



Surveillance Use Policy BART Police Body Worn Cameras (BWC)

BART Police Department

BPD-BWC-SUP-01

21 Day BART Board Notice – August 5, 2021

15 Day Public Notice – August 11, 2021 BART

Board Meeting – August 26, 2021



A. Purpose

The use of Body Worn Cameras (BWC) by the BART Police Department seeks to continually increase the confidence of the public using BART's public transportation system. Specifically, this technology seeks to provide transparency of BART police and police representatives while interacting with the public. Body Worn Cameras (BWC) are intended to assist BART Police officers, police oversight branches such as the Independent Police Auditor, Internal Affairs, District Attorney, and others as required by law. The BWC provides video of interaction between authorized police representatives and contacted members of the public. The video's intent is to provide objective, unbiased video, and audio record of a contact and/or incident. The Police Department is providing a BWC to designated sworn and civilian personnel for use while on-duty. The BWC is designed to record both video and audio activity and shall only be used during the course of official police duties. BWC enhance public safety and are in alignment with BART Police Department's transparency, community, and progressive policing vision.

The use of the BWC provides documentary evidence for criminal investigations, civil litigation, and allegations of officer misconduct. Such evidence shall be maintained by the Police Department in accordance with the Surveillance Ordinance and BART Police records retention policy, unless required by subpoena, or as an investigatory record for a criminal investigation, or for purposes of an administrative investigation on the conduct of a member(s) of the Police Department. For certain criminal cases, there may be a requirement by the courts or legal decision to retain the video indefinitely.

Officers shall utilize the body worn camera in accordance with the provision of this Policy in order to enhance transparency and ensure the integrity of evidence.

The proposed implementation of the BWC would serve the following key purposes:

Transparency

- Reassures the public when interacting with members of the BART Police Department.
- Collects information that is objective and unbiased.
- Provides evidential support to prosecute offenders for criminal offenses.
- Provides the public a means to address or report Police Misconduct.

B. Authorized Use

The list below provides the complement of BPD Personnel that are currently Authorized Users of BWC. Each Authorized User must receive training in the specific BWC in accordance BPD Policy on BWC's prior to use.

Police Lieutenants
Police Sergeants
Police Officers
Fare Inspectors
Crisis Intervention Specialists
Community Service Officers
Ambassadors

Body Worn Camera Users

Any authorized BWC user assigned to a uniformed position will be issued a BWC and shall carry a Department-issued BWC. Any Police officer assigned to a non-uniformed position may carry a Department-issued BWC at any time the officer or Command Staff believes that such a device may be utilized in order to assist the officer in the performance of their duties by providing an objective, unbiased video, and audio recording of a contact and/or incident. However, whenever a non-uniformed officer is working a uniformed patrol assignment, he/she shall be required to wear a Department - issued BWC. Members of the Department are expected to activate their BWC any time they reasonably believe that a recording of an on-duty contact with a member of the public may be of future benefit to the Department. If problems are encountered with any component of the system, the BWC equipment will not be used. The officer to whom the problematic equipment is assigned shall report the problem up on becoming aware of it. A spare BWC shall be issued to that officer through a supervisor prior to the officer going into service. The problematic BWC shall be routed to the BWC Technician and/or Vendor to diagnose and shall reassign a new unit to the affected employee.

Equipment Testing and Problem Reporting

Prior to going into service each officer shall perform an inspection and record a test video, to ensure that his/her BWC is operational. If problems are encountered with any component of the system, the BWC equipment will not be used. The officer to whom the problematic equipment is assigned shall report the problem upon becoming aware of it. A spare BWC shall be issued to that officer through a supervisor prior to the officer going into service. The officer and supervisor shall inform the BWC Technician via email of problems that are occurring with the problem unit as well as what spare BWC camera was assigned to the officer. The problematic BWC shall be routed to the BWC Technician to diagnose and shall reassign a new unit to the affected employee.

The officers shall report the loss or theft of an BWC to their immediate supervisor. The officer shall prepare a memo to be routed via the chain of command to their Bureau Deputy Chief documenting the circumstances surrounding the loss or theft of the device. The BWC technician should be informed via email from the immediate supervisor of the loss. A spare BWC shall be issued to the officer through a supervisor prior to going back into service. The officer and supervisor shall inform the BWC Technician via email of what spare was issued.

The BWC Technician shall assign a new unit to the officer as soon as possible after receiving notification of the loss or theft of the camera.

When an equipment malfunction is identified as a reason for a non-activation or late activation, it shall be documented.

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Once the BWC is activated pursuant to this policy, it shall remain on until the event giving rise to the activation has reached a conclusion and/or the officer leaves the scene of the event, whichever occurs first.

C. Data Collection and Prohibited Uses

BWC data shall be collected during the following:

Activation of the Body Worn Cameras Compliance

All on-scene officers (inclusive of all initiating and witness officers) equipped with a BWC shall activate their cameras prior to making contact with individuals in any of the following circumstances:

- Any law enforcement contact including:
- Detentions or Arrests
- Non Consensual, Vehicle stops
- Non Consensual, Walking stops
- Ejection of a subject from a BART station or train, with no voluntary compliance
- Probation and parole searches
- Service of a search or arrest warrant
- Any contact with a subject suspected for criminal behavior
- Processing, transporting, and booking of all prisoners
- Any contact with a subject for a suspicious activity report

Officers are encouraged to activate their BWC on consensual contacts and officers are required to activate their BWC anytime a consensual contact becomes a detention or arrest. An anticipated future use of the BWC is a public safety feature of the camera which allows the BWC to automatically activate if either the taser is deployed or when an officer's firearm is removed from the holster. Taser deployment occurs when the taser is out of the holster and the safety switch is turned on. The camera would remain on while the taser trigger is pulled and the taser is cycling. This automatic activation would also activate any other BPD Officers' BWC within the Bluetooth range of 30' to 50'. This feature would be implemented following BPD training and BPD Policy updates.

BWC data shall be prohibited during the following:

Prohibited use or Activation of the BWC Video and/or Audio Recorder

Penal Code Section 632 prohibits any individual from surreptitiously recording any conversation that is a confidential communication; in which any party to the conversation has a reasonable belief that the conversation is private or confidential. This excludes a communication made in a public gathering or in any legislative, judicial, executive, or administrative proceeding open to the public. Members of the Department are expressly prohibited from utilizing Department recorders and recorded media for personal use. Members of the Department will not make copies of any recordings for their personal use and are prohibited from using a recording device (such as a phone camera or secondary video camera) to record or back up the recording from a BWC.

D. Data Access

Access to BWC Data shall be restricted to the following personnel that have a right AND a need to know:

- All persons designated by the BART Police Department.
- BART personnel involved in the operation, installation, and maintenance of the BWC.
- Per Court Order or Subpoena, or during an ongoing investigation.
- Office of Independent Police Auditor and Internal Affairs Department.
- District Legal Affairs Department.

E. Data Protection

The data collected by the BWC system will be maintained in a secure location as required by Evidence Collection Procedures. Electronic access is limited to authorized individuals and includes electronic access protections and firewalls. All BWC data is secure and is encrypted via BART's IT encryption requirements from the data source capture through transmission for storage.

- All activity is logged for audit and tracking purposes. Audits are available to BART Police Department, Office of the Independent Police Auditor, District Attorney's, and others to view the actions of authorized system users.

F. Data Tag Type and Retention Periods

The BART Police Department has categories to tag and retain BWC videos in Evidence. The retention period for each category is publically posted in the Records Retention Schedule. It should be noted that retention times can be extended at any time by a Supervisor, Internal Affairs, Office of Independent Police Auditor, Legal Order or Subpoena, Evidence Specialist, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee.

All videos must be promptly categorized with one of the following categories, as applicable:

- Gone on Arrival or Unable to Locate or No Merit – Used for all evidence when the suspect/victims are gone and unable to be located.

- Infraction Crime – Used for all evidence of crimes involving only infraction violations.
- Misdemeanor Crime – Used for all misdemeanor crimes.
- Felony Crime – Used for all felony crimes.
- Detention – Used for detentions where the involved person(s) are released without any further enforcement.
- Proof of Payment – Used only by Fare Inspectors when conducting proof of payment fare enforcement.
- Welfare Check/Sick Person – Used for all welfare checks and/or sick persons with no further action taken.
- Welfare and Institutions – Used for emergency psychiatric evaluation submittals to hospitals with no criminal enforcement/arrest.
- Injured Person – Used for all injured persons with no criminal enforcement.
- Non-Criminal – Used for all non-criminal activities not captured under other categories.
- Consensual Contact – Used to document all consensual contacts that don't involve a detention or arrest.
- Adult Arrest – Used for all videos when an adult is arrested.
- Juvenile Arrest – Used for all videos when a juvenile is arrested.
- Outside Agency Assist – Used for all incidents handled by another agency or when acting as a cover officer for an outside agency.
- Homicide/Death/Sex Crime – Used for all homicides, deaths, and/or sex crimes.
- Testing – Used to document testing of equipment videos.
- Accidental – Used to document accidental recordings.
- Use-of-Force – Category used by supervisors for all evidence related to a supervisor's use of force investigation and placed on all videos that capture the actual use of force.
- Officer Involved Shooting – Used for all evidence related to an officer involved shooting or in-custody death.

Once the BWC is activated, it shall remain on until the event giving rise to the activation has reached a conclusion and/or the officer leaves the scene of the event, whichever occurs first. Officers shall record further interaction with suspects, including searching, processing, transporting, and booking. Any exceptions will be documented in the police report and reported to a supervisor. When the officer reasonably believes the event giving rise to the activation is over, he/she may deactivate the BWC from the recording mode. If the event giving rise to the activation resumes following the officer's termination of the BWC camera recording the officer shall reactivate their BWC. The BWC has an integrated Global Positioning System (GPS) that will display the BWC location on a map when the BWC is activated.

Department personnel shall not intentionally erase, alter, reuse, modify or tamper with audio-video recordings, nor shall they attempt to erase, alter, reuse, modify or tamper with audio-video recordings.

If the BWC is accidentally activated, the officer shall inform his or her immediate supervisor requesting the recording be deleted. The request shall be sent via email and routed to the BWC Administrator. Once the video has been reviewed by the supervisor and administrator and deemed to have no evidentiary value the video will be categorized as "ACCIDENTAL" and retained for thirty (30) days prior to deletion.

G. Public Access

BART shall grant Public access to data collected from the BWC system per BART Surveillance Ordinance only in accordance with California State Law. Information gathered will not be disclosed to the public unless such disclosure is required by law or court order. The BART Police Department is subject to BART's Surveillance Ordinance that has been publicly noticed and approved by the BART Board. BWC Data Collection will be monitored by BART Police as well as be subject to Police Internal Affairs and State Auditors to ensure the security of information and compliance with applicable privacy laws.

Such data will not otherwise be disclosed/released by the BART Police Department without the consent of the Chief of Police and District Legal.

Release of BWC Data to the General Public

All BWC Data shall be used by law enforcement for public safety and security purposes only; except as required by law, subpoenas or other court process, such data will not otherwise be disclosed/released by the BART Police Department without the consent of the Chief of Police and District Legal.

Department employees shall not release any information, including capabilities regarding the BWC systems to the public without prior authorization from the Chief of Police, or District Legal.

Requests for Video and Audio Recording from Members of the Public

Persons that have a subpoena or preservation letter, and are interested in requesting BWC data, shall be directed to the Department's Records Division during normal business hours, or via fax at 510-464-7089 for consideration of their request. Records shall consult with the Chief of Police and District Legal Prior to any approval of release.

Persons that do not have a subpoena or preservation letter and are interested in requesting BWC Data are to be directed to the District Secretary's Office for review by District Legal at 510-464-6080 or via fax at 510-464-6011.

H. Third Party Data Sharing

BART shall maintain robust security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect BWC data from unauthorized access,

destruction, use, modification, or disclosure. The Administrator of the data collection will not share information with ICE or any agency conducting immigration enforcement or removal operations. Information is only shared with other law enforcement possessing a need and legal right to know, including the following:

- In response to subpoenas
- Pursuant to a Court Order
- Request by Law Enforcement Agencies for active Criminal Investigations
- In accordance with all applicable California State law

Notwithstanding any other law or regulation:

(a) A public agency such as BART that operates or intends to operate an BWC system shall provide an opportunity for public comment at a regularly scheduled public meeting of the governing body of the public agency before implementing the program. BART shall present this Impact and Use document to the BART Board of Directors and provide notice to the public in accordance with BART's Surveillance Ordinance. BART Police Department shall also conduct outreach with privacy groups to address any privacy concerns that may be raised.

(b) A public agency shall not sell, share, or transfer BWC information, except to another law enforcement agency, and only as otherwise permitted by law.

Department employees shall not release any information, including capabilities regarding the District's BWC systems to the public without prior authorization from the Chief of Police, or Office of the General Counsel.

California State Law requires the release of recordings from body-worn cameras within 45 days of an incident, including if officers fired shots or if a use-of-force causes death or great bodily harm.

I. Training

Training for BART's BWC system will be provided by BART internal staff and service providers. Training will consist of BWC operation, data download and security. Technical training will be both hands on and via electronic instruction. Training will also cover this Use Policy as well.

J. Auditing and Oversight

The BART Police Department shall oversee the BART BWC System and data retention to ensure compliance with the Surveillance Ordinance. Additionally, BART Police will require the management of the system to be available to administrative auditors to ensure the BWC policy and California State Laws are adhered. The audit process shall ensure that no misuse of the system or parts of the system occurs.

Personnel who are authorized to have access to the system shall be designated in writing and the designation shall ensure that their access to and use of the data complies with the Ordinance and this Use Policy.

A log shall be maintained that records when access to BWC data is requested by outside entities. This shall include the date, time, data record accessed, justification for release and staff member involved. The log shall be available for presentation for all required audits.