

<b>MENOMONEE FALLS POLICE DEPARTMENT POLICY</b>		
<b>5104.15 – Body Worn Cameras</b>		
<b>Date:</b> 03-13-2023	<b>Supersedes:</b> <i>New Policy</i>	<b>Review Date:</b> 1-2024
<b>WILEAG:</b> Chapter 6		<b>Standards:</b> 6.1.10

## **I. PURPOSE**

The purpose of this policy is to establish guidelines for the use; maintenance and storage of body worn cameras (BWCs) and BWC data; the limitations the Department imposes on which officers may wear a BWC; and the limitations the Department imposes on situations, persons, or encounters that may be recorded by a BWC. This policy shall address those requirements as listed under Wisconsin §165.87 Body Cameras and Law Enforcement. This policy applies to all department employees. The department shall review this policy and program annually and will be made publicly available via the department website or upon request.

## **II. POLICY**

It is the policy of the Menomonee Falls Police Department to issue body worn cameras to all sworn members who have primary duties involving traffic patrol, beat patrol, or responding to calls from the public requiring assistance. In addition, this policy will require sworn members who are equipped with a body camera to record in situations as outlined herein. Furthermore, uniform procedures will be followed for the storage and safekeeping of audio/video recordings.

## **III. DISCUSSION**

The objective of this policy is to increase the transparency of the department, increase officer safety and safeguard the rights of our citizens and personnel in the use of this technology. It is understood the recording captured from a BWC provides an objective record of the event; however, it does not necessarily reflect the experience, state of mind of the individual assigned, or events occurring outside the recording capabilities of the camera angle. The video recording has limitations and may depict events differently than the events recalled by the involved personnel. Specifically, it is understood the BWC may capture information that may not have been heard and/or observed by the involved employee and may not capture information observed by the employee.

## **IV. DEFINITIONS**

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

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**Categories:** An assigned label that identifies the type of incident and corresponding retention period for that specific recording.

**EVIDENCE.COM:** Web-based, secure, offsite storage solution for the management and storage of audio/video recordings produced by each BWC.

**Record Subject:** An individual recorded by a BWC to whom any of the following apply:

- A. The individual is depicted in the recording or the individual's voice is audible.
- B. The individual's identity is known to law enforcement.
- C. The individual is not suspected of committing a crime or other violation of law in connection with the law enforcement officer's presence in the location that was recorded.
- D. The individual is not a law enforcement officer who was acting in an official capacity unless a crime or other violation of law has been committed against the law enforcement officer while the law enforcement officer was present at the location that was recorded.

**Officer:** All sworn law enforcement officers (e.g. patrol officer, Detective, Sergeant and Lieutenant).

**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. {§ 175.47(1)(c)}.

**Officer Involved Critical Incident:** An incident involving the death of, or serious injury to, a person resulting from the action or involvement of an officer while on duty, or while off duty but performing activities that are within the scope of his or her law enforcement duties.

**Pre-Event Recording/Buffering:** The Axon BWC is continuously recording video in 30-second looped increments. This is sometimes known as a pre-event 30-second buffer. Audio is not recorded until the officer begins a recording. Once the officer begins to record, the previous 30-seconds of video is included in the evidentiary recording.

**Redaction:** A process, conducted by specific authorized personnel, for censoring and/or obscuring a part of written, audio, and/or video media for legal, security, and/or privacy purposes.

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**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/her minor children for whom he/she has not been denied physical placement and the record is otherwise accessible to the person by law.

### V. GENERAL PROCEDURES

- A. The only department authorized Body Worn Camera (BWC) is the Axon Body 3. Personally-owned BWCs are prohibited.
- B. Officers are prohibited from using their personal cell phones for BWC purposes. Officers are also prohibited from viewing BWC footage while off-duty or transferring data to a personal device.
- C. Training

All department members will receive training commensurate with their level of participation in the BWC program (e.g. camera wearer, administrative, reviewer, records manager). Training will include a combination of the below topics:

1. Proper mounting
2. Testing
3. Basic functionality/operation
4. Activations/Recordings
5. Uploading
6. Categories/retention periods
7. Reviewing
8. Maintenance/storage/release of records
9. Policy review

- D. Issuance

All officers who have primary duties involving traffic patrol, beat patrol, or responding to calls from the public requiring assistance will be issued body worn cameras. These officers include:

1. Officers
2. Detectives
3. Sergeants
4. Lieutenants
5. As otherwise assigned by the Chief of Police

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### E. Responsibility

The Services Bureau will have overall responsibility of the BWC program. This includes but not limited to inventory control, maintenance, training and the coordination of repairs. Any defects, damage or issues impacting the operational readiness of any BWC shall be reported immediately via the chain of command to the Services Bureau Commander/Supervisor. Each officer is responsible for the care of their individual assigned camera and associated equipment.

### F. Any officer who intentionally disables or damages any part of BWC hardware or fails to activate the BWC as required by this policy shall be held accountable and may be subject to disciplinary action.

## VI. OPERATIONAL GUIDELINES

### A. Start of Shift

1. Prior to each shift, officers assigned a BWC will ensure the unit is adequately charged. Further, officers will inspect their BWC to ensure there is no visible damage and the device is in good working order. Any visible damage or concerns about the functionality of the BWC or associated equipment will be brought to the attention of the officer's immediate supervisor as soon as it is practical to do so.
2. Services Bureau will make available a spare BWC in the event an officer reports a hardware issue with their assigned BWC.
3. In-car video and body cameras are each considered a tool in the performance of law enforcement duties. When an officer is assigned a BWC and operating a vehicle equipped with in-car video, both the in-car video body microphone and the BWC will be worn. Please see Policy 5104.12 *Mobile Audio-Video Recording System*.

### B. Activation/Initiating Recordings

1. Officers must start a recording as soon as practical and, when safe to do so, once the officer realizes he/she will be conducting a matter of investigatory nature or an enforcement action. This includes, but is not limited to:

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- a) Self-initiated field investigatory stops of subjects and/or vehicles
  - b) Traffic crashes
  - c) Investigations
  - d) Calls for service
  - e) Transports
  - f) Processing of prisoners (e.g. booking procedures)
  - g) In jails or correctional facilities
  - h) Any other situation the user, through their training and experience, believes should be recorded.
  - i) Interviews and interrogations regardless of the type of severity of the offense.
2. All officers engaged in investigatory or enforcement action must activate their camera regardless of the number of other officers on the scene with cameras.
3. There is no requirement that officers notify someone that they are being recorded; however, officers must be aware that it may be beneficial to inform the other person(s) that a recording of the interaction is being made. If a person inquires as to whether or not the officer is recording them, the officer shall respond truthfully. If a member of the public objects to the recording, they should be courteously informed that Wisconsin law allows audio/video recording.
4. Officers are authorized to use BWCs inside private dwellings 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.

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5. Officers shall not jeopardize their safety in order to obtain a better-quality recording.
6. When the use of a BWC is related to an event which is documented in an incident report, the incident report must indicate that BWC footage was captured and the officer must briefly summarize what the footage is expected to contain. The department suggests using the following as part of your opening statement:

*“At the time of this investigation I was wearing my issued body worn camera, which was functional and activated. The body worn camera footage was categorized as a (identify category). See the video recording for precise details as the following is a summary based off of little, no review or full review.”*

### C. Exceptions to Recording

Officers are permitted to keep BWCs off in the following situations:

1. When interacting with a victim or witness who requests not to be recorded while giving a statement.
2. When interacting with someone who is at the hospital awaiting medical clearance unless enforcement or investigatory actions are likely, the likelihood of additional criminal activity or escape attempt is high, the subject is making voluntary statements, or the officer is gathering additional evidence (e.g. legal blood draws).
3. When interacting with a confidential informant.
4. When authorized by a supervisor.
5. Officers acting in an undercover capacity are exempt from the requirements of using a BWC.
6. When interacting with an undercover officer.
7. When responding to bomb threats or suspicious packages. A BWC, like cell phones or portable radios, could trigger explosive devices.

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8. A health care provider is discussing medical issues with a patient.
9. Any other incident where the officer can articulate the necessity and totality of the circumstances that led to not activating the BWC.

### D. Prohibited Recordings

1. Officers are prohibited from using BWCs in the following circumstances:
  - a) Inside Department restrooms and/or locker rooms. The officer's BWC shall be placed in the designated container or their mailbox when utilizing department bathrooms/locker rooms.
  - b) Intentionally recording conversations and actions of fellow Department personnel (including outside law enforcement/public safety agency members) without their knowledge during non-enforcement activities.
  - c) Recording off-duty and/or personal activity.
  - d) While conducting strip searches or body cavity searches.
  - e) Any reason other than official police business.
2. Nothing in this policy prohibits BWCs from being used for training purposes as long as all personnel involved in training are aware that BWCs are being used and the training does not violate any of the above listed prohibitions.
3. In the event of an accidental prohibited recording, the officer involved will immediately notify their supervisor of the incident who will categorize the recording as *Confidential*, which restricts access to the file. The supervisor should not review the footage. The supervisor will send an email to the Services Bureau Commander (and "cc" the officer) noting the cause of the accidental recording and address any issues with operator error (policy review) or an equipment malfunction (remove from service). The Services Bureau Commander will review the footage in order to ensure the deletion would not violate state law and if not, would then immediately delete the recording. Notification shall be made to the Office of the Chief of the deletion.

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### E. Deactivation/Stopping a Recording

1. Once a BWC is activated, officers must continue to record until their involvement in the event ceases, their investigatory or enforcement duties related to the event cease, or an exception to the use of BWCs becomes present.
2. Officers are required to make a verbal announcement on the video recording anytime he/she plans to intentionally turn off a BWC prior to the completion of an event. The announcement must include the reason(s) why the BWC is being turned off.
3. When a BWC is not used or turned off pursuant to one of the listed exceptions, and the event is documented in an incident report, the incident report must clearly articulate why the BWC was not used or turned off.

### F. Categorization/Tagging

1. All BWC recording shall be categorized as soon as practicable. This includes the “P” number and (when available) the case number and most appropriate category known at that time.
2. Categories and corresponding retention periods are as follows:
  - a. All Other – 180 days
  - b. Municipal Court Case – 365 days
  - c. State Criminal Case – 3650 days
  - d. Use of Force – 730 days
  - e. Confidential – 3650 days
  - f. Training Value – 3650 days
  - g. Pending Review – Until manually deleted
  - h. Training Demo – Until Manually deleted

### G. End of Shift

1. Officers shall return their assigned BWC to their assigned charging station at the end of their shift to ensure all recorded files are downloaded and the unit’s battery is recharged for their next shift.
2. Officers shall ensure the BWC is correctly aligned in the charging station and there are no visible error messages.

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### **VII. CRITICAL INCIDENTS**

- A. As soon as practicable, after an officer-involved death or officer-involved critical incident is under control, a supervisor/commander shall collect all known BWC and maintain chain of custody. The supervisor/commander shall ensure that BWC recordings are uploaded and/or archived as directed by the designated investigators.
- B. Officers involved in critical incidents or officer involved death are not allowed to view BWC recording from the incident without permission from Office of the Chief. 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 files.
- C. Involved officers and/or witness officer(s) will be requested to give a formal interview prior to review of any related in-squad camera or body worn camera video. If the officer declines to be interviewed without the opportunity to review the related video evidence, the prosecutor shall be consulted. This directive does not prohibit the investigating agency and prosecutor from allowing the officer to review the BWC prior to being interviewed. If the officer agrees to commence the formal interview without prior viewing of related definitive forensic evidence, a detailed interview will be completed. Once the interview is complete the officer will then be offered an opportunity to view digital evidence. The officer may decline to view the digital evidence. If the officer elects to view the digital evidence, investigators may or may not be present during the viewing.
- D. Following the digital evidence review, the officer will be given an opportunity to provide additional statements to be documented by the investigator(s). The investigator's documentation of the interview will serve as the officer's report.
- E. 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 his/her designee.

### **VIII. RECORDINGS**

- A. Review

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Recordings may be reviewed:

1. By officers to ensure a BWC system is working properly.
2. By officers viewing their individually assigned recordings to assist with writing a report, supplement, citation, memorandum or court case preparation.
3. If there is an investigative need for an assisting officer to view another officer's video, the officer may share the video through the Axon software application.
4. The sharing of recordings with outside law enforcement agencies will need to receive supervisory or command approval prior to being shared and must be for legitimate investigative reasons.
5. By authorized department members for the purpose of reviewing evidence and processing records requests.
6. By a supervisor/commander to investigate a specific act or allegation by another department member or by a member of the public. While recorded data shall not be routinely or randomly viewed by supervisory staff for the sole purpose of enforcing policy violations, the Chief of Police or his/her designee may order periodic integrity inspections of recordings to be conducted by supervisory or commander staff.
7. By authorized department personnel participating in an official investigation, such as a citizen complaint, administrative inquiry or criminal investigation.
8. BWC recordings may be used for the purposes of training. Officers aware of BWC recordings that may serve as a training aid for other officers should notify the Services Bureau Supervisor who will review the recording to determine its feasibility as a training aid.
9. BWC recordings will never be used with the intent of belittling, ridiculing or embarrassing any member of the department, notwithstanding the potential use of BWC recordings in disciplinary matters.

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10. Officers will not allow citizens to review video captured by a BWC unless there is an investigative reason to do so and such viewing has been approved by a supervisor. Members shall advise citizens that they may request a copy of the recording through the public records process.

### B. Security

1. Once captured, BWC recordings are protected with multiple layers of encryption and cannot be altered. Video integrity is validated before and after upload to ensure no changes occurred during transmission
2. All access and activity associated with the BWC recordings, including viewing, copying, editing and deleting of all BWC recordings are logged within the BWC system's audit logs.
3. Each user of the software has a password protected login requiring authentication.
4. Permission levels within the software have been created for all users. These permissions are administratively assigned under two user types as a *Basic* Role or *Pro* role. These are then further defined into subgroups with more specific permissions commensurate with each user's responsibilities.

### C. Retention

1. Retention length is determined by the category assigned to each recording, but will be a minimum of 120 days. The only exception would be a deleted prohibited recording.
2. Required retention periods longer than 120 days for specific events are as follows:

Data from a body camera used on a law enforcement officer that record any of the following shall be retained until final disposition of any investigation, case, or complaint to which the data pertain:

- a) An encounter that resulted in the death of any individual or actual or alleged physical injury to an individual.
- b) An encounter that resulted in a custodial arrest.

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- c) A search during an authorized temporary questioning.
- d) An encounter that included the use of force by a law enforcement officer, unless the only use of force was the use of a firearm to dispatch an injured wild animal.

3. A longer retention period may be directed by a law enforcement officer or law enforcement agency, a board of police and fire commissioners, a prosecutor, a defendant, or a court that determines that the data have evidentiary value in a prosecution. A person making a preservation directive under this paragraph shall submit the directive to the law enforcement agency having custody of the record within 120 days after the date of recording.
4. Data from a body worn camera used on a law enforcement officer that are used in a criminal, civil, or administrative proceeding may not be destroyed except upon final disposition, including appeals, a determination from the court or hearing examiner that the data are no longer needed, or an order from the court or hearing examiner.

### C. Records Requests

1. The release of video requested through a public records request will be handled in accordance with existing policy 7201.07 Public Records policy and Wisconsin Public Records Law, Wis. Stat. §19.31-19.39.
2. BWC recordings that contain a record subject who is a victim of a sensitive or violent crime or who is a minor shall be provided only if the public interest in allowing access is so great as to outweigh that public policy. In that case, the record subject's face and anything else that would allow the record subject to be identified may be redacted using pixelization or another method of redaction.
3. BWC recordings of a record subject who is in a location where the record subject has a reasonable expectation of privacy shall be provided only if the public interest in allowing access is so great as to outweigh that public policy.

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Approved:

  
Mark P. Waters  
Chief of Police

Date:

  
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