

**Milwaukee County District Attorney's Office  
Policy and Procedures**

**Policy X.XXX  
Effective Date: 06/01/22**

**X.XXX BODY WORN CAMERAS (BWC)**

**INTRODUCTION**

Milwaukee County District Attorney Investigators' duties involve open and direct contact with members of the public, including crime victims, witnesses and suspects. Body-worn cameras provide an unalterable audio and visual record of interactions that capture empirical evidence of police-citizen contacts and criminal investigations.

Body-worn cameras will be used to establish transparency in operations and to support investigators in the performance of their duties by providing an accurate and unbiased recording of interactions between investigators and the public.

Body-worn cameras will be used to enhance the accuracy of investigative reports and testimony in court and to document:

- probable cause for arrest;
- evidence for investigations and prosecution;
- the presence and the seizure of contraband and evidence; and
- the use of force and the response to critical incidents.

Body-worn cameras will be used to deter unprofessional, inappropriate, and illegal behavior by law enforcement and members of the public; and to provide additional information for training.

**PURPOSE**

The purpose of this policy is to establish guidelines for the use, management, storage and retrieval of recordings from the office's body worn camera (BWC) system in compliance with Wis. Stat. §165.87.

**POLICY**

This policy establishes standards and guidelines related to the capture and use of audio and video recordings produced by Axon Body 3 - body worn cameras.

This policy applies to all sworn members of the Milwaukee County District Attorney's Office that are assigned a BWC and to any investigative, legal, or support staff that use, maintain, store or release BWC data.

**DEFINITIONS**

- A. AXON MOBILE SMARTPHONE APPLICATION: A smart phone application (app) that allows for a Bluetooth connection from the camera to a supported smartphone device. The app will allow a staff member to view live or recorded

video stored on the camera. Video cannot be altered or modified, but members can tag the video in the field while the video is still stored on the camera. Tagging videos in the field will eliminate the need to tag videos after uploading at the work location.

- B. 30 SECOND PRE-EVENT BUFFERING: The Axon Body 3 BWC is continuously recording video in 30 second looped increments (often referred to as a pre-event 30 second buffer). Audio is not recorded until the investigator begins a recording. Once the investigator begins to record, the previous 30 seconds of video is included in the evidentiary recording.
- C. BODY WORN CAMERA (BWC): A portable audio/video recording device that is worn on the officer's body. BWC for investigators of the Milwaukee County District Attorney's Office is the Axon Body 3 camera system. Personal video and audio recording devices are prohibited.
- D. CLOUD STORAGE: A mode of data storage where the digital data is stored in computer servers located offsite and accessed via Internet.
- E. EVIDENCE.COM: A secure web and cloud-based storage solution for the management and storage of audio/video recordings produced by each BWC.
- F. EVIDENCE SYNC: A desktop-based application that allows Axon Body 3 video to be annotated with meta-data in the same fashion as the AXON Mobile smartphone application prior to uploading to Evidence.com. SYNC streamlines video uploads from the Body Worn Camera when you connect AXON cameras to a workstation desktop computer.
- G. EVIDENCE TRANSFER MANAGER (ETM): Docking station that uploads data from a BWC to Evidence.com.
- H. OFFICER INVOLVED DEATH: An incident that involves the death of an individual that results directly from an act 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 in the scope of his/her law enforcement duties (Wis. Stat. § 175.47(1)(c)).
- I. CRITICAL INCIDENT: An incident involving a law enforcement officer that results in death or injury, or which may result in death to a person, that is caused by a law enforcement officer's actions occurring while in police custody; or any incident that the Chief Investigator or his designee declares a critical incident. An injury to a person as a result of a firearm discharge by a law enforcement officer, not resulting in death, shall also be considered a critical incident.
- J. RECORD SUBJECT: An individual recorded by a BWC to whom all 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.
- K. **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.
- L. **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.
- M. **TAGGING:** The process of adding metadata to a video recording either manually by the user or automatically through CAD integration. Tagging includes, at a minimum, adding the CAD number, title and retention category to each video. For efficiency, investigators assigned a BWC can view and tag captured video via the Axon mobile smartphone app or by using Sync prior to uploading to Evidence.com

## **GENERAL INFORMATION**

Each BWC system will be used to document various events that occur during the duty shift of the assigned investigator. All captured data will be preserved in a secure recording storage location upon completion of the shift. Upon capture, these recordings are protected with multiple layers of encryption and cannot be altered.

BWC's must be worn when an investigator is performing or is likely to be performing investigatory or enforcement duties.

## **GENERAL GUIDELINES**

### **A. TRAINING AND ASSIGNMENT**

1. All sworn investigators and all other employees that use, maintain, store or release BWC data will receive training on all content in this policy, including any limitations imposed on the use of BWC, any limitations imposed on

situations, persons or encounters that may be recorded by a BWC, and data retention, inclusive of record storage, retention, redaction and dissemination.

2. All sworn investigators of the Milwaukee County District Attorney's Office shall be assigned a BWC.
3. All investigators will receive prescribed training prior to being assigned a BWC.

#### B. CARE AND EQUIPMENT

1. Investigators assigned a BWC are responsible for the proper care of the equipment.
2. Any BWC that is lost or stolen will be immediately reported to the Chief Investigator, or his/her designee.
3. When a BWC needs to be repaired or replaced due to damage, the investigator assigned the camera must notify a supervisor as soon as practical, but no later than by the end of the person's shift.

### **OPERATIONAL GUIDELINES (WILEAG 1.2.5, 6.3.6, 6.6.4, 10.2.1)**

#### A. PRE-SHIFT INSPECTION

Prior to each shift, investigators assigned a BWC will ensure the unit is adequately charged. Further, investigators will inspect and test their cameras to ensure there is no visible damage and the device is functioning properly. Any visible damage or concerns about the functionality of the equipment must be brought to the attention of a supervisor.

#### B. WEARING POSITION OF THE BWC

1. It is acknowledged that sworn investigators of the Milwaukee County District Attorney's Office operate in civilian or soft attire during the course of their regularly assigned duties.
2. The BWC should be affixed to the investigator's protective body armor, facing outward at mid-chest level, with the use of office-approved mounting accessories that can be adjusted depending on the individual investigator's body size and/or assignment.
3. BWC should be worn in a location and manner that maximizes the camera's ability to capture audio/video footage of the investigator's activities.
4. Investigators are not expected to jeopardize their safety in order to obtain better audio/video recordings.

#### C. USE OF AUDIO / VIDEO RECORDINGS WITH BWC

1. An investigator assigned a BWC must wear it at all times when: on duty; wearing their protective body armor with POLICE identifiers displayed; and when performing, or likely to perform, enforcement duties.
2. The office recognizes that officer safety is paramount. In urgent or rapidly developing circumstances, investigators shall activate their BWC as soon as it is safe and practical to do so.
3. All investigators engaged in investigatory or enforcement action must activate their cameras regardless of the number of other law enforcement members on the scene with cameras.
4. Investigators shall make every effort, absent exigent circumstances, to activate their BWC for all investigative or enforcement contacts. They are further encouraged to utilize their body worn cameras anytime they have contact with the public.
5. Investigators should use their discretion when deciding whether an interview should be video recorded via BWC.
6. There is no requirement that investigators notify someone they are being recorded; however, investigators must be aware that it may be beneficial to inform others that the interaction is being recorded. If a person expresses a desire to know if the investigator is recording them, the investigator shall respond truthfully.
7. If not being worn, the BWC must be readily available for immediate use while on duty.
8. Investigators with a BWC who arrive on a scene or engage in investigative or enforcement contacts shall activate their BWC for recordable events, including, but not limited to, during:
  - a) Vehicle stops;
  - b) Vehicle and foot pursuits;
  - c) Field interviews and investigatory stops of subjects and/or vehicles as provided in Wis. Stat. § 968.25;
  - d) Transporting citizens or prisoners;
  - e) Searches of persons or property;
  - f) Attendance at crime scenes;
  - g) Criminal investigations and arrests;
  - h) The provision of *Miranda* warnings in the field or absent other recording devices;
  - i) Critical incidents, as authorized;
  - j) Subpoena and Process Service;
  - k) Courthouse security;
  - l) Prisoner processing;

9. Any investigator who is lawfully present in **an area protected by the Fourth Amendment** shall activate their BWC when there is reasonable suspicion that a crime is being committed, has been committed, or is about to be committed, or while making an arrest, taking a subject into custody, or during a search of a person, residence, or property.
10. 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 investigator must cease recording if asked to do so by a person with apparent authority over the constitutionally protected area, unless it reasonably appears to the investigator that such privacy does not outweigh any legitimate law enforcement interest in recording.
11. Investigators may re-activate or continue a BWC recording despite a request not to record when there are articulable reasons, based upon the investigator's training, experience, or observations, which cause them to determine a recording of the incident is necessary.
12. Investigators are authorized to activate/use their BWC while **inside private dwellings** under the following circumstances:
  - a) with consent to enter;
  - b) with consent to record;
  - c) with a valid search or arrest warrant;
  - d) if a legal exception allowing investigators to enter the building exists.
13. Once a BWC is activated and recording, investigators 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 a BWC arises.
14. When a BWC is used in an event which is documented in an incident report, the incident report must indicate that BWC footage was captured, and the investigator must briefly summarize what the footage is expected to contain.

#### D. EXCEPTIONS TO USE OF BODY WORN CAMERAS

- 1) Investigators have discretion to record potentially sensitive events or circumstances.
- 2) Investigators may deactivate BWCs during non-enforcement activities.
- 3) Investigators shall make a verbal notation on the recording anytime they plan to intentionally stop a recording prior to the completion of an event or incident. The verbal notation must include the reason why the member is stopping the recording.

- 4) Investigators are permitted to keep off, or turn them off in the following situations:
  - a) When interacting with the victim of a sexual assault;
  - b) When interacting with a victim who is a child;
  - c) When interacting with a victim or witness who requests not to be recorded while giving a statement;
  - d) 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);
  - e) When there are articulable reasonable circumstances present as to why the camera should be stopped;
  - f) When authorized by a supervisor; and
  - g) When conducting a custodial interrogation or interview in a room already equipped with recording equipment.
5. 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 articulate why the BWC was not used or was turned off.

#### E. PROHIBITED RECORDINGS

1. Investigators should remain sensitive to the dignity of all individuals being recorded and should exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the investigator 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 the same criterion. Recording should resume when privacy is no longer an issue unless the circumstances no longer fit the criteria for recording.
2. BWCs will not be activated in a place where a reasonable expectation of privacy exists, such as dressing rooms, locker rooms and restrooms (Wis. Stat. § 175.22). Any purposeful or accidental recordings made under these circumstances may be deleted prior to the standard 180-day retention period at the direction of the Chief Investigator or his/her designee. Documentation shall be made and retained, that the recording was made and deleted.
3. BWCs will not be intentionally activated to record conversations of fellow department members without their knowledge during routine and non-enforcement activities.
4. BWCs will not be utilized to record any off duty or personal activity.

5. 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.

#### F. CESSATION OF RECORDING

Once activated, the BWC should remain on continuously until the investigator reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation. If a recording is intentionally stopped, the investigator should make a verbal notation as to why prior to stopping the recording.

#### G. SURREPTITIOUS USE

1. 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)).
2. Investigators may surreptitiously record any conversation, during the course of a criminal investigation in which the investigator reasonably believes that such a recording will be lawful and beneficial to the investigation.
3. Investigators shall not surreptitiously record another agency member.

#### H. OFFICER INVOLVED DEATH / CRITICAL INCIDENT PROTOCOL

1. Investigator(s) involved in an officer involved death or critical incident, and/or any witness investigator(s) shall not review any BWC recording prior to providing a formal statement to the designated outside lead investigators.
2. The outside agency lead investigator shall make the determination if the involved investigator(s) will be permitted to view the recorded data.
3. This section does not prohibit investigators involved in an officer involved death or critical incident, with ongoing exigency from viewing body worn camera recordings that may aid the present investigation (e.g., suspect descriptions, suspect vehicles, direction of travel, etc.).
4. Investigators involved in a critical incident and/or an officer involved death should cease recording once it is determined the scene is secured. The BWC shall be given to an on-scene supervisor who will maintain chain of custody. The supervisor shall ensure that BWC recordings are uploaded and/or archived as directed by the designated investigators.
5. When responding to a Critical Incident that is not an active scene and being investigated by another agency, investigators shall not activate their body worn cameras unless instructed to do so by a supervisor of the lead investigating agency.

6. If a critical incident involving a MCDA investigator is investigated by an outside agency and reviewed by another prosecutorial agency, the Milwaukee County District Attorney's protocol of allowing access to the body camera footage as soon as practical to the decedent's family will be encouraged.

#### I. REPORTING / DOCUMENTATION

1. When a BWC records an incident resulting in either an arrest or the issuance of a citation, the use of the BWC will be documented in the citation and/or report narrative.
2. Investigators shall document the existence of a recording in any report or other official record of the contact, including any instance where the BWC malfunctioned, or the investigator deactivated the recording. Investigators should include the reason for deactivation.

#### J. SYSTEM INTEGRITY

1. BWC footage is considered law enforcement sensitive material and, in certain circumstances, is considered evidence. Therefore, original raw footage will always be securely maintained for the specific retention period. Copying and editing BWC footage for legitimate law enforcement purposes (such as making copies for discovery or redacting for release to the public under open records law) are allowed by specifically authorized personnel.
2. While officers who use BWC will have access to BWC footage for purposes of review, only BWC Administrators and/or their designee will have access to the storage settings.
3. Investigators are prohibited from viewing BWC footage while off-duty.
4. Axon is the current vendor of BWC used by the Milwaukee County District Attorney's Office. Axon offers two apps that can be used in conjunction with cloud storage. Axon View is an app that connects to a BWC and allows the app user to review and categorize videos on the BWC (the app does not store data on the device with the app). Axon Capture is an app that allows the app user to capture photographs and video with their device and then upload the photographs/video to cloud storage (the app does not store data on the device with the app).
5. Investigators are permitted to use Axon View solely for the purpose of reviewing and categorizing footage on the BWC assigned to them. Officers may not perform functions, such as screen captures, with their devices that will save/store data on the device with the app.
6. Once recordings are uploaded to Axon Evidence, the software provides detailed tracking logs as to who is accessing recorded data, and when. All access and activity within Axon Evidence is logged and is subject to auditing at any time.
7. All digital media that is captured with a BWC is the sole property of, and will be retained by, the Milwaukee County District Attorney's Office for a minimum

of 180 days following the date it is recorded. Video may be retained for longer periods in the event the video is the subject of a criminal, civil, or administrative proceeding, litigation hold, part of discovery, etc.

8. Unauthorized accessing, copying or releasing captured video without the approval of the Chief Investigator or his/her designee is strictly prohibited. Investigators are prohibited from making copies of a BWC audio/video recording by using another recording device such as a cell phone.
9. With the proper Evidence.com permission level, recordings may be duplicated or shared with criminal justice agencies, and with bona fide city, county, state or federal law enforcement partners, as part of statutorily or constitutionally mandated criminal discovery or evidence, or when otherwise authorized by the Chief Investigator or his/her designee.
10. Investigators will not allow civilians to review video captured by a BWC unless there is an investigative reason to do so, and such viewing has been approved by the District Attorney or the Chief Investigator or his/her designee. Investigators shall advise civilians that they may request a copy of the recording through the public records process.

#### K. DATA RETENTION

1. All recordings shall be retained for a period consistent with the requirements of the records retention schedule set forth in Wis. Stat. § 978.07, but in no event for a period less than 180 days from the date of recording.
2. BWC data that captures any of the following shall be retained until final disposition of any investigation, case or complaint to which the data pertain, or for the periods set forth in Wis. Stat. § 978.06, whichever is longer:
  - a. An encounter that resulted in the death of any individual or alleged physical injury to an individual;
  - b. An encounter that resulted in a custodial arrest;
  - c. A search during an authorized temporary questioning as described in § 968.25 (i.e. a *Terry Stop*);
  - d. An encounter that included the use of force by a law enforcement officer (does not apply to the destruction of an injured wild animal)
3. BWC data that is used in a criminal, civil or administrative proceeding may not be destroyed except: upon final disposition, including appeals; upon a determination from the court or hearing examiner that the data is no longer needed; upon an order from the court or hearing examiner; or that the record is considered obsolete under Wis. Stats. § 978.07.
4. A request for retention of BWC footage beyond 180 days may be made to the Custodian of Records for the Milwaukee County District Attorney's Office by: a law enforcement officer; a law enforcement agency; police and fire commission; a prosecutor; a defendant; or a court that determines that the

BWC data has evidentiary value in a prosecution. Any other person who wishes to make a preservation request must submit an open records request to the department within 180 days after the date of the recording.

5. No data from a body camera used on a law enforcement officer may be destroyed during the period specified in s. 19.35(5) .

#### L. DATA PRIVACY / RECORDS REQUESTS / REDACTION

1. Data from a BWC used by investigators are subject to the right of inspection and copying under Wis. Stat. § 19.35 (1), except as provided in subsections (2) through (5).
2. The Milwaukee County District Attorney's Office shall maintain the privacy of a record subject who is a victim of a sensitive or violent crime, or who is a minor; and access to data from a BWC that records such a record subject 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 by pixelization or other redaction method.

The presumption regarding privacy does not apply if a record subject who is a victim of sensitive or violent crime, or his/her next of kin if the record subject is deceased, does not object to granting access to the data. The presumption regarding the privacy of a record subject who is a minor does not apply if the parent or legal guardian does not object to granting access to the data.

3. It is the policy of the Milwaukee County District Attorney's Office to maintain the privacy of a record subject who is in a location where the record subject has a reasonable expectation of privacy; and access to data from a BWC that records a record subject in such a location shall be provided only if the public interest in 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.

The presumption of privacy does not apply if the record subject does not object to granting access to the data.

4. Prior to the release of any BWC recording to the public, records will be checked to ensure that proper redactions have been made in accordance with state law.
5. For purposes of requests under § 19.35(1) for access to data from a BWC used by a law enforcement agency, the law enforcement agency is the legal custodian of the record. If any other authority has custody of any such data, that authority is not the legal custodian of that data. If any other authority receives a request under § 19.35(1) for that data, that authority shall deny any portion of the request that relates to that data.

6. If a requester believes that the Milwaukee County District Attorney's Office has made an improper decision to redact or deny access to BWC data, the requester may pursue remedies under §19.37(1).
7. Nothing in this section prohibits the release of BWC data under §175.47(5)(b) in relation to the investigation of officer involved critical incidents.
8. Nothing in this policy restricts the release of BWC video as discovery in a criminal or civil action prosecuted by the District Attorney's Office or by a prosecutor acting on behalf of the District Attorney's Office, or pursuant to a lawfully issued subpoena in a civil case.
9. Recordings that were captured inadvertently and/or capture sensitive material; strategic or tactical operations; and/or prohibited recordings may be deleted or redacted only upon authorization by the Chief Investigator and the District Attorney or his/her designee.

#### M. DEPARTMENT REVIEW / TRAINING

1. All recordings made with a BWC are the property of the Milwaukee County District Attorney's Office. Recordings may be reviewed:
  - a. By a department member to ensure a BWC system is working properly.
  - b. By an investigator viewing his/her individually assigned recordings to assist with writing a report, supplement, citation, memorandum or court case preparation.
  - c. By authorized persons for the purpose of reviewing evidence and processing records requests.
  - d. By a supervisor to investigate a specific act or allegation by another department member or by a member of the public.
  - e. By authorized department personnel participating in an official investigation, such as a citizen complaint, administrative inquiry or criminal investigation
  - f. By department legal and support staff in order to facilitate the review and / or prosecution of charges associated with the events capture by BWC.
2. BWC recordings are subject to random audits by authorized personnel and may never be used with the intent of belittling, ridiculing or embarrassing any member of the public or the department, notwithstanding the potential use of BWC recordings in disciplinary matters.
3. The Chief investigator and the District Attorney or his/her designee shall periodically review practices regarding BWC and data from BWC to ensure compliance with this policy and the requirements herein.

4. The Chief investigator and the District Attorney or his/her designee shall periodically review the BWC policy to ensure compliance with this policy with state and federal law and developing technology and best practices.