

## Portable Audio/Video Recorders

<b>Effective Date:</b>	8/08/2017
<b>Revised Date:</b>	11/03/2023
<b>Issuing Authority:</b> Chief K. Bakken	

### 423.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems, whether body-worn, hand-held, or integrated into portable equipment (Wis. Stat. § 165.87).

This policy does not apply to mobile audio/video recordings, interviews, or interrogations conducted at any Altoona Police Department facility, authorized undercover operations, wiretaps, or eavesdropping (concealed listening devices).

### 423.2 POLICY

The Altoona Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

### 423.3 MEMBER PRIVACY EXPECTATION

All recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity of this department regardless of ownership of the device it was made on, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### 423.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and inspect the device to ensure it is in good working order. If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a

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conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

When using a portable recorder, the assigned member shall record his/her name, APD identification number, the current date and time, and case number at the beginning of each recording. Members shall include the date and time at the end of each recording. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording, however, members shall document the case number and category of each recording within the software.

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members should include the reason for deactivation.

### **423.5 ACTIVATION OF THE AUDIO/VIDEO RECORDER**

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify the Communications Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member 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 this same criterion. Recording should resume when privacy is no longer an issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

#### **423.5.1 CESSATION OF RECORDING**

Once activated, the portable recorder should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits

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the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing, waiting for a tow truck or family member, or other breaks from direct participation in the incident.

### **423.5.2 SURREPTITIOUS USE OF THE PORTABLE RECORDER**

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)).

Members may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

### **423.5.3 EXPLOSIVE DEVICE**

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

### **423.6 PROHIBITED USE OF PORTABLE RECORDERS**

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Police Chief. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements, and should notify the on-duty supervisor of such use as soon as reasonably practicable.

Recordings shall not be used by any member for the purpose of embarrassment, harassment or ridicule.

### **423.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

To assist with identifying and preserving data and recordings, members shall download, tag or mark these in accordance with procedure and document the existence of the recording in any related case report.

A member should transfer recordings at the end of each work shift. Members shall tag or mark recordings with the case number prior to the conclusion of their work week and no more than 4 days

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after the recording. If there is not a case number, members should use a citation number, warning number, or note what the video contains. Members shall place the recording in the category that most accurately reflects the nature of the recording always using the most serious offense.

- (a) Criminal Investigation: Interviews, statements, interrogations, arrests
- (b) Juvenile Case: Interviews, statements, interrogations, arrests, citations - under 17 years old.
- (c) Mental Health: Chapter 51, Chapter 55, Detox, or any mental health-related case
- (d) Arrest (Warrant Arrest)
- (e) Civil Investigation
- (f) Death Investigation
- (g) Medical
- (h) Crash Investigation
- (i) Citation: Traffic or ordinance
- (j) OWI
- (k) Warning: Written, verbal - traffic or ordinance
- (l) Use of Force
- (m) Evidence\_Save: Critical investigations
- (n) Officer Injury
- (o) Other: Citizen contact no action taken
- (p) Test: Testing device, accidental recording

If the recording contains sensitive or shocking information or images the video should be tagged with the red flag option.

If the recording is part of an internal investigation the video shall be tagged confidential in conjunction with an above category.

### **423.8 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members can review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review and document relevant recordings any time they are investigating alleged misconduct, reports of meritorious conduct, policy required reviews, or whenever such recordings would be beneficial in reviewing the member's performance. This includes documented use of force and pursuit reviews following those incidents and in accordance with respective policies.

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Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court (Wis. Stat. § 165.87(3)).

### **423.9 SUPERVISOR RESPONSIBILITIES**

If a member reports a malfunctioning portable recorder, the appropriate documentation should be made to notify the coordinator of needed repairs. A properly functioning recorder should be temporarily issued if one is available.

On reasonable intervals, supervisors should validate that recorded media is downloaded and documented, including ensuring videos are labeled and tagged appropriately.

When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, peace officer-involved shootings, department-involved crashes), a supervisor shall respond to the scene and ensure that the appropriate supervisor, coordinator or crime scene investigator downloads the recorded media. The coordinator or investigator should ensure the media is recovered and retained appropriately, often as evidence. Copies may be distributed to investigators as appropriate to the investigation.

Supervisors may activate the portable recorder remotely to monitor a developing situation, such as a chase, riot or an event that may threaten public safety, officer safety or both, when the purpose is to obtain tactical information to assist in managing the event. Supervisors shall not remotely activate the MAV system for the purpose of surveillance regarding the conversations or actions of an officer.

### **423.10 COORDINATOR**

The Chief of Police or the authorized designee should designate a coordinator responsible for (Wis. Stat. § 165.87):

- (a) Establishing procedures for the security, storage, and maintenance of data and recordings.
- (b) Establishing procedures for accessing data and recordings.

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- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging, or marking events.
- (e) Coordinating training on this policy to:
  - 1. Officers who are authorized to use portable audio/video recorders.
  - 2. Members of the Department who use, maintain, store, or are responsible for the release of records and recordings.
  - 3. Supervisors for reviewing and monitoring software and videos.
- (f) Periodically reviewing the Department's practices relating to the use, maintenance, and storage of body cameras and data to confirm compliance with this policy.
- (g) Ensuring this policy is available to the public.

#### **423.11 RETENTION OF RECORDINGS**

Once submitted for storage, all recording media will be labeled and stored in a designated secure area/server. All recordings shall be retained for a period consistent with the requirements of the established records retention schedule but in no event for a period less than 120 days (Wis. Stat. § 165.87).

##### **423.11.1 RELEASE OF AUDIO/VIDEO RECORDINGS**

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.

##### **423.11.2 EXCEPTIONS TO RETENTION REQUIREMENTS FOR BODY-WORN CAMERAS**

Exceptions to the 120-day retention period for body-worn cameras are as follows (Wis. Stat. § 165.87):

- (a) Recordings should be retained until the final disposition of any investigation, case, or complaint to which the recordings pertain to any of the following:
  - 1. Death or actual or alleged physical injury to any person in the recording
  - 2. An encounter resulting in custodial arrest
  - 3. A search during a temporary detention pursuant to Wis. Stat. § 968.25
  - 4. An encounter resulting in the use of force except when the only use of force involves the use of a firearm to euthanize an injured wild animal
- (b) Recordings used in any criminal, civil, or administrative proceeding may not be destroyed except upon a final disposition from the court or hearing officer after a determination the recordings are no longer needed, or by an order from the court or hearing officer.
- (c) Recordings may be retained for a period beyond 120 days if a request or directive to preserve the recordings is made before the expiration of that time period by an officer from this department or another law enforcement agency, member of a board of fire and police commission, prosecutor, defendant, or a court.

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### **423.12 TRAINING**

All members who are authorized to use the department issued audio/video recorders shall successfully complete instruction prior to their use.

Supervisors shall be trained on the reviewing of videos and related policy.

Members of the Department who use, maintain, store, or are responsible for the release of records and recordings shall be trained on this policy and guidelines for the retention and release of body camera data.