

Body-Worn Cameras

421.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of body-worn cameras by members of this department while in the performance of their duties (RCW 10.109.010).

This policy does not apply to the interception of conversations for lawfully authorized investigative purposes under RCW 9.73.210 and RCW 9.73.230.

Body-worn camera systems will be used to enhance member safety while promoting community trust and transparency. They are not intended to replace effective first-level supervisory practices. Body-worn camera use shall be used in accordance with applicable law. In the event of future changes to applicable law, this policy may be reviewed and revised following standard department procedure.

The Department has adopted the use of body-worn cameras by members to:

- (a) Accurately capture the actions, interactions, and communication of both members and the public.
- (b) Collect evidence for use in criminal investigations and prosecutions.
- (c) Deter criminal activity and uncooperative behavior during police-public interactions.
- (d) Assist members with completing reports and providing testimony in court.
- (e) Ensure accountability for policy and law violations.
- (f) Provide evidence to quickly and accurately resolve complaints; and,
- (g) Provide additional information for member evaluation, training, and continuous improvement.

Body-worn cameras provide additional information regarding an investigative or enforcement contact with a member of the public. Body-worn cameras, however, provide a limited perspective of the encounter and should be considered with all other available evidence, such as witness statements, member interviews, forensic analyses and documentary evidence.

421.2 DEFINITIONS

Body-worn video camera (BWC) - System that captures audio and video signals that is capable of being worn on a member's person which includes, at minimum, a camera, microphone, and recording device.

421.3 POLICY

The Kirkland Police Department will provide commissioned personnel, parking enforcement officers and animal control officers with body-worn cameras for use during the performance of their duties due to their regular interactions with members of the public. All members who are provided with a BWC by the department shall use and wear it consistent with the policy. Members are prohibited from using privately owned BWCs while on duty. The use of body-worn cameras

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is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public. BWC footage will not be utilized with any facial recognition software for investigative purposes. The use of facial recognition software by public disclosure personnel, for redaction purposes only, is authorized.

421.4 MEMBER PRIVACY EXPECTATION

All recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity of the department, regardless of ownership of the device it was made on, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

421.5 GENERAL OPERATING PROCEDURES

Uniformed Personnel

Prior to going into service, each uniformed member will be responsible for making sure that they are equipped with a BWC issued by the Department, and that the BWC is in good working order. Members will wear the BWC securely mounted on their outer uniform, positioned to capture interactions from a forward-facing direction.

Non-Uniformed Personnel

Any member assigned to a role that is functioning primarily in an administrative or support capacity, or is in a plain-clothes assignment, and could not reasonably be expected to take enforcement action, may carry a BWC any time the member believes that such a device may be useful. These members shall carry a BWC anytime they are engaged in a situation that is reasonably likely to result in a law enforcement encounter. These personnel will be responsible for making sure that they are equipped with a BWC issued by the Department, and that the BWC is in good working order. Unless conducting a lawful recording in an authorized undercover capacity, these personnel shall wear the BWC in a conspicuous manner when in use, positioned to capture interactions from a forward-facing direction and will notify persons that they are being recorded, whenever reasonably practicable.

All Personnel

If the BWC recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to their supervisor and obtain a functioning device as soon as reasonably practicable. A reasonable number of spare BWCs will be available to replace non-functioning units. Members are responsible to ensure their BWC remains charged and operational during their entire shift.

Members shall verbally inform any person being recorded that an audio and video recording is being made and shall make the attempt to ensure said advisement is recorded. A member may encounter a situation in public that is rapidly evolving, dynamic, or involving a group of persons. In these situations, it may not be feasible to advise all parties present that they are being audio and video recorded because of the dynamic environment. In a group, or public setting, or in situations

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where the law recognizes minimal expectations of privacy, the member should advise the primary contact and make reasonable efforts to advise all other parties if time and circumstances allow.

Members conducting traffic stops while equipped with a BWC shall notify the occupants that there is an audio and video recording occurring. Members shall make a reasonable effort to ensure that non-English speaking persons, those with limited English proficiency, or hearing-impaired persons understand that they are being recorded. This may be accomplished simply by pointing at the camera while giving the advisement or providing the advisement in multiple languages on a reference card.

Members shall ensure video from a BWC is uploaded by the end of their shift and any time the storage capacity is identifiably nearing its limit by inserting the BWC into the designated docking station. Members shall classify each video in the manner prescribed during their training. Members shall make reasonable efforts to avoid incurring overtime to perform the upload. If the upload may incur overtime, the member shall report the issue to their supervisor.

Members should document the existence of a recording in any report or other official record of the contact. This also includes any instance where the member was aware that the BWC malfunctioned or the member delayed or deactivated the recording prior to the conclusion of the incident. Members should include the reason for the delay or deactivation in their report or other official record of the contact if no report (RCW 10.109.010). If a citation was issued, the proper notation shall be made in the SECTOR citation that the incident was recorded.

421.5.1 ACTIVATION OF THE BODY-WORN CAMERA

This policy is not intended to describe every possible situation in which the BWC should be used. Nothing prohibits a member from activating a BWC while at work, unless specifically prohibited by this policy and in accordance with all requirements as stated in this policy. When in doubt, members should consider recording.

While not all-inclusive, the BWC shall be activated in any of the following situations:

- (a) Field contacts involving actual or potential criminal conduct, including:
 1. Traffic Stops
 2. Priority Responses
 3. Vehicle Pursuits
 4. Suspicious vehicles and suspicious persons
 5. Arrests
 6. Investigatory stops and/or detentions
 7. Vehicle searches
 8. Physical confrontations or use of force
 9. Verbal confrontations
 10. DUI investigations, including sobriety tests

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11. Crimes in progress
 12. Responses to an in-progress call
 13. Domestic violence calls
 14. Offenses involving weapons
 15. Mental health contacts and welfare checks
 16. Transport of any subject
 17. While observing another member violating policy or laws
 18. If requested by a member of the public
- (b) Self-initiated activity in which the member believes there may be evidentiary value in activating the BWC.
- (c) Any contact that becomes adversarial after the initial contact in a situation that would otherwise not be recorded.
- (d) Any other circumstance that the member reasonably believes that a recording of a contact or event would be appropriate.

No member of this department may record a face-to-face conversation without first announcing, or otherwise communicating, that the conversation is going to be recorded and ensuring the announcement is recorded except pursuant to a court order, or when the communication is of an emergency nature or relates to communications by a hostage holder or barricaded suspect (RCW 9.73.030(2)).

At no time is a member expected to jeopardize his/her safety in order to activate their BWC. However, the BWC should be activated in situations described above as soon as reasonably practicable and the member must document the reason the BWC was not activated at the outset of the incident.

Members recording law enforcement activity who inadvertently turn off their BWC shall not be subject to discipline unless the member has been previously counseled for similar incidents. Members who repeatedly fail to activate the BWC when required or intentionally stop recording without articulable reasons will be subject to discipline, up to and including termination.

421.5.2 DEACTIVATING THE BWC DURING AN INCIDENT

Consistent with this policy, once started, BWC recordings should continue without interruption until the contact ends. However, 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. Members may de-activate or turn off the BWC during an incident in the following circumstances:

- (a) Members have the discretion to keep their cameras turned off during conversations with witnesses to, or victims of, crime and members of the community who wish to

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report or discuss criminal activity in their neighborhood if the member believes that deactivation of the BWC would encourage complete and accurate information sharing by the witness or victim,

- (b) Members have the discretion to keep their cameras turned off in situations involving rape, sexual abuse, nudity, or other similarly sensitive matters. Members should consider the evidentiary value of recording and the willingness of the victims or witnesses to speak on camera.
- (c) Consistent with this policy, members may deactivate the BWC during an incident when exchanging information with other members when the information is sensitive to a criminal investigation or when engaged in an operational or tactical discussion. If the BWC is de-activated during a contact to exchange sensitive information or to discuss operational details with another member, the member shall state the reason the BWC is being turned off and the member should promptly re- activate the BWC before resuming duties related to the incident.

Unless impractical or impossible, a member shall record a request to deactivate the BWC. Recording should resume when privacy is no longer at issue or to capture that the contact has ended. Anytime a member turns off the camera prior to the conclusion of an interaction or contact, the member shall record on camera the reason for turning the BWC off unless impractical or impossible and shall also document the same in their police report.

421.5.3 CESSATION OF RECORDING

Once activated, the BWC should remain on continuously until the member reasonably believes that their direct participation in the incident is complete or the situation no longer fits the criteria for activation, unless cessation is otherwise authorized in this policy.

421.5.4 RECORDING SUSPECT AFTER ARREST

Consistent with RCW 9.73.090 and RCW 10.122.030, before a member records an arrested suspect with a BWC, the member shall

- (a) Inform the suspect that they are being recorded.
- (b) State the time the recording begins and ends.
- (c) Record the reading of the Miranda warnings

See Investigation and Prosecution Policy for further details.

421.5.5 RECORDING IN A PRIVATE RESIDENCE AND RESPONDING TO CIRCUMSTANCES WHERE A PERSON IS OR MAY BE UNWILLING TO COMMUNICATE WHILE BEING RECORDED

It is permissible to record in a private residence and, absent exigent circumstances or when a contact becomes adversarial, members shall verbally, or otherwise, inform any person being recorded that a recording is being made and shall ensure said advisement is recorded.

Personnel should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy interests by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest

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in recording. Recording should resume when privacy is no longer an issue or to capture that the contact has ended.

If a victim or witness requests that their identity and/or communications remain confidential for public records purposes, the officer shall reflect this in their general report. There is no guarantee that these recordings will be exempt from disclosure, but these criteria will be evaluated at the time a public records request may be received.

If a community member objects to being recorded, the member may elect to record the encounter despite the objection. Since conversations with on-duty police officers are not considered private under Washington law, there is no requirement that an officer turn off the camera for a community member who objects to having the interaction recorded.

421.5.6 RECORDING IN A MEDICAL FACILITY

When recording in hospitals or other health care facilities, members shall be careful to avoid recording persons other than the suspect, victim or witnesses deemed relevant to the matter being investigated by the officer. Victim interviews in such facilities should be conducted in an area where personal privacy can be protected and, if appropriate, should have a victim advocate present.

421.5.7 ACTIVATION OF LIVE VIEW

The BWC has a feature enabling authorized personnel to activate the camera system remotely if the BWC is recording. The use of the "live view" feature can be activated by authorized personnel when there is an extreme emergency involving the member or where the use of this feature is beneficial in locating or providing aid to the member. "Live View" may also be activated during responses to serious situations such as mass casualty incidents, active shooters, and natural disasters. The use of live view will be included in the electronic log referenced below.

421.5.8 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER

Washington law prohibits any individual from surreptitiously recording any conversation, except as provided in RCW 9.73

421.5.9 EXPLOSIVE DEVICE

Body-worn cameras emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present. If a BWC is already active when the explosive device is encountered, the member should back at least 300 feet away from the suspected device as soon as possible in order to turn off the BWC.

421.6 PROHIBITED USE OF BODY-WORN CAMERA RECORDINGS

Members are prohibited from using BWCs for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Department personnel shall not upload recorded data onto public and/or social media websites without express permission from the Chief of Police or their designee.

Members shall not duplicate or distribute such recordings, except for authorized Department purposes. All such recordings shall be retained at the Department.

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Members are prohibited from using personally owned recording devices while on-duty

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

421.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS

Members shall download all footage following Department protocols at the end of their shift.

To assist with identifying and preserving data and recordings, members should tag or mark these in accordance with procedure and document the existence of the recording in any related case report.

A member should tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.

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.

Supervisors should ensure that this policy is being followed and that all applicable protocols are followed through day-to-day observations and report review.

421.8 REVIEW OF BODY-WORN CAMERA 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.

BWC recordings may be randomly reviewed to monitor member performance through the use of a general auditing function to ensure compliance with this policy.

A supervisor may conduct a review of a specific incident when there is an articulable reason justifying such review. Articulable reasons for reviewing and/or disclosing a specific incident include, but are not limited to:

- (a) Capturing specific evidence for use in a criminal prosecution,
- (b) When a civil claim has been filed or threatened against the City involving the incident,
- (c) When a complaint has been made against a member regarding the incident,

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- (d) When the incident included use of force,
- (e) When the incident included a vehicle pursuit,
- (f) When the incident included a vehicle collision,
- (g) When the incident involved serious injury or death,
- (h) With the involved member present to address a training or coaching issue in a private setting (such as Field Training or a recurring performance issue).
 - 1. Supervisors shall not routinely or randomly review videos with the goal of finding training or coaching issues on a specific member, unless:
 - (a) the member is undergoing training as part of a formal Training Program, or
 - (b) if the member is having recurring performance issues.
- (i) To assess properly functioning BWC systems when there is reason to believe that the system is not functioning properly.
- (j) By a department investigator who is participating in an official investigation, such as a personnel complaint, preliminary investigation, administrative investigation, or a criminal investigation.
- (k) By a member who is captured on or referenced in the video or audio data and reviews and uses such data for any purposes relating to his or her employment.
- (l) To assess possible training value at the suggestion of the involved member and approved by the Chief of Police or designee.
- (m) Recordings may be shown for training purposes.
 - 1. If an involved member objects to showing a recording, his or her objection shall be submitted to the Chief of Police or designee to determine if the training value outweighs the member's objection.
- (n) By an employee's legal representative and/ or bargaining unit representative who is involved in representing the employee in an official investigation, such as a personnel complaint or a criminal investigation.
- (o) By the City Attorney's Office, City Ombud, or other legal representative of the City consistent with the articulable reasons above.
- (p) Recordings will be provided to the City and County prosecutors or attorney's office when requested as part of discovery for a criminal or civil case.
- (q) As part of any Public Disclosure Request; or,
- (r) In connection with any incident that garners media or community inquiry consistent with the articulable reasons above.

All recordings should be reviewed by the Public Disclosure Analyst, or equivalent position, 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, absent appropriate redaction, unless disclosure is required by law or order of the court.

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In situations where an member has not been able to review relevant BWC video prior to preparing a written report, providing a statement, or answering questions as part of a formal interview, or informal questioning, the Department recognizes that in those situations, the potential for accuracy may be diminished. As such, a member should not receive any discipline based solely upon a difference between the member's report and the video evidence unless other evidence proves deception.

A recording shall never be used or shown for the purpose of ridiculing or embarrassing a member, department employee or member of the community.

An electronic log of all times a recording is viewed or transmitted shall be maintained. The log will include the date, time, and reviewer.

421.9 COORDINATOR

The Chief of Police or the authorized designee should appoint a coordinator responsible for (RCW 10.109.010):

- (a) Establishing procedures for the security, storage and maintenance of data and recordings.
- (b) Establishing procedures for transferring, downloading, tagging or marking events.
- (c) Establishing procedures for members communicating to non-English speakers, those with limited English proficiency or those who are deaf or hard of hearing that a portable recorder is being used.
- (d) Establishing procedures for accessing data and recordings.
- (e) Establishing procedures for logging or auditing access.

421.10 RETENTION OF RECORDINGS

All recorded imagery will be stored and retained by the Department in accordance with the law and destroyed at the conclusion of any retention period required by law. The retention may be extended at the request of a member or supervisor and should be extended if the recorded contact constitutes evidence in a criminal case or that the recorded contact may be beneficial in a noncriminal matter.

Any time a member records a contact that constitutes evidence in a criminal case, the member shall mark the file within the video software program in accordance with Department procedures to ensure the recording is retained for evidentiary purposes, and document the existence of the video in their case report.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter, the member should mark the file in accordance with Department procedures, ensure the recording is retained, notify their supervisor and document the existence of the video in their case report.

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Members shall upload the files by the end of their shift and any time the storage capacity is nearing its limit. If the upload is going to incur overtime, the officer shall report the issue to their supervisor.

421.10.1 RETENTION PARAMETERS

All recordings shall be retained for a period consistent with the requirements of the State's records retention schedule and other applicable retention-related laws.

- (a) Videos related to internal investigations shall be transferred to a format compatible with the Department's electronic tracking system and made part of the file. The videos will be retained in accordance with the Washington State Records Retention Schedule.
- (b) Records labeled as evidentiary shall be retained on the secure video server in compliance with state law and until all trial and appellate litigation has been completed.
- (c) Videos labeled as non-evidentiary shall be retained on the secure video server for 90 days and thereafter may be destroyed in accordance with the applicable records retention schedule (RCW 42.56.240)
- (d) Videos redacted for a public disclosure request shall be retained for 24 months after the request and then deleted.
- (e) In the event of an accidental activation of the BWC where the resulting recording is of no perceived investigative or evidentiary value, the recording member may request that the BWC video in question be deleted by submitting a written request to the Administrative Commander.

421.10.2 RECORDING SECURITY

Recordings made by members shall be stored and secured on a city owned server maintained by the city's IT department or with a contractor capable of providing secured cloud or off-site storage. Recordings will only be accessible by those members with access rights or others granted limited or specific access rights.

Officers shall not copy, edit, alter, erase, or otherwise modify in any manner BWC recordings except as authorized by law or Department policy. Any violation of this provision is considered serious misconduct and subject to disciplinary action, up to and including termination.

421.11 PUBLIC DISCLOSURE AND REDACTION OF BODY-WORN CAMERA RECORDINGS

Public disclosure and appropriate redaction of BWC recordings, is governed by the Public Records Act, Chapter 42.56 RCW. The Public Records Analyst, or equivalent position, will ensure that a copy of the recording is made and delivered in accordance with a lawful request.

421.12 TRAINING

The Training Sergeant shall ensure that those members issued a BWC, or involved in the BWC program, receive Department approved training. Prior to use, initial training shall be given on the proper operation and care of BWCs and on the Department's policy regarding the use of BWCs. Thereafter, training shall be provided at periodic intervals to ensure, among other things, the

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continued effective use of the equipment, proper calibration, and performance, and to incorporate changes, updates, or other revisions in policies or equipment (RCW 10.109.010).