DEPARTMENT OF CORRECTIONS

Policy Number: **107.019**
Title: **Office of Special Investigations – Fugitive Apprehension Unit – Body Worn Cameras**
Effective Date: **2/14/22**

PURPOSE: To provide procedures for the use of Body Worn Camera (BWC) systems by the Minnesota Department of Corrections (DOC) Fugitive Apprehension Unit (FAU) sworn peace officers. This includes the BWC system, storage, review, retention, and data release procedures.

APPLICABILITY: All MN DOC Fugitive Apprehension Unit Members (FAUM).

DEFINITIONS:
Activate – powering on a body-worn camera (BWC) system which causes the BWC system to transmit or store audio or video data.

Body-Worn camera (BWC) administrator – peace-officer-licensed person who is trained in the operational use and repair of BWCs, including duplicating methods, storage and retrieval methods, and procedures, and who possesses a working knowledge of video forensics and evidentiary procedures.

Body-Worn camera (BWC) audio/video – audio-video signals recorded on any storage device obtained through a department-installed BWC video system governed by Minnesota data practices laws.

Body-Worn camera (BWC) recording – an intentional act done by a FAUM to place the BWC in a full recording mode which continuously captures audio and video.

Body-Worn camera (BWC) system – any system that captures audio and video signals that is capable of being worn individually by a fugitive apprehension unit member (FAUM).

Buffer – a configured component of the BWC that records a preset timeframe of video only, without audio, prior to a BWC recording. The buffer records only when the BWC is powered on. Audio recording begins when an officer activates recording.

Critical incident – any incident that has caused or is likely to have caused serious bodily harm or death to any person.

Deactivate – any process that causes the BWC to stop recording audio or video data.

Fugitive apprehension unit member (FAUM) – a licensed peace officer at the Department of Corrections, Office of Special Investigations.

Mandatory recording – when the BWC must be activated under this policy.

Memorandum of understanding (MOU) – an agreement outlining the terms and conditions of any assignment or deputization of a FAUM to a specific federal, state, county, or city task force.

Minnesota Government Data Practices Act (MGDPA) – Minnesota Statutes, Chapter 13.

Mute – using the capability of the BWC to stop audio recording while continuing to record video.

Prohibited recording – when a FAUM is not allowed to record on a BWC under this policy.

PROCEDURES:

A. Operational Objective

The DOC office of special investigations (OSI) fugitive apprehension unit (FAU) has adopted the use of body-worn cameras (BWCs) to accomplish the following objectives:

1. To further document statements and events during the course of an interaction.

2. To enhance the fugitive apprehension unit member's (FAUM's) ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.

3. To provide a measurement for self-critique and field evaluation during new FAUM training.

4. To preserve visual and audio information for use in current and future investigations.

5. To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of video and audio recordings.

6. To identify training needs.

7. To aid in internal investigations into allegations of officer misconduct.

8. To protect officers from unjustified or falsified complaints.

B. Issuance

1. All FAUMs assigned BWCs must successfully complete training in the use of the technology and this policy. Training is documented in the agency-approved electronic training management system.

2. One BWC is assigned to each FAUM.

3. FAUMs may not trade BWCs between each other without the BWC administrator's prior approval. FAUMs may switch a BWC during emergency circumstances but must document this switch by completing a report in the Augmented Criminal Investigation Support System (ACISS).

C. FAUM Responsibilities Related to Use of BWCs

1. FAUMs must wear their BWCs above or at the midline of the waist, at the point where they afford the maximum possible view.

2. The FAUM is responsible for the inspection and general maintenance of the BWC equipment issued to them.

3. At the start of each shift, the assigned FAUM must perform an inspection to ensure that the BWC is performing in accordance with the manufacturer's recommendations. If a FAUM is unable to perform the inspection at the start of shift due to emergency call out status, the FAUM must perform the inspection as soon as possible and make a notation in their daily log indicating the inspection was performed after the emergency response was completed.

4. FAUMs must dock the BWC units at a central office docking station every 30 days to ensure the firmware is up to date.

5. The FAUM must promptly report any malfunctions or damage of BWC equipment to the BWC administrator and document it in a report within ACISS, prior to placing the unit into service. The BWC administrator must provide direction to the FAUM regarding replacement or verify the damage does not affect the audio and video recording of the device.

6. Each FAUM is responsible to dock (upload) their BWC within 24 hours of activation for any enforcement activity (for example, arrests or investigative actions) that does not meet the criteria of a critical incident. For critical incidents, the FAUM must upload the BWC as directed by the investigating authority or as soon as practical at the conclusion of the FAUM's working period.

7. Exemption: FAUMs may be requested or required to work outside the Twin Cities metropolitan area to conduct investigations. If the FAUM does not have the ability to upload the information from the BWC, the FAUM must complete an upload during the next shift in the metro area.

8. Each FAUM is responsible to classify videos correctly by category (for example, traffic stop, search warrant, warrant arrest, critical incident, etc.) as soon as practicable following their duty period.

9. FAUMs must inform those who ask that recording equipment is in use.

10. Under no circumstances may a FAUM personally sell, transfer, share access, or distribute copies of audio or video recordings without express written permission of the MN DOC chief law enforcement officer.

11. Subpoenas or other requests for recordings for purposes of investigation, charging or discovery must be referred to the deputy director or assistant director of the OSI fugitive apprehension unit.

12. Public data requests for audio/video recordings must be directed to the assistant director and, if media-related, to the public information officer for a response that is consistent with the Minnesota Government Data Practices Act (MGDPA).

D. <u>BWC Recording</u>

1. FAUMs must wear, activate, and use the BWC recording function with their BWC system when engaged in official law enforcement field activities, including such examples as:
   a) Arrests of supervision release violators.

   b) Investigating an escape from custody.

   c) Requests for assistance arrests from other law enforcement agency personnel.

   d) Official field or investigative activities of FAUMs assigned to federal, state, county, or city task forces.

   e) Search warrants execution and entry.

f) Vehicle or person stops (high risk stops or investigative stops of individuals).

g) Transports conducted due to arrests, detainment, or escorting an individual in accordance with policy or supervisory directive.

h) When directed by a supervisor.

2. Muting
   a) FAUMs may use the mute on the BWC audio function when appropriate, for example:
      (1) When having tactical conversations during arrest procedures or preplanning procedures.
      (2) When discussing confidential investigative information, techniques, or other legal processes, which are safety-related or confidential.
      (3) When requested by an individual who is cooperative and non-resistant.

   b) FAUMs must document any muting in an ACISS report following the conclusion of the recorded incident.

   c) FAUMs must document the reason for the muting in the ACISS report. (for example, tactical planning, the recorded person requested muting, investigative technique discussion, etc.).

3. Discretionary recording
   a) This policy does not describe every possible situation when the BWC may be recording. Beyond the mandated scenarios described above, a FAUM may use the BWC to record whenever they believe it should be recording based on their training, experience, and judgement, except when recording is prohibited under this policy.

   b) If a FAUM is involved in a situation and they are unsure if the activation is mandatory, discretionary, or prohibited, they should activate the BWC.

4. Exceptions to Mandatory Recording:
   a) Due to an unusually sudden and/or dangerous event in which a reasonable officer under similar circumstances would be unable to use the BWC to record. In such circumstances, the FAUM must start the BWC recording as soon as practicable after the immediate danger has passed.

   b) When there is a recording equipment failure that is properly reported pursuant to Section C, and for which there is no immediate remedy.

5. FAUMs should record the entirety of an investigative or arrest incident, and FAUMs must consider the totality of the circumstances before deactivating recording and determine the best approach for a particular circumstance. For example, deactivation may be the best option if the situation is not adversarial and a BWC inhibits a victim or witness from providing information. Nothing precludes a FAUM who has deactivated recording under these circumstances from reactivating it.

E. <u>Prohibited BWC Recording</u>
1. FAUMs must not record:
   a) Non-investigative activities or activities solely among other department employees;

b) Non-work-related activity;

c) Within areas of a police facility restricted to personnel-only access, including meeting rooms, locker rooms, break rooms, and report rooms;

d) During a work break;

e) At any location where a reasonable expectation of privacy exists, such as a bathroom or locker room, unless necessary for a law enforcement investigation or arrest; or

f) In patient care areas of a hospital, sexual assault treatment center, or other healthcare facility unless necessary for a law enforcement investigation or arrest.

g) Exemption:
FAUMs may use their training and experience to determine when they may deactivate their BWC when with an arrested individual in a healthcare facility, when the individual is cooperative, compliant, and non-resistant.

2. This policy recognizes that FAUMs encounter tense, uncertain, and rapidly evolving situations regardless of location. Given this fact, officers may unintentionally create a prohibited recording. If a prohibited recording is recognized and occurred, the FAUM must notify the BWC administrator.

3. This policy recognizes FAUMs cannot or will not always know of, or have time or opportunity to account for, protections afforded under the MGDPA. A FAUM may also intentionally record an individual with MGDPA protections, or any witness or victim who has requested that the recording be deactivated, in order to comply with other sections of this policy.

F. <u>Deactivation of BWC recording</u>

1. The FAUM may deactivate the BWC recording when:

a) The incident or event is of such duration that recording is deactivated to conserve power or storage capacity and the officer is not directly involved in activity relating to the incident or event.

b) In a critical incident, only when the supervisor has ordered deactivation.

c) Deactivation is reasonable and necessary to protect the safety of the officers or others.

d) Deactivation is approved or directed by a supervisor.

2. A FAUM's decision to deactivate recording in a situation that would otherwise be recorded under this policy must be documented verbally on the camera before deactivation.

3. Nothing in this section is intended to discourage a FAUM from recording during non-enforcement situations when in their judgement the recording may be beneficial.

G. <u>BWC system recorded data</u>

1. Evidentiary Value

Whenever an audio or video recording documents an arrest or significant incident, the recording constitutes evidence and the legal rules of evidence apply. As such, care must be given toward documenting and maintaining a chain of custody and ensuring the integrity of any video or audio recordings.

2. Critical Incidents:
   a) When a critical incident occurs, a supervisor or designee must respond to the scene and secure any BWC from a FAUM once the incident itself has concluded.

   b) The supervisor or designee must then dock the BWC and allow for a download to occur. The supervisor immediately informs the BWC administrator of the download and must place the recordings in a secure file that only the BWC administrator can access.

   c) FAUMs are not allowed to view the critical incident footage until approved to do so by the MN DOC chief law enforcement officer.

   d) The MN DOC chief law enforcement officer must review critical incidents and may assign a critical incident to an outside agency for a follow-up investigative process.

   e) If an investigation is to occur, a FAUM may request to review their BWC video with the assigned investigator but only after an initial interview and before the conclusion of the process. Once the FAUM has reviewed their BWC video, the interview process may continue.

3. Protection and Audit of Data:
   a) Reviewing of Data:
      Audio and video recordings generated in connection with a FAUM's duties are the exclusive property of Minnesota DOC OSI fugitive apprehension unit and are not available for external use, except as provided by this policy and in accordance with state law.

   b) Reviewing of BWC Recordings
      (1) The video storage platform has integrated auditing and view and access attempts are tracked at the individual level. This policy serves as written authorization, as required by the MGDPA, to access video under the following circumstances:
         (a) All access must be for legitimate law enforcement purposes only.
         (b) Anytime video is accessed, the person accessing the video must make a notation identifying the reason for the video being accessed (for example, "report writing", "court prep", "pursuit review", "routine audit", "case investigation", supervisory review, etc.)
      (2) OSI fugitive unit supervisors, DOC legal counsel, and authorized MN DOC data practices personnel may access BWC data in order to complete their duties. Internal or supervisory audits and reviews are mandatory to ensure compliance with policy and law.
      (3) Other DOC staff may review a BWC recording with specific approval from the OSI director, assistant director OSI, or deputy director OSI for training or incident review purposes.
      (4) An outside law enforcement agency with a bona fide need to know may review a BWC recording, upon specific written request and prior approval from the director or assistant director of OSI – investigations.

(5) FAUMs are allowed access to their own BWC data and, with OSI fugitive apprehension unit supervisor approval, may view other members' footage for legitimate business purposes only (for example, for case investigation, report writing, court preparation, etc.). This does not include access to critical incident data.

(6) Data must be made available to prosecutors, courts, and other criminal justice entities as provided by law.

(7) Data may be available in compliance with Minnesota data practices laws, including the public benefit section of the MGDPA.

(8) The MN DOC OSI fugitive apprehension unit presumes a public benefit in allowing family members (representatives of the decedent) to view BWC recordings of any MN DOC deadly force encounter and must facilitate such viewing within five days of an event upon request of a qualified representative. Such data may require redaction under Minn. Stat. § 13.825.

H. BWC Data Retention

1. All audio/video recordings must be maintained in accordance with the MGDPA and the Records Retention Schedule, but for not less than one year from the data capture.

2. Upon written request of the subject of BWC data, MN DOC OSI will retain the relevant BWC video beyond the normal retention period and up to 180 additional days. At that time, MN DOC OSI will notify the subject that the data will be destroyed unless a new request is made.

I. Sanctions for misuse of equipment of recordings

FAUMs who do not use the equipment as outlined in this policy or who misuse recorded data are subject to disciplinary action, up to and including termination. If the misuse rises to the level of criminal conduct, OSI refers the matter to an appropriate law enforcement agency for investigation.

J. The BWC Administrator:

1. Coordinates and respond to data requests regarding DOC OSI audio/video recordings.

2. Reviews all recordings prior to public release to ensure compliance with Minnesota data practices laws.

3. Arranges for an independent audit of BWC data once every two years and ensure the audit results are shared as required by Minnesota data practices law. Also arranges and conducts internal district audits of BWC data twice annually to ensure each district is in compliance with data laws and retention policies.

4. Maintains the following public BWC data:

a) The total number of devices owned by the agency;

b) A daily record of the total number of devices that are actually deployed and used;

c) The policies and procedures for use of portable recording systems; and

d) The total amount of recorded audio/video data collected by the portable recording system and maintained by the agency, the agency's retention schedule, and the agency's procedures for destruction of the data.

5. Notifies the BCA within ten days of acquiring new BWC technology.

INTERNAL CONTROLS:

A. FAUM training in the use of BWCs is documented in the agency-approved electronic training management system.

B. When FAUMs switch a BWC during emergency circumstances, this switch is documented through a report in the Augmented Criminal Investigation Support System (ACISS).

C. Any malfunctions or damage of BWC equipment are documented within ACISS.

D. Instances of muting are documented within ACISS.

E. All audio/video recordings are maintained in accordance with the MGDPA and the Records Retention Schedule, but for not less than one year from the data capture. Upon written request of the subject of BWC data, MN DOC OSI retains the relevant BWC video beyond the normal retention period and up to 180 additional days, or longer if an additional request is made.

ACA STANDARDS: None

REFERENCES: Minn. Stat. Chap. 13; and § 626.8473
Policy 107.009, "Office of Special Investigations – Code of Conduct and Ethics"
Policy 107.006, "Fugitive Apprehension Unit"

REPLACES: All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: None

APPROVALS:
Deputy Commissioner, Reintegration and Restorative Services
Deputy Commissioner, Facility Safety and Security
Assistant Commissioner, Organizational and Regulatory Services
Assistant Commissioner, Chief of Staff
Assistant Commissioner, Health, Recovery, and Programming