

<b>Kent PD</b>	<b>WASPC</b>	<b>Title</b>
<b>#6.80</b>	<b>N/A</b>	<b>Body Worn Cameras and In-Car Videos</b>

**A. Purpose and Scope**

The Department has adopted the use of Body-Worn Cameras (BWC) and In-Car Videos (ICV) to record interactions between police officers and members of the public.

The Department will continually review this policy and consider changes in best practices, technology, and legal standards.

This policy does not apply to video or audio recordings using equipment other than BWCs or ICVs, nor does it apply to the surreptitious interception of electronic communications for lawful authorized investigative purposes under RCW 9.73.210 and RCW 9.73.230.

**B. BWC/ICV Equipment**

**Maintenance**

A Video Technician, in association with contracted vendors, shall be responsible for BWC system maintenance, upgrades, updates, and repairs.

**System Management**

The Video Technician is the overall system administrator responsible for system management, file retention, distribution, and deletion. The Video Technician will assist the City Clerk’s Office with public records requests.

**City Property**

The BWC/ICV equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment are the sole property of the City.

**C. BWC/ICV User Responsibilities**

**Inspection**

Officers shall inspect their BWC/ICV equipment at the start of every shift. If an officer discovers that the BWC/ICV equipment is not functioning, he/she will be responsible for documenting this in CAD and will ensure that the equipment is

Effective:	12/21/18
Revised:	11/18/20
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turned over to the Video Technician for repair. Officers will obtain a spare BWC from their sergeant when their BWC is with the Video Technician.

### **Location of BWC**

The BWC shall be worn on the front torso in a fixed position.

### **Activation of BWC/ICV Upon Initial Involvement in Incident**

**BWC.** Subject to the exceptions contained in this policy (and as public and officer safety considerations permit), officers shall activate their BWC before civilian contact occurs for all calls for service, as well as for all enforcement and investigative contacts with civilians. If circumstances prevent activation at the start of an event, the officer will activate the BWC as soon as practicable. In addition, and unless otherwise prohibited by this policy, officers may, at their discretion, activate the BWC any time they determine it would be beneficial to capture an event or activity. Officers working in an off-duty assignment should only activate their BWC during enforcement and investigative contacts with civilians.

Officers working in a court security capacity should only activate their BWC during enforcement and investigative contacts with civilians. This applies to investigative contacts while outside of a court room or inside of a court room as determined by the event or activity.

Detectives shall activate their BWC during pre-planned investigative events including but not limited to, residential search warrants, serving an arrest warrant, or with the expectation of arresting a subject. The use of a BWC will be discretionary for interviews with suspects, persons of interest, witnesses, or victims during ongoing/evolving investigations. It is permissible under this policy for Detectives to exercise reasonable discretion to record or not record events in circumstances outlined in the discretionary recording section of this policy.

Detectives may activate their BWC any time they determine it would be beneficial to capture an event or activity. If a member of the Detective Unit work in a patrol capacity, they will be governed by the policy referencing officers.

**ICV.** As public and officer safety considerations permit, officers shall ensure that the ICV is activated when they respond to an incident, when civilians enter the rear seat of their vehicle, or when their emergency lights are activated; provided, in patrol vehicles, the ICV will automatically activate when vehicle emergency lights

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are activated or the rifle rack is opened. For the purposes of this section, the term “civilians” does not include individuals on ride-alongs or personnel working on vehicles. If circumstances prevent activation at the start of an event, the officer will activate the ICV as soon as practical. In addition, and unless otherwise prohibited by this policy, officers may, at their discretion, activate the ICV anytime they determine it would be beneficial to capture an event or activity. When stopping a vehicle or making contact at the scene of a response, and as public and officer safety considerations permit, officers will make reasonable efforts to position the vehicle to obtain useful recordings and capture critical evidence.

### **Activation Amnesty**

No officer will be subject to discipline for failing to activate a camera for any reason for the first month or 16 shifts, whichever occurs later, after he or she is assigned to wear a BWC or drive a vehicle equipped with an ICV. Evidence of a failure to activate a BWC or ICV during the amnesty period shall not be used or considered for performance evaluations or discipline after this amnesty period. This amnesty period will apply again in the event an officer who previously was assigned to an assignment with a BWC or ICV, is reassigned to an assignment with a BWC or ICV after a period of six months or more in an assignment without a BWC or ICV. Officers assigned to assignments without a BWC or ICV who work extra shifts on assignments with a BWC or ICV will not be subject to discipline for an unintentional failure to activate the BWC or ICV.

### **Deactivation of BWC/ICV – Prohibitions and Exceptions to Recording**

Deactivation at Conclusion of Incident. Once activated, and subject to all exceptions set forth throughout this policy, the officer shall not purposely turn off the camera until the officer’s involvement in the incident has concluded. The officer should cease recording when his or her part of the active investigation is completed, and there is little possibility that the officer will have further contact with any person involved in the event.

Temporary Deactivation of Audio Only. Audio recording contemporaneous with a BWC may be temporarily disabled, “muted”, for conversations with other officers or persons not involved with the call. Muting the audio should only be used in rare circumstances and should not be a common occurrence. Pursuant to RCW 9.73.090(1)(c), audio recording contemporaneous with an ICV shall not be disabled when the ICV is activated.

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## **Recording Prohibited**

Unless specifically authorized by the Chief of Police, the BWC/ICV shall not be used to record:

1. Anything not involved with official duties.
2. Communications with other police personnel while not on a call.
3. Communications with undercover officers or confidential informants.
4. When on break or otherwise engaged in personal activities.
5. While in a jail unless for a direct law enforcement purpose.
6. While in the interiors of medical, mental health, counseling, or therapeutic facilities unless investigating a crime in progress (e.g. recording of an investigation of a crime committed at the facility, the drawing of blood at a facility following a DUI, the taking of a statement from a suspect or witness while in a facility, etc., would be permitted).
7. While within the police station or substations, except when taking an in station report or placing a suspect into one of the temporary holding cells in the police station. If so, announce as you enter the station that you are recording. Turn off your recording after the suspect is placed and secured in the temporary holding cell. Activate your recording each time you have an interaction with the suspect in the cell until the suspect is released or transported to jail.

## **Discretionary Recording**

It is permissible under this Policy for officers to exercise reasonable discretion to record or not record events in the following circumstances:

1. When the officer is in a location where individuals have a reasonable expectation of privacy (such as a bathroom or locker-room) and the officer is not there to effect an arrest or serve a warrant.
2. When respect for an individual's privacy or dignity outweighs the need to record an event. Such circumstances may include (without limitation) natural death scenes, death notifications, child or sexual assault victim interviews, and cultural or religious objections to being recorded.
3. Sensitive communications such as matters of law enforcement intelligence or where the recording could hinder a criminal investigation.
4. When the officer has an articulable basis, based on the facts and circumstances of the particular situation, that recording would be unsafe.

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## **Notification of Recording**

Notification at Initial Contact. Upon initial contact with civilians, during a call for service, or an enforcement/investigative contact, officers shall notify them, as soon as practicable, that they are being recorded. Whenever possible, this notification shall be recorded, and shall be repeated to any new arrivals during the contact when feasible.

Notification to Non-English Speakers. Officers will try to communicate to non-English speakers, those with limited English proficiency, deaf persons, or persons hard of hearing that they are being recorded.

Notification During Arrest. In accordance with RCW 9.73.090(1)(b), officers shall again notify persons placed under arrest they are being recorded and verbally give Miranda warnings on the recording.

Notification Exceptions. In accordance with RCW 9.73.090(1)(c), officers will not be required to inform the person being recorded if the person is being recorded under exigent circumstances.

Notification Not Satisfied. Contact situations are inherently fluid. For example, multiple persons may enter and leave the scene of the contact. This fluidity may pose a challenge to the satisfaction of the requirements of this subsection. The Department shall consider the fluidity of the contact, along with any other relevant factors, prior to determining whether a violation of this subsection has occurred.

## **Documentation of Recording in Police Reports**

When the BWC or ICV is activated, officers shall document in their case report that a BWC and/or an ICV recording was made. If an officer does not activate the BWC or ICV for any reason, mutes the audio recording associated with a BWC or ICV, or terminates the recording of the BWC or ICV for any reason, the officer shall document in his or her case report the circumstances and reason(s) why this occurred. If no case report is taken, an MI in the call to document the circumstances and reasons why is acceptable.

## **Downloading and Storage of BWC and ICV Recordings**

Officers shall download camera footage at least once per shift; provided, officers shall download camera footage as soon as practicable after a serious incident or when

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storage capacity is reaching its limit. Any time an officer records any portion of a contact that the officer reasonably believes constitutes evidence in a criminal case, the officer shall record the related case number and document the existence of the recording in the related case report. There may be circumstances where an officer is unable to download camera footage during his/her shift. In such cases, the officer will ensure the camera footage is downloaded at the beginning of their next regular or overtime shift, whichever occurs first; provided, video footage shall be downloaded prior to going on days off. The exception to downloading footage at a time other than at the end of a shift shall not apply to footage associated with a case that results in the booking of a suspect into jail, unless the inability of the officer to download the footage is beyond his/her control. Under certain circumstances, the Department may require video to be downloaded at times other than those specified herein or may cause the video to be downloaded by someone other than the officer to whom the camera was issued. Officers can volunteer to have an at home docking station where they can download their BWC.

### **Review of BWC/ICV Recordings**

Review Own Recordings and Those of Other Officers on Scene. Officers may view their own video recordings (and the recordings of other Officers on scene) in accordance with this policy and may request that other officers or law enforcement personnel from other state or federal agencies review video for law enforcement purposes. In addition, the officer’s attorney, KPOA’s Executive Board, and KPOA’s attorney may view video recordings upon request.

Preparing Written Reports. When preparing written reports, officers may review, utilize, and reference their BWC/ICV recordings as a resource. Officers shall not use the fact that a recording was made as a reason to write a less detailed report.

Public Safety Statement. If an officer is involved in a shooting, or other serious use of force, an officer may be required to provide a public safety statement prior to having the opportunity to review BWC or ICV recordings.

Viewer Application Entry. Any officer viewing a video will manually make an entry in the viewer application at the beginning of the viewing session stating the purpose for viewing the video.

Review, Retention and Distribution Prohibited. Officers shall not review video for purposes not related to their job duties, and under no circumstances shall an officer retain or distribute a recording for a non-law enforcement purpose.

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Civilian Review Prohibited. Civilians shall not be allowed to review the recordings at the scene.

### **Notification to Supervisor**

Officers are encouraged to inform their supervisor if the BWC/ICV may have recorded an incident that they reasonably believe may:

- a. Result in a complaint.
- b. Be used for training.
- c. Anything else that is unusual or high profile.

### **Inadvertent/Accidental Recording**

An officer may inadvertently/accidentally record themselves or others. These particular inadvertent/accidental recordings typically do not meet the statutory definition of a public record (as described in RCW 40.14.010) because they are not made "in connection with the transaction of public business" and as such may be deleted. The KPD Video Technician shall be responsible for the deletion of recordings that do not need to be retained pursuant to the procedure set forth below. The following procedure has been established for videos that should be deleted because they are inadvertent or accidental:

#### Notify Supervisor

The recording officer shall notify the on-duty patrol supervisor, via email, that:

1. An inadvertent/accidental recording was made; and
2. The recording date and time; and
3. A request that the recording be reviewed for deletion.

#### Supervisor Review

The on-duty patrol supervisor will review the recording and if he/she agrees that the video should be deleted shall direct the Video Technician to delete the subject footage. The presumption shall be that all inadvertent/accidental recordings shall be deleted.

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Deletion

As soon as possible, the Video Technician shall delete the video as directed by the on-duty patrol supervisor.

**D. Department Responsibilities**

**Officer Designation**

The Chief or his/her designee shall determine which commissioned officers will be required to use and operate the BWC and ICV in the performance of their official duties. Such designation shall not be arbitrary and the Department must treat all employees within a particular assignment the same in terms of whether they will be required to use and operate the BWC and/or the ICV.

**Supervisor Responsibilities**

Supervisors will be responsible for ensuring that assigned officers use and maintain their BWC and ICV equipment in accordance with this policy. They will review all body camera video associated with a use of force report, a pursuit report, or prior to taking any citizen complaint. Supervisors shall only review video of their immediate subordinates or if they are reviewing a use of force report, K-9 application, a pursuit report, or taking a citizen complaint of another officer. While reviewing video for authorized reasons, supervisors might find minor misconduct take place. This misconduct could be obscene language, minor rudeness, or other conduct that is minor in nature. This misconduct should be reviewed with the officer in a verbal counseling session.

**Immediate Possession of Video and Equipment**

If an officer is involved in a shooting or other serious use of force and/or is suspected of wrongdoing, the officer's supervisor should take physical custody of the BWC/ICV and will be responsible for downloading the data. The supervisor will take custody of the BWC/ICV outside of public view. When the officer uses deadly force, the investigating agency may supervise the downloading of the video.

**Review of Video**

Review by Supervisors and Command Staff. Supervisors and Command Staff, or their designees, are authorized to conduct a narrowly tailored review of relevant

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recordings of their immediate chain of command, when they are investigating a complaint of alleged misconduct; when reviewing a report of meritorious conduct; as a part of a follow-up to corrective action, counseling, or during the period of a performance improvement or action plan; for the purposes of training; for the purposes of determining whether to approve the filing of charges; for the purposes of reviewing applications of force, the use of a canine, pursuits, or other instances in which reporting is mandatory. Video may also be reviewed for the purposes of conducting a deadly force review, a traffic accident, for the purposes of defending or prosecuting civil or criminal litigation, or for the purposes of a coroner's inquest.

Other Relevant Recordings. Detectives, to include Persons, Property and SIU, in the Investigations Division are approved to review all relevant recordings for legitimate investigation purposes and in cases that they are assigned to work on. Other officers who are participating in an official investigation such as an administrative investigation or criminal investigation may be authorized to view other officers' relevant recordings upon approval of a command level officer. Any misconduct, found in these relevant recordings, will be reported to the reviewing officer's chain of command. If the officer involved with the misconduct is in another division, the commander will contact his/her counterpart in the other division.

Random Review Prohibited. BWC/ICV recordings will not be randomly reviewed for any reason.

Random Review for Discipline Prohibited. The purpose of this policy *is not* disciplinary in nature. The Department shall not randomly search through BWC/ICV recordings to discover reasons to impose discipline against officers.

All Evidence to be Considered. The Department further acknowledges that video recordings provide only a two-dimensional perspective (with limited vantage points) of an incident. Consequently, the Department will never rely solely upon the review of video recordings as the basis for discipline against an officer. Instead, the Department shall review and consider other available evidence (such as witness statements, officer interviews, forensic analysis, documentary evidence, etc.) prior to imposing discipline against an officer.

### **Video Storage, Retention and Disclosure**

Video Retention. BWC/ICV recordings should be stored, retained, released, and deleted in accordance with state records retention and public records disclosure

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laws. Recordings shall be retained for a period consistent with the requirements outlined by state law, or KPD’s own records retention schedule if more stringent, but in no event for a period less than 60 days. All videos recorded during training will be retained for seven days.

Public Disclosure Request. Members of the public who wish to view video shall be required to submit a public disclosure request, or in the event of litigation, seek the video in discovery. KPD will only release video to the public in accordance with Washington’s Public Records Act or pursuant to lawful process.

Review Prior to Public Disclosure. All recordings requested by the public shall first be reviewed prior to public release. Recordings that unreasonably violate a person’s privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court, and only after appropriate and legally permitted redactions, are made to preserve the involved person’s right to privacy.

Prosecutor’s Office and City Disclosure. Recordings shall be released and available to the City of Kent prosecutors and King County Prosecutor’s Office for the purposes of reviewing or prosecuting criminal cases or traffic or civil infractions. Recordings shall also be released and available to the City to review or prosecute code enforcement matters or licensing violations, and to defend the City or its employees in litigation. Recordings shall also be released and available to other criminal justice agencies as that term is defined in RCW 10.97.020.

Officer Involved Shooting. It is the department’s intent to release video related to an officer involved shooting within 48 hours after receiving a PRR. The Chief reserves the right to delay the release depending on investigative need or will release at his/her discretion for the best interests of the parties involved or the City; provided, the City shall comply with the Public Records Act.

**GPS Associated with BWC/ICV**

In the event GPS or other location capabilities (hereinafter “GPS”) are available with the BWC or ICV, the GPS will not be monitored with the primary purpose being to impose discipline. Instead, if an employee is suspected of engaging in possible misconduct, the GPS data may be consulted as evidence in any resulting investigation. The Department shall not review such GPS data prior to the commencement of an investigation. In addition, no discipline will be imposed except in accordance with City policy and any applicable collective bargaining agreement.

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## **E. BWC/ICV Training**

### **Initial Training**

Prior to wearing and operating a BWC or operating a vehicle with an ICV, officers are required to successfully complete Department training on the proper use of the equipment and procedures for uploading recorded video. This training will include:

- a. Department policy on BWCs and ICVs.
- b. System preparation and operation.
- c. Procedures for operating equipment
- d. Placement of the BWC.
- e. Procedures for downloading and tagging recorded data.
- f. Procedures for preparing and presenting digital evidence for court.
- g. Scenario based exercises that replicate situations that officers may encounter.

### **Refresher Training**

Officers shall attend refresher training on the BWC and ICV as directed by the department.

## **F. Violations of Policy**

### **Discipline**

Only violations of sections C or D may result in discipline. Furthermore, an employee may only be subject to discipline for violating a provision of section C or D if:

Intent to Violate. There is reasonable evidence an employee's violation of a provision of section C or D was willfully intended to circumvent the purpose of the particular provision; or

Repeat Violations. There is reasonable evidence the employee has repeatedly committed violations of provisions of sections C or D.

### **Counseling**

Notwithstanding the fact an employee may not be subject to discipline for a

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violation of this policy, the employee may be subject to non-disciplinary counseling, and further non-compliance after such counseling may be used for the purposes of reviewing and rating performance.

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