

South Carolina Department of Public Safety



Office of the Director

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| POLICY | 300.06 |
| EFFECTIVE DATE | FEBRUARY 17, 2016 |
| SUBJECT | AUDIO/VIDEO RECORDINGS |
| REPLACES POLICY DATED | FEBRUARY 5, 2015 |
| APPLICABLE LEGAL AUTHORITIES | S.C. Code §§ 17-1-40, 17-28-320, and 23-1-240 |
| APPLICABLE STANDARDS | 11.4.5, 41.3.8, 83.2.2 |
| APPLICABLE STANDARD OPERATING PROCEDURES (SOP) | N/A |
| FORMS | DPS-LE-014 (Uniform Administrative Report); DPS-LE-026 (Audio Video Log); DPS-LE-027 (Audio Video Recording Chain of Custody & Disposal); DPS-LE-027A (Audio Video Recording Chain of Custody & Disposal Supplemental); DPS-LE-065 (Audio/Video Monitor Report) |
| DISTRIBUTION | TO ALL EMPLOYEES |

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I. PURPOSE

To provide guidelines for South Carolina Department of Public Safety (SCDPS or department) law enforcement personnel as they relate to the use of audio/video recordings to enhance officer safety, collect and document evidence, and enhance training and officer evaluation initiatives. *[41.3.8(a)]*

II. POLICY

SCDPS will ensure the proper collection, preservation, handling, retention, and disposal of audio and video recordings produced in the line of duty by officers of the department. *[41.3.8(a)]*

III. DEFINITIONS

For the purposes of this policy, the following definitions shall apply:

Division Director - The Chief Financial Officer; Bureau of Protective Services Chief; Human Resources Director; Office of Professional Responsibility Chief; Office of Strategic Services, Accreditation, Policy and Inspections Commander; General Counsel; Communications Director; Office of Highway Safety and Justice Programs Director; Office of Information Technology Director; Legislative Liaison; Immigration Enforcement Unit Commander; Colonel for Highway Patrol and Colonel for State Transport Police.

Duplication - a replicated tape/DVD utilized for training purposes, *FOIA/litigation*, and court prosecutions (e.g., Rule 5) that can be produced by any law enforcement officer.

Recording - digital devices (e.g., Body-Worn Cameras [BWC], tapes, or DVDs) utilized to capture sounds and/or visual images.

Review - *The initial supervisory review of an audio/video recording not including subsequent supervisory reviews of the same recording.*

Unit - a troop, district, or operating SCDPS law enforcement office that has the ability to issue, maintain, and track audio and video recordings.

IV. **GENERAL PROVISIONS**

- A. Use of recording devices that are not issued by the department is prohibited. **[41.3.8(a)]**
- B. All audio, images, and recordings are confidential. No personal duplications are allowed under any circumstances. Officers will not upload any SCDPS recordings, images, and/or audio to any public or social media website. **[41.3.8(a)]**
- C. The viewing of any recording for anything other than approved SCDPS purposes is prohibited. **[41.3.8(a)]**
- D. Officers will not attempt to erase, edit, or otherwise alter recordings in any manner. **[41.3.8(a)]**
- E. Officers should make every effort to ensure that no background noise interferes with the audio portion of the recording. **[41.3.8(a)]**
- F. A tape/DVD shall not be tampered with before or after installation into the recorder.
- G. If a tape/DVD malfunctions during use, the officer shall label the tape/DVD with the date and time of the malfunction. All audio/video malfunctions shall be reported to the officer's supervisor as soon as possible utilizing DPS-LE-014 (Uniform Administrative Report).

V. **IN-CAR AUDIO/VIDEO RECORDING SYSTEM USE**

- A. When the blue lights and/or siren are activated in a law enforcement vehicle, the in-car video/audio recording system will automatically activate. The in-car system will remain on as long as the officer has interaction with the violator being stopped to include transporting the violator to a jail or detention facility. **[41.3.8(b)]**
- B. In all cases involving enforcement activities, once the in-car video/audio recording system has begun recording, the device shall not be stopped, paused, turned off or otherwise interfered with at any time until the enforcement activity has concluded ***except as otherwise provided below***. In cases where the blue light remains activated for safety purposes, the officer should also continue recording. **[41.3.8(b)]**
- C. SCDPS officers are permitted to stop or deactivate the audio portion of in-car audio/video recording devices when communicating privately with a supervisor and/or the Office of General Counsel (OGC). Upon completion of the private conversation with a supervisor and/or OGC, the recording devices will be reactivated. **[41.3.8(b)]**
- D. At the time of a traffic stop, officers shall use the wireless microphone to record the following information:
 - 1. location of stop;
 - 2. description of vehicle(s);
 - 3. number of occupants in vehicle(s) and their race and sex, if known; and
 - 4. license plate number(s) and state(s) of issuance for vehicle(s). **[41.3.8(b)]**

- E. Officers should position a violator when outside of the stopped vehicle in such a way that the violator is in plain view of the in-car video/audio equipment.
- F. If asked, officers shall inform violator(s)/*individual(s)* that audio and video recording equipment is in use.
- G. Officers who assist other officers in a backup capacity shall also activate their in-car video recording system to record the incidents at the point blue lights and/or sirens are activated or when the officer arrives on the scene, whichever is sooner. The recording shall continue until there is no longer contact with the violator(s)/individual(s) involved. Since the primary officer is recording, backup officers may turn off their audio transmitters upon exiting the vehicle in order to avoid interference with the primary officer's audio recording. **[41.3.8(b)]**

VI. BWC USE

- A. ***BWCs shall be worn by all SCDPS officers whose primary function is to answer calls for service and interact with the public.***
- B. Commissioned officers involved in undercover operations are exempt from wearing a BWC.
- C. When there are interactions with individuals which do not involve the use of a blue light and/or siren, the BWC shall be activated when practical. The director may approve and/or mandate other activities be recorded at his discretion (e.g., internal investigations, special events, etc.). **[41.3.8(b)]**
- D. The BWC shall be positioned on the officer's body per training guidelines.
- E. When engaging with a violator, officers should position a violator in such a way that the violator is in plain view of the BWC.
- F. The BWC will be worn throughout the duration of an officer's working hours. Once the BWC is activated, the device will remain activated until the conclusion of the law enforcement activity. **[41.3.8(b)]**
- G. Officers will only activate the BWC when ***arriving at a call for service or initiating any other law enforcement or investigative encounter between an officer and member of the public. These scenarios include, but are not limited to: [41.3.8(b)]***
 - 1. *the scene of all violent crimes;*
 - 2. *traffic stops;*
 - 3. *motor vehicle accident investigation when participants of the accident are present;*
 - 4. *encounters with suspicious persons or emotionally disturbed persons;*
 - 5. *public drunkenness or disorderly conduct;*
 - 6. *interaction with field contacts;*
 - 7. *arrests;*
 - 8. *situations in which weapons are actually or alleged to be present;*
 - 9. *use of force; and*
 - 10. *any potential adversarial contact. [41.3.8(b)]*
- H. ***Officers who assist other officers in a backup capacity shall also activate their BWC to record the incidents when blue lights and/or sirens are activated or when the officer arrives on the scene, whichever is sooner. The recording shall continue until there is no longer contact with the violator(s)/individual(s) involved. [41.3.8(b)]***

- I. Officers will be permitted to deactivate the BWC during certain encounters including: *[41.3.8(b)]*
 1. *engaging in break or personal activities;*
 2. entering a public locker room/restroom;
 3. entering a doctor's office/hospital;
 4. *attending* court proceedings;
 5. interacting with departmental employees during daily work (e.g., meetings, briefings, award ceremonies, etc.);
 6. *communicating privately with a supervisor and/or OGC,* or;
 7. any other circumstances unrelated to law enforcement activity. *[41.3.8(b)]*
- J. *The BWC shall not be used to record communications with other SCDPS employees except in conjunction with official law enforcement duties. The BWC shall not be used to record communications with undercover law enforcement personnel or informants from other law enforcement agencies without the permission of the appropriate law enforcement division director. [41.3.8(b)]*
- K. *There is no obligation to obtain consent from a victim or witness prior to utilizing a BWC during an interview. However, if asked, an officer must be forthcoming about its use.*
- L. *Officers shall use discretion when dealing with victims of rape or sexual assault, persons who are nude, and circumstances when any sensitive human areas are exposed.*
- M. Officers are responsible for safely securing the BWC while not on duty and the device is not in use.
- N. *Officers will be trained on how to download captured data before the BWC reaches maximum storage capacity. [41.3.8(d)]*

VII. AUDIO/VIDEO RECORDING SYSTEM TAPE/DVD SECURITY AND CONTROL

- A. Officers shall carry in their vehicle only the number of blank tapes/DVDs that will be needed during the duration of their shift.
- B. When issuing a blank tape/DVD, it shall be sequentially numbered identifying the issuing unit. Issued blank tapes/DVDs will be documented on DPS-LE-026 (Audio/Video Log).
- C. Officers shall write identifying information on all recorded tapes/DVDs, which shall include the name of the officer responsible for the recording, the first date that the tape/DVD was used, and the last date that the tape/DVD was used. No adhesive tapes/labels are to be used *on DVDs*.
- D. If *at any time an officer transfers an original recording*, the chain of custody will be documented on *DPS-LE-027 (Audio/Video Recording Chain of Custody, Duplication, and Disposal)* and, if applicable, *DPS-LE-027A (Audio/Video Recording Chain of Custody, Duplication, and Disposal Supplemental)*.

VIII. AUDIO/VIDEO RECORDING SYSTEM TAPE/DVD STORAGE, RETENTION, AND DISPOSAL

- A. Each unit office shall turn over unissued tapes/DVDs to the unit evidence custodian for storage in a climate controlled and secured area.
- B. Original tapes/DVDs will be protected as evidence.

- C. When a video or audio recording contains information that may be used as evidence in a case involving a major drug arrest, complaint, or civil rights allegation, the video or audio recording with the chain of custody documented utilizing DPS-LE-027 and, if applicable, DPS-LE-027A shall be turned over to the unit's evidence custodian as soon as notification is received from a law enforcement supervisor. **[41.3.8(c)]** [83.2.2]
- D. The arresting officer shall maintain custody of and store recorded tapes/DVDs in a secure controlled area until final disposition of the case. **[41.3.8(d)]** Within five (5) working days of the final disposition of the case, the arresting officer shall release the tape/DVD to the unit evidence custodian *or authorized supervisor* utilizing DPS-LE-027 and, if applicable, DPS-LE-027A.
- E. The evidence custodian *or authorized supervisor* shall log submitted tapes/DVDs on DPS-LE-026 and store them for 90 days. If the officer turning in the tapes/DVDs does not notify the evidence custodian *or authorized supervisor* of any court appeals or other reason(s) to retain the tapes/DVDs during the 90 day period, the tapes/DVDs will be disposed. **[41.3.8(d)]** [83.2.2]
- F. To dispose of the tapes/DVDs, the evidence custodian or authorized supervisor will sign form DPS-LE-027 noting the date and method of disposal. ***After disposal of the recording, DPS-LE-027 and, if applicable, DPS-LE-027A will be retained for a period of five (5) years.***
- G. ***The disposal date shall also be properly documented on DPS-LE-026.*** [83.2.2]
- H. The unit evidence custodian *or authorized supervisor* will periodically review DPS-LE-026 ensuring tapes/DVDs turned in are in compliance with this policy. The status of the tapes/DVDs with active cases will be verified annually by each unit's evidence custodian *or authorized supervisor* with the officer who turned in the tapes/DVDs. Once ***all recordings indicated on the form have been returned and disposed, DPS-LE-026 shall be retained for five (5) years.***
- I. Supervisors have the authority to take possession of videotapes/DVDs after a pursuit, shooting, complaint or other incident when a change of custody is deemed necessary by the supervisor. The transfer of custody will be documented on DPS-LE-027 and, if applicable, DPS-LE-027A.
- J. ***For recordings of any (a.) arrests for or (b.) violations of offenses outlined below, officers shall follow the retention requirements outlined therein:***
 - 1. *S.C. Code of Laws § 17-28-320 (Preservation of Evidence Act);*
 - 2. *S.C. Code of Laws § 17-1-40 (Expungement); or*
 - 3. *any other statute, regulation, or case law which sets forth retention requirements.***[41.3.8(d)]**

IX. **DUPLICATIONS**

- A. If a transcription of a recorded conversation is needed or if information contained on recordings requires frequent review for investigative purposes, a ***duplication*** will be made of the recording with the unit commander's approval.
- B. Tapes/DVDs can be copied or duplicated by officers for ***law enforcement or departmental purposes only.***
- C. ***When practical,*** additional ***uplications*** of tapes may be ***made*** using the first ***duplication*** of a tape. When making copies of a tape, the record protect tab should be removed from the

original or source tape to avoid accidental erasure. A notation must be made on DPS-LE-027 and, if applicable, DPS-LE-027A reflecting that a **duplication** was made. Care should be taken to securely store **uplications**.

- D. The label for duplications shall contain the same information as the original recording, to include adding the words “Duplicate Copy.” Duplication may be authorized by a supervisor.

X. REVIEW OF RECORDINGS

- A. In the event of an inquiry or complaint, a supervisor may enter the chain of custody of a recording on a pending or active case in order to conduct the appropriate review.
- B. The evidence custodian may release recordings to other unit supervisors to assist in the above review of each recording.
- C. **The supervisor conducting the review** of a recording shall evaluate an officer’s actions to ascertain the following:
 - 1. Compliance with standard operating procedures, safety procedures and other training;
 - 2. Interactions with the public; and
 - 3. Professional behavior and demeanor.

A review will be documented by completing DPS-LE-065 (Audio/Video Monitor Report).

- D. Action shall be taken to address issues that arise as a result of this review. If extraordinary issues are detected that involve serious incidents of misconduct or have the potential for developing into serious incidents of misconduct, they shall be immediately reported to the troop and unit commander utilizing DPS-LE-014. The unit commander shall immediately review the recording and take appropriate action to address those issues. **These actions include notifying the appropriate division director, the director, and the Office of Professional Responsibility (OPR).** [11.4.5]

XI. INSPECTION, MAINTENANCE, AND REPAIR OF RECORDING EQUIPMENT

- A. Prior to an officer beginning his/her shift, the officer will be responsible for ensuring that all recording devices are functional. If the equipment is not functional, the officer must notify his/her supervisor immediately. **[41.3.8(e)]**
- B. A supervisor shall routinely inspect cameras and evaluate the recording equipment to ensure it is working properly. This **inspection** will be documented on DPS-LE-029 (Line Inspection Checklist). If an officer experiences a malfunction with any part of the recording equipment, the officer shall notify his/her supervisor of the problem and record such notification on DPS-LE-014. The supervisor shall arrange for the repair of the malfunctioning equipment. **[41.3.8(e)]**
- C. The BWC will be inspected during the monthly line inspection by the officer’s immediate supervisor **[41.3.8(e)]**

XII. COMPLAINTS

- A. If a complaint is made against an officer, a supervisor will immediately secure the recording(s) related to the complaint. A **duplication** of all tapes/DVDs will be made and the original tape/DVDs will be turned over to the unit’s evidence custodian. Complaint-related recordings may be made available to the officer for court cases, but may not be erased or destroyed until final disposition of the complaint. **[41.3.8(c)]**

- B. The **duplication** of a tape or DVDs will be used during the course of an investigation. If a complaint is substantiated, the original recording will be released to OPR after it is no longer required for court purposes.

XIII. DUPLICATION OR DISTRIBUTION OF RECORDINGS FOR TRAINING PURPOSES

A. GENERAL

Once a recording is no longer needed for legal purposes, the recording must be forwarded to the appropriate division director or the officer's supervisor if the recording could be beneficial for training purposes. In such cases, a notation must be made on DPS-LE-026 indicating the recording was forwarded to the training division along with the date the recording was forwarded. If the recording is not selected for use as a training video, it shall be returned to the unit's evidence custodian for disposal as outlined in this policy.

B. TRAINING VIDEO PROCEDURES

1. If a recording is approved for training purposes, the training staff and the appropriate law enforcement division shall work together to produce a training recording that is acceptable to both.
2. Once an edited training recording is completed, the original recording shall be disposed of in accordance with the provisions of this policy.

C. DISTRIBUTION OF TRAINING VIDEOS

1. Requests for department recordings pursuant to FOIA must be referred to the SCDPS FOIA Officer for processing.
2. The SCDPS FOIA Officer shall forward to the department's training staff all requests from other law enforcement agencies or other sources having a legitimate need or statutory right to copies of training recordings. In instances where there is an active case or pending prosecution **relating to the subject matter on the video**, OGC must first approve the release of the recording.
3. The duplication shall be made by the department's training staff and shall be labeled "South Carolina Department of Public Safety."

D. VIDEOS FROM OTHER LAW ENFORCEMENT AGENCIES

SCDPS may use training recordings from other law enforcement agencies. However, before such recordings may be used, approval must be secured from the respective law enforcement agency by the SCDPS's training staff. Additionally, SCDPS personnel shall strictly adhere to any reasonable restrictions of the law enforcement agency as to the recordings' use or distribution. Audio/video recordings from other law enforcement agencies may be modified to a training format by SCDPS training staff. However, the approval of that law enforcement agency must be secured in writing prior to such modification and the law enforcement agency shall be consulted regarding the modification of the recording.

XIV. FOIA REQUESTS

- A. Audio/video recordings or portions thereof which are recorded and maintained by the department may be subject to FOIA requests. All FOIA requests received by any office or division of the department shall be forwarded to the SCDPS FOIA Officer for response. It is the responsibility of the appropriate division directors to notify the Office of Communications if the recording or portions of the recording are not believed to be subject to release under

FOIA. Only the director, Office of Communications and/or OGC can approve or disapprove the release of documents or recordings requests under FOIA.

B. *Data recorded by a BWC is not a public record subject to disclosure under FOIA. Only the following individuals/entities may be entitled to receive such data:*

- 1. *SLED, the Attorney General, and a circuit solicitor may request and must receive such data recorded by a BWC for any legitimate criminal justice purpose.***
- 2. *A law enforcement agency may request and must receive data recorded by a BWC if the recording is relevant to an internal investigation regarding misconduct or disciplinary action of a law enforcement officer.***
- 3. *In accordance with the South Carolina Rules of Criminal Procedure, the South Carolina Rules of Civil Procedure, or a court order, the following individuals are also entitled to request and receive BWC-captured data:***
 - a. *the individual who is the subject of the recording;***
 - b. *the criminal defendant if the recording is relevant to a pending criminal action;***
 - c. *a civil litigant if the recording is relevant to a pending civil action;***
 - d. *a person whose property has been seized or damaged in relation or otherwise involved with a crime to which the recording is related;***
 - e. *a parent or legal guardian of a minor or incapacitated person described in items (a) or (b) of this list; and***
 - f. *an attorney for a person described in items (a) through (e) of this list.***

XV. TRAINING

All SCDPS officers shall be properly trained *in accordance with the training guidelines* before using a recording device. *[41.3.8(f)]*

XVI. VIOLATION OF POLICY

Any violation of this policy shall be handled in accordance with Policy 400.08 (Disciplinary Action).

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| By Order of the Director Date: February 11, 2016 |
| <i>Leroy Smith</i> |
| Director S C Department of Public Safety |
| The Original Signed Copy of this Policy is on File in the Office Strategic Services, Accreditation, Policy, and Inspections |