

Madison Police Officer Body-Worn Camera Policy¹²⁰

1. Purpose

- a. The primary purpose of this policy is to establish clear procedures regarding the use of body-worn cameras to document incidents involving police officers and the public, while also protecting the privacy rights of all parties who may be recorded and to minimize the misuse of recording capabilities for mass surveillance of individuals or groups.
- b. This Department authorizes the use of body-worn cameras to record officer interactions with the public; collect evidence of criminal activity; monitor officer performance and compliance with governing laws and Department policies, procedures, and training; and serve as a training tool.

2. Use of Body-Worn Cameras

- a. Only law enforcement officers with the authority to conduct searches and make arrests shall be permitted to wear a body camera.
- b. Officers shall use their body-worn camera and all other recording and imaging devices in compliance with the manufacturer's operational guidelines, Department training, and this policy.
- c. Officers shall determine, at the start of each shift, whether their body-worn camera is working properly and shall bring any problems with the equipment to the attention of their immediate supervisor as soon as practicable.
- d. The body-worn camera shall be worn in a location and manner that maximizes the camera's ability to capture footage of the officer's activities, including, to the greatest extent possible, the officer's own body (e.g., legs and arms). The body-worn camera shall be worn as high on the officer's body as feasible, but in no case lower than the shoulder level. The body camera shall have as wide a field of view as can be practically achieved (preferably 180 degrees or wider)
- e. Technology shall be employed, to the extent feasible, to stabilize video images and reduce the distortions caused by shaking and jostling from the officer's body movements, which can otherwise create a misperception of heightened confusion and chaos.
- f. Body-worn cameras shall be activated immediately, or as soon as practicable, when responding to all calls for service and during all law enforcement encounters and activities involving the general public. To ensure compliance with this requirement, technologies shall be adopted that automatically engage the recording equipment whenever squad car lights are activated, squad car doors are opened, officers are dispatched to an incident by the dispatch center, the camera system detects that an officer is running, or other similar automatic engagement systems offered by the technology. Automatic engagement systems do not

¹²⁰ This Model Policy draws heavily from a model BWC policy proposed by Professor Kami N. Chavis, a law professor at Wake Forest Law School, which she published as part of her article, *Body-Worn Cameras: Exploring the Unintentional Consequences of Technological Advances and Ensuring a Role for Community Consultation*, 51 WAKE FOREST LAW REVIEW 985 (2016), with supplemental provisions drawn from the Model Policy produced by the ACLU. Our Committee began with those sources and modified and expanded the policy significantly to address the specific concerns the Committee heard about BWCs in Madison.

absolve officers of their responsibility under this policy to ensure that all law enforcement encounters are recorded. Regardless of whether recording systems are engaged automatically by the technology itself, officers shall ensure that they engage the recording system during all law enforcement encounters.

- i. Law enforcement encounters shall include, but are not limited to the following:
 1. Routine calls for service;
 2. Enforcement encounters where there is at least reasonable suspicion the person involved has committed, is committing, or is about to commit a criminal violation consistent with applicable search-and-seizure law;
 3. Any time an officer engages squad car lights or sirens;
 4. All incidents involving the use of force;
 5. When serving a search warrant;
 6. All investigatory stops;
 7. All traffic stops;
 8. When responding to crimes in progress and priority assignments;
 9. When initiating any vehicular or foot pursuit;
 10. When conducting any vehicle or pedestrian investigation or search;
 11. When initiating any arrest or any in-person citation;
 12. When handling a disturbance or crisis-related incident;
 13. When handling a imminently violent protest or demonstration, but only if there is a reasonable suspicion that criminal activity is taking place;
 14. When confronted by any individual who is demonstrating behaviors or language consistent with becoming hostile;
 15. When conducting any investigatory interviews of witnesses or suspects, regardless of location, including telephonic interviews;
 16. Situations where recording might enhance the probability of evidence-based prosecutions; and
 17. Situations where the officer, through training and experience, believes recording would serve a proper police purpose (e.g., recording the processing of an uncooperative arrestee).
- g. If multiple officers are involved in any event for which this policy requires activation of the body-worn camera system, all such officers are required to activate their body-worn cameras so that the incident is recorded from as many perspectives as possible.
- h. The body-worn camera system shall employ buffering technology in all instances in which the recording captures a minimum of 30 seconds of activity prior to the engagement of the recording system.
- i. Body-worn cameras shall not be used covertly. Officers wearing a body-worn camera must notify any persons being recorded, as soon as practicable, that they are being recorded by a body-worn camera.
- j. Officers shall not disengage the body-worn camera or otherwise pause or interrupt the recording until the entire incident that requires recording has concluded and the officer has left the scene. In the event of arrest, the incident is concluded only

when the arrestee is transported to the station, or the recording officer leaves the scene and the presence of the arrestee.

- k. Officers must verbally state the justification for any disengagement of their body-worn camera before disengaging the body-worn camera. Additionally, if an incident report is completed, the officer must thoroughly document the justification for disengaging the body-worn camera in the narrative portion of the report.
 - l. In the event an officer fails to record an incident as required by this policy, failure to activate and the reason for such failure to activate must be properly documented in the officer's activity log and immediately reported to the desk officer. Failure to activate the body-worn camera must also appear in the narrative portion of the officer's incident report.
 - m. If for any reason a recording is interrupted, the officer must document the reason for, or factors contributing to, the interruption with the shift supervisor and in the narrative portion of any incident report, as well as on the recording itself, if possible.
 - n. Appropriate disciplinary action shall be taken against any officer who is found to have intentionally and without reasonable justification failed to adhere to the recording or retention requirements contained in this policy, or to have intentionally interfered with a body-worn camera's ability to accurately capture footage. Since such infractions implicate integrity and compromise the validity of video evidence, they shall generally be deemed a violation of integrity. Notice of any violations of this policy and any documentation related to it shall be provided to the Office of the Independent Monitor and Police Civilian Oversight Board.
3. Prohibited Recording
- a. Officers shall not use their body-worn cameras to record any of the following:
 - i. Places where privacy expectations are paramount, such as, but not limited to, hospital emergency rooms, locker rooms, and restrooms, except in the following instances:
 - 1. When all parties visibly or audibly recorded consent to such recording;
 - 2. While conducting an arrest;
 - 3. While executing a search warrant;
 - 4. When all parties visibly or audibly recorded consent to such recording;
 - 5. While conducting an arrest;
 - 6. While executing a search warrant;
 - 7. During the use of any reportable force; or
 - 8. Under any other extraordinary circumstances that are likely to involve confrontations between police and civilians, such as warrantless entry into a home pursuant to exigent circumstances.
 - ii. While on the grounds of any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health, or during custodial interrogations of juveniles, or when responding to an otherwise recordable incident involving only individuals known to police to be adults. Any inadvertent filming of juveniles shall be redacted;

- iii. Activity that is unrelated to a response to a call for service or a law enforcement/investigative encounter between an officer and a member of the public;
- iv. Gruesome images, persons nude or exposed, sensitive human areas, but only if the privacy considerations attendant to such images cannot adequately be accommodated by subsequent redaction or pixilation and are so significant that they justify compromising the integrity of the recording by interrupting continuous recording;
- v. Body cameras shall not be used for any intelligence-gathering efforts involving activities in which subjects are engaging in First Amendment protected speech, associations, or religion, such as but not limited to participation in peaceful protests, attendance at religious services or ceremonies, engaging in normal daily social activities that raise no reasonable suspicion of criminal activity, or delivering or attending a lecture, presentation, debate, or similar events;
- vi. The decision whether to record or not record an individual under this policy shall not be based on race, color, gender, national origin, sexual orientation, religion, or other protected classification
- vii. When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, ask the apparent crime victim if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime victim responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera;
- viii. Whenever a victim or witness requests that he or she not be recorded as a condition of cooperation, when the interests of justice require his or her cooperation, and when the request to turn off the recording by the victim or witness him or herself is captured in the recording before the recording equipment is disengaged;
- ix. Conversations among law enforcement personnel that are not participated in by civilians, but only when this is not in conflict with the requirement for continuous recording in 2.j;
- x. Conversations with confidential informants and undercover officers, unless the recording is conducted specifically for the purpose of documenting an operation, drug purchase/sale, or other important information in furtherance of a criminal investigation.
- xi. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body camera. When asking such person if they want to discontinue use of the body camera, the officer must also offer the individual the option of continuing the recording with the understanding that the individual's identity will be protected by redaction technology that will pixelate or blur out identifying information. If the person seeking to remain anonymous requests that the recording cease, the

law enforcement officer shall immediately discontinue use of the body camera.

- b. Except when officers are executing a search or arrest warrant, or when exigent circumstances permit officers to enter a home without a warrant, video recording should occur inside a private residence only subject to the following requirements and conditions:
 - i. As soon as possible upon entering a residence, in a manner that is captured on the audio recording, officers shall request permission to video record. If any apparent lawful occupant or resident of the dwelling, other than an apparent aggressor in a domestic violence situation, denies permission, the body-worn camera shall be de-activated, unless, subject to the limitation set forth in 3.a.vii, legitimate law enforcement objectives require recording, such as where important evidence related to the incident will be irretrievably lost unless recording occurs, or the situation between the police and the occupants becomes confrontational or violent.
 - ii. If, at any time, a subject rescinds consent to record while in a residence, officers shall immediately, or as soon as practicable, deactivate their body-worn cameras, unless continued recording is justified or required by some other provision of this policy
 - iii. Should officers continue to record inside a residence despite a subject's refusal to permit recording or a subject's request to discontinue recording, the officers shall document in their written reports, and if possible on the recording itself, the specific law enforcement needs that they relied upon to override the request to stop recording.
 - iv. If recording is made over the objection of individuals in the residence, supervisory staff shall in all such instances promptly review the incident, including the recording, to determine if continued recording was warranted under this policy. If supervisory staff determine that the recording was made in violation of this policy, the recording shall be redacted to remove improperly recorded portions or the recording shall be deleted.

4. Community-Created Cell Phone and Other Video Recordings

- a. For any incident that is subject to recording via police body-worn cameras pursuant to this policy (whether the body-worn cameras were actually activated or not), the Department shall permit members of the public to submit or otherwise upload recordings of the same incident. Such footage shall be treated as if it were also body-worn camera footage, in accordance with all other policies outlined within this document.

5. Officer Viewing of Recordings

- a. No law enforcement officer shall review or receive an accounting of any electronic recording of an incident prior to completing any required initial reports, statements, and interviews regarding the recorded event, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.
- b. Once any required initial reports, statements, and interviews are completed, involved officers may then view the video file or other electronic recordings of the recorded incident. If, based on their review of the electronic recording(s) the

officers determine that their written reports or statements were inaccurate or incomplete, they may then submit supplemental reports, making the needed corrections and additions, but must note that the corrections or additions were based on their view of the video file; the initial written report or statement itself may not be altered in any way after viewing the recordings.

6. Security of Body-Worn Camera Footage

- a. Officers are strictly prohibited from sharing any body-worn camera system login information or passwords with any other person.
- b. Only officers who have successfully completed body-worn camera training and possess valid body-worn camera system log-in credentials are authorized to view body-worn camera footage.
- c. Accessing, copying, or releasing files for non-law enforcement purposes are strictly prohibited. All access to the body-worn camera system, other than by the Office of the Independent Police Monitor and Police Civilian Oversight Board, must be authorized in writing by the Chief of Police or their designee.
- d. Accessing, copying, releasing, or sharing body-worn camera footage on/from any computer or device not issued by the Department is strictly prohibited, except as otherwise provided in this Policy. The Department shall retain a noneditable, original version of all body-worn camera footage and shall log any time the footage is viewed, including the length of time it is viewed and by whom.
- e. The Department shall log any copying or editing of body-worn camera footage.
- f. Access to the body-worn camera system shall be controlled through a secure location. All access to the body-worn camera system is logged and subject to audit at any time.
- g. To protect against unauthorized copying or editing, the Department shall employ a data storage system with built-in audit trails.
- h. Officers are explicitly prohibited from tampering with, editing, or copying footage stored in the body-worn camera system.

7. Retention of Body-Worn Camera Footage:

- a. Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for six (6) months from the date it was recorded, after which time such footage shall be permanently deleted.
- b. Notwithstanding the retention and deletion requirements set forth above:
 - i. Video footage shall be retained for no less than three (3) years if the video footage captures an interaction or event involving:
 1. Any use of force; or
 2. An encounter about which a complaint has been registered by a subject of the video footage or a witness to the incident.
- c. Body camera video footage shall also be retained for no less than three (3) years if a longer retention period is voluntarily requested by:
 - i. The law enforcement officer whose body camera recorded the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

- ii. Any law enforcement officer who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;
 - iii. Any superior officer of a law enforcement officer whose body camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary or exculpatory value;
 - iv. Any law enforcement officer, if the video footage is being retained solely and exclusively for police training purposes;
 - v. Any member of the public who is a subject of the video footage;
 - vi. Any parent or legal guardian of a minor who is a subject of the video footage; or
 - vii. A deceased subject's spouse, next of kin, or legally authorized designee.
- 8. Release of body-worn camera footage:
 - a. All video footage of an interaction or event captured by a body camera, if that interaction or event is identified with reasonable specificity and requested by a member of the public, shall be provided promptly to the person or entity making the request to the extent permitted by and in accordance with the procedures for requesting and providing government records under the Wisconsin Open Records Law.
 - b. Notwithstanding any time periods established for acknowledging and responding to records requests under the Wisconsin Open Records Law, responses to requests for video footage that is subject to a minimum three (3) year retention period pursuant to Department policy, where a subject of the video footage is recorded being killed, shot by a firearm, or grievously injured, shall be prioritized and the requested video footage shall be provided as expeditiously as possible, but in no circumstances later than five (5) days following receipt of the request.
 - c. Body camera video footage may not be withheld from the public on the basis that it is an investigatory record or was compiled for law enforcement purposes where any person under investigation or whose conduct is under review is a police officer or other law enforcement employee and the video footage relates to that person's on-the-job conduct.
 - d. All unedited footage shall be made available to the Independent Police Monitor (IM) and/or the Police Civilian Oversight Board (COB) promptly upon request.
 - e. When referring a case to the District Attorney's Office for charging, all video footage taken or received by the Madison Police Department related to the incident shall be forwarded to the District Attorney along with the referral documents, or as soon as practicable thereafter.
 - f. Once any individual has been charged with a crime in connection with incidents captured on any body-worn camera footage, the Department shall immediately forward a copy of all such footage to the individual's defense attorney, if any, or to the Madison Trial Office of the State Public Defender's Office, or to the subject individual if the individual expresses an intention to proceed without counsel and requests a copy. Any footage disclosed to the accused and/or counsel must be unabridged and unedited, except to the extent that pixilation or redaction or deletion is otherwise permitted by this policy prior to release to the public, and

in any event only to the extent that such pixilation or redaction does not undermine or detract from the evidentiary value of the recording or obscure any potentially exculpatory information.

- g. When forwarding video footage to the District Attorney's Office and/or Public Defender's Office (or other counsel for the accused in the case, or the accused himself or herself if unrepresented, as set forth above), the Department shall forward with the video footage a report stating in writing where in the video footage (by date, time, or similar reference marking) the events of most relevance to the charges or defenses in the case can be located.
 - h. Any member of the public, parent or guardian of a minor, or next of kin of a deceased, who is a subject of body-worn camera footage, shall be permitted to review an unedited version of that specific footage. If that person is represented by counsel, that attorney shall also be permitted to review an unedited version of that footage. In-person review will specifically be provided by a representative of the Office of the Independent Monitor rather than by employees of the Madison Police Department.
9. Deletion, Editing, or Redaction of Video Footage:
- a. Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person's voice, provided the redaction does not interfere with a viewer's ability to fully, completely, and accurately comprehend the events captured on the video footage.
 - b. In the event of an unintentional activation of a body-worn camera during a nonenforcement or non-investigative activity, including but not limited to, restroom breaks, meal breaks, or other situations where a reasonable expectation of privacy exists, the officer may request the recording be permanently deleted. A memorandum detailing the circumstances of the unintentional recording will be forwarded via the chain of command to the Chief of Police or his or her designee. If approved, the actual deletion requires two-party authorization. One of these parties will be the Chief of Police or his or her designee and the other party will be the Captain of Specialized Services. The following subsection c is inapplicable to deletions made under this section.
 - c. When redaction is performed on video footage, an unedited, original version of the video footage shall be retained.
 - d. Except pursuant to the rules for the redaction of video footage set forth above or where it is otherwise expressly authorized by this Policy, no other editing or alteration of video footage, including a reduction of the video footage's resolution, shall be permitted.
10. Limit on the Use of Biometric Techniques to Search Footage:
- a. The Madison Police Department shall strictly abide by MGO 23.63 and 23.64 restricting facial recognition software.
 - b. Images from body-worn camera footage shall not be used to create a database of mug shots or used as fillers in photograph arrays and shall not otherwise be used except for those purposes expressly permitted under MGO 23.63 and 23.64.

- c. If good cause arises to believe that body-worn camera footage is being used by any governmental agency or entity, federal or state, for a purpose that is impermissible under this policy, such as ICE issuance of administrative subpoenas to utilize facial recognition software to search for undocumented residents, the Chief of Police or the Independent Police Monitor or the Police Civilian Oversight Board should promptly notify the Council of this use and request a prompt decision by the Council as to whether to continue or end the body-worn camera program.

11. Training Requirements

- a. All officers and supervisors will be provided adequate training in the use of body-worn cameras prior to using the equipment. Annual retraining will be provided to all authorized users of the body-worn cameras.

12. Discipline for Violations.

- a. Should any law enforcement officer, employee, or agent fail to adhere to the recording or retention requirements contained in this policy, intentionally interfere with a body camera's ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation appropriate disciplinary action shall be taken against the individual officer, employee or agent.
- b. Supervisory staff shall periodically review body-worn camera footage for evaluation of officer performance and training purposes. No officer, however, may be disciplined or reprimanded for failing to issue a citation or make an arrest, in circumstances where supervisor review of footage alerted the supervisory staff to facts suggesting that grounds for citation or arrest were present in an encounter. The Department shall broadly publicize to officers, through training and periodic updates, that no officer will be subject to discipline or reprimand for failure to make an arrest or issue a citation in circumstances where body camera footage suggests there were grounds for citation or arrest.

13. Data Collection and Reporting

- a. Comprehensive data shall be maintained by the Department on its Body-Worn Camera Program. The collected data shall include, but need not be limited to:
 - i. The number of officers equipped with body-worn cameras;
 - ii. The number of times per officer per shift that body-worn cameras are engaged;
 - iii. The nature of the encounters that are recorded (e.g., Arrests, citations, execution of search warrants);
 - iv. Topics identified during supervisor review of body-worn camera footage for purposes of training accompanied by descriptive data on the uses of this footage in individual or department-wide training;
 - v. The duration of the recorded encounters;
 - vi. The number and nature of use-of-force incidents captured by body-worn cameras;
 - vii. The number and percentage of times that victims, witnesses, or residents request that the cameras be turned off;
 - viii. The number and nature of body-worn camera policy violations by officers;
 - ix. The number and nature of technical malfunctions;

- x. The quantity of stored recording footage and associated costs;
 - xi. The outcomes of incidents captured on video, including whether an individual was charged with a crime, the nature of any such charges, the number of times an officer was the subject of a complaint or discipline from incidents with body-worn camera footage and the nature of the alleged violations and the outcomes.
 - xii. The number of times that initial police-officer reports or charging recommendations are altered after officer or supervisor review of body-worn camera footage, and if charges are altered, the nature of the changes.
 - xiii. The race of subjects captured on body-worn camera footage.
 - xiv. The frequency of body-worn camera engagements by geographical area within the city.
 - xv. Other things?
- b. The data collected by this section shall be provided to the Independent Monitor and Civilian Oversight Board on at least an annual basis, or at an earlier interval upon request of either the Independent Monitor or the Civilian Oversight Board. This report shall also include metrics on aspects of impact, such as criminalization rates, charging decisions, and uses of force.