

**Gallatin County Sheriff's Office**  
**Body Worn Camera(s) (BWCs) Policy [Policy No. 423]**

Adopted February 28, 2023

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#### **423.01 Purpose and Scope**

This Policy provides guidelines for the use of Body Worn Cameras (BWCs) by law enforcement deputies within the Gallatin County Sheriff's Office (GCSO) while in the performance of their official duties.

#### **423.02 Policy**

This Policy is designed to help the GCSO achieve a balance: balancing instances where electronically recording evidence that might help solve a crime and successfully prosecute an offender; balancing the need to promote law enforcement transparency and accountability; balancing the need to respect the privacy interests of individuals captured in a BWC recording.

This Policy recognizes that it is important to use objective criteria for activation and use of a BWC in the field.

It also recognizes that in circumstances where a law enforcement deputy is afforded discretion in deciding to activate or de-activate a BWC, the reasons for exercising that discretion must be documented to permit supervisory review.

#### **423.03 Review of BWC Policy Every Two Years**

This Policy will be reviewed for updates and modifications by the Gallatin County Sheriff or her or his designee at least every two years.

#### **423.04 Law Enforcement Deputies Required to Wear BWCs**

The following deputies shall be required to be **equipped with and wear BWCs** and adhere to the provisions of this Policy while performing their official duties:

- (a) All uniformed law enforcement deputies.
- (b) All law enforcement deputies assigned to a pre-planned search warrant execution or a pre-planned arrest. This shall include pre-planned searches and arrests performed pursuant to a statutory authority (e.g., probation or misdemeanor probation searches).
  - (1) However, deputies are not required to be equipped with or activate a BWC during pre-planned search warrant execution under the following circumstances:
    - i. If the deputy is conducting a search of a cellphone, tablet, computer, other electronic device, document, file or other similar item pursuant to a search warrant, when such items have already been seized and the search is performed at a location other than the premises of the initial search and seizure; or
    - ii. If the deputy is conducting a search of a cellphone, tablet, computer, or other electronic device, document, file or other similar item that is suspected to contain images or depictions of child sexual exploitation.

#### **423.05 Special Circumstances When a Law Enforcement Deputy is Required to Wear a BWC and/or is Not Required to Wear a BWC**

Exceptions are permitted when approved by the Sheriff or designee and only under such circumstances that justify an exemption at the discretion of the Sheriff or designee.

#### **423.06 Placement of BWCs**

BWC's will be worn in a conspicuous manner and specific placement of a BWC shall be in accordance with the BWC systems manufacturer's instructions and shall utilize any mounts issued with the BWC. A deputy should reasonably place the BWC to maximize the BWC's ability to capture video footage of the deputies' activities. To the extent reasonably possible, a BWC shall be placed so that the camera is unobstructed (e.g. outside clothing).

#### **423.07 Law Enforcement Deputy's Duty to Inspect and Report BWC Malfunction**

A deputy equipped with a BWC shall be responsible for determining the BWC is fully functional, and its battery is adequately charged at the start of a duty shift and before going into the field. If a malfunction is detected, the deputy shall report the malfunction to a supervisor before going into the field.

If the BWC malfunctions while out in the field the deputy should utilize appropriate back-up devices on scene and subsequently replace the malfunctioning device as soon as practicable during their shift. The malfunction shall be reported to a supervisor as soon as it is safe and practicable to do so.

#### **423.08 Training Required**

The GCSO will designate one or more training deputies to ensure that all deputies issued a BWC and deputy's or civilian employees who access or handle BWC recordings, are familiarized with this Policy. The designee will also provide training on the manufacturer's instructions for proper use of the issued BWCs.

#### **423.09 No Privacy Expectation of BWC Recordings**

All BWC recordings made on any GCSO issued BWC that is activated only while in performance of official law enforcement duties and for the purpose of recording incidents, investigations and deputy/civilian encounters, at any time, and for any reason, shall remain the property of the GCSO. Deputies have no expectation of privacy or ownership interest in the content of BWC recordings regarding the required duties of a peace deputy defined in 7-32-201 MCA that is employed by the GCSO.

#### **423.10 Public Notice that BWCs are Deployed and Active**

GCSO will take reasonable steps to inform the public of the use of BWC technology. GCSO will publish a statement that it deploys BWCs on its public website. The website will include a picture showing what the device looks like, and how it is worn by law enforcement, so that citizens will be able to determine whether a law enforcement deputy is equipped with the device.

Additionally, this Policy requires:

- (a) Deputies Must Give Truthful Responses to Specific Inquiries about BWCs: A deputy shall answer truthfully if a person asks the deputy if he or she is equipped with a BWC or inquires as to whether the BWC is activated. A deputy is prohibited from misleading any person as to whether the deputy is equipped with a BWC or whether the BWC is activated.

This section recognizes a deputy's ability to openly record while in the course of performing duties related to law enforcement. *See* § 46-4-408, MCA ("[A] custodial interrogations **must** be electronically recorded"); *see also* §§ 45-8-213(2)(a)(i), (2)(a)(iii), and (2)(b)(iii) (Privacy in Communications).

#### **423.11 Law Enforcement Deputy Responsibility Related to Recordings-After-the-Fact**

If a deputy becomes aware, at any time, that a BWC was not activated pursuant to **423.13, Standards Governing the Activation of BWCs**, but where there may be RATF video captured that otherwise would have been required to have been captured under this Policy, the deputy shall notify a Supervisor prior to the end of shift so that the RATF video may be obtained, if possible. A Supervisor shall work with the deputy to obtain and preserve RATF video as quickly as possible.

#### **423.12 Standards Governing the Activation of BWCs**

This Policy is not intended to describe every possible situation in which a BWC should be activated, although there are many situations where activation and use are appropriate. Generally, deputies should activate a BWC any time the deputy believes it would be appropriate or valuable to record an incident.

BWC systems and recordings are not a substitute for a deputy's reasonable beliefs and perceptions and cannot account for the physiological responses during critical incidents, such as visual tunneling and auditory exclusion. BWC recordings should not be viewed as the sole measure of truth, or the totality of the circumstances. BWC systems and their inherent limitations only capture video and audio evidence from the camera's physical position on scene and not necessarily from the user's overall perspective.

Nothing in this Policy should be construed or applied in a manner that jeopardizes deputy safety by distracting the deputy's attention from the immediate need to use force, if necessary.

When circumstances necessitating force arise suddenly during the course of swiftly developing events, it may not be safe or practicable for a deputy to activate a BWC before employing force.

At no time is a deputy expected to jeopardize his/her safety or the safety of another to activate a BWC. However, the BWC should be activated in situations as described below, as soon as is reasonably practicable.

A law enforcement deputy required to wear a BWC pursuant to **423.05 Law Enforcement Deputy's Required to Wear BWCs** shall have their BWC powered on and in standby mode while on duty.

This Policy further requires:

- (a) BWC's Used Only in Performance of Official Duties: A BWC shall be activated only while in performance of official law enforcement duties and for the purpose of recording incidents, investigations, and deputy-citizen encounters involving those law enforcement activities specified in their duties, or otherwise specified in the policies of the GCSO.
- (b) Circumstances When BWC Activation is Generally Required: A deputy equipped with a BWC will activate the BWC whenever the deputy is responding to a call for service or at the initiation of any other investigative encounter between a deputy and a member of the public, unless there exists an immediate threat to the deputy's life or safety that makes such activation impossible or dangerous. In such situations, the deputy must activate the BWC at the first reasonable

opportunity to do so and the BWC shall remain activated until the encounter has fully concluded and the deputy leaves the scene.

- (c) When a BWC is required to be activated by a deputy pursuant to this Policy, the device must remain activated throughout the entire encounter/event/episode and will not be deactivated until it is concluded, except as set forth in **423.16 Circumstances when BWC Activation or Use is Subject to Special Conditions or Restrictions**.
- (d) Activation and Recording while Transporting an Arrestee or Person in Protective Custody: A deputy will activate a BWC when transporting an arrestee or person in protective custody, unless authorized by a supervisor to place BWC in standby mode. The BWC shall remain activated while the deputy is in the presence of the person and until the person is secured in a holding cell, processing room, or until custody of the person has been transferred to County jail personnel, or the person is with the hospital/medical/mental health personnel and the deputy is no longer in the presence of the person.
- (e) Special Activation Rules Governing Use-of-Force Incidents, In-Custody Deaths, and Other Exigent Circumstances Where deputies are in Danger: An deputy equipped with a BWC shall specifically activate the BWC before arriving at the scene in the following incidences:
  - 1. Any use of force by any law enforcement deputy, regardless of agency, resulting in death;
  - 2. Any use of deadly force (including the discharge of a firearm) by any deputy, regardless of agency, and regardless of whether such force resulting in injury;
  - 3. The death of any civilian during an encounter with a law enforcement deputy, regardless of agency; or
  - 4. The death of any civilian while in the custody of the Gallatin County Sheriff's Office.

A deputy responding to an incident described above shall not-deactivate the BWC unless specifically instructed to do so by the County Attorney or the Sheriff. Such instructions may be given telephonically. The deputy shall record who gave the instruction to stop recording.

#### **423.13 Standards Governing the Deactivation of BWCs Upon the Request of a Civilian**

A deputy will not suggest to any person that the BWC be deactivated; nor will the deputy ask the person if he or she would prefer that the BWC be deactivated. Rather, the request for deactivation must be self-initiated by the person or civilian. The deputy may explain the consequences of deactivation (*e.g.*, that important evidence relevant to the criminal investigation will not be recorded).

Under such circumstances, the following provisions govern requests for the deactivation of BWCs as follows:

- (a) Standards Governing Deactivation at the Request of a Civilian/Witness/Victim Providing Information and Cooperation: a deputy may deactivate a BWC when a civilian conversing with the deputy requests the device be turned off and where it reasonably appears that the person will not provide information or otherwise cooperate with the deputy unless the request is respected.

When deciding whether to deactivate a BWC at the request of a civilian, the deputy will consider the impact that deactivation will have on the criminal investigation, the privacy and safety interests of the person requesting the deactivation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide only if the deactivation request is honored.

However, the deputy will not deactivate based on the request of a civilian if the request occurs in relation to or during a custodial interrogation. *See* § 46-4-409, MCA ("[A]ll custodial interrogations must be electronically recorded.").

- (b) Standards Governing Deactivation at the Request of a Person Seeking Emergency Medical Assistance: a deputy may deactivate a BWC when a person, other than an arrestee, is seeking emergency medical services for her or himself or another and requests that the BWC be deactivated. In deciding whether to deactivate the BWC, the deputy shall consider the privacy interests of the person requesting deactivation and the person in need of medical assistance.
- (c) Procedures for Deactivation upon the Request of a Civilian: When a deputy deactivates a BWC the deputy will follow the following procedure:
  - 1. The discussion between the deputy and civilian concerning the request for deactivation shall be electronically recorded;
  - 2. Before the deputy deactivates a BWC, the deputy shall narrate the circumstances of the deactivation (e.g., "I am now turning off my BWC, per the victim's request.");
  - 3. The deputy shall report the circumstances concerning the deactivation to a Supervisor as soon as is practicable;
  - 4. The deputy shall document the circumstances and reasons for the deactivation in any investigation or incident report concerning the incident under the investigation;
  - 5. The deputy shall ensure the BWC recording is appropriately "tagged" to indicate the BWC recording raises special privacy or other issues pursuant to **423.20(a) Identification, Categorization, and Preservation of Recordings and Provisions to Identify and Categorize ("Tag") Recordings that Raise Special Privacy or Safety Issues.**
- (d) Procedure when a Deputy Decides to Decline to Deactivate a BWC: If a deputy declines to deactivate a BWC recording after the request of a civilian, the reasons for declining the request must be documented (e.g. the deputy believes there is a reasonable possibility that it may be necessary to use force during the encounter; or that the probative value of the recording is significant in light of the criminal investigation, like a homicide).

If the deputy declines a deactivation request, the deputy will inform the person making the request of the decision. A deputy is prohibited from misleading the person making the deactivation request into believing the BWC has been turned off, when it is in fact

operating, unless the County Attorney or Sheriff has expressly authorized covert recording consistent with applicable law.

#### **423.14            Standards Governing the Deactivation of a BWC During Criminal Investigation, Planning Discussions or to Obtain Legal Advice**

- (a) Procedure for Deactivation During Criminal Investigation Strategy/Planning Discussions: A deputy may deactivate a BWC while participating in a discussion pertaining to criminal investigation strategy or planning (e.g. to consider what investigative techniques to pursue, such as what questions to pose to a suspect or witness, whether to summon a canine, whether to apply for a search warrant, whether to request permission to conduct a consent search, etc.), so long as the strategy/planning discussion is not conducted in the immediate presence of a civilian (i.e., under circumstances where a civilian might overhear the strategy session), and further provided that the deputy is not actively engaged in the collection of physical evidence (i.e., conducting a search).
- (b) Deactivation Required when Obtaining Legal Advice and Applicable Procedure: A deputy shall deactivate a BWC when engaged in any communication with the County Attorney or any Deputy County Attorney for purposes of obtaining legal advice or to otherwise discuss case strategy, investigative strategy, or investigative planning.

#### **423.15            Locations and Circumstances Involving BWC Activation and Deactivation that are Subject to Special Considerations**

The following are subject to special consideration regarding a deputy's activation or deactivation of an equipped BWC:

1. Is in a school or youth facility or on school or youth facility property under circumstances where minor children would be in view of the BWC;
2. Is in a patient care area of a healthcare facility, medical office, mental health center, behavioral health unit, or substance treatment facility under circumstances where patients would be in view of the BWC; or
3. Is in a place of worship under circumstances where worshipers would be in view of the BWC.
4. A BWC shall not be powered on while the deputy is not actively performing law enforcement functions (e.g. while eating meals, while in the restroom, while in a locker room, while in the deputy's personal residence etc.). A BWC shall not be activated or used by a deputy for personal purposes or when engaged in GCSO union business. A BWC shall not be used to record conversations involving deputy counseling sessions, guidance sessions, personnel evaluations, or any similar supervisory interaction with a deputy.

5. If a deputy is required to deactivate the BWC in accordance with the provisions of this Section, the BWC shall be reactivated as soon as it is safe and practicable to do so, if and when circumstances requiring deactivation are no longer present (e.g., the law enforcement deputy is conversing with an adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWC).
- (a) Special Restriction on BWC Recordings during Sexual Assault Nursing Examinations (SANE Exams): A deputy shall not activate the BWC during a Sexual Assault Nursing Examination (SANE) evaluation if the deputy is present for the evaluation.
- (b) Special Restriction on BWC Recording during County or Regional Interdisciplinary Child Information and School Safety Team Meetings: A deputy shall not activate during a county or regional interdisciplinary child information and school safety team meeting held pursuant to § 52-2-211, MCA.
- (c) Special Restrictions when Undercover Deputy's or Confidential Informant Would Be Recorded: Unless required under **423.13(e) Special Activation Rules Governing Use-of-Force Incidents, In-Custody Deaths, and Other Exigent Circumstances Where Deputies are in Danger**, a deputy shall not activate a BWC if the deputy knows or reasonably believes that the BWC would risk revealing the identity of an undercover officer or confidential informant or would otherwise pose a risk to the safety of an undercover deputy or confidential informant, unless such an activation is expressly authorized by a Supervisor.

Notwithstanding the foregoing general rule prohibiting the recording of an undercover deputy or cooperating witness, in the event of a planned arrest/search warrant execution where it is expected that an undercover deputy or cooperating witness would be present (e.g., a raid where the undercover operative will be arrested to preserve his or her cover), a Supervisor, may provide specific instruction to any BWC-equipped deputy's participating in the operation on whether to activate their BWCs.

- (d) Special Restrictions when a BWC Recording would Reveal Tactical Operation Information: Unless required under **423.13(e) Special Activation Rules Governing Use-of-Force Incidents, In-Custody Deaths, and Other Exigent Circumstances Where Deputies are in Danger**, a deputy shall not activate a BWC if the deputy knows or reasonably believes that the BWC would reveal confidential tactical information, the disclosure of which might jeopardize future operations or deputy safety (e.g. verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms, techniques to convince persons to open doors, etc.).
- (e) Special Restrictions on BWC Recording in Courtrooms: A deputy shall not activate (or shall deactivate) a BWC while in any courtroom during court proceedings, unless responding to a call for service, when law enforcement action is required.



- (f) Special Restrictions on BWC Recordings during consultation with County Attorney, Deputy County Attorney: A deputy shall not activate their BWC during any consultation with a County Attorney or Deputy County Attorney related to any circumstances involving legal advice, case investigation or strategy, or case planning.
- (g) Deactivation/Removal of BWC from Alcohol Breath Testing Areas: In order to eliminate any argument that radio frequency interference from a BWC affected an electronic alcohol breath test, BWCs shall be deactivated and turned off, while in the area of the breath test instrument before an electronic breath test is conducted. Nothing herein shall be construed to preclude the use of a BWC to record the behavior of a person arrested for driving while intoxicated other than while the person is in the breath-testing area while the electronic breath testing device is being operated. If this provision requires deactivation of a BWC, the BWC shall be re-activated when safe and practicable to do so following the completion of the breath testing operation.
- (h) Restriction on Using BWC with Enhanced Audio/Visual Capabilities: If the GCSO acquires a BWC with enhanced audio/video capabilities that allow it to record an image or conversation that could not be seen or heard by the deputy wearing the device (e.g., infrared night vision or thermal imaging, sound amplification that would record conversations occurring at a remote distance), the feature capability shall not be used
- (i) Restrictions on Using BWC in Conjunction with Facial Recognition Technology: The use of facial recognition technology in conjunction with the use of a BWC or any BWC recording shall not be permitted without the specific written approval of the County Attorney, in accordance with any applicable legal requirements.
- (j) Restrictions on Using BWC Where Explosive Device(s) May be Present: BWC's should not be used or operated in any area where an explosive device may be present.

#### **423.16 Identification, Categorization, and Preservation of Recordings**

- (a) Provisions to Identify and Categorize ("Tag") Recordings that Raise Special Privacy or Safety Issues: To identify BWC recordings that may raise special privacy or safety issues, a deputy or supervisor should "tag" or otherwise categorize a BWC recording when she or he reasonably believes the recording:
  1. Was made in a residential premises (e.g. a home, apartment, college dormitory, hotel/motel room);
  2. Was made inside a school or youth facility;
  3. Was made inside a healthcare facility or medical office;
  4. Was made inside a substance abuse or mental health treatment facility;
  5. Was made inside a place of worship;
  6. Captures a conversation with a person whose request to deactivate a BWC was declined;

7. Captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded;
  8. Captures the image or information pertaining to an undercover deputy or confidential informant;
  9. Captures the screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information, other than related to the specific/ pending investigation (e.g. captures confidential criminal justice information related to a separate and distinct investigation);
  10. Raises additional special privacy, safety, or other issues not otherwise provided for in the Policy and which the deputy believes should be brought to the attention of a supervisor or County Attorney
- (b) Provisions to Identify and Categorize (“Tag”) BWC Recordings that Incidentally or Accidentally Capture Situations Subject to Restrictions: When any person becomes aware that a BWC recording incidentally or accidentally captured audio or video related to situations that should not have been recorded pursuant to **423.14 Standards Governing the Deactivation; 423.15 Standard Governing the Deactivation of a BWC During Criminal Investigation or Planning Discussions, or to Obtain Legal Advice; or 423.16 Locations and Circumstances Involving BWC Activation and Deactivation that are Subject to Special Considerations** (e.g. incidentally records a Deputy County Attorney providing legal advice, or accidentally records a Court proceeding), the person shall tag and/or notify a Supervisor who shall “tag” the BWC. The BWC recording shall not be destroyed and shall be retained consistent with **423.19 Retention of BWC Recordings**.
- (c) Approval for Access to “Tagged” BWC Recordings: In addition to the requirements of **423.22 Restrictions on Access, Use, and Dissemination of BWC Recordings**, except when provided to the County Attorney for prosecution of a criminal offense or pursuant to a legal hold, or an ongoing investigation, a BWC recording tagged pursuant to this section, shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the written approval of the County Attorney or a Supervisor.
- (d) Compliance with Discovery Obligations Relating to BWC Recordings that Might Expose Deputy’s or Other Persons to Danger: If disclosure of a BWC recording as part of the State’s discovery obligations in a prosecution might present a danger to any law enforcement deputy or civilian (e.g. reveal an undercover deputy, confidential informant, witness, surveillance site, or put a victim at risk of danger, etc.), or might reveal confidential tactical information the disclosure of which might jeopardize future operations or deputy safety), the law enforcement deputy shall “tag” the recording and bring it to the attention of the County Attorney. The County Attorney shall, in the exercise of sound prosecutorial discretion, take such steps as are appropriate and authorized by law and or Court Rule to protect the information from disclosure, such as seeking a protective order from the court.

#### **423.17 Release of BWC Recordings**

Requests for the release of BWC recording will be processed in accordance with the Records Maintenance and Release Policy. If special considerations arise, the GCSO should consult with the County Attorney.

#### **423.18 Restrictions on Access, Use, and Dissemination of BWC Recordings**

No person shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in this Section or otherwise by law.

Deputies, GCSO employees, or other individuals with access to BWC recordings are prohibited from using or copying the recordings for personal or commercial use. BWC recordings shall not be duplicated or distributed except as authorized by this Policy. BWC recordings shall not be divulged or used for commercial or non-law enforcement purposes.

- (a) Dissemination by the Gallatin County Sheriff in Consultation with County Attorney: At the discretion of the Sheriff, a BWC recording may be disseminated to a civilian, non-law enforcement entity, or the public, where the Sheriff in consultation with the County Attorney determines that disclosure is lawful, warranted, in the public interest, and the need for disclosure outweighs a law enforcement interest in maintaining confidentiality. However, a BWC recording deemed Confidential Criminal Justice Information shall not be released absent a court order consistent with applicable law.
- (b) Access to and Dissemination/Use of BWC Recordings for Authorized Purposes: Access to and use of stored BWC recordings are permitted only under the following circumstances or for the following limited purposes:
  - 1. When relevant to and in furtherance of a specific and relevant criminal investigation and prosecution;
  - 2. When relevant to and in furtherance of a specific and relevant internal investigation or deputy misconduct, or to determine the existence of a pattern of practice of possible misconduct;
  - 3. When relevant to a supervisor's review of a deputy's actions as part of the supervisory process authorized by the GCSO;
  - 4. To comply with the State's discovery obligations in prosecutions;
  - 5. To disseminate the recording to appropriate legal counsel for the County when counsel is acting on behalf of the County in any civil legal action, proceeding, or suit, as directed by the County Attorney;
  - 6. To comply with a lawful court order or any other legal obligation to provide or otherwise turn over the BWC recording to a person or entity;
  - 7. For training purposes external of GCSO, provided that the BWC recording is edited so that the identity of individuals depicted in the recording cannot be determined by persons viewing the training video, unless the depicted individuals have consented to the recording being used for training purposes;
  - 8. To conduct an audit to ensure compliance with this Policy;

9. To enhance deputy or public safety by providing intelligence information in preparation for a specific lawfully authorized raid/warrant execution (e.g. by providing information about the layout of a premises to be searched);
10. Any other specified official purpose where the County Attorney finds in writing that good and sufficient cause exists to lawfully authorize access to a particular BWC recording.

- (c) General Authorization for a Deputy to Review BWC Recordings: A deputy will be permitted to review a BWC recording prior to and while creating substantive initial reports, providing a statement, submitting to an interview regarding the recorded event, or providing Court ordered testimony. A deputy will not review a BWC recording when directed by a supervisor that she or he shall not access a BWC recording for any reason.

Nothing in this Section shall be interpreted to prevent a deputy's supervisor from reviewing such a BWC recording.

Nothing in this Section shall be construed to *require* a deputy to review a BWC recording prior to creating any required initial reports, statements, and interviews regarding the recorded event, nor to prevent a deputy from their recollection of a BWC recording subsequent to the creation of any required initial report, statement, or interview regarding the recorded event.

- (d) Documenting Access to Stored BWC Recordings: The designated Custodian of Record shall maintain a record and log of all access to stored BWC recordings. The record should document the following information:

1. The date and time of access;
2. The specific BWC recording(s) that was/were accessed;
3. The individual who accessed the stored BWC recording;

#### **423.19 Sheriff's Office to Designate Custodian of Records**

The GCSO shall appoint and designate a "Custodian of Record" for BWC recordings that will be primarily responsible for any necessary Court testimony related to BWC recordings as "records of regularly conducted activity" or "public records and reports." See Mont. R. of Evid. 803(6) and 803(8).

#### **423.20 Supervisor Responsibilities**

In addition to duties as otherwise set forth in this Policy, when an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, Deputy-involved shootings, Deputy-involved traffic accidents), a supervisor should respond to the scene and ensure that the appropriate person properly retrieves the recorded media. The media may need to be treated as evidence and should be handled in accordance with current evidence procedures for recorded media.

#### **423.21            Retention of BWC Recordings**

- (a) Minimum 180-Day Retention Period: All BWC recording shall be retained for not less than 180 days from the date it was recorded; but shall also be subject to additional retention requirements as described in this section.
- (b) Retention Pursuant to County Sheriff Records Retention Schedule: All BWC recordings shall be retained for a period not less than the applicable requirements established in the Montana Local Government Retention Schedule, County Sheriff Records Schedule promulgated by the Local Government Records Committee for the State of Montana (County Sheriff Record Retention Schedule).
- (c) Automatic Three-Year Retention Period for Incidences Involving Complaints: In addition to any requirements imposed by the County Sheriff Records Retention Schedule, a BWC recording shall be retained for not less than three years if it captures an encounter about which a complaint has been registered by a subject of the BWC recording.
- (d) Three-Year Retention Upon Request: In addition to any requirements imposed by the County Sheriff Records Retention Schedule, a BWC recording shall be retained for not less than three years if voluntarily requested by:
  - 1. A deputy whose BWC made the recording if that deputy reasonably asserts the recording has evidentiary or exculpatory value;
  - 2. A deputy who is a subject of the BWC recording, if that deputy reasonably asserts the recording has evidentiary or exculpatory value;
  - 3. Any supervisor of a deputy whose BWC made the recording or who is the subject of a BWC recording, if that supervisory reasonably asserts the recording has evidentiary or exculpatory value;
  - 4. Any deputy, if the BWC recording is being retained solely and exclusively for law enforcement training purposes;
  - 5. Any member of the public who is subject of the BWC recording;
  - 6. Any parent or legal guardian of a minor who is subject of the BWC recording;
  - 7. A deceased subject's next of kin or legally authorized designee;
  - 8. The County Attorney or any Deputy County Attorney.
- (e) Additional Retention Requirements When Issued a Legal Hold by the County Attorney: In addition to any requirements imposed by the County Sheriff Records Retention Schedule, when a BWC record is responsive to a legal hold from the County Attorney, the BWC record shall be kept until the County Attorney has provided written authorization the record no longer needs to be maintained.
- (f) Additional Retention Requirements when Related to the Subject of an Internal Investigation: In addition to any requirements imposed by the County Sheriff Records Retention Schedule,

when a BWC records an incident that is the subject of an internal investigation, the recording shall be kept pending final resolution of the internal investigation and any resulting administrative action, including any relevant appellate deadlines or applicable statute of limitations.

- (g) If in the performance of duties an Office member required to wear a BWC records a personal event, (dinner with family, children, bathroom visit—an event outside the scope and performance of normal duties with no State related interest, the Office member may request, formally in writing, the video be locked and not accessible except to Admin personnel. These videos shall be reviewed for deletion by the Sheriff or his/her designee.

## **423.22 Definitions and Acronyms**

Definitions related to this Policy include:

**Activate:** To actuate the recording mode/function of a body worn camera.

**Administrator:** Sheriff, Undersheriff, Captain, Sergeant

**Body Worn Camera (BWC):** A device worn by a law enforcement deputy that makes an electronic audio and video recording of activities that take place during a law enforcement action. The term does not include a mobile video recording device when mounted inside a police vehicle (e.g. a dash-cam) or the additional use of a video recording device (e.g. using cell phone video recording capabilities). The term does not include any form of electronic recording device worn by a law enforcement deputy while acting in an undercover capacity, wiretaps, or eavesdropping (concealed listening devices), or electronic recording of station house (or any Gallatin County Sheriff's Office facility or detention center) of custodial interrogations.

**County Attorney:** Means the Gallatin County Attorney personally, or a person specifically designated in writing by the Gallatin County Attorney for purposes of providing required approval authority.

**County Sheriff Record Retention Schedule:** The Montana Local Government Records Committee, Retention Schedule for County Sheriff Records (Schedule No. 14) (publicly available at: [https://sosmt.gov/wp-content/uploads/attachments/Local\\_Schedule14.pdf](https://sosmt.gov/wp-content/uploads/attachments/Local_Schedule14.pdf)), or as it is subsequently amended or updated.

**Equipped with a BWC:** A law enforcement deputy actually wearing a BWC at the time in question, as opposed to simply receiving BWC equipment from the GCSO.

**Law Enforcement Deputy or Officer:** A deputy peace officer, as that term is defined in § 7-32-201, MCA, that is employed and deputized by the Gallatin County Sheriff's Office.

**Power On -** Turning the BWC on and into standby mode.

**Power Off -** Turning the BWC completely off, where it is not in standby mode.

**Record-After-the-Fact (RATF):** An RATF event is one for which a BWC camera may generate an event video (without sound), even when the BWC was not originally activated during an event, per hardware and software specifications.

**Sheriff:** Means the Gallatin County Sheriff personally, or a person specifically designated by the Gallatin County Sheriff for purposes of providing the required approval or action.

**Standby Mode:** BWC is powered on but is not actively recording (in standby or buffering).

**Supervisor:** Means any Gallatin County Sheriff's Office deputy with the rank of Sergeant, Lieutenant, Captain, Undersheriff, or Sheriff.

**Tag or Tagging:** A notation in the BWC Storage System that indicates that a BWC recording raises special or unique circumstances.

**Uniformed Law Enforcement Deputy:** All Gallatin County Sheriff's Office deputies wearing any uniform as set forth in in Gallatin County Sheriff's Office Policy 1022. The term does not include Investigators or other deputies permitted to wear Civilian Attire as set forth in Gallatin County Sheriff's Office Policy 1022.5. For purposes of this Policy, Gallatin County Detention Center Officers are not deemed Uniformed Law Enforcement Deputies.