

D. BODY WORN CAMERA EVIDENCE (BWC)

BWC may contain images and/or sounds that may or may not be relevant or discoverable on the case. Body Worn Camera evidence is subject to the same discovery and privilege rules as other evidence as set forth in Brady v. Maryland (1963) 373 U.S. 83 and its progeny, as well as Penal Code sections 1054, et seq. In all cases, BWC evidence will be disclosed, or made available, to defense no later than 30 days before trial or after first readiness for misdemeanors, unless good cause exists to deny, restrict, or defer disclosure (PC 1054.7).

However it is the goal of this Office to produce BWC evidence as soon as possible to avoid delaying any cases.

1. BWC Disclosure-

To timely provide this discovery we will release BWC evidence without redacting in most cases, provided the assigned defense attorney has signed the BWC protective order that states they will not be sharing non-discoverable information with the defendant and other members of the community. Should defense counsel change, the prosecutor must confirm that a protective order is signed by the new assigned counsel before supplemental release.

However, if from the reports it appears that the defendant or others may pose a danger to victims and witnesses if personal information were released in its unredacted form then the BWC evidence should be viewed and redacted. Examples would include: Highly dangerous and violent defendants, threat and relocation situations, CI information, information relating to ongoing investigations, and other information that should not be in the possession of defense counsel without redaction.

In cases that the BWC does require redaction, if the written reports or other information does not identify concerns that potential Brady information may be in BWC, the BWC can be redacted after the PE in felony cases or the first readiness conference in misdemeanor cases.

Vertical units can develop their own method of disclosure due to the highly sensitive nature of material that is handled in those areas, though they must comply with Brady and pre-prelim Gutierrez information and the standard discovery rules.

2. Redaction Responsibility

As with other forms of discovery, prosecutors have the legal and ethical obligation to prevent disclosure of privileged information in BWC, such as non-discoverable victim or witness information (PC1054.2, California Constitution Article I, Section 28, Cal Pen Code §679.026 (Marsy's law), People v. Valdez, 55 Cal. 4th 82, 118 (2012)), Penal Code section 1054.1(c) and Westerfield

v. Superior Court (People) (2002) 99 Cal.App.4th 994 (child pornography), or other privileged information (PC §1054.6, EC§915 (b), EC §1040 et seq, etc.)

Our office has adopted the protective order to accomplish the above goals in the majority of our cases. However, the responsibility still lies with the prosecutor to assess cases for risk and redact in a timely and appropriate manner.

3. Discovery Process

It is expected that in most cases Evidence.com or Commander will be used as the platform to provide defense counsel access to BWC evidence. The duration of the sharing period will be 90 days unless you expect the case to take longer to adjudicate or the defense has requested a longer period of access. If the case has not adjudicated in the 90 day time period, the access period should be extended to ensure defense counsel has access to the evidence.

4. Pro Per

Pro Per defendants BWC evidence will be redacted and will be subject to a limiting discovery order wherein they are granted access to the evidence but not permanent custody of the evidence. For an in-custody Pro Per, the jail will hold the discs and allow the inmate to view. For those out of custody the viewing will occur at our office under the supervision of a DAI. Those motions and orders can be found on the BWC page of DANet.

5. Brady in BWC

In cases where the written reports or other information identify or raise prosecutor concerns that potential Brady information may be contained or corroborated in BWC, the case prosecutor should review the BWC **as soon as possible**. If the prosecutor review of BWC confirms the existence of actual Brady information, the prosecutor should discuss the matter with their supervisor to determine if dismissal is appropriate, or immediate disclosure of BWC is required for the information to be of use to the defense at preliminary hearing, pretrial motion, during trial or sentencing. (Brady vs Maryland, Magallan v. Superior Court, 192 Cal. App. 4th 1444 (Cal. App. 6th Dist. 2011); Bridgeforth v. Superior Court (2013) 214 Cal.App.4th 1074, 1081; People v. Gutierrez (2013) 153 Cal.App.4th 343.).

6. BWC Evidence for Official Uses Only

Body Worn Camera evidence should only be used for official purposes. It should not be copied, made accessible or provided to third parties except as specifically authorized in the course of carrying out official District Attorney Business.