

**X.XXX VIDEO RECORDING POLICY**

**PURPOSE**

The purpose of this policy is to establish guidelines for the use, management, storage and retrieval of recordings from the department's body-worn camera (BWC) system, mobile video recording system, and custodial interviews. It is recognized the audio and video captured from the use of these recordings may not show all aspects of an event or cover every angle of an event.

Persons reviewing recordings should be cautious before rendering conclusions of an incident based solely upon them. The department views video as one item available when considering the totality of the circumstances in a particular situation or event. This policy is intended to reduce the risk of wrongful conviction of innocent persons and to ensure that the highest-quality evidence possible is obtained.

**BODY WORN CAMERAS**

The use of BWCs is approved to accomplish the following objectives:

1. Allow for additional documentation of police-public contacts, arrests, and critical incidents. They also serve to enhance the accuracy of officer reports and testimony in court.
2. Audio and video recordings enhance the department's ability to review probable cause for arrest, officer and suspect interaction, and evidence for investigative and prosecutorial purposes, and to provide additional information for officer training.
3. The BWC may also be useful in documenting crime and accident scenes or other events that include the confiscation and documentation of evidence or contraband.

This policy applies to all members assigned a BWC by the chief or his/her designee.

**A. BODY-WORN CAMERA OPERATIONAL MODES**

1. There are 3 operational modes of the BWC which are defined under this policy as:
  - a. "Off" – The power to the BWC has been switched off.

- b. "On/Standby" – The power to the BWC is switched on, but not set to record. The BWC is actively buffering 30 seconds of video, without audio, prior to its recording activation.
- c. "Activated" – The BWC is actively recording audio and video until stopped by the wearer.

**B. CARE AND EQUIPMENT**

- 1. Members shall only use BWCs issued by the Fitchburg Police Department. Personal video recording devices are prohibited.
- 2. Police personnel who are assigned BWCs must complete an agency approved and/or provided training program to ensure proper use and operations. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy and equipment.
- 3. Members assigned a BWC are responsible for the proper care of the equipment.
- 4. Any BWC that is lost, stolen, or damaged will be reported to the shift supervisor as soon as practical, but no later than the end of the officer's shift. When a BWC is in need of repair or replacement due to damage, the member assigned the camera must notify a supervisor. The member shall detail the circumstances leading to the damage in an official police incident report if the damage occurred during an incident.
- 5. Prior to each shift, members assigned a BWC will ensure the unit is adequately charged and ensure there is no visible damage. Any visible damage or concerns about the functionality of the equipment will be brought to the attention of the member's supervisor as soon as it is practical to do so.

**C. PROCEDURES**

- 1. BWCs should be worn in a location and manner that maximizes the camera's ability to capture video footage of the member's activities.
- 2. Use of and Recording with the BWC

- a. All police officers, detectives, and patrol sergeants will be assigned a BWC for use in accordance with this policy.
- b. A member assigned a BWC while on-duty in department uniform or engaged in outside employment in department uniform, must wear the BWC at all times unless directed or authorized otherwise by a supervisor.
- c. Plain-clothes members assigned a BWC must wear the BWC when on-duty and conducting pre-planned arrests and serving search warrants.
- d. Special Events Team members must wear the BWC when on-duty and assigned to Special Events Team operations, to include conducting pre-planned arrests and serving search warrants.
- e. Members wearing BWCs, when in public places or private places held out to the public, will activate their cameras to record all contacts with citizens in the performance of official duties, excluding court testimony.
- f. The member shall activate the BWC at the first reasonable opportunity to do so, unless an immediate threat to the member's life or safety makes activating the BWC impossible or dangerous; in which case the member shall activate the BWC as soon as it is safe to do so.
- g. A member has discretion whether or not to activate the BWC in the following situations:
  1. Traffic control/direction
  2. EMS and Fire incidents without reasonable suspicion that a crime has been, is being, or is about to be committed.
  3. During transports of people when the in-car video system is utilized to record the transport.
  4. When engaged in solely in community outreach events, such as neighborhood/community stakeholder meetings and department outreach programs.

5. Inside a medical treatment facility, except for the following circumstances a member shall activate the BWC:
  - a. While affecting an arrest or taking a person into custody.
  - b. While in direct physical control of a person in custody.
- h. Any member who is lawfully present in an area protected by the Fourth Amendment shall activate the BWC when there is reasonable suspicion that a crime is being committed, has been committed, or is about to be committed. Once the member determines the scene to be stabilized and safe, the member shall, as soon as practicable, inform the person(s) of the BWC recording status. The member must cease recording if asked to do so by a person with apparent authority over the constitutionally protected area.
  1. Members may re-activate or continue the BWC despite a request not to record when there are articulable reasons, based upon the member's training, experience, or observations, which cause them to determine a recording of the incident is necessary.
  2. Situations where a BWC shall be activated, regardless of location, include making an arrest, taking a subject into custody, or a search of a person, residence, or property.
- i. All member offers to discontinue the use of the BWC, and the responses thereto, should be recorded by the BWC prior to discontinuing the use of the BWC.
- j. Once a BWC is recording, members must continue to record until either the completion of the event or until they leave the scene and their involvement in the event ceases.
- k. Deliberative process conversations involving law enforcement, which are not participated in by citizens, which include, but are not limited to, discussions on charging decisions, and comparing witness accounts, should be muted. Members shall make a verbal notation on the

recording anytime he/she plans to mute a recording. The verbal notation must include the reason the recording is being muted. Once the recording is un-muted, a verbal notation should be made as well.

- I. A BWC is not specifically designed to log evidence or to be used for any situation where fine detail and resolution is necessary. Members are encouraged, however, to use their assigned BWC to record crime scenes prior to the arrival of crime scene technicians or forensic investigators, especially if the scene may change or be compromised.
- m. Members shall note BWC use and/or the existence of BWC recordings in the initial heading section of dictated incident reports. However, BWC recordings are not a replacement for thoroughly written reports.
- n. If a member fails to activate the BWC, fails to record the entire contact, or interrupts the recording, the member shall document why a recording was not made, was interrupted, or was terminated in the incident report.

**D. Restrictions on Body-Worn Cameras**

- 1. The cameras shall only be used in conjunction with official duties and shall not be used to record the following:
  - a. Communications with other police personnel without the permission of the Chief of Police
  - b. Encounters with undercover officers or confidential informants, unless the recording is conducted specifically for the purpose of documenting an operation or criminal investigation.
  - c. When on break or otherwise engaged in personal activities.
  - d. In a restroom, locker room, or any other similar location where individuals have a reasonable expectation of privacy. Members may power off the BWC in these locations, but must power them back on once they have left.

- e. To gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a member and a member of the public.
- 2. Members should request consent to continue BWC recording of statements from all sexual assault victims and children victims of physical abuse or neglect.

**D. RECORDING REVIEW**

- 1. All recordings made with a BWC are the property of the Fitchburg Police Department. Recordings may be reviewed:
  - a. To ensure functionality, adherence to policies and procedures, and by authorized persons for the purpose of reviewing evidence and processing records requests.
  - b. By officers reviewing their individually assigned recordings.
  - c. By a supervisor to investigate a specific act or allegation by another officer or by a member of the public, or for any official investigation, such as a citizen complaint, administrative inquiry, or criminal investigation.
  - d. By authorized department personnel participating in an official investigation.
  - e. Civilians shall not be allowed to review the recordings at the scene.
  - f. BWC recordings may be shared with other law enforcement agencies only for legitimate laws enforcement purposes.
- 2. BWC recordings may be used for the purposes of training. Members aware of BWC recordings that may serve as a training aid for other members should notify a supervisor who will review the recording to determine its feasibility as a training aid. Members involved in a recording that has been deemed a training aid will be notified by a supervisor of the intent to use the recording for training purposes.

3. Members shall not edit, alter, erase, duplicate, copy, share, or otherwise distribute in any manner BWC recordings without authorization and approval of the Chief of Police or his/her designee.
4. 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.
5. Circumstances when an officer is prohibited from viewing a BWC recording until after they have completed an initial report are as follows:
  - a. If an officer is suspected of wrongdoing.
  - b. If an officer is involved in a critical incident, such as an officer-involved shooting or serious use of force.

**E. FILE STORAGE, RETENTION, AND RELEASE**

1. All files shall be securely downloaded by department members periodically and no later than the end of each shift. Each file shall contain information related to the date, BWC identifier, and assigned officer.
2. All files will be downloaded to and stored on a secure server designated by the department and compatible with the BWC system in use by the department.
3. All images and sounds recorded by the BWC are the exclusive property of the Fitchburg Police Department. Accessing, copying, or releasing files for non-law enforcement purposes is strictly prohibited.
4. All access to BWC data (images, sounds, and metadata) must be specifically authorized by the Chief or his/her designee, and all access is auditable to ensure that only authorized users are accessing the data for legitimate and authorized purposes.
5. Files should be securely stored in accordance with state records retention laws and no longer than useful for purposes of training or for use in an investigation or prosecution. The default file retention period will be 180 days.

6. Files will be considered for public release in accordance with state open records laws. All public requests for files will be made through the department's records request procedure.
7. Supervisory personnel must approve any public release of BWC files. BWC files should be reviewed for content and redaction considerations prior to any public release of BWC files.
8. BWC video files shall not be used to create a database of facial images or randomly searched using biometric or facial recognition software.

This subsection does not prohibit the members from using a recognition software to analyze the recording of a particular incident when a member has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording. The exception must be approved by the member's direct supervisor.

9. Members may request deletion of all or portions of a recording of an activation of the BWC during a non-enforcement or non-investigative activity. A written memo detailing the circumstances of the request will be forwarded, via the chain of command, to the Chief of Police. All requests for deletion, and the outcomes of the request, shall be maintained.

#### **F. SUPERVISORY RESPONSIBILITIES**

1. Supervisory personnel shall ensure that members equipped with BWC devices utilize them in accordance with this policy.
2. On a quarterly basis, supervisors will randomly review at least three (3) BWC and three (3) mobile video recordings of department members they supervise to ensure equipment is operating properly, members are using the devices appropriately and in accordance with policy, and to identify any areas in which additional training or guidance is required.

#### **G. BWC PROGRAM AND POLICY REVIEW**

1. The BWC program, including the policy, will be reviewed annually to determine if the program continues to meet the objectives of the department.

#### **AUDIO/VIDEO RECORDING**

1. DEFINITIONS

- A. Electronic Recording: A visual and/or audio recording using digital or analog storage format.
- B. Recorded Media: Refers to audio and/or video signals recorded on any of several storage media, including analog tape (VHS, SVHS, Hi 8mm), digital tape (DV) or other portable digital storage media (CD, DVD, hard drive, streaming media, cloud media storage, files like MPEG, MP4, AVI, etc.)
- C. Mobile Video Recording Equipment (MVR): A system capable of recording audio and visual signals, installed in a vehicle, which generally includes a camera, microphone, remote transmitter, recorder and monitor.

2. PROCEDURES

- A. Electronically Recorded Media Is Intended To:
  - 1. Enhance Officer Safety.
  - 2. Accurately capture statements and events during an incident.
  - 3. Assist with the prosecution of violators.
  - 4. Respond to allegations of officer misconduct.
  - 5. Assess officer performance.
  - 6. Document and review statements and actions for internal reporting requirements and for courtroom preparation and presentation.
  - 7. Document acknowledgement of and rigid adherence to suspects' rights and the law.

3. ELECTRONIC RECORDING OF CUSTODIAL INTERVIEWS

- A. The State of Wisconsin requires that all in-custody interviews of juveniles (persons under 17 years old) and all in-custody felony interviews of adults (persons 17 years old and older) be recorded by use of either audio or audio-video equipment. Whenever possible, such interviews should be conducted at the department, utilizing the audio-video equipment in an interview/holding room.

- B. If circumstances prevent interviewing the in-custody person at the department (i.e., the person is detained in jail or admitted to a medical facility), then other means must be utilized to record the interview. An MVR or digital audio recorder may also be utilized.
  - C. All recordings should begin at the start of each contact or questioning and continue without interruption until the contact or questioning ends.
  - D. Officers are not required by law to inform adults or juveniles they are being recorded.
  - E. Officers should use their discretion as to whether a particular suspect is likely to be inhibited by notice that they are being recorded.
  - F. The lack of consent to recording does not affect the admissibility of a recorded statement.
  - G. The recording of interviews or interrogations of adults for any misdemeanor or lesser offense is encouraged.
  - H. Recording may not be possible or practical if:
    - 1. The recording device does not work and there is no other device reasonably available.
    - 2. The officer operating the recording device inadvertently fails to operate it properly.
    - 3. During the questioning, the recording device malfunctions without the officer's knowledge.
    - 4. Recording is not practical due to the minor nature of the case and/or the location of the contact.
    - 5. A person makes a statement to law enforcement spontaneously or in response to a routine booking question.
  - I. Electronic recordings are not substitutes for reports or written statements of suspects.
4. **MOBILE VIDEO RECORDING EQUIPMENT**

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- A. At the beginning of each shift officers shall verify whether their MVR equipment is working properly.
    - 1. Positioning of camera to record events.
    - 2. MVR starts recording when the emergency lights are activated.
    - 3. MVR can be activated manually.
    - 4. Microphone is operational.
  - B. MVR equipment installed in vehicles will automatically activate when the vehicle's emergency lights are in operation. Officers will use MVR equipment installed in vehicles to record all traffic stops, field sobriety tests, pursuits, and arrests, when practicable, and while investigating traffic violations. Officers shall ensure the squad MVR microphone is worn and activated when the camera is in operation.
  - C. Once recording of an enforcement contact has started, recording generally should not be stopped until the contact has concluded. The equipment may be deactivated during non-enforcement activities and/or in accordance with body-worn camera policy.
  - D. Should a MVR unit not be functioning properly, the officer should immediately notify a supervisor.
7. RETENTION OF AUDIO AND VIDEO RECORDINGS
- A. Personnel will not erase, alter or make unauthorized copies of recorded media.
  - B. Personnel shall appropriately electronically tag or label recordings with information such as the case number and type of recording when possible.
  - C. Personnel may review video images that they made to review the actions of suspects during interviews or arrest situations, the preparation of reports, and the interaction between citizens and the officer. Personnel may also review recordings as needed for authorized investigative purposes.
  - D. Personnel shall document in their reports when an incident has been recorded.

- E. Recorded media made by MVR or other recording devices are considered a “record” under Wisconsin Statutes. Citizen requests  
  
to view recorded media or requests for copies of recorded media should be referred to the records custodian.
  
- F. Recorded media considered to have evidentiary value (suspect interviews, MVR recordings from the primary officer during OWI investigations, etc.) shall be transferred as necessary to storage media (CD/DVD/file storage device) and placed into evidence storage. Copies may be made as necessary, and marked as such, for the case folder to be utilized for legal purposes and to fulfill records requests.