



Police Review Commission (PRC)

## **BODY-WORN & DASH CAMERAS SUBCOMMITTEE**

Commissioners Lippman (Chair), Javier, Roberts, Yampolsky

### **AGENDA**

**Wednesday, February 10, 2016**  
**5:30 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL**

**2. APPROVAL OF AGENDA**

**3. PUBLIC COMMENT**

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)*

**4. OLD BUSINESS (DISCUSSION AND ACTION)**

a. Develop Berkeley Police Department (BPD) written police policy for body-worn and dashboard cameras, in response to City Council referral of February 10, 2015.

1. Review and discuss modifications to draft contributed by BPD representative.
2. Input from BPD representative(s).
3. Discuss process and timeline for report.

**5. SCHEDULE NEXT MEETING DATE**

**6. ADJOURNMENT**

**Communications Disclaimer**

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.

**Communication Access Information (A.R.1.12)**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

**SB 343 Disclaimer**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 3<sup>rd</sup> floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info).

**Lee, Katherine**

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**From:** Ari Yampolsky <ari.yampolsky@gmail.com>  
**Sent:** Friday, January 29, 2016 4:47 PM  
**To:** Lee, Katherine  
**Subject:** PRC Body Worn Camera Subcommittee  
**Attachments:** Draft Camera Policy AY EDITS - AY updated of Jan 29 on TR edits of Jan 26.docx

Below are notes from the meeting. Attached is a Comm. Roberts's draft that has in it edits I incorporated based on decisions made at the last meeting. Please circulate. Thanks.

**Notes: Body-Worn Camera Subcommittee, January 27, 2016**

- Present: GL, TR, JJ, AY, Sgt. Okies (BPD), KL (PRC Officers)
- 1 member of the public

KL: BWC issue off of 3/29 Council worksession calendar. New date not determined yet.

GL: Have redlined version of JO's draft that AY made changes to based on last week's meeting.

TR: Also have a redlined version of JO's draft that AY made changes to based on last week's meeting (separate from GL's version).

GL: Review both proposals and try to reconcile.

Agree on TR changes to 450.1. Change "integrated portable device" to "other."

TR 450.2. Take out addition: "ensure the integrity of evidence" in first paragraph. Accept changes to paragraph 2, except change word "actual" to "full."

TR 450.2a. TR will come back with inclusion of language into Section 450.6.

JO: BPD public records release policy may govern some of this already. TR should take a look at that.

TR 450.3. Accepted.

TR 450.3a. Training requirement. JO: Agreed to put in TR 450.3a: 1) BPD required to train on cameras before officers provided; 2) BPD must develop training curriculum; 3) PRC reviews training curriculum. Use GL language in his § 450.9(h) but change limiting language re: activating cameras to training on this policy.

TR 450.4 ¶1: GL draft: Accept change. Discussion re "conspicuous" location definition. JO: different systems have different mounts; officers may put in a variety of locations. Leave "conspicuous" as is.

TR 450.4 ¶2: TR proposal to change “in the area” to “at the location.” Accepted.

TR 450.4 ¶3: TR proposal to start the sentence with the words, “Upon the approval of the chief of police.” Change to “Upon the approval of the chief of police or his/her designee.” Done.

TR 450.4 ¶4: Leave as is.

TR 450.4 ¶5: No decision. Assigned to TR to develop protocol.

TR 450.4.1: Review for next meeting. See Cal Penal Code § 832.18.

TR 450.5 ¶1: Accept TR changes. JO concern re defining “limits of privacy described herein.”

TR 450.5 ¶2a-f: Leave as is w/o TR change.

GL additions after 450.5 ¶2f re when recordings no required. JO: whats the concern? GL: send message to officer that s/he should think about it. Re last sentence re “advise or obtain from victims or witnesses when taking a recorded statement.” (Comes from OPD section re “Statement Taking.”) GL: let’s return to this next time. JO concerns re requiring it.

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Ari Yampolsky  
(213) 700-2929

**DRAFT Berkeley PD Policy**

**Portable Audio/Video Recorders**

**450.1 PURPOSE AND SCOPE**

This policy provides guidelines for the use of portable audio/video recording devices (PRD) 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 otherwise.

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).

**450.2 POLICY**

The Berkeley Police Department recognizes that video recording of contacts between Department personnel and the public provides an objective record of these events and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in policing. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel and will improve the delivery of police services to the community.

While recordings obtained from video recorders provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience or state of mind of the individual member(s) in a given incident.

450.2a Confidential Nature of Recordings. Put in statement something like LA. pg.3.VII

**450.3 MEMBER PRIVACY EXPECTATION**

All recordings made by members acting in their official capacity shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

450.3a Training Required. Officers who are assigned PRD's must complete department-approved training in the proper use and maintenance of the devices before deploying to the field. ---LA. pg. 4 XIII

**450.4 MEMBER RESPONSIBILITIES**

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, and that the recorder 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.

**Commented [TR1]:** Add new narrative to be determined

**Commented [a2]:** TR will come back with language to include in TR § 450.6

**Commented [TR3]:** Agreed to put in TR 450.3a: 1) BPD required to train on cameras before officers provided; 2) BPD must develop training curriculum; 3) PRC reviews training curriculum. Use GL language in his § 450.9(h) but change limiting language re: activating cameras to training on this policy.

**Commented [a4]:** We raised but tabled a foundational question regarding whether "uniformed" versus "nonuniformed" was the right way to distinguish officers required to wear a camera. I had an edit to cross out "uniformed" in this sentence and insert after the word "member" the phrase "required by this policy to wear a camera." I did not make the change in the text here because it requires a broader discussion of the uniformed vs. nonuniformed schematic, but am flagging that for further discussion.

Officers are not required to obtain consent to record from members of the public when the officer is lawfully at the location in the area where the recording takes place.

Upon the approval of the police chief or his/her designee Any non-uniformed members may use an approved portable recorder. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use and notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his/her name, BPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

Members are required to 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. In the event activity outlined in section 450.5 is not captured in whole or in part the member will need to document this and the reason the footage was not captured. Other agencies have set up specific procedures for this--we should consider one for this policy---see Oak pg.7, C (1)(2)

#### 450.4.1 SUPERVISOR RESPONSIBILITIES

Supervisors should take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving a use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

Oak pg.7, IV.A.a and LA pg.5, XX

#### 450.5 ACTIVATION OF THE PORTABLE RECORDER

Members shall - activate the recorder as required by this policy or at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The portable recorder shall be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify the Communications Center
- (d) Probation or parole searches
- (e) Service of a search or arrest warrant
- (f) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

The above section needs more detail . See Oak, pg.2 and LA pg. 2 for examples we might consider

**Commented [a5]:** No decision. Assigned to TR to develop protocol.

**Commented [a6]:** Review for next meeting. See Cal Penal Code § 832.18.

**Commented [TR7]:** What does this say?

**Commented [TR8]:** We should consider these for more detail here

**Commented [a9]:** START HERE NEXT MEETING. Review GL additions after GL450.5 ¶12f re when recordings not required.

**Commented [TR10]:** see note

Crowd Control Activation. Need section to address. Example –Oak pg.3.B

Commented [TR11]: add section

Activation not Required. Consider section to address this here. See Oak pg. 3 (C) and LA pg. 3.

Commented [TR12]: see comment

Add Sectio on Statement Taking. See Oak, Pg.4 (2)

Commented [TR13]: Add Section

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 or where privacy will not be maintained in accordance with this policy. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Commented [TR14]: Add

ADD a Section containing a Berkeley Privacy Policy Value Statement here.

Commented [TR15]: see comment

Informal community interactions differ from "consensual encounters" in which officers make in an effort to develop reasonable suspicion to detain someone or make a probable cause to arrest. To strengthen relationships between police and citizens, officers may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community, but in no case will recordings be made that are in conflict with the provisions of this policy.

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

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**450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER**

Members of the Department 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 (Penal Code § 633).

Commented [TR19]: What does this say?

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

**450.5.2 CESSATION OF RECORDING**

Once activated, the portable recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria authorized herein for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Commented [TR20]: Add

Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

Commented [TR21]: What does this say?

See Oak pgs. 3&4 (D) for other ideas

Commented [TR22]: consider adding more detail

#### 450.6 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, ~~or giving or sending copies to others unless authorized by this policy.~~

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 recorders.~~ Members shall not duplicate or distribute such recordings, ~~except as authorized by this policy 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 Watch Commander. 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.~~

See Oak, Pg. 1, F. as example to above sentence

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

Need Section Re: Prohibition of Modifying Recordings-- See LA pg.3, VIII

#### 450.7 RETENTION OF RECORDINGS

Any time a member records ~~of all or 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 ~~of the recorder~~ is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the portable recorder and be responsible for downloading the data. Officers must properly categorize and tag video recordings any time they are downloaded.

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 and document the contact appropriately.

Members are prohibited from intentionally erasing, altering, reusing, modifying, or tampering with audio video recordings.

#### 450.7.1 RETENTION REQUIREMENTS

The Berkeley Police Department has twelve (12) categories to tag and retain our cases in Evidence.Com. Each one is listed below with the current retention cycle. It should be noted that retention times can be extended at any time by a Supervisor, Internal Affairs Bureau, Id Technician, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee. Categories can also be added if needed.

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Commented [TR24]: see comment

Commented [TR25]: Add section

Commented [TR26]: Add

Commented [TR27]: What is the current procedure? Likely need a new one for body cams

Commented [TR28]: Add



See Oak, Pg. 14, A.3 and BART Pg. 38 for retention policy ideas to compare with those below

- (a) 01) INFRACTION VIOLATIONS 2 YEARS
- (b) 02) DETENTIONS 2 YEARS
- (c) 03) AID TO CITIZEN 1 YEAR
- (d) 04) COLD REPORT 1 YEAR
- (e) 05) ARREST (AT STATUTE OF LIMITATIONS)
- (f) 06) OUTSIDE ASSIST 1 YEAR
- (g) 07) CONSENSUAL CONTACTS 1 YEAR
- (h) 08) SICK OR INJURED COMMUNITY MEMBERS 3 YEARS
- (i) 09) STATEMENTS ( AT STATUTE OF LIMITATIONS)
- (j) 10) USE OF FORCE (UNTIL MANUALLY DELETED)
- (k) 11) UNATTENDED DEATH / HOMICIDE (UNTIL MANUALLY DELETED)
- (l) 12) TESTING / ACCIDENTAL 30 DAYS

Commented [TR29]: see note

Commented [TR30]: How long?

Commented [TR31]: What is this?

Commented [TR32]: How long?

Commented [TR33]: Need limit

Commented [TR34]: Need limit

**450.8 REVIEW OF RECORDINGS**

When preparing written reports, members should review their recordings as a resource. However, members shall not retain personal copies of recordings. Members shall should not use the fact that a recording was made as a reason to write a less detailed report.

See Oak, Pg. 8, c, d, 2, 3 for ideas on above.

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 or District Attorney 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, if permitted, and in accordance with the Records Maintenance and Release Policy.
- (e) By training staff regarding incidents which may serve as a learning or teaching tool.

Commented [TR35]: Needs more thought

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Commented [TR37]: see note

Commented [TR38]: What level?

Commented [TR39]: What level?

Commented [TR40]: Who is authorized in BPD?

Commented [TR41]: Need more detained protocols and process

Commented [TR42]: Who? Upon whose authorization?

All recordings should be reviewed by the Custodian of Records 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 unless disclosure is required by law or order of the court.

In the event of an officer involved shooting or other incident involving the death of a subject officers shall provide an initial interview before they review any audio or video recordings of the incident. An involved officer will have an opportunity to review recordings after the initial statement has been taken, and he or she can be re-interviewed if either the officer or members of the investigating team believe it is necessary.

#### 450.9 COORDINATOR

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

Note 1: There is too much remaining above for work in the future. Much of this can be addressed in this policy rather than totally leaving to the police chief to do later.

Note 2. Things not addressed:

- a) There are no details on training
- b) How should we handle references to disciplinary action? Where might they be needed?
- c) Should there be any references to Watch Commander, Training coordinator, and Commander responsibilities? See LA pgs. 6&7
- d) Other ??????

Commented [TR43]: See notes

**DRAFT Berkeley PD Policy**

**Portable Audio/Video Recorders**

**TR Feb 4 edits on AY update of Jan 29**

**Big picture note: I have revised and added to my original comments through sec 450.7.1. I have not noted anything new in sec. 450.8 because GL has many suggestions and I recommend that we use those as a base for our next discussion. I have revised my thoughts at the bottom of sec. 450.9. I now think some of this policy work needs to be undertaken as a second phase of the policy because there are currently many cost, personnel, equipment and logistical unknowns.**

**450.1 PURPOSE AND SCOPE**

This policy provides guidelines for the use of portable audio/video recording devices (PRD) 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 otherwise.

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).

**450.2 POLICY**

The Berkeley Police Department recognizes that video recording of contacts between Department personnel and the public provides an objective record of these events and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in policing. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel and will improve the delivery of police services to the community.

While recordings obtained from video recorders provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience or state of mind of the individual member(s) in a given incident.

**450.2a Confidential Nature of Recordings**

Body Worn Video use is limited to enforcement and investigative activities involving members of the public. The recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, and other proceedings protected by confidentiality laws and Department policy. Officers shall comply with all applicable laws and policies regarding confidential information. Unauthorized use or release of BWV recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded. Therefore, any unauthorized use or release of recordings or other violation of confidentiality laws

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Commented [TR1]: Add this section. From LA pg.3

Department policies are considered serious misconduct and subject to disciplinary action.

#### 450.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

##### 450.3a Training Required

Officers who are assigned PRD's must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of PRD's under this policy. BPD shall develop a training curriculum which shall be reviewed by the PRC periodically.

#### 450.4 MEMBER RESPONSIBILITIES

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, and that the recorder 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 are not required to obtain consent to record from members of the public when the officer is lawfully at the location in the area where the recording takes place.

Upon the approval of the police chief or his/her designee Any non-uniformed members may use an approved portable recorder. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use and notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his/her name, BPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

Members are required to document all activations of their PRD's except for test or accidental recordings and 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. In the event activity outlined in section 450.5 is not captured in whole or in part the member will need to document this and the reason the footage was not captured.

**Commented [TR2]:** Add section, Combination of GL and TR language

**Commented [a3]:** We raised but tabled a foundational question regarding whether "uniformed" versus "nonuniformed" was the right way to distinguish officers required to wear a camera. I had an edit to cross out "uniformed" in this sentence and insert after the word "member" the phrase "required by this policy to wear a camera." I did not make the change in the text here because it requires a broader discussion of the uniformed vs. nonuniformed schematic, but am flagging that for further discussion.

**Commented [TR4]:** Add. from Oak pg. 7

Documentation shall be provided in at least one of the following reports: crime report; consolidated arrest report, or Juvenal record, field interview, CAD notes, use of force report.

**Commented [TR5]:** Add this. BPD may have diff reports. This is from Oak, Pg 7

#### **450.4.1 SUPERVISOR RESPONSIBILITIES**

~~Supervisors should~~ shall take immediate physical custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving a use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded in a timely manner as prescribed by BPD policy. (Penal Code § 832.18).

**Commented [a6]:** Review for next meeting. See Cal Penal Code § 832.18.

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Supervisors shall also:

**Commented [TR7]:** need to clarify uploading vs downloading, policies vary

- Ensure that officers assigned PRD equipment have completed Department-required training and are familiar with applicable policies and procedures;
- Conduct periodic inspections of officers assigned PRD equipment and ensure that the cameras are properly affixed to the officers' uniforms and fully operable;
- Ensure officers upload all BWV recordings at the end of their shifts; and,
- Review relevant PRD recordings prior to submitting any administrative reports (e.g. non-categorical use of force investigations, pursuits, officer-involved traffic collisions).

**Commented [TR8]:** need some level of urgency

Supervisors shall report any defective equipment, remove it from service, and ensure it is immediately replaced.

**Commented [TR9]:** Add this section, mostly from LA pg.5

#### **450.5 ACTIVATION OF THE PORTABLE RECORDER**

Members shall - activate the recorder as required by this policy or at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The portable recorder shall be activated in any of the following situations:

- All enforcement and investigative contacts including stops and field interview (FI) situations
- Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- Self-initiated activity in which a member would normally notify the Communications Center
- Probation or parole searches
- Service of a search or arrest warrant

(f) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

(g) Dententions and arrests

(h) Vehicle pursuits

(i) Conducting searches of persons or property

(j) Transporting any detained or arrested citizen

**Commented [a10]:** START HERE NEXT MEETING. Review GL additions after GL450.5 ¶2f re when recordings not required.

**Commented [TR11]:** Add g,h,i,j. From Oak pg.2

Crowd Control Activation

**Commented [TR12]:** Add this section. From Oak pg 3

During crowd control, protest or mass arrest incidents members shall use their PRD's consistent with this policy, and when directed by the Incident Commander. The Incident Commander shall document their orders in an appropriate report (e.g. Operations Plan or After Action Report) and provide the orders to all personnel.

Activation not Required. Consider section to address this here

**Commented [TR13]:** see GL comments

Statement Taking

**Commented [TR14]:** Add this section. From Oak pg 4 and 5

Personnel are authorized to use the PRD's to record statements in lieu of taking a written statement. PRDs, however, shall not be used to record statements from child abuse or sexual assault victims.

a. Personnel shall advise or obtain consent from victims or witnesses when taking a PDRD recorded statement.

b. PDRD statements shall be recorded as an individual separate file, baring exigent circumstances. Therefore, during a required activation, where none of the de-activation criteria have been met, members may temporarily de-activate their PRD to record individual separate statements.

c. Personnel whose PDRD is not already activated shall activate it before and deactivate it after each statement is taken to create a separate individual file.

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 or where privacy will not be maintained in accordance with this policy. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

**Commented [TR15]:** Add

Informal community interactions differ from "consensual encounters" in which officers make in an effort to develop reasonable suspicion to detain someone or make a probable cause to arrest. To strengthen relationships between police and citizens, officers may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community, but in no case will recordings be made that are in conflict with the provisions of this policy.

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

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#### 450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Members of the Department 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 (Penal Code § 633).

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

#### 450.5.2 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria required herein for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

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Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

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Members shall not de-activate their PDRD, when it was activated as required by this policy, until one of the following occurs:

Commented [TR22]: Add this section. Oak pg 4

a. Their involvement in the citizen contact, arrest or detention has concluded or becomes a hospital guard;

b. They receive an order from a higher ranking member;

c. They are discussing administrative, tactical or law enforcement sensitive information away from the citizen;

d. They are at a location where they are not likely to have interaction or a chance encounter with the suspect (e.g. outer perimeter post, traffic control post, etc.);

e. The searches requiring activation as have concluded and the member believes they will have no further interaction with the person;

f. They reasonably believe the recording at a hospital may compromise patient confidentiality;

g. A pursuit has been terminated and the member performs the required actions or notifies Communications they are in-service;

h. They are interviewing an informant for the purpose of gathering intelligence. At the conclusion of the interview, the PDRD shall be re-activated until no longer required by policy;

i. They are meeting with an undercover officer. At the conclusion of the meeting, the PRD shall be re-activated until no longer required by policy.

After a member de-activates their PRD, it is their responsibility to ensure they re-activate their PDRD should the circumstances require

#### 450.6 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, ~~or giving or sending copies to others unless authorized by this policy.~~

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 recorders.~~ Members shall not duplicate or distribute such recordings, except ~~as authorized by this policy 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 Watch Commander. 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.

~~PROHIBITION AGAINST MODIFICATION OF RECORDINGS. Officers shall not copy, edit, alter, erase, or otherwise modify in any manner PRD recordings except as authorized by law or Department policy. Any violation of this provision is considered serious misconduct and subject to disciplinary action.~~

#### 450.7 RETENTION OF RECORDINGS

Any time a member records ~~of all or~~ 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 ~~of the recorder~~ is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the portable recorder and be responsible for downloading the data. Officers must properly categorize and tag video recordings any time they are downloaded.

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 and document the contact appropriately.

Members are prohibited from intentionally erasing, altering, reusing, modifying, or tampering with audio video recordings.

#### 450.7.1 RETENTION REQUIREMENTS

The Berkeley Police Department has twelve (12) categories to tag and retain our cases in Evidence.Com. Each one is listed below with the current retention cycle. It should be noted that retention times can be

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extended at any time by a Supervisor, Internal Affairs Bureau, Id Technician, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee. Categories can also be added if needed.

The requirements below are essentially the same as BART Pg. 38

- (a) 01) INFRACTION VIOLATIONS 2 YEARS
- (b) 02) DETENTIONS 2 YEARS
- (c) 03) AID TO CITIZEN 1 YEAR
- (d) 04) COLD REPORT 1 YEAR
- (e) 05) ARREST ~~(AT STATUTE OF LIMITATIONS)~~
- (f) 06) OUTSIDE ASSIST 1 YEAR
- (g) 07) CONSENSUAL CONTACTS 1 YEAR
- (h) 08) SICK OR INJURED COMMUNITY MEMBERS 3 YEARS
- (i) 09) STATEMENTS ~~( AT STATUTE OF LIMITATIONS)~~
- (j) 10) USE OF FORCE ~~(UNTIL MANUALLY DELETED)~~
- (k) 11) UNATTENDED DEATH / HOMICIDE ~~(UNTIL MANUALLY DELETED)~~
- (l) 12) TESTING / ACCIDENTAL 30 DAYS

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**Commented [TR29]:** How long?

**Commented [TR30]:** What is this?

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**Commented [TR32]:** Need limit

**Commented [TR33]:** Need limit

#### 450.8 REVIEW OF RECORDINGS

When preparing written reports, ~~members should review their recordings as a resource~~. However, members shall not retain personal copies of recordings. Members ~~shall~~ should not use the fact that a recording was made as a reason to write a less detailed report.

See Oak, Pg. 8,c,d,2,3 for ideas on above.

~~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 or District Attorney 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, if permitted, and in accordance with the Records Maintenance and Release Policy.
- (e) ~~By training staff~~ regarding incidents which may serve as a learning or teaching tool.

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**Commented [TR38]:** What level?

**Commented [TR39]:** Who is authorized in BPD?

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**Commented [TR41]:** Who? Upon whose authorization?

All recordings should be reviewed by the Custodian of Records 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 unless disclosure is required by law or order of the court.

In the event of an officer involved shooting or other incident involving the death of a subject officers shall provide an initial interview before they review any audio or video recordings of the incident. An involved officer will have an opportunity to review recordings after the initial statement has been taken, and he or she can be re-interviewed if either the officer or members of the investigating team believe it is necessary.

#### 450.9 COORDINATOR

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

Note 1: The more I think about it most of the above items should be addressed and proposed by the Chief in a follow up action. There are equipment issues we don't understand yet in terms of how procedures will need to work. There are personnel and logistics needs that we don't fully understand yet that may require funding, etc. We can work with the Chief on the follow up.

Note 2. Things not addressed:

a) How should we handle references to disciplinary action? Where might they be needed?

c) Should there be any references to Watch Commander, Training coordinator, and Commander responsibilities? See LA pgs. 6&7

d) Other ?????? |

**Commented [TR42]:** See notes above