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Portable Audio/Video Recorders

DEFINITIONS

Body Worn Camera (BWC) – A mobile audio and video capture device that allows an officer to record what is seen and heard. The COBAN camera system is the only department authorized and approved BWC.

Categorizing – A method to mark and store a BWC recording for a specific purpose and period of time.

Digital Evidence – Includes photographs, audio, and video recordings that are stored digitally.

Evidence Transfer System (ETS) – A docking station for the COBAN body camera and battery. When the camera is docked, video data stored on the camera is automatically downloaded.

Labelling – The process of attaching an incident report in the ID field of a BWC recording.

424.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this Department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment. This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes or to mobile audio/video recordings (see the Investigation, and Prosecution and Mobile Audio/Video policies).

424.2 POLICY

The Vail Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

424.3 RESPONSIBILITIES

MEMBER

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department that does not contain data from a prior shift and is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever

possible. Officers will not use privately owned BWC under any circumstances. Upon transfer to an assignment where a BWC is not worn, or separation from the department, officers must return the BWC.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. When a non-uniformed member is wearing a body worn camera it shall be conspicuously mounted.

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

SUPERVISOR:

Ensure all patrol officers utilize the cameras in accordance with this policy;

Ensure any malfunction or damage to a BWC unit is documented. The supervisor will remove the BWC from service and contact the Digital Evidence Specialist to have the BWC repaired;

Periodically access BWC recordings during the course of his/her duties.

424.4 ACTIVATION OF THE PORTABLE RECORDER

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder at the initiation of any encounter with the public where there is a potential for enforcement, investigation, or any other encounter that becomes adversarial after the initial contact in a situation that would not otherwise require recording. Situations which require recording include, but are not limited to:

1. Vehicles stops;
2. Detentions, investigations pursuant to an arrest, arrests, suspect interviews, and post-Miranda interrogations;
3. Search of persons incident to arrest (if not already activated);
4. As soon as possible after the occurrence of an officer-involved traffic accident (if not already activated);
5. Pursuits: primary and secondary officers;
6. Any other citizen contact or official duty circumstance at the officer's discretion based on circumstances and reasonableness.

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

**424.5 PRIVACY EXPECTATIONS
DEPARTMENT MEMBERS**

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

MEMBERS OF THE PUBLIC

Officers are not required to obtain consent to video/audio record (except in the case of victims or witness as addressed below). Whenever possible, safe and practical, officers should inform individuals that they are being recorded. 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. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Once the BWC is activated, recording will continue until the event has concluded; the following are exceptions:

1. The event/location is of a sensitive nature, i.e. victim of a crime, child sexual assault, presence of child pornography, etc., and the absence of a BWC recording will not affect the investigation. Such locations include places of worship, religious ceremonies, certain locations in hospitals or clinics, law offices, day care facilities, public or private school grounds, etc. The presence of, and recording by, BWCs may not be practical even though officers may have a legal reason to be present and conduct public safety business. At such locations, at the officer's discretion and based on the circumstances, BWCs may be turned off. Officers must state the reason they are turning off the camera before doing so. The officer may consider the option to divert the camera away from any subjects and recording only audio if appropriate.;
2. The incident has concluded prior to the arrival of the officer;
3. The incident or event is of such duration that deactivating the BWC is necessary to conserve available recording time;
4. Investigative personnel arrive and begin the formal investigative process;
5. The officer determines that the recording must be stopped, either temporarily or for the duration of the event, based on clearly articulable reasons;
6. A citizen has requested the officer stop recording or wants to report a crime anonymously. Officers have no obligation to stop recording in response to a citizen's request if the recording is pursuant to an investigation, arrest, lawful search, or the circumstances clearly dictate that continued recording is necessary. However, officers should evaluate the situation and when appropriate, honor the citizen's request. The request to turn the camera off should be recorded, as well as the officer's response.
7. A citizen with standing has requested the officer stop recording within their residence and the officer's presence is not pursuant to an investigation, arrest, lawful search, or the circumstances clearly dictate that continued recording is necessary. As a general rule, if an officer must legally ask permission to enter a premise, the officer should also ask the resident with standing if they will allow recording.

Cessation of Recording

Officers shall continue recording until they announce on camera that they are deactivating their BWC:

- Under the exceptions above, Officers must state the specific reason(s) they are turning off their cameras before doing so;
- When the officer clears an event;

- When the officer arrives at any detention facility and just prior to entering the facility:
- Officers will not activate their BWC inside any detention facility. If circumstances arise where an officer needs to activate the BWC to record an exchange between the officer and the prisoner, the officer will request a secure room where the officer can activate the BWC. BWCs will not be used to record exchanges between corrections officers and prisoners;
- If possible, when experiencing technical problems with the camera.
- Activation of the BWC is not required during periods of unassigned time, breaks or lunch periods, or when not in service. Officers will continue recording for a short period after the event to demonstrate clearly to a subsequent viewer that the incident has concluded and the officer has resumed other duties or activities.

Juvenile Recordings

It is recognized that video images of juvenile offenders will at times be recorded by the BWC when responding to calls for service or during the course of an investigation. Because of this, officers shall protect video recordings of juveniles the same as still photographs of juveniles. Juvenile victims or witnesses to a crime will only be recorded with the permission of a parent or legal guardian present at the time of the recording. This permission must be documented on the recording. If consent is not given to being recorded the officer may consider the option to divert the camera away from the subject and recording only audio.

Crime Scenes

Officers who record video at a crime scene will identify themselves to arriving investigative personnel so that the presence of video can be noted by the detective(s). Officers will cease recording, if they haven't already done so, once the investigation begins. BWCs will undoubtedly record video of evidentiary value as officers arrive, handle and conduct preliminary investigations at crime scenes. These recordings will not replace evidence collection by crime scene investigators and are not the primary means for documenting evidence at a crime scene.

Restrictions

BWC shall be used only in conjunction with official law enforcement duties. The BWC shall not be used to record:

1. Any personal conversation of or between other department employees without the recorded employee's knowledge;
2. Non-work related personal activity and will not be activated in places where a reasonable expectation of privacy exists, such as locker rooms, dressing rooms or restrooms;
3. Major crime investigative briefings without detective sergeant approval;
4. Encounters with undercover officers or confidential informants;
5. Departmental meetings, workgroups, in-service training, or assignments of an operational or administrative nature without approval of the chief of police or designee.

424.6.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Colorado law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (CRS § 18-9-303).

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

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

424.6.2 EXPLOSIVE DEVICE

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

424.6.3 PROHIBITED USE OF PORTABLE RECORDERS

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

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned device. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department. Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Shift Sergeant. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

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

424.7 RETENTION OF RECORDINGS

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

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

424.7.1 RETENTION REQUIREMENTS

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule. If a recording needs to be retained the recording officer will label the recording with the incident number and categorize it using one of the following codes:

	Category	Retention
1.	Death – Non-criminal	10 years
2.	Major Violent Felony	10 years
3.	Sexual Assault	10 years
4.	Felony Case	7 years
5.	Misdemeanor case	2 years

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| 6. | Traffic Accident | 2 years |
| 7. | Traffic Citation | 1 year |
| 8. | Municipal Ordinance Violation | 1 year |
| 9. | Traffic Stop – no enforcement | 30 days |
| 10. | Field Contact – no report | 30 days |

If a recording needs to be retained, either for the officer’s reference or for investigative or follow-up purposes, but does not fall into one of the above categories the officer needs to label the event in the title field and contact the Digital Evidence Specialist.

424.9 REVIEW OF RECORDINGS

When preparing written reports, members should review their recordings as a resource. Members should not use the fact that a recording was made as a reason to write a less detailed report. Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member’s performance.

Recorded files may also be reviewed:

- a. Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- b. Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- c. By media personnel with permission of the Chief of Police or the authorized designee.
- d. In compliance with a public records request. All requests must be approved by the Chief of Police or designee. Once a request is received by Records for a video classified as a criminal justice record, the request will be forwarded to the Digital Evidence Specialist who will perform the technical aspects of redacting the video. Prior to being released to the requesting party, all recordings from the police department should be reviewed by the Custodian of Records or designee to ensure compliance with the Colorado Open Records Act, or other applicable law (see the Records Release and Security Policy).