

POLICIES AND PROCEDURES

Police Department
Subject: Digital Media Devices & Recordings Reference: E-XXXVII
Source: President Eff. Date: September 1, 2018
Approval Auth.: President Approved: _____
Remarks: New Policy
Date: September 1, 2018

This policy provides guidelines for the use, management, storage and retrieval of audio-visual media recorded by the McLennan Community College (MCC) Police Department (Department). Any electronic document, report, audio, or video recording, image, email, voice communication, or any other form of electronic data created while on or off duty that is directly related to official MCC operations or investigations, whether created on personal or MCC owned equipment, is considered to be an MCC record. As such, it is subject to public records laws, and it shall be preserved accordingly.

If any form of digital evidence exists, formal Department reports will include notation that such evidence exists, including the type of evidence and the storage location. The use of audio, video, or other electronic recordings does not reduce the requirement to provide thorough documentation of incidents.

The use of digital media to document MCC employee actions is not intended to be a replacement for a thorough and detailed police report or taking a written statement. In situations requiring a police report, employees must still document all actions pertinent to the investigation and necessary for investigator follow up and prosecution. In situations requiring a written statement, digital media can be used to supplement, but not replace a written statement; however, this does not apply to if the victim/witness refuses to provide a written statement.

Definitions

Recorded Media, Recordings or Videos - refers to photographic, audio and/or video signals recorded on any storage device, not limited to: analog tape, CD, DVD, hard drive and removable digital media.

Body Worn Camera (BWC) and Body Worn Video Recorder (BWVR) -
Synonymous terms which refer to any video storage device worn on

the person that captures audio and/or video signals.

Objectives

The use of digital recording systems provide an unbiased audio/video recording of events encountered by Department employees. These recordings can be useful for the documentation of evidence, the preparation of offense reports and future court testimony. These recordings can also protect Department employees from false allegations or provide actionable evidence in the case of actual misconduct. The recordings are useful for debriefing incidents, evaluating performance, and identifying training needs of the Department. The systems are intended to enhance officer and public safety, assist in complying with Racial Profiling statutes, and assist the Department in providing proper service to the campus community.

Body Worn Cameras

This section covers the use of Department-issued and personally owned BWVR systems.

Department-issued Body Worn Digital Recording System

Employees equipped with a Department issued BWVR system must be trained in the operation of the equipment prior to its use. BWVR equipment will be used in accordance with the BWVR vendor produced operations manual. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy and equipment.

Employees assigned a BWVR shall wear the camera above the midline of their torso when working in uniform. Plainclothes employees shall wear the camera at or above the belt line. In all situations the BWVR will be worn in a position designed to produce an effective recording.

Employees who discover an operational defect with the BWVR system will attempt to correct the system following the received training on the device (i.e. by: cycling the power, pushing the reset button on the back). If the BWVR is found to have a physical defect or malfunction, the employee will notify the supervisor, and write up the device for service describing the events leading up to failure. The employee should immediately contact an on duty supervisor to acquire a temporary replacement device.

In the event that a BWVR is lost, the employee shall immediately notify his/her supervisor.

Employees shall not:

- Bypass or attempt to override the equipment.
- Attempt to erase, alter, or delete any recording or metadata produced by the BWVR.

- Distribute or allow the viewing of any recording data without the permission of the Chief of Police or their designee.
- Upload any BWVR to any social media site or other website without the permission of the Chief of Police or their designee.
- The BWVR may not be used for the purpose of intimidating an individual or to discourage an individual from making a complaint.

When BWVR System Use Is Required

This section is not intended to describe every possible situation where the system may be used. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera; however the audio portion can be valuable evidence and is subject to the same activation requirements.

A. All units responding to a scene shall activate their BWVR equipment when they:

- Initiate or continue a citizen contact for a criminal justice purpose; or
- Have detained or arrested a person; or
- Are attempting to detain or arrest a person; or
- By the nature of the call for service, may have to detain or arrest a person

B. Examples of when the BWVR system must be activated include, but are not limited to:

- Traffic stops, Citizen stops, or Consensual encounters initiated by the Department employee for investigative purposes
- Pursuits or emergency response, until completion of enforcement action
- DWI investigations, including field sobriety tests
- Warrant Service
- Investigatory stops
- Field or eyewitness identification
- Obtaining suspect or witness statements
- Backup officers responding to a criminal justice event or incident
- Immediately upon the officer's involvement in a vehicular crash
- Transport of a violent person or persons of the opposite sex
- Transporting a person to a mental health facility or the county jail

C. Any contact that becomes adversarial that would not otherwise require recording. In those situations, it may be impractical or unreasonable for employees to activate their BWVR system before taking police action. It is expected that once the immediacy of the situation is over, employees will activate

their BWVR system to record the remainder of the incident.

In addition to the required situations, employees may activate the system anytime they believe its necessary use would be appropriate and/or valuable to document an incident.

There may be instances in which an officer is required to take immediate action for an event that occurs directly in front of them, which may not allow time to activate their BWVR. In these circumstances, the officer shall activate their BWVR as soon as practical to allow the officer time to safely contain the situation.

- D. If an officer fails to activate the BWVR device, fails to record the entire contact, or interrupts the recording, the officer shall document in their offense report or supplement why a recording was not made, was interrupted, or was terminated. In cases where a case report is not normally required, i.e., traffic stops, the employee will submit an administrative memo documenting the reason.

When BWVR Deactivation Is Authorized

- A. Once the BWVR system is activated it shall remain in record mode until the incident has concluded.
- B. For purposes of this section, conclusion of an incident has occurred when:
- All arrests have been made and arrestees have been transported to a detention facility:
 - All witnesses and victims have been interviewed and contact has concluded
 - All persons on Emergency Detention Orders have been transported to a medical facility for evaluation and police action is unlikely
 - All detained persons have been released
 - The Officer leaves the scene and is no longer involved in the investigation or follow-up.
- C. Recording may cease if no further law enforcement action is likely to occur. (i.e., waiting for a tow truck, or a family member to arrive)
- D. Officers should only use BWVR systems in patient care areas of medical or psychiatric facilities when the recording is for official purposes, and Officers shall be careful to avoid recording persons other than the suspect.
- E. Officers should be aware that under certain circumstances, e.g., victims in various stages of undress, the officer may consider using only the audio capability of the device or stopping the recording and explaining the stopped recording in the officer's report.

F. Recordings may be temporarily muted or paused in order for employees to engage in conversations about:

- Law enforcement related tactics
- Strategy related to the ongoing incident
- Police policy issues

Employees who pause recording or mute their audio should verbally note the reason for doing so on the recording. In addition, the employee should document the instance in their report if making one, or in a memo if not making a report.

When BWVR Use Should Be Avoided

A. Activation of the BWVR system is not required:

- During break periods unless called to perform police action
- When not in service and not on a call
- When in service but not on a call

B. Activation of the BWVR should generally not occur:

- During encounters with undercover officers or confidential informants outside of an enforcement scenario
- During judicial proceedings
- When engaged in conversations with individuals with whom the employee is in a legally recognized privileged relationship (i.e., spouse, attorney, police peer counselor, labor representative, minister, etc.)
- In police employee areas where a reasonable expectation of privacy exists (i.e., restrooms, locker room, or break rooms)
- During supervisor/employee discussions about employee performance
- Peace officers may not be required to activate their BWVR for their entire shift.

Personally Owned BWVR Systems

A. Personally-owned BWVR devices may not be used by an employee in lieu of an MCC-owned BWVR issued to that employee.

B. Employees may purchase and use their own BWVR device, if they have not been issued an MCC-owned BWVR device or during approved police related off duty employment where a department owned BWVR is unavailable; however, employees choosing to use a personally-owned BWVR system shall adhere to this policy. In such a case;

- Employees will notify their supervisor that they have a personally-owned recording device. If needed to preserve evidence, the employee may be asked to surrender the device upon the request of any supervisor.
- All recordings made while working in any capacity as an MCC employee or through the authority as an MCC employee become

the property of MCC and are subject to review and seizure pursuant to this policy.

- Employees must submit any recordings of evidentiary value as evidence when using a personally owned BWVR system. Recordings will be copied onto other digital media and submitted as evidence.
- Should the personally-owned BWVR device be damaged, MCC will not be liable for repair, replacement, or the cost of the device.

Digital Voice Recordings

A. Employees may use digital voice recorders to record interviews of witnesses or suspects or in the authorized course of their official duties:

- After capturing the recording, personnel shall transfer the recording to a Department-owned computer; and
- After the recording is complete , the recording shall be burned to a CD; and
- The CD shall be tagged into the property room before the employee ends their tour of duty; and
- After the availability of the recording on the computer and the CD are tagged into evidence has been confirmed, the employee will delete the original recording from the handheld device; and
- The recording saved to the desk top computer will be retained until a disposition is received from the District Attorney's office, the US Attorney's office, or the statute of limitations has expired.

Digital System Recordings

This subsection covers the use of all digital system recording devices.

Review and Use of Digital System Recordings

A. Recordings will only be made for legitimate law enforcement purposes.

B. All audio and/or video recordings obtained from Department-owned equipment or created by on duty employees during the course of their employment are owned by MCC.

C. Other than what is approved for release in this policy, release of recorded media to persons or organizations outside the department is prohibited without specific approval from the Chief of Police or their designee.

- Approval from the Chief of Police is not needed when furnishing an official recording to prosecutors.
- MCC supervisors who have a legitimate need to review the recording may only view the recorded media with their Vice President's consent.

- D. Approval is required by the Chief of Police, before a copy of a recording can be released to another law enforcement agency.
- E. Recording of crime scenes or on duty incidents and or situations, etc. for personal use, use by outside entities, or for anyone's financial gain is prohibited.
- F. Digital recordings shall not be reviewed by personnel for curiosity only. Only personnel with specific duties related to the recording shall review such recordings. No recording shall be viewed, used or shown in a manner likely to result in ridicule or embarrassment of any employee.
- G. Employees shall not obtain, attempt to obtain, or convert for their own personal use, or for the unauthorized use of another person, any information obtained by a digital recording system, whether Department or personally owned.
- H. Employees will not use Department-owned equipment, electronic or otherwise, for personal benefit or to conduct personal business.
- I. Inappropriate use of electronic devices or the release or posting on the internet or other social media sites of another party's private information, or governmental information usually deemed private is prohibited and can lead to an internal investigation and subsequent disciplinary action.
- J. This subsection outlines the review of digital system recordings whether the device is Department or privately owned.
- Recordings may be reviewed:
 - i. By the authoring employee to make sure the system is working,
 - ii. By the authoring employee to assist with the writing of a report, supplement, statement, or memorandum,
 - iii. By authorized persons with direct responsibility for reviewing evidence,
 - iv. By a supervisor investigating a specific act of their employee's conduct, or reviewing their employees performance,
 - v. By authorized Department personnel participating in an official investigation, such as a personnel complaint, administrative inquiry, or a criminal investigation
 - vi. By employees expressly designated by the Chief of Police to have responsibility to review recordings.
 - No digital recording system will be used to record another employee without that employee's consent unless part of a legitimate police incident. Employees should notify, when safe to do so, other employees of an activated BWVR if it is not readily apparent.

- Immediate supervisors shall:
 - i. Review all subordinates' vehicular pursuit videos and/or videos the crash of a Department vehicle in the care or control of personnel under their command.
 - ii. Review a portion of the recordings of officers working under their command in order to ensure that the equipment is being used according to policy and procedures to assess officer performance.
 - iii. Identify recording that may be inappropriate for use in the training classroom (submit copy to Training Sergeant)
- Any employee who becomes aware of potential misconduct captured by a digital recording device shall immediately report the conduct to their chain of command.
- Recording may be shown for the purpose of training after having sought the permission the Chief of Police or their designee. If an involved employee objects to showing a recording, their objection will be submitted for the Chief of Police's review to determine if the training value overweighs the employee's objection.
- Employees will not release, share, discuss contents, or make copies of any electronic documents, reports, audio or video recordings, images, emails, voice communications, or any other form of electronic data created while on or off duty that is directly related to official Department operations or investigations, whether created on personal or Department owned equipment, unless specifically authorized by this order or by the Chief of Police.

Supervisor Responsibility

- A. Patrol supervisors will ensure personnel under their command know how to properly operate their BWVR system.
- B. Supervisors will document in writing the theft, intentional damage or unauthorized modification of any recording device and forward a memorandum through their chain of command for review and initiate an internal affairs investigation.
- C. Supervisors will ensure their subordinates download any associated recordings of significant or major events as soon as possible. Supervisors may contact the Chief of Police, or designee, if a video needs to be restricted on the system and made unavailable for viewing.
- D. Supervisors will review their subordinates' reports to ensure the procedures in this policy are followed.

Investigator Responsibilities

- A. Follow up investigators shall verify that an officer has assigned a case number to evidentiary recordings. Investigators are responsible to ensure the recording have been properly tagged by type in the system software to ensure

proper retention and note that fact in their supplementary report. In the event of an arrest or other prosecution, investigators will make a digital copy of the video evidence to be provided for the prosecution and discovery process.

- B. The investigators supervisor shall notify the Chief of Police or designee, if the officer failed to assign a case number to a recording as required by this policy.

Retention and Response to Requests for Digital Evidence

- A. Retention periods will comply with and requests for digital evidence will be fulfilled according to MCC policy, Texas statutes, and Federal law.
- B. All official recorded media must be kept for a minimum of 180 calendar days.
- C. Otherwise, the retention schedule for recorded media is as follows:
- Evidential recordings - Statute of limitations or State of Texas retention timetable, whichever is greater, from the date the recording was originally created.
 - Liability related recordings - 3 years from the date the recording was originally created, except that recordings involving juveniles must be kept 3 years beyond the involved juveniles 18th birthday. This requirement also applies to video where a "Use of Force" form has been filed, even if no criminal offense is filed.
 - Special Circumstance - A recording involving the use of deadly force by an employee or that is related to an administrative or criminal investigation of an officer must be maintained until all criminal matters have been finally adjudicated and all administrative investigations have been concluded.

Body Worn Digital Recordings as Evidence

- A. Employees will download all recording captured on any BWVR system they carry by the end of their shift. Employees will be allowed to view BWVR recordings to assist them in making offense reports or statements related to their actions.
- B. The employee shall ensure that BWVR recordings are properly tagged, by type, in the BWVR system to ensure proper retention.
- C. Employees assigned a body worn camera may use the camera at approved off duty employment, but only in connection with Department duties. When used for this purpose, if the employee will not return to work within the next 24 hours, the employee shall upload all recordings capturing any arrest or use of force by returning to the Department as soon as is practically possible. For all other videos related to their off duty

employment, the employee shall upload the media during their next regularly assigned on duty shift.

Saving a Recording

- A. Officers are required to properly tag all video by encounter type, and assign a case number to any recorded media if such recordings have evidentiary value, or could be needed for some other important purpose (liability reasons, prove or disprove a citizen complaint, etc.). If for some reason the recording needs to be saved but a report is not otherwise required, an officer should obtain a case number from dispatch, assign that case number to the media to be saved and title the report as Information Only.
- B. If a recording needs to be saved and no report is being made, officers may also save the video with a citation number in the notes if a citation was issued in association with the recording.
- C. If an officer is unable to assign a case number to a recording before ending their tour of duty; then the officer is responsible to assign a case number to their recordings upon their return to work.
- D. All commissioned personnel who make recordings must follow the approved procedure for using the system software when assigning a case number to a recording.
- E. Personnel using a BWVR system will dictate, in their offense report, the unit number they were using the day the recording was originally made.

End of Policy