

NOTICE

TO: All S.C. Law Enforcement Agency Heads and Training Officers
FROM: South Carolina Law Enforcement Training Council and South Carolina Criminal Justice Academy
RE: Law Enforcement Training Council's Body-Worn Camera Guidelines
DATE: December 7, 2015

The Law Enforcement Training Council has conducted a thorough study of the use, implementation procedures, costs, and other related aspects associated with body-worn cameras in jurisdictions with body-worn cameras currently in use or about to be in use. As a result of this study, LETC has developed and finalized guidelines for the use of body-worn cameras by state and local law enforcement agencies, pursuant to S.C. Code 23-1-240. These Guidelines are attached to this notice.

If you have not submitted your Body-Worn Camera Policy to the South Carolina Criminal Justice Academy for review, you may do so now. You may send the policy to jfennell@sccja.sc.gov. Once received, your policy will be reviewed to make sure it conforms to the Guidelines set forth by LETC.¹ If your policy is approved, you will receive a letter stating so. You must attach a copy of this approval letter² to your request for funding from the Department of Public Safety's Public Safety Coordinating Council. Please note, that the Academy must approve your policy before you may apply for these funds. Your policy must be submitted to the Academy by March 7, 2016, pursuant to S.C. Code 23-1-240.

If you have any questions, please feel free to contact James M. Fennell at 803-896-7722.

¹ Legal disclaimer: Neither the South Carolina Criminal Justice Academy nor the South Carolina Law Enforcement Training Council are rendering an opinion as to your policy's legal sufficiency. These entities are only stating that your policy meets the guidelines promulgated by LETC. It is advised that you seek legal advice on your policy's legal sufficiency.

² The approval letter will contain additional instructions in the event your policy changes.

Pursuant to S.C. Code 23-1-240, the South Carolina Law Enforcement Training Council has established guidelines for law enforcement's use of body worn cameras. These guidelines are intended to establish a standard for South Carolina law enforcement, but are not intended to address all topics pertaining to body worn cameras. As such, these guidelines are not intended to be policies. Although the agency policies must conform to the guidelines, the policies may add to the standards set forth in the guidelines. In fact, it is recommended that agencies write policies that include topics not covered by the guidelines. These topics might include: when to de-activate the body worn camera; and/or when an officer can view the video.

Once the policy has been drafted, an electronic copy shall be submitted to South Carolina Criminal Justice Academy (jfennell@sccja.sc.gov). A review of the policy will take place to ensure the policy's compliance with the SCLETC guidelines. This review will only address the policy's compliance, but not the policy's legal sufficiency.

I. Which officer must wear a BWC?

- a. Uniformed officers whose primary function is to answer calls for service and interact with the public, or officers who have a reasonable expectation that they will.

II. When must BWCs be worn and activated?

- a. When a uniformed officer arrives at a call for service or initiates any other law enforcement or investigative encounter between an officer and a member of the public, including, but not limited to: on the scene of all violent crimes; traffic stops; motor vehicle accident investigation when the parties to the motor vehicle accident are present; suspicious persons; public drunk; public disorderly conduct; field contacts; arrests; emotionally disturbed persons; weapons are present or alleged to be present; use of force; and an adversarial contact or a potentially adversarial contact.

III. Restrictions on the use of BWCs.

- a. BWCs shall be used only in conjunction with official law enforcement duties. The BWC shall not generally be used to record communications with other police personnel without the permission of the chief executive officer (CEO), encounters with undercover officers or confidential informants, when on break or otherwise engaged in personal activities, unless for a direct law enforcement purpose such as a crime in progress or the recording of the location is material to a criminal investigation. Furthermore, officers should use discretion where there is a victim of rape or sexual assault. Additionally, to respect the dignity of others, unless

articulable exigent circumstances exist, officers will try to avoid recording persons who are nude or when sensitive human areas are exposed.

- IV. Process to obtain consent of victims and witnesses before using BWCs during an interview.
 - a. There is no obligation to obtain consent from victims or witnesses prior to using a BWC during an interview. However, if asked about its use, a LEO will be forthcoming about its use. At that time the LEO will have discretion on whether to keep the BWC on or turn it off. If the LEO discontinues the recording, the LEO must document the reason for discontinuation either on the BWC or in a written report.

- V. The retention and release of data recorded by BWCs.
 - a. Recordings that are non-investigative, non-arrest, and are not part of any internal investigation will be retained not less than fourteen (14) days.

 - b. Recordings of any arrests or violations of offenses listed in the S.C. Preservation of Evidence Act, S.C. Code 17-28-320, the expungement statute of S.C. Code 17-1-40, or any other statute, regulation, or case law will follow the retention requirements outlined therein.

 - c. Data recorded by a body-worn camera is not a public record subject to disclosure under the Freedom of Information Act:
 - i. The State Law Enforcement Division, the Attorney General, and a circuit solicitor may request and must receive data recorded by a body-worn camera for any legitimate criminal justice purpose;
 - ii. A law enforcement agency, the State Law Enforcement Division, the Attorney General, or a circuit solicitor may release data recorded by a body-worn camera in its discretion;
 - iii. A law enforcement agency may request and must receive data recorded by a body-worn camera if the recording is relevant to an internal investigation regarding misconduct or disciplinary action of a law enforcement officer;
 - iv. In addition to the persons who may request and must receive data recorded by a body-worn camera provided in item (2), the following are also entitled to request and receive such data pursuant to the South Carolina Rules of Criminal Procedure, the South Carolina Rules of Civil Procedure, or a court order:
 - 1. a person who is the subject of the recording;

2. a criminal defendant if the recording is relevant to a pending criminal action;
3. a civil litigant if the recording is relevant to a pending civil action;
4. a person whose property has been seized or damaged in relation to, or is otherwise involved with, a crime to which the recording is related;
5. a parent or legal guardian of a minor or incapacitated person described in sub item (1) or (2); and
6. An attorney for a person described in sub items (1) through (5).