

# Body Worn Cameras and Audio Recorders (Reviewed 02/08/2022) (Revised 02/08/2022)

## 423.1 PURPOSE AND SCOPE

This policy provides guidelines for the use, maintenance, and data storage of body-worn cameras (BWC) and portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems, whether body-worn, hand-held, or integrated into portable equipment (Wis. Stat. § 165.87).

This policy does not apply to mobile audio/video recordings, interviews, or interrogations conducted at any Fond du Lac Police Department facility, authorized undercover operations, wiretaps, or covert (i.e. concealed) recording devices.

### 423.1.1 DEFINITIONS

**Body-Worn Camera (BWC)** - A portable audio/video recording device which can be worn on the Officer's body.

**Cloud Storage** - A mode of data storage where the digital data is stored in computer server's located offsite and accessed via internet. The storage is typically maintained by a third party under contractual agreement.

**Great Bodily Harm** - Bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury

**Officer-Involved Death** - A death of an individual that results directly from an action or an omission of a law enforcement Officer while the law enforcement Officer is on duty or while the law enforcement Officer is off duty but performing activities that are within the scope of his or her law enforcement duties.

**Record Subject** - An individual about whom personally identifiable information is contained in a record, as set forth and subsequently amended in Wis. Stat. § 19.32(2g).

**Requester** - Any person who requests inspection or copies of a record, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under ch. 767, and the record is otherwise accessible to the person by law, as set forth and subsequently amended in Wis. Stat. § 19.32(3).

## 423.2 POLICY

The Fond du Lac Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

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### **423.3 BWC COORDINATOR**

The Chief of Police or the authorized designee will designate a BWC Coordinator responsible for (Wis. Stat. § 165.87):

- (a) Establishing procedures for the security, storage, and maintenance of data and recordings.
- (b) Establishing procedures for accessing data and recordings.
- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging, or marking events.
- (e) Coordinating with the Administrative Lieutenant to provide training on this policy to:
  - 1. Officers who are authorized to use portable audio/video recorders.
  - 2. Members of the Department who use, maintain, store, or are responsible for the release of records and recordings.
- (f) Periodically reviewing the Department's practices relating to the use, maintenance, and storage of body-worn cameras and data to confirm compliance with this policy.
- (g) Ensuring this policy is available to the public on the Department's website.

The BWC Coordinator will prepare a monthly activity report to the Assistant Chief of Police/Administration outlining:

- (a) Any cameras that required replacement or repair within the last month as well as their status.
- (b) Monthly audit for tagging and categorization review.
- (c) Initial assignment BWC review within seven (7) days (when applicable).
- (d) Quarterly audit for CAD activity and BWC recordings review.

### **423.4 MEMBER PRIVACY EXPECTATION**

All recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity of this department regardless of ownership of the device it was made on, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### **423.5 BODY WORN CAMERA ASSIGNMENT**

BWCs will be assigned to all uniformed Officers assigned to the Patrol Division, School Resource Officers, Specialists, and any other members or Officers as designated by the Chief of Police or designee. All Officers assigned a BWC will wear the assigned camera during all scheduled duty shifts and any overtime assignments. Officers will only use those BWCs issued to them by the Department unless outlined elsewhere within policy or otherwise approved by the Chief of Police, BWC Coordinator, or designee. The wearing of personal video recorders, or those assigned to other Officers is strictly prohibited.

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### **423.6 MEMBER RESPONSIBILITIES**

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

At the beginning of each tour of duty, each member should remove the BWC from the docking station and affix the BWC to their uniform in such a manner to provide maximum video coverage. Each member will conduct a function check to ensure the following functions of the BWC are operating properly:

- (a) Video recording.
- (b) Audio recording.
- (c) Accurate time/date and other information on the display.
- (d) Function checks will be classified as 'non-evidentiary video'.

Throughout the Officer's shift or at the end of the Officer's shift, recorded video files will be given a classification code and the Officer will ensure the auto labeling process assigned the appropriate corresponding incident number. Officers will notify the BWC Coordinator of any BWC videos that do not upload properly and remain visible on the BWC.

Activity not requiring an assigned incident number can be classified as 'non-evidentiary video', 'citizen contact', or 'training' without an incident number being assigned.

Officers are required to periodically, throughout the shift, ensure that the camera is positioned in such a manner as to provide maximum video coverage.

At the end of the Officer's tour of duty, the Officer will return the BWC to the docking station to upload the digitally encrypted data to the web-based storage and to recharge the battery. Officers are responsible for ensuring the BWC is functioning with a green battery status.

If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. In the event an Officer needs a spare camera a supervisor will issue that Officer a spare camera based on the availability listed on the spare camera spreadsheet. The supervisor will immediately notify the BWC Coordinator that a spare camera has been issued.

An Officer who loses a BWC shall notify their direct supervisor and BWC Coordinator as soon as feasible and without delay.

Members will only use Department issued cell phones when using BWC Apps (e.g. Axon Capture, etc.).

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members will include the reason for deactivation.

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### **423.7 ACTIVATION OF BODY-WORN CAMERA AND AUDIO/VIDEO RECORDERS**

This policy is not intended to describe every possible situation in which the BWC should be used, although there are many situations where its use is appropriate. Members should activate the BWC any time the member believes it would be appropriate or valuable to record an incident. Officers working non-uniform assignments are encouraged to record events when practical.

All members engaged in investigatory or enforcement action will activate their BWC regardless of the number of other members on the scene with BWCs.

Juveniles will be recorded as an adult would.

There is no requirement that members notify an individual they are being recorded, however members must be aware that it may be beneficial to inform the individual(s) that a recording of the interaction is being made. If an individual expresses a desire to know whether or not the member is recording them, the member will respond truthfully.

All Officers who are equipped with a BWC will activate the BWC to the record mode at the earliest possible time, when it is safe and practical, for each citizen encounter related to a call for service and/or law enforcement activity not outlined as prohibited within this policy. This will occur prior to arrival/exiting the squad car or when emergency lights have been activated and a citizen encounter is anticipated. The recording will continue until the citizen encounter has ended.

Officers are authorized to use a BWC inside a private dwelling under the following circumstances:

- (a) There is a valid search or arrest warrant.
- (b) The resident provides consent to enter the premises.
- (c) There is a legal exception permitting the police to enter the dwelling.

The BWC will be activated in any of the following situations:

- (a) Engaged in emergency vehicle operation.
- (b) All enforcement and investigative contacts including stops and field interview (FI) situations.
- (c) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (d) Self-initiated activity in which a member would normally notify Fond du Lac County Communications Center.
- (e) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

Additionally, tactical activities such as building searches, vehicle searches, searches for suspects and missing persons, and building checks at alarms will be recorded. This includes SWAT Officers who are issued BWCs when participating in a SWAT operation.

Tactical Field Force members who have been issued a BWC will be required to use the camera when deployed.

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Except as provided below, once started, recordings will continue without interruption until the contact ends.

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize their safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

#### 423.7.1 AXON SIGNAL

Squads equipped with the Axon Signal will activate the BWC when the emergency lights are activated. The signal lasts for 30 seconds and affects a 30 foot radius.

- (a) Officers are still responsible to ensure their BWC has been activated.
- (b) If an Officer is in close proximity to another squad's emergency lights during the signal burst their BWC may be activated.
- (c) Inadvertent recording may be categorized as 'non-evidentiary video.'

#### 423.7.2 EXCEPTIONS TO USE OF BODY-WORN CAMERAS

Circumstances when a BWC may not be used include, but are not limited to:

- (a) Officer safety prohibits due to a sudden assault or unexpected altercation.
- (b) Speaking with an informant or community member providing information who request deactivation of BWC prior to providing information.
- (c) A health care provider is discussing medical issues with a patient.
- (d) While in the hospital waiting for an individual in custody to be medically cleared unless their behavior dictates the need for continued activation of the BWC.
- (e) When interacting with a victim of a sexual assault.
- (f) When interacting with a victim who is a child.
- (g) When authorized by a supervisor.
- (h) While in a courtroom during court proceedings.
- (i) Drug Investigators in a plain clothes capacity and Officers conducting pre-employment background investigations are not required to wear a BWC.
- (j) Surveillance team members working in an undercover capacity will not be required to wear their BWC.

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- (k) SWAT - Crisis Negotiation Team members will not be required to wear their respective cameras when conducting negotiations that do not involve face to face encounters with citizens.
- (l) SWAT - Snipers while in their hide will not be required to activate their BWCs.
- (m) Off-duty Officers who put themselves into an on-duty status due to an emergency situation are not required to have their BWC.

If a citizen refuses to make a statement because they are being recorded, the Officer may discontinue recording and document in accordance with the direction listed in Policy 423.7.2 - Cessation of Recording. The Officer may also suggest to the citizen that they leave the audio recording on and point the camera in another direction so the citizen is not being video recorded.

#### 423.7.3 BWC ON SCHOOL PROPERTY

School Resource Officers (SROs) will not activate camera while inside school health offices, bathrooms, or school locker rooms, except when being used as part of a legitimate call for service.

Unless the SRO is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that use of force is feasible, the SRO will not activate a BWC or will deactivate a BWC that has been activated. A SRO required to deactivate the BWC will do so in accordance with Policy 423.7.4 (Cessation of Recording).

Any Officer who responds to a call for service at a school will use their camera in accordance with this policy.

#### 423.7.4 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member reasonably believes that their direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing, other breaks from direct participation in the incident, or as outlined in Policy 423.6 - Activation of Body-Worn Camera and Audio/Video Recorders.

When a BWC recording is stopped prior to the completion of the incident, the member will document the reason for stopping the BWC recording.

Anytime the BWC is deactivated when otherwise required by this policy to record, the Officer will first advise on recording before deactivation, a detailed reason why the termination or interruption occurred. If there is any doubt as to whether a situation should be recorded, consult with a supervisor. If the supervisor is unavailable, and it is possible to record, then the incident will be recorded.

#### 423.7.5 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Wisconsin law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Wis. Stat. § 968.31(2)(b)).

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Members may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

#### **423.7.6 EXPLOSIVE DEVICE**

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

#### **423.8 PROHIBITED USE OF BODY-WORN CAMERAS**

Officers are prohibited from using a BWC in the following circumstances:

- (a) Personal use.
- (b) Recording off-duty and/or personal activity.
- (c) Inside Department restrooms and/or locker rooms.
- (d) While conducting strip searches.
- (e) Routine communication with other Departmental or other City personnel.
- (f) During informal/formal supervisor counseling sessions.

Nothing in this policy prohibits a BWC from being used for training purposes as long as all personnel involved in training are aware that a BWC is being used and the training does not violate any of the above listed prohibitions.

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Shift Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements, and should notify the on-duty supervisor of such use as soon as reasonably practicable.

Recordings shall not be used by any member for the purpose of embarrassment, harassment or ridicule.

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### **423.9 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

To assist with identifying and preserving data and recordings, members should download, tag or mark these in accordance with procedure and document the existence of the recording in any related case report.

A member should transfer, tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.
- (g) The recording or portions of the recording may be protected under the Public Records Law (Wis. Stat. § 19.31 et seq.).

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

### **423.10 RETENTION OF RECORDINGS**

All recordings shall be retained for a period consistent with the requirements of the established records retention schedule but in no event for a period less than 120 days (Wis. Stat. § 165.87).

All video captured shall be retained online through Evidence.com until purging and deletion is approved by the Chief of Police or designee, in accordance with the Department's Records Retention Schedule and all corresponding policies.

#### **423.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS**

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy 804.

#### **423.10.2 EXCEPTIONS TO RETENTION REQUIREMENTS FOR BODY-WORN CAMERAS**

Exceptions to the 120-day retention period for body-worn cameras are as follows (Wis. Stat. § 165.87):

- (a) Recordings should be retained until the final disposition of any investigation, case, or complaint to which the recordings pertain to any of the following:
  - 1. Death or actual or alleged physical injury to any person in the recording
  - 2. An encounter resulting in custodial arrest
  - 3. A search during a temporary detention pursuant to Wis. Stat. § 968.25



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4. An encounter resulting in the use of force except when the only use of force involves the use of a firearm to euthanize an injured wild animal
- (b) Recordings used in any criminal, civil, or administrative proceeding may not be destroyed except upon a final disposition from the court or hearing officer after a determination the recordings are no longer needed, or by an order from the court or hearing officer.
- (c) Recordings may be retained for a period beyond 120 days if a request or directive to preserve the recordings is made before the expiration of that time period by an Officer from this department or another law enforcement agency, prosecutor, city attorney, or a court.

#### **423.11 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Critical Incidents Policy 305 and the Body-Worn Camera Files of Significant Use of Force Incidents Policy 423.11 for guidance in those cases). If a review is done the Officer will document the review in the incident report. Members should not use the fact that a recording was made as a reason to write a less detailed report.

While recordings obtained from BWC's provide an objective record of these events, it is understood that BWC recordings (or video from any other recording device) do not necessarily reflect the experience or state of mind of the individual Officer(s) in a given incident. Moreover, video cameras have limitations and recordings may depict events differently than the events recalled by the involved Officer(s). Specifically, it is understood the BWC may capture information that may not have been heard and/or observed by the involved Officer(s) and may not capture information observed by the Officer(s).

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, or reports of meritorious conduct, or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department or members of the City Attorney/ Human Resources Departments who are participating in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy 804.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy 804).

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#### 423.11.1 SUPERVISOR RESPONSIBILITIES

The supervisor will conduct a monthly audit for each assigned Officer to ensure proper tagging and categorization. If issues are identified the supervisor will ensure the Officer makes the corrections. Monthly audits will be documented in an activity report.

The supervisor will review their Officers' recordings within seven (7) days of initial assignment (BWC), and thereafter on a quarterly basis. This may be accomplished by viewing a sampling of each Officer's recordings and comparing those recordings with the Officer's CAD activity report. The supervisor may review the activity report and recordings with the assigned Officer to correct any deficiencies that are identified as appropriate. The supervisor will review a minimum of three (3) videos per Officer per quarter. Supervisors will document the video review in an activity report.

If it is deemed that pursuant to video review the Officer's choice of location for camera wear is supplying obviously insufficient or substandard video footage, the supervisor will advise the Officer of the need for adjustment and document accordingly in an activity report.

#### 423.12 BODY-WORN CAMERA FILES OF SIGNIFICANT USE OF FORCE INCIDENTS

As soon as practical after the incident is under control, a supervisor will direct the collection and upload of all known BWC files from the following types of incidents:

- (a) All incidents involving the use of deadly force against a person.
- (b) All incidents involving the use of force by an Officer that results in great bodily harm or death to a person.
- (c) All BWC files from all Officers involved in motor vehicle pursuits that result in great bodily harm or death to a person.
- (d) Any other incident as directed by the Chief of Police or designee.
- (e) All incidents involving significant property damage (\$10,000.00+).

An Officer involved in the significant use of force will be allowed to view their BWC video, but only after providing the initial on-scene supervisor appropriate public safety information. After providing an initial public safety information verbal statement, the Officer may be permitted to review the BWC and complete a written report and/or provide their final statement. Exceptions to this restriction may include, for example, when viewing the files is immediately necessary to identify a potential suspect(s) and/or witnesses. If this is necessary, a person not directly involved in the incident should view the file(s).

No citizen witness to these incidents shall view any BWC files from the incident prior to being interviewed about the incident, without an authorization from the Chief of Police or designee.

#### 423.13 SECURITY

All recording media, images, and audio are the sole property of the Fond du Lac Police Department and shall not be copied, released, or disseminated in any form or manner outside the parameters of this policy without the expressed written consent of the Chief of Police. Under no circumstances

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will any member of the Fond du Lac Police Department make a personal copy of any recorded event without prior written permission of the Chief of Police or designee.

Officers shall not edit, alter, erase, duplicate, copy, share, or otherwise distribute in any manner any Department recordings without prior written authorization and approval of the Chief of Police or designee. Deletion of any recording(s) or portions thereof is strictly prohibited.

The usage of any department issued camera, including the Evidence.com software while off-duty is strictly prohibited.

Any request for information by anyone other than law enforcement will require an open records request pursuant to Wisconsin Open Records law (written or verbal), subpoena duces tecum, or other legal request.

The release of material may necessitate the consultation of the City Attorney and/or District Attorney.

Unauthorized use of recordings is prohibited.

#### **423.14 USE OF BWC FOR PROSECUTION**

The Officer's incident report will indicate when a BWC video has been created related to an incident. This will be done to assist the District Attorney's Office and City Attorney's Office in satisfying requirements under Wisconsin Law relative to discovery in felony and misdemeanor cases.

The District Attorney/ City Attorney will contact the Property and Evidence Control Unit if a copy of a recording is needed for evidentiary purposes.

Officers will not review BWC recordings in preparation for testifying at preliminary hearings unless directed to do so by a prosecutor. Otherwise, Officers may elect to review BWC recordings in preparation for testifying at motion hearings and all trials, unless directed not to do so by a prosecutor.

#### **423.15 TRAINING**

All members using a BWC device shall receive training in the use and maintenance of the equipment and store or release of BWC data (Wis. Stat. § 165.87(1)). The training will include techniques that will help to ensure an incident is accurately documented and properly stored.

All department members that use, maintain, store, or release BWC data will receive training that includes:

- (a) Review of this policy.
- (b) BWC data retention requirements.
- (c) Requirements regarding when BWC data may be released.