

County of Santa Clara

Office of the District Attorney Surveillance Use Policy

Night Vision Binoculars

1. Purpose

The purpose of the Night Vision binoculars manufactured by Newcon Optik shall be to enhance the ability of the user to make observations in low light. The binoculars owned by the SCCDA do not have the ability to digitally record the user's observations. If the SCCDA seeks to acquire night vision binoculars with material surveillance enhancements and/or to use for a purpose, in a manner, or in a location not approved by the Board in this Policy, the SCCDA shall return to the Board for review and/or approval, as applicable, of an updated Surveillance Use Policy, in compliance with the County's Surveillance-Technology and Community-Safety Ordinance.

2. Authorized and Prohibited Uses

Use of Night Vision binoculars shall be limited to SCCDA personnel authorized by SCCDA Administration to use the devices in the course and scope of their employment to support the administrative, investigatory, and prosecutorial functions of the SCCDA. Night Vision binoculars shall only be deployed with valid consent; with a search warrant, or pursuant to judicial authorization; or in circumstances that do not violate the Fourth Amendment to the United States Constitution. If the use of Night Vision binoculars requires a search warrant, the assigned investigator and/or prosecutor shall make an application to the court and obtain a court order before deploying the device. In cases where the use of Night Vision binoculars is not governed by a search warrant or other court order, the user shall abide by this Surveillance Use Policy.

County-owned Night Vision binoculars and associated data shall not be used for personal, non-SCCDA purposes. The binoculars shall not be used for illegal purposes, and shall not be used to harass, intimidate, or discriminate against any individual or group.

3. Data Collection

The Night Vision binoculars owned by the SCCDA do not collect data; they only provide real-time viewing by the user. The user may document the observations made possible by the binoculars.

4. Data Access

The Night Vision binoculars shall be stored in a secure location, and all access and use of the binoculars shall be documented in an activity log. The documented observations shall be stored in the physical case file and/or stored within an SCCDA-approved electronic case/content management system. Approved case/content management systems shall log user name, date/timestamp, files or data accessed, and attempts at altering or deleting files.

Access to the documented observations shall be limited to SCCDA personnel authorized by SCCDA Administration to utilize the data in the course and scope of their employment to

support the administrative, investigatory, and prosecutorial functions of the SCCDA, as well as other county personnel designated in writing by the District Attorney or the District Attorney’s written designee to the extent that access is necessary for a specific criminal, civil, or administrative investigation or action.

5. Data Protection

See Section 4 of this Policy. The County of Santa Clara and the SCCDA shall utilize physical access controls, application permission controls, and other technological, administrative, procedural, operational, and personnel security measures to protect the documented observations made possible by Night Vision binoculars from unauthorized access, destruction, use, modification, or disclosure.

6. Data Retention

The Night Vision binoculars do not collect data. The SCCDA-personnel documented observations, whether downloaded, copied or printed, shall be maintained in accordance with this Surveillance Use Policy, applicable state and federal evidentiary laws, and the SCCDA Record Retention and Destruction Policy approved by the Board of Supervisors on June 21, 2016, which states as follows:

Case Type	Official Retention Period
Homicide Case Files	Permanent
All Non-Homicide Case Files, Unless Otherwise Stated in this Schedule	Seventy-five years. Case files will be scanned and electronically archived and retained for 75 years. Originals will be retained for a period of at least 90 days to allow scanning for authentication by the department, after which they will be destroyed. Backed up by DA IT provider.
Juvenile Ward Files	When a minor turns 18 and petitions the court for records to be sealed, the record will be destroyed at age 20 or as otherwise ordered by a court of competent jurisdiction. Otherwise as covered by this schedule.
Developmentally Disabled (DD) Case Files	Life of the defendant.
Plea of Insanity (PC 1026) Case Files	Life of the defendant.

Case Type	Official Retention Period
Juvenile Case Files	Two years after final disposition or until minor attains age of 21, whichever is later. Caveat 1): If case is appealed, the file must be retained until the final appellate decision is received. Caveat 2): Cases that may be charged as “strikes” should be retained for 75 years.
Certificates of Rehabilitation Case Files	Two years.
Advise and Assist Case Files	Two years.
Expungement Case Files	Two years.
Post-Conviction Proceedings and Special Project Files	Two years.

Data that is relevant to administrative/personnel-related matters shall be retained through the adjudication of any administrative, civil or criminal case in a recognized court of law, as well as allotment of time for an appeals process and statute of limitations. To the extent that data is not covered in the chart above, the data shall be destroyed no later than two years after the later of (1) the time for an appeals process expires; (2) the statute of limitations expires; and (3) for data regarding a County employee’s administrative investigation, the date the employee’s employment for the County terminates.

7. Public Access

Absent a court order, the public shall not have direct access to the documented observations made possible by Night Vision binoculars. If a California Public Records Act request, subpoena, or court order is issued for this data, it shall be made public or deemed exempt from public disclosure pursuant to state or federal law, after consultation with the Office of the County Counsel as needed.

8. Third-Party Data-Sharing

The sharing of observations made through the use of Night Vision binoculars shall be limited to the following third parties:

- Law enforcement agencies when relevant to an ongoing specific investigation or prosecution;
- Defense and appellate counsel and pro se litigants pursuant to Penal Code section 1054 et seq. and *Brady v. Maryland*;

- Individuals who have obtained a valid Court Order, subpoena, or otherwise approved in writing by the District Attorney or written designee.

9. Training

SCCDA shall provide staff with a copy of this Surveillance Use Policy when training on the secure handling of confidential and personal information, including the documented observations from Night Vision binoculars. The training shall address appropriate handling and transmission procedures, as well as consequences of misuse of the documented observations and a security breach.

10. Oversight

District Attorney's Office Administration shall ensure compliance with this Surveillance Use Policy and all applicable laws. Sanctions for violation of this Surveillance Use Policy may range from counseling to termination, and in more serious breaches, may result in criminal prosecution.

Approved as to Form and Legality

 6/15/2020

Rob Coelho
Office of the County Counsel