



POLICY & PROCEDURE

WISCONSIN LOTTERY ENFORCEMENT & COMPLIANCE

SUBJECT: **MOBILE AUDIO/VIDEO RECORDING EQUIPMENT** NUMBER: 9.03

SCOPE: All Sworn Personnel ISSUED: 06/21/2024

DISTRIBUTION: Policy & Procedures Manual EFFECTIVE: 06/21/2024

REFERENCE: WI State Statutes: 19.32(2), 165.87, RESCINDS
175.22, 973.06(1)(av) AMENDS

WILEAG 6TH EDITION
STANDARDS: 6.1.10

INDEX AS: Audio/Video Recording Equipment
Body Worn Camera
Mobile Audio/Video Recording System (MVARs)
Video Recording Equipment

PURPOSE: The purpose of this Policy & Procedure is to establish guidelines to be followed by members of the Wisconsin Lottery Office of Enforcement & Compliance Agency during the use of mobile audio/video recording equipment (MVARs). Typically vehicles assigned to Special Agents with the Wisconsin Lottery Office of Enforcement and Compliance will not be equipped with mobile audio/video recording equipment (MVARs). If a Special Agent finds themselves in a situation where such equipment is needed they will use their body worn cameras in place of any mobile audio/video recording equipment (MVARs)

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROGRAM OBJECTIVES
- IV. OPERATING PROCEDURES

V. RECORDING CONTROL AND MANAGEMENT

I. POLICY

- A. All special agents assigned to Wisconsin Lottery Office of Enforcement and Compliance shall be issued body worn cameras. Other members may be issued body worn cameras at the discretion of the Director or his/her designee or for certain circumstances.
1. Any member wearing, using, maintaining, storing, or releasing data from body worn cameras shall be trained in its use and data retention and release requirements prior to using the equipment or releasing data.
- B. Whenever a special agent has reason to believe that a contact has an enforcement nature, or believes it is in the best interest of the Wisconsin Lottery Office of Enforcement & Compliance Agency, the contact should be recorded. (A special agent shall not jeopardize their safety or the safety of the public in order to activate a camera system). In general, contacts of an enforcement nature include but are not limited to:
1. Arrests
 2. Warnings
 3. Investigations to be submitted for Complaint
 4. When in Medical Facilities: Special agents should be conscious to not record other patients in a medical setting. Special agents will not turn on their body camera in a medical facility unless it is necessary to capture the following circumstances. Special agents shall take into consideration the HIPAA laws that protects patients:
 - a) When responding to a crime or a situation where we are there to prevent a potential serious or imminent threat (out of control person) to an individual or the public.
 - b) Special agent believes that they are able to obtain evidence of a crime that occurred on the premises.
 - c) When responding to an off-site medical emergency, where the victim came into the emergency room (example: for a gunshot wound, stabbing, etc.).
 - d) When a search warrant/arrest warrant has been obtained and is being executed.
 - e) When responding to identify/locating a suspect of a crime, fugitive, material witness or missing person.

- f) When bringing a suspect or victim to the medical facility or responding to the medical facility to talk to a suspect or a victim of a crime (adult or child), when collecting evidence or obtaining evidence from talking to them.
- g) The Agency will not release any information/video per policy that would be captured on our cameras that would violate the HIPAA laws, or that contain medical information, or that would violate the privacy of a recorded subject who is a victim of a sensitive or violent crime or is a minor. NOTE....information/videos may be released IF the areas noted above are redacted in a recognized and approved manner.

II. DEFINITIONS

- A. **BODY WORN CAMERA:** A portable audio and/or video recording device which can be worn on a special agent's body.
- B. **MOBILE PHONE:** Cellular phone with audio/visual recording capabilities provided to the Special Agent by the Wisconsin Lottery. Mobile Phones provided to Special Agents are property of the Wisconsin Lottery Office of Enforcement and Compliance and are seen as a secondary/back up option when recording audio/video.
- C. **USE OF FORCE INCIDENT:** Any amount of force beyond cooperative handcuffing used by a special agent to control an uncooperative person.

III. PROGRAM OBJECTIVES

- A. The Wisconsin Lottery Office of Enforcement & Compliance Police Agency has adopted the use of body worn camera in order to accomplish the following objectives:
 - 1. Accurate documentation of events, actions, conditions, and statements made during arrests and critical incidents so as to enhance special agent reports, collection of evidence and testimony in court.
 - 2. The enhancement of the Agency's ability to review probable cause for arrest, arrest procedures, special agent/suspect interaction, evidence for investigative purposes, as well as special agent evaluation and training.
 - 3. Protect special agents from false allegations of improper police conduct.
 - (a) Note...Under s. 973.06 (1) (av) the costs, fees, and surcharges taxable against the defendant shall consist of the following items and no others if a defendant violates s. 946.41 by obstructing an special agent; the reasonable costs expended by a state or local law enforcement agency or emergency response agency to respond to or investigate the false information that the defendant provided or the physical evidence that the defendant placed.

Costs allowable under this paragraph may include personnel costs and costs associated with the use of police or emergency response vehicles.

4. The Agency recognizes that cameras can't always capture everything that is seen by the special agent or that happens at a scene, but can act as a tool to help explain an event.

Sometimes the cameras are unintentionally obstructed, on a fixed mount, or may not have enough frames per second to capture what the human eye saw or perceived.

IV. OPERATING PROCEDURES

- A. Care and use of the body worn camera is the responsibility of the special agent assigned to that equipment and shall be used in conformity with Agency policy and training.
- B. Prior to each shift, special agents shall determine whether their recording equipment is working properly. Special agents shall report any problems to a supervisor as soon as practical.

1. Ensure the body worn camera is fully charged before each shift.

C. BODY WORN CAMERA OPERATING GUIDELINES:

1. Special agents should record their interactions while in direct contact with the public on incidents to include but are not limited to:
 - a) All special agent/subject contacts during traffic stops.
 - b) All special agent/subject contacts during an arrest including approach, custody, statements, transportation, booking process and release.
 - c) All special agent/subject contacts of arrested subjects taken to the State County Criminal Justice Facility or Juvenile Detention Center. Recordings will cease upon entry to these facilities unless approved by facility staff.
 - d) Any other contacts with persons under circumstances that lead the special agent to believe that the specifics of the contact may need to be retrieved or reviewed.
- B. Continuous, non-stop recording during contacts or incidents of an enforcement nature is not required when special agents are not in direct contact with the suspect, or other persons involved. Examples when special agents may choose to deactivate their recording equipment include, but are not limited to:
 1. Conferring with backup special agents away from the suspect or any person involved in the incident.

2. While speaking with anyone who is not directly involved in the incident such as medical or fire personnel.
- C. The equipment may be deactivated during non-enforcement activities such as protecting accident scenes from other vehicular traffic or perimeter assignments at critical incidents.
- D. Special agents shall document in all incident reports whenever recordings are made during an incident in question. This should be done at the beginning of the report when the special agent(s) identify if bank or juvenile information is included in the report.
- E. Special agents are encouraged to inform their supervisors of any recorded sequences that may be of value for training purposes, court, or unusual circumstances or events.
- F. Special agents shall not intentionally alter or attempt to alter recordings in any way.
- G. Special agents shall not use mobile audio/video recording equipment to record administrative conversations, i.e. disciplinary actions, supervisor's directives, or talks between employees.
- H. Special agents are reminded of the restrictions in Wisconsin State Statute 175.22 prohibiting audio or video recording in locker rooms.

V. RECORDING CONTROL AND MANAGEMENT

- A. Recordings are subject to existing State of Wisconsin open records laws.
 1. The Records Custodian will establish a reproduction fee for the duplication of recordings. The fee will include the cost of storage media and the actual necessary costs of the reproduction effort.
 2. Recordings may be duplicated for another criminal justice agency when required for trial, or otherwise authorized by the Director or designee.
- B. Recordings may be shown to Wisconsin Lottery Office of Enforcement & Compliance employees for training and evaluation purposes.
 1. Recordings may be shown to persons other than Wisconsin Lottery Office of Enforcement & Compliance Agency employees provided prior approval is obtained from the Director or designee.
- C. Storage of Media
 1. After use, body worn cameras will be downloaded and stored internally or via cloud storage. Officers who capture audio and video will be responsible for labeling each audio/video and connecting the camera to the docking station used to upload videos to the storage, and re-charge the battery.
 - a) The labeling of media will include, but not be limited to, category and case

number, date, time, and officer ID.

2. Storage of Media as Evidence; audio/visual recordings will be recorded as evidence when any of the following events are captured:
 - a) Physical altercation(s) or any use of force
 - b) Injury to special agent or citizen
 - c) Pursuit
 - d) Any custodial arrest
 - e) Any death related to a shooting/use of force incident (actual or alleged)
 - f) Incident involving citizen complaint
 - g) Any search conducted during temporary questioning (a "Terry stop") provided in Wisconsin State Statute 968.25
 - h) Any other incident in the special agents or supervisors' judgment that should be secured as evidence

D. Media integrity

1. All audio/video recordings generated on body worn cameras or mobile phones are property of the Wisconsin Lottery Office of Enforcement and Compliance
2. All audio/video recordings are subject to Wisconsin Open Records Laws.
3. Release of copies of recordings for prosecution shall be coordinated through the appropriate District Attorney and/or the State Attorney's Office.
4. Release of copies of recordings for civil proceedings shall be coordinated through Department of Revenue Legal Department
5. All audio/video recordings are possessions of the Wisconsin Lottery Office of Enforcement and Compliance. As such, no recording shall be released, shared, duplicated or distributed without authorization from the Director.
6. If a special agent uses a personal recording device (although not recommended) while working as an on duty special agent; the images, video, recordings, and audio captured by the special agent's device will be considered property of the Wisconsin Lottery Office of Enforcement & Compliance Police Agency and can only be released with authorization of the Director.

E. Miscellaneous

1. While not required by policy or state law, special agents assigned a body worn camera may find it valuable to inform other parties that they are being recorded.

This has proven to be influential in garnering cooperation of subjects and has been shown to reduce incidents of use of force.

However, it is not necessary for Special Agents to volunteer the fact that the enforcement contact is being recorded. If asked, Special Agents shall advise persons as to whether the body worn camera is recording or not.

2. Special agents are not required to cease or initiate recording based on the demand on of a citizen, involved party, or suspect.
3. No employee shall attempt to erase, alter, or cause to be erased or altered any audio or visual recordings. The only exception would be pursuant Policy & Procedure: 10.05 Retention of Records.
4. Supervisors will coordinate the repair or replacement of body worn cameras
 - a) Supervisors will perform periodic reviews to ensure special agents follow established procedures for the storage, use of, and maintenance of body worn cameras and the proper documentation of its use.
 - b) In addition, The Director or his/her designee will perform periodic reviews of the release of data to ensure established procedures in this policy are followed.
5. Recordings used for training purposes.
 - a) When an incident that is recorded that is perceived to be of value as training aid, the special agent responsible for the recording will notify his/her supervisor.
 - b) The supervisor will review the recording to determine the value for training.
 - c) The supervisor will obtain expressed permission from the Director or designee to use the recording for training.
6. Tape review.
 - a) The body worn camera recordings may be routinely or randomly reviewed by supervisors to monitor special agent performance.
 - b) Special agents may review their own recording of the data being downloaded. (This may be beneficial when dictating a report).
 - c) No recording shall be used or shown for the purpose of special agent ridicule or embarrassment.
 - d) Supervisors should review body camera at random to make sure the cameras are being used.
7. This policy shall be made available to the public on any internet site the Agency maintains or is maintained on its behalf.

F. Restrictions on Using Recording Devices

1. Recording Devices shall only be used in conjunction with official duties primarily including but not limited to the investigation and/or reporting of crimes or other violations of the law.
2. Special agents may not activate Body Worn Cameras to surreptitiously record:
 - a) Communications with other Lottery personnel without the permission of the Director.
 - b) Conversations that concern matters over which the person being recorded would have a reasonable expectation of privacy.
3. Body Worn Cameras are utilized primarily by sworn personnel as authorized by this agency. Special agents who are assigned Body Worn Cameras must utilize such equipment unless otherwise authorized by supervisory personnel.
 - a) All Agency issued Body Worn Cameras and recorded media in any form issued by the Agency remain the exclusive property of the Agency for use only as outlined in this Policy & Procedure.
 - b) No privately owned Recording Devices will be utilized by Special Agents while on duty for any reason without the prior authorization of the Director.

G. Recordings Retention; 120 Day Hold

1. Recordings are considered records as defined by Wisconsin Statute 19.32(2). Pursuant Policy & Procedure 10.05: Retention of Records, recordings will be saved at minimum of 120 days.
2. Recordings noted as evidence in V. C. above shall be retained until final disposition of any investigation, case, or complaint to which it pertains.
3. For further guidance and additional information regarding recordings retention and release, refer to Wisconsin State Statute 165.87 (2) and (3).

Director Richard Fitzgerald

Richard Fitzgerald

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

Initial 06/21/2024