent crime victim, the enforcement member should inform the victim they are being recorded. Capturing the statements of victims on the BWC can be a valuable tool for the investigation and for court.

Recordings made pursuant to an arrest or any search is considered a non-consensual encounter for the purposes of this policy. The BWC should remain activated until the event is completed in order to ensure the integrity of the recording.

#### CONFERENCE MODE:

When two or more members are in a conversation discussing the facts of the case or incident, which are not participated in by citizens, which include but are not limited to, discussions on charging decisions, comparing witness accounts, discussing the facts with



their supervisor on the phone or in person, discussing administrative, tactical or management discussions, should not be audio recorded.

This can be accomplished on the Body 3 Camera by pressing the “Select” button for 3 seconds muting the BWC and going into “conference mode.” Members should say out loud, “Going into Conference,” then press the select button for three seconds. This allows everyone listening to the audio and watching the video to know why the camera was muted. The display screen of the body camera will show a camera and a microphone with a slash through the microphone.

Once the discussion is over the BWC should be un-muted. All of the members that were in conference mode should say out loud “Going Out of Conference,” then each member should verify they are unmuted and now recording by looking at the microphone icon on the top of their camera which should show a microphone without a slash through it.

#### D. FUNCTION TEST

At the beginning of each shift a function test of the BWC and MVR should be performed. This can be accomplished by creating a test recording for a few seconds on the BWC and on the MVR. Once the recording on the BWC is completed the recording should be viewed using Axon View to verify the BWC is recording properly. Once the MVR recording is complete, it can be viewed on Axon View XL using the MDT in the vehicle to verify the MVR system is recording properly.

These function test recordings should be categorized as “Function Test,” in Evidence.com, these function test videos will be retained for 3 years. If either the BWC or the MVR are not working properly, inform your supervisor and contact Sheriff’s Technology staff to attempt to rectify the issue.

#### 24-31-902 (Conference Mode Requirements)

(B) A peace officer may turn off a body-worn camera to avoid recording personal information that is not case related; when working on an unrelated assignment; when there is a long break in the incident or contact that is not related to the initial incident; and in administrative, tactical, and management discussions.

#### FAILING TO ACTIVATE OR RE-ACTIVATE BODY CAMERA AS REQUIRED

24-31-902 (1)(D)(III) If a peace officer fails to activate a body-worn camera or dash camera as required by this section or tampers with body-worn or dash-camera footage or operation when required to activate the camera, there is a permissive inference in any investigation or legal proceeding, excluding criminal proceedings against the peace officer, that the missing footage would have reflected misconduct by the peace officer. If a peace officer fails to activate or reactivate his or her body-worn camera as required by this section or tampers with body-worn or dash camera footage or operation when required to activate the camera, any statements sought to be introduced in a prosecution through the peace officer related to the incident that were not recorded due to the peace officer’s failure to activate or reactivate the body-worn camera as required by this section or if the statement was not recorded by other means creates a rebuttable presumption of inadmissibility.

Notwithstanding any other provision of law, this subsection (1)(a)(III) does not apply if the body-worn camera was not activated due to a malfunction of the body-worn camera and the peace officer was not aware of the malfunction, or was unable to rectify it, prior to the incident, provided that the law enforcement agency's documentation shows the peace officer checked the functionality of the body-worn camera at the beginning of his or her shift.

#### E. VIDEO BUFFERING

In both the BWC and MVR there is video buffering setting that is set to record one minute of video before the video activation button, also called the “Event Button,” is pressed. This buffered video is set to have no audio, audio starts upon activation of the “Event Button.” This buffered video can assist in capturing surprise encounters on both the BWC and the MVR systems. For example, a traffic crash occurs, and the MVR is not recording. Once the recording is started the buffered video gets added capturing the surprise event. The BWC and MVR has to be on and in the buffering mode to capture the previous one minute of video.

#### F. WHEN ACTIVATION NOT REQUIRED

Activation of the MVR/BWC system is not required during breaks, lunch periods, when not in service, or when the officer is otherwise involved in routine or administrative duties.

#### G. ACTIVATION OF BWC IN DETENTIONS

Members issued BWC in the Detention Division should activate their BWC when dealing with or responding to uncooperative inmates, or to an anticipated use of force, a cell extraction, use of the restraint chair, investigating unusual activity, responding to fights and disturbances, and during the intake process when dealing with uncooperative inmates.

A jail incident report will be created when appropriate and the jail incident number will be tied to the body worn camera recording using Axon View Application on a cell phone or iPod Touch. In Evidence.com the jail incident needs to be labeled with a “J” preceding the incident number. (e.g. Jail Incident): Jccyy-nnnnnnnn (i.e. J2020-12345678).

#### H. DEACTIVATION OF BWC IN DETENTIONS

Members will deactivate their BWC when conducting any strip search, by turning off the body camera and therefore it is not in the buffering mode. If a member accidentally keeps their BWC on and recording while conducting a strip search, they shall notify their supervisor of the time and date that this occurred. The supervisor will inform an Evidence.com administrator of the same sex of the inmate strip searched, to redact that portion of the BWC video or delete the accidental recording of the strip search.

#### I. PROHIBITED USE OF BWC

BWC's shall not be used to gather intelligence information based on First Amendment protected speech, associations or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between an enforcement member and a member of the public.

Absent an emergency/urgent response, audio or video recording-devices shall not be used

in locker rooms, restrooms or any other intimate places where there would be a reasonable expectation of privacy.

Members shall not intentionally record confidential informants or undercover officers unless the recording is conducted specifically for the purpose of documenting an operation, drug purchase/sale or other undercover operation in furtherance of a criminal investigation.

#### J. ACTIVATION AT SCHOOLS, HOSPITALS, NURSING HOMES

When members are on a school's grounds, at a hospital, or nursing home they should not activate their BWC to record ordinary or everyday activities within the school or hospital. Members should only activate their BWC when responding to an incident, or investigating a criminal case, affecting an arrest, controlling a person using arrest control techniques, less lethal or lethal weapons, any other unusual or extraordinary circumstances that the members believes should be recorded or is required by law.

#### K. REPORT WRITING REQUIREMENTS

The MVR/BWC is not a replacement for written reports. Enforcement members may refer to the MVR/BWC for exact quotes that were used by the contacted parties. Officers are still responsible for completing a thorough report in the same manner they would if they did not have an MVR/BWC recording. If an officer is on a call where their role would not normally call for a report, but the MVR/BWC was activated, CAD integration will select the corresponding category based upon the call type and label the ID number with the appropriate incident.

#### L. RECORDINGS ARE PROPERTY OF SHERIFF <LE 41.3.8c>

All digital recordings captured using the MVR/BWC will be considered property of the Douglas County Sheriff's Office. Accessing, copying or releasing any recording by any member for other than official law enforcement purposes is strictly prohibited, except to the extent disclosure is required pursuant to the Criminal Justice Records Act. Dissemination outside of the agency is strictly prohibited, except to the extent permitted by the Sheriff or his/her designee or required by policy and law.

#### M. DELETION OF UNINTENDED RECORDINGS

In the event of an unintentional activation of the MVR/BWC system during a non-enforcement or non-investigative activity, including but not limited to, restroom, meal break, or other areas where a reasonable expectation of privacy exists, enforcement members may request the recording to be deleted. A memorandum detailing the circumstances of the unintentional recording will be forwarded via the chain of command to the members Captain. If approved, the actual deletion requires two-party authorization. One of those parties will be the Captain or designee and the other party will be an Evidence Section supervisor (Office BWC Administrator).

#### N. FAILURE TO ACTIVATE AND MVR/BWC DOCUMENTATION

If an enforcement member fails to activate their MVR/BWC, fails to record the entire contact, or interrupts the recording, the enforcement member shall document why the recording was not made, interrupted or terminated. Appropriate disciplinary action shall be taken against any enforcement member who is found to have intentionally failed to

adhere to the recording or retention requirements contained in this policy, or to have intentionally interfered with an MVR/BWC's ability to accurately capture video footage. Any administrative action (i.e. coaching notes, letters of reprimand etc.) taken as a result of failing to activate their MVR/BWC shall be documented in a separate PCR.

24-31-902 (1) (a) (III)

If a peace officer fails to activate a body-worn camera or dash camera as required by this section or tampers with body-worn- or dash-camera footage or operation when required to activate the camera, there is a permissive inference in any investigation or legal proceeding, excluding criminal proceedings against the peace officer, that the missing footage would have reflected misconduct by the peace officer. If a peace officer fails to activate or reactivate his or her body-worn camera as required by this section or tampers with body-worn or dash camera footage or operation when required to activate the camera, any statements sought to be introduced in a prosecution through the peace officer related to the incident that were not recorded due to the peace officer's failure to activate or reactivate the body-worn camera as required by this section or if the statement was not recorded by other means creates a rebuttable presumption of inadmissibility. Notwithstanding any other provision of law, this subsection (1)(a)(III) does not apply if the body-worn camera was not activated due to a malfunction of the body-worn camera and the peace officer was not aware of the malfunction, or was unable to rectify it, prior to the incident, provided that the law enforcement agency's documentation shows the peace officer checked the functionality of the body-worn camera at the beginning of his or her shift.

(IV) (A) In addition to any criminal liability and penalty under the law, if a court, administrative law judge, hearing officer, or a final decision in an internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or dash camera or tampered with any body-worn or dash camera, except as permitted in this section, the peace officer's employer shall impose discipline up to and including termination, to the extent permitted by applicable constitutional and statutory personnel laws and case law.

O. COVERT OR SURREPITITIOUS RECORDINGS

No member of this agency may surreptitiously record a conversation of any other member of this agency or eavesdrop; except with a court order or when authorized by the Sheriff or his authorized designee for the purpose of conducting a criminal investigation or as an administrative function.

P. REVIEW OF MVR/BWC RECORDINGS <LE 41.3.8c>

Recordings may be reviewed in any of the following situations:

- (a) For use when preparing reports, statements or for court testimony.
- (b) By a supervisor investigating a specific act of officer conduct.
- (c) By a supervisor to assess officer performance.
- (d) To assess proper functioning of MVR/BWC systems.
- (e) By an investigator who is participating in an official investigation, such as a personnel complaint, administrative inquiry or a criminal investigation.
- (f) By court personnel through proper process or with permission of the Sheriff or the authorized designee.

- (g) Public release of MVR/BWC recordings will be in accordance with current office evidence release policies, as well as the rules set forth in the Colorado Criminal Justice Records Act. Release may also occur at the direction of the Sheriff or authorized designee.
- (h) Recordings may be shown for training purposes. If an involved officer objects to showing a recording, his/her objection will be submitted to their captain to determine if the training value outweighs the officer's objection.

Officers with MVR/BWC equipment that are on the scene of a critical incident, but are not a subject or witness officer, will complete case reports and notify investigations or Internal Affairs that they have video that may be pertinent to their investigation.

In no event shall any recording be used or shown for the purpose of ridicule or embarrassing any employee.

#### Q. TASK FORCE OR UNDERCOVER ASSIGNMENTS

Members who serve in an undercover role or in a specialized assignment on a task force such as, DEA, DEA Front Range Task Force, Joint Terrorism Task Force (JTTF), Safe Streets Task Force, Rocky Mountain Regional Computer Forensic Lab (RCRCFL), and Metro Gang Task Force, will not be subject to this BWC or MVR policy (PP-B-173). Task Force Officers will refer to the governing policies and procedures for the specific task force where they are assigned.

#### R. BWC IN THE COURT ROOM

The Chief Judge of the 18<sup>th</sup> Judicial District has ordered that, the only recording devices that are allowed into the court rooms are the Court's official recording devices or Court Reporters. Therefore, no other recording devices are allowed into the court room or they must be turned off. Body cameras must not be recording while in the court room unless there is a disturbance or an uncooperative citizen or inmate in the court room. Then the body worn cameras can be activated to record these types of incidents. When court deputies are outside of the court room in the public areas, they should activate their camera as required in section VIII. B. Activation of BWC, in this policy, when Court Deputies are in Detentions or escorting inmates, they should follow this policy section VIII. F. Activation of BWC in Detentions.

### **IX. ADMINISTRATIVE REVIEW OF THE BODY WORN CAMERA AND MOBILE VIDEO RECORDING SYSTEMS. <LE 41.3.8g>**

Internal Affairs Sergeants have access and the ability to retrieve video that is required for internal review (including complaints, use of force review, pursuit review, litigation research, etc.). <LE 41.3.8c> If trained personnel are not available in Internal Affairs to retrieve video, then the other trained personnel may be used after administering a witness confidentiality admonishment (other supervisors should be utilized first).

Periodic auditing and review of recordings captured via BWC and MVR camera systems is essential to ensure that video evidence is being properly collected and classified, as well as to identify operational, training, or policy deficiencies. At least quarterly, the administrative lieutenant of the Divisions where BWC and MVRs are assigned, or his designee will review 10 randomly selected video recordings and document his findings in a memorandum addressed to their Division Captain, with a copy to the Accreditation unit.

**X. OTHER PHOTO, ELECTRONIC AND RECORDING DEVICES**

A. Office members shall use office authorized/issued smart phones to capture still pictures, videos of crime scenes and/or audio recording if a BWC is not available. Member will not use a personal electronic recording or imaging device while performing law enforcement duties except in rare events to record evidence when office issued equipment is not available or unless the member is on a stipend plan. If a member needs to use a personally owned device to take photographs, audio or video recordings, the member shall upload all evidence to Evidence.com prior to the conclusion of their shift.

B. All photographs or videos containing any individually identifiable patient information are covered by HIPAA privacy laws and must be protected in the same manner as patient care reports and documentation.

C. Recordings shall be used for evidentiary documentation or training purposes only, except as permitted by prior written approval by the Sheriff or designee. Only those members acting under their official duties will be permitted access to recordings and/or images. <LE 41.3.8c>

D. Office members will not make surreptitious recordings of conversations with other Office members except when necessary in the course of a criminal investigation or for Office administrative investigations. In either case, the Sheriff or designee will be notified prior to for authorization of the nonconsensual recording.

E. Any on-scene images/recordings and/or any other images/recordings taken by members in the course and scope of their duties are the sole property of the Office. This includes any images taken intentionally or inadvertently with a member's personally owned camera, cell phone camera or any other digital imaging device. The images shall be downloaded as soon as feasible and deleted from the member's personal device.

F. No images/recordings taken by any member in the course and scope of their duties may be used, printed, copied, scanned, e-mailed, posted, shared, reproduced or distributed in any manner, unless for official law enforcement purposes. This prohibition includes the posting of any Office photographs on personal websites or social media sites including but not limited to, Facebook, Instagram, MySpace, YouTube, other public safety agency websites, or e-mailing to friends, relatives or colleagues without prior approval of the Sheriff.

G. All Office digital data will be downloaded as soon as feasible and will be cataloged and

stored in Evidence.com with access limited to appropriate members. After being downloaded, digital data on memory cards will be erased, including any member's personal devices.

The following are incident ID formats for use with *Evidence.com*:

- Note: ccyy represents a 4-digit year format, yy represents a 2-digit year format.
- Call for Service Incident or LERMS Case: ccyy-nnnnnnnn (i.e. 2020-12345678)
- Ticket/Citation: The full ticket number (i.e. EA1234567 or 20A12345)
- Jail Incidents (Corrections Jail Incident): Jccyy-nnnnnnnn (i.e. J2020-12345678)
- Professional Standards Number
  - Internal Affairs Investigation: yyIAI-nnn (i.e. 20IAI-123)
  - Personnel Contact Report: yyPCR-nnn (i.e. 20PCR-123)
  - Pursuit: yyPUR-nnn (i.e. 20PUR-123)
  - Use of Force: yyUOF-nn (i.e. 20UOF-123)
  - Grievance: yyGRV-nn (i.e. 20GRV-123)
  - Commendation: yyCOM-nn (i.e. 20COM-123)
  - PPL: yyPPL-nnn (i.e. 20PPL-123)
  - ARB: yyARB-nnn (i.e. 20ARB-123)
  - Litigation: yyLIT-nnn (i.e. 20LIT-123)
- Generic ID's
  - TEST = Either upper or lower case
  - CEW = Either upper or lower case
  - NPA= No Police Action (Upper Case Only)
  - DEMO
  - TRANSPORT = (Upper Case Only)
  - SEARCH = Search of person, items or area (Upper Case Only)

The following are incident ID formats for use with Detention's *Avigilon* Video system:

- ccyy-3-character month-date-location-description of event  
Example:
  - 2020-Sep-23-C/D Hall-Inmate Escort
  - 2020-Sep-23-Scheiber Incident-J2020-00006535(noncriminal Jail incident)
  - 2020-Sep-20-Delacruz Incident-2020-00106127(criminal report incident)

## **XI. AXON CAPTURE**

When using Axon Capture to take still photographs for case reports and incident reports,

when possible, the pictures should be taken in the landscape format (landscape format is obtained by placing the phone on its side when taking the photo). The landscape format is the default for the pictures to be oriented upright in Evidence.com.

After the photo(s) are taken, the “ID” field needs to be filled in with the case report number or incident number. Complete this field by filling in all thirteen characters of the case report number or incident number. (For example: 2016-00012345) The four-digit year and then the dash and 8 numerals after the dash, make up the case report or incident number.

The “Category” field then needs to be selected from the available drop-down list. Once the correct “Category” is selected, this will dictate the retention time of the photos taken. Usually the “Category” will be “Crime” if it is a case report.

After both of these fields are filled in, then the photos can be uploaded to Evidence.com. If the “Category” field or the “ID” field are not completed before uploading to Evidence.com, the member will have to add these fields in Evidence.com once uploaded. CAD integration does not work with Axon Capture.

## **XII. AXON VIEW**

The Axon View application on your smart phone is used to view body camera videos that are stored on the body camera and have not been uploaded to Evidence.com. This application is helpful in watching the body camera video before writing the report. If the body camera video is tied to a CAD incident or case number, the CAD integration will automatically label the video “ID” number in the correct 13-digit format and add the “Category” based upon the call for service.

If there is a body camera recording and the recording that is not tied to a CAD Incident or case number, then you must add the “Title” and “Category” to the video before docking the body camera. If you forgot to label the video using Axon View before docking and uploading the video, then the body camera user will need to label the video in Evidence.com.

If there is a case or incident you are following up on, then you must label the “ID” number and “Category” using Axon View to tie the body camera video to the correct case or incident number. Complete this field by filling in all thirteen characters of the case report number or incident number. (For example:2016-00012345).

If you pull multiple case report numbers on the same call you will need to manually add the “ID” number and “Category” to the video because the CAD integration cannot correlate two separate case report numbers or incident numbers on the same video correctly.

When conducting follow-up from a previous case or incident and your body camera is activated you must use Axon View to label the new recording ID with the original case or incident report number. If you fail to label it with Axon View, then CAD integration will label the follow-up with the newly assigned Incident number. If this occurs the body



camera or MVR user must then go into Evidence.com and change the ID number to the original case or incident number. Failing to change the follow-up video to the original case or incident number could lead to a discovery violation if the user fails to follow these steps.

#### AXON VIEW XL

The Axon View XL is used with the Axon Fleet camera system. Axon View XL allows users to label videos with an “ID” number and add a retention “Category.” It also allows users to mute the in-car microphone when talking to other officers. This mute function is a similar function as going into the “conference mode,” with the Axon Body Camera. Axon View XL allows users to view recorded Axon Fleet videos before they are uploaded across the Wi-Fi network into Evidence.com. Your Body Camera can be paired to Axon View XL instead of your iPhone or Android’s Axon View application. You cannot pair to both Axon View XL on your MDT and Axon View on your phone at the same time.

### **XIII. REPAIRS, INSPECTION AND MAINTENANCE** <LE 41.3.8 e.>

Members utilizing MVR/BWC devices will maintain the equipment per the manufacturer’s guidelines and inspect the equipment for non-functioning or malfunctioning devices before duty and immediately report any nonfunctioning equipment to their supervisor. The shift supervisor may reassign another unit if MVR audio/video equipment has a malfunction provided a unit is available or reissue another BWC until repairs or replacement can be made.

### **XIV. UPLOADING, STORAGE, AND RETENTION OF RECORDINGS** <LE 41.3.8 d.>

Any MVR/BWC recorded incident shall be documented in the associated case reports, incident reports, field interview entries or on traffic citations that are not associated with a case or incident. Uploading of an MVR/BWC will be done in accordance with manufacturer specifications and office training. MVR/BWC evidence will be stored in an office designated secure location, including but not limited to:

- (a) An approved web-based server whether that is maintained by Douglas County or an approved outside vendor.
- (b) An approved, on-site Douglas County server.
- (c) Physical storage media such as CDs, DVDs, or other digital storage devices, that will then be submitted to the Evidence Section per policy.

All MVR/BWC recordings will be categorized and labeled with the case, incident or citation number at the end of the recording or by end of your shift, when possible. If the recordings are not categorized and labeled by the end of the shift before docking and uploading of the recording, the member must then log into the evidence storage server system and categorize and label each recording in accordance with manufacturer’s specifications or training. Each recording will be labeled with the case or incident report number, field interview incident number or traffic citation number.

If no incident number is associated with a traffic citation, then the traffic citation number should be used. This should only happen when working a designated traffic enforcement operation and the officer did not call out an individual traffic stop on the radio or create a

traffic stop on their mobile computer.

All MVR/BWC recordings shall be uploaded at the end of an officer's shift if practical or critical to an investigation. If there is a circumstance when this cannot be accomplished, a supervisor must be notified, and approval given.

Data gathered by the MVR/BWC shall be retained and stored by this Office or an authorized third-party based upon the classification of the video.

Any third-parties acting as an agent in maintaining MVR/BWC footage shall not be permitted to independently access, view or alter any video footage, except to delete videos as required by law or this agency's retention policies.

Pursuant to Colorado's Criminal Justice Records Act statutes, it is the goal of this policy to support and promote openness in government by releasing non-confidential video recordings to the public upon request. This policy must also ensure that the privacy of victims, witnesses and suspects is maintained whenever feasible. MVR/BWC video footage should not be divulged or used for any commercial or other non-law enforcement purpose. This policy will not affect the release of recordings pursuant to a court order or subpoena. Nothing in this policy shall be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations and prosecutions.

Data gathered by the MVR/BWC may be used and shared with the District Attorney's office or other law enforcement agencies only as permitted.

#### **XV. CLASSIFICATION AND RETENTION OF MVR/BWC RECORDINGS IN EVIDENCE.COM**

If the user of the body camera has been assigned to a CAD call, or the user self-assigned themselves to a CAD call, and the body camera was activated, the CAD/RMS integration will correctly assign the incident number or case number automatically about 95% of the time. It will also automatically assign a retention category based upon the call type to the body camera video once the videos are uploaded to Evidence.com about 95% of the time. CAD integration only works for Axon Body and Axon Fleet video files for up to 7 days from the date of the recording. If a Body Camera is not docked within 7 days or a vehicle with an Axon Fleet Camera is not brought into a Wi-Fi network at the Sheriff's Office or Highlands Ranch Sub-Station within 7 days, the CAD integration will not automatically add the associated "ID" number or retention "Category." When CAD integration time period has expired it will require the assigned deputy to manually add the case or incident number and the retention category to these video files in Evidence.com. CAD integration does not label Axon Capture photo files, these files will all need to be labeled manually using Axon View or once uploaded labeled manually in Evidence.com.

If the user is not on a CAD call or CAD integration did not assign the case number or incident number, then CAD integration will also not assign a retention category. The user of the body camera will then have to login to Evidence.com and manually add the incident report or case report number and the, retention "Category" from the drop-down list, and "Title" if needed.

If the body camera user notifies dispatch they are on a directed traffic operation in a specific area, (this typically means not every traffic stop is called out to dispatch and a separate incident number is not assigned to each traffic stop) the incident number of this directed traffic enforcement will automatically be assigned through the CAD integration and the category will be updated without user intervention about 95% of the time. There is no need to add the incident or case number into the “ID” number field by using Axon View.

If the citation number is needed on the body camera video, the user will have to enter the citation number in the “Title” field of the video using Axon View. If the body camera has been docked and the videos have been uploaded and a citation number is needed, the user can enter the citation number in the “Title” field using Evidence.com.

There will be times that no incident or case number will be associated with a body camera recording, or MVR recording. To find Evidence that has “None” in the “ID” field in Evidence.com, use the evidence search just type “None,” in the ID field and a list of Evidence will appear with no ID numbers. Some of the common reasons this occurs are testing the body camera or MVR, or an Axon Signal unit or Taser 7 has activated the body camera accidentally during testing of the light bars or Taser test arcing. Other reason could include being approached outside your vehicle and you start the body camera and realize the body camera is not needed and you turn it off but, no Incident number is pulled for the contact with the public, jail transport, jail incident where no jail incident number is associated, during training or demos of the Body camera or MVR.

In these cases where no Incident Number exists the user will have to login to Evidence.com and manually replace the “ID Field” which will display “None” in Evidence.com with the following:

<u>Category:</u>	<u>ID Field:</u>
Test No Event	TEST
No Police Action	NPA
CEW Log not tied to a specific CEW incident	CEW
Training Demo	DEMO
Inmate Transport	TRANSPORT, SEARCH (of an Inmate).
Function Test	FTEST

The other body camera and MVR categories should have an associated incident number or case number.

These categories assist in locating the recording and each category will have an established retention time. Labeling these categories can be accomplished using Axon View on a smartphone or iPod touch with Bluetooth and Wi-Fi enabled or by using Evidence.com once the videos or pictures are uploaded or through CAD integration. Any MVR/BWC recording in any classification can be changed to another classification or have its retention

status changed for the benefit of an investigation or organizational needs. An MVR/BWC recording's retention time also may be extended in response to a litigation hold.

1. Uncategorized (Video or Pictures)	Until manually deleted	No Restrictions
2. ANIMAL	5 Years	No Restrictions
3. ASSIST	15 Years	No Restrictions
4. CEW Firing Log	Until manually deleted	No Restrictions
5. CIVIL	10 Years	No Restrictions
6. CRIME	Until manually deleted	No Restrictions
7. DUI	Until manually deleted	No Restrictions
8. IA REVIEW	Until manually deleted	Restricted Category
9. INCIDENT NON-CRIMINAL	3 Years	No Restrictions
10. INMATE TRANSPORT	2 Years	No Restrictions
11. No Police Action	1 Year	No Restrictions
12. Officer Injury	Until manually deleted	No Restrictions
13. Other Restricted	Until manually deleted	Restricted Category
14. Pending Review	Until manually deleted	No Restrictions
15. PURSUIT	Until manually deleted	No Restrictions
16. TEST NO EVENT	90 Days	No Restrictions
17. TRAFFIC ACCIDENT	10 Years	No Restrictions
18. Traffic Stop	10 Years	No Restrictions
19. Training Demo	90 Days	No Restrictions
20. Use of Force	Until manually deleted	No Restrictions
21. WARRANT	10 Years	No Restrictions
22. UAS – Criminal Case	Until manually deleted	No Restrictions
23. UAS – Non-Criminal	3 Years	No Restrictions
24. UAS – Traffic Investigation	10 Years	No Restrictions
25. Jail Incident	3 Years	No Restrictions
26. Function Test	3 Years	No Restrictions