

MONTPELIER POLICE DEPARTMENT

Mobile Video Recorder (MVR)	Related Policies: See Pursuits; Duty to Disclose
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Vermont Statutes:	
CALEA Standard: 41.3.7; 41.3.8	
Date Implemented: March 15, 2012	Review Date: March 15, 2012

- I. **Purpose:** The purpose of this policy is to direct officers and supervisors in the proper use and maintenance of mobile video recorders as well as directing how video will be utilized as a quality control mechanism and evidence.
- II. **Policy:** The policy of this department is to provide officers with mobile video recording devices in an effort to enhance the officers' ability to detect and prosecute criminals.
- III. **Procedure:** It is the intent of this policy that all officers who will be using a vehicle outfitted with MVR equipment shall be trained on the manner in which the MVR shall be tested, maintained and used.
 - A. It shall be the responsibility of each individual officer to test the MVR equipment at the beginning of each tour of duty. In the event that the equipment is found to be functioning improperly, the officer shall report the problem immediately to their immediate supervisor so that the information can be documented, and arrangements made for repair.
 - B. Except when MVR equipment unforeseeably does not function, all motor vehicle stops or street encounters conducted by officers using department vehicles with MVR equipment shall be recorded by these vehicles, using both the video and audio MVR functions.
 - C. To the extent that vehicles are not equipped with recording devices or such devices are not working, the requirements of this policy shall be preempted.
 - D. The recording shall begin no later than when the officer first signals the vehicle to stop or arrives at the scene of an ongoing motor vehicle stop initiated by another law enforcement officer or when the officer initiates a street encounter or arrives at a street encounter initiated by another officer.
 - E. The recording shall continue until the motor vehicle stop or street encounter is completed and the stopped vehicle or the citizen involved in the street encounter

departs or until the officer, whose cruiser has MVR equipment discontinues his or her participation in the stop or encounter, by leaving the scene.

- F. The recording shall include searches of any kind, to include; K-9 searches of vehicles, arrests of any persons, operators or occupants of vehicles and the issuance of violations.
- G. When transporting an in custody suspect and when feasible the MVR will positioned to capture and record the movement and statements of the suspect.
- H. If an officer, whose vehicle has MVR equipment, participates in a traffic stop or street encounter is aware that the event was not recorded using the MVR equipment, the officer shall immediately notify the dispatcher that the stop was not recorded and should notify the district sergeant as to the reasons why the stop was not recorded. The notification to the sergeant shall be in writing and shall be forwarded through the chain of command to the commanding officer of the division the officer is assigned.
- I. It shall be the responsibility of individual officers to be aware of the indicator that the recording is nearing the end. There is also a visual time indicator that also shows how much time is left of recording. The vehicle is to be brought to the person responsible to have the recording medium changed when the alert beep sounds, or when the timer is approaching the ten (10) minute mark.
- J. All recording are property of this agency and shall not be broadcast, published, uploaded or otherwise disseminated outside this department without the express authorization of the Chief of Police.

IV. Supervisory Responsibility – Video Recordings

- A. If the agency has digital recording technology, downloading and storage shall be done in accordance with equipment specifications and the Vermont Records Retention law.
- B. It shall be the sole responsibility of the supervisor for the changing and securing of the recording medium removed from police vehicles.
- C. While stored, the recording medium shall be catalogued by the police vehicle's registration number, and the date the medium was removed, (example 2113/7-6-01).
- D. The recording medium shall be stored in a designated locked area with access limited to supervisory personnel designated by the Chief of Police
- E. A log shall be kept and maintained at the supervisory level of any officer requesting a recording medium, the date of viewing of the recording, the time removed from storage, whether a copy is made, the time returned to storage and the name of the person removing the recording from the secure area.
- F. Recordings shall be held for three years before being recycled for reuse, unless so ordered for an extended period of time by an order of the court.
- G. Recordings shall be subject to review by the Chief of Police or his designees.
- H. In order to review a recording, authorized officers must fill out a Release Authorization from the Commanding Officer. A log shall be maintained of all such requests and the recording will be logged out by signing a logbook. A reviewing area shall be designated at headquarters and it shall be equipped with the necessary playback device to view the recording.

- I. First line supervisors should review a recorded event of each officer under his or her supervision at least twice per month. The supervisor will log this review in the "video review database" (database to be implemented by Data Processing under the officer's name). Thus each officer should have at least two notations of review in any given (30) thirty day period.
- J. Supervisors should use these reviews as a quality control measure. Following such a review, the supervisor will hold a meeting with the officer and provide the officer with either positive reinforcement or constructive criticism with respect to the stop reviewed. Constructive criticism may relate to officer safety issues, demeanor, policy issues or legal issues related to the stop as well as any other supervisory observation relative to performance.
- K. If upon review, the supervisor finds that corrective action is necessary regarding an officer's conduct, the direct supervisor may take the necessary action and bring the matter to the attention of his direct supervisor. In such cases, a special MVR review schedule should be implemented with respect to that particular officer for a set duration in order to ensure compliance with the corrective action.
- L. In cases in which a review reveals a significant infraction of agency rules and regulations, the Chief of Police or his/her designee, after review of all information regarding the incident, shall determine the proper disciplinary action. In such cases, special MVR review schedule shall be implemented with respect to the particular officer for a set duration in order to ensure compliance with the corrective action.

V. Use of MVR Recordings as Evidence in Criminal/Motor Vehicle Prosecutions

- A. In a case where an event is recorded which involves an arrest or any seizure of evidence or property, the officer in charge of the vehicle shall fill out the MVR form indicating that the event has been recorded.
- B. In misdemeanor cases this form shall be immediately delivered to the officer's direct supervisor (sergeant in most cases). The sergeant shall then review the recording in the police vehicle and determine its evidentiary value. (It should be noted that most technology allows recordings to be reviewed in the police vehicle, without causing damage to the recording-if this technology is unavailable, the recording shall be saved in the manner which preserves it for further use.) If the supervisor determines that the recording should be maintained as evidence, the supervisor shall make a notation on the MVR form so that the incident may be copied and maintained as evidence with the case by following the established procedure.
- C. In felony cases this form shall be immediately delivered to the officer's direct supervisor (sergeant in most cases). The officer shall immediately deliver an additional copy of the MVR form to the division responsible for investigating and/or charging the offense that has occurred. (i.e. Detectives) The detective who receives the MVR form shall be responsible for requesting a review of the recording to determine its evidentiary value by following the established procedure. If it is determined that the recording should be maintained as evidence, then the detective shall make a notation on the MVR form so that the incident may be copied and maintained as evidence with the case.
- D. Where a supervisor or detective has made a determination that a recording shall be maintained as evidence, they must deliver a signed copy of the MVR form indicating that the recording should be saved and delivered to the chief's designee. The

copying of the recording in question shall be done at the direction of the chief's designee, and only the person designated by him/her shall make the copy. A copy of the MVR form shall be maintained in the case file. Evidentiary tapes shall be marked with the corresponding report # and shall be forwarded to the evidence division for maintenance or custody until such time as the case in question reaches disposition.

- E. Where there is any indication that the MVR may contain evidence that may be helpful to a suspect's/defendant's defense, that recording must be saved and turned over to the prosecutor assigned to the case in accordance with the "Duty to Disclose" policy of this agency.

VI. Recordings of Field Sobriety Tests; Pursuits and Traffic Stops: Law enforcement agencies may record on film or videotape or by other visual and audible means the pursuit of a violator or suspected violator, the traffic stop, or field sobriety tests administered at the scene of an arrest for violation of Vermont Law or such tests at a police station, jail, or other suitable facility subject to the following conditions:

- A. The testing is recorded in its entirety (except for blood alcohol analysis testing); and
- B. The entire recording of the field sobriety tests and the entire recording of such portions of the pursuit and traffic stop as were recorded is shown in court unless the defendant waives the showing of any portions not offered by the prosecution; and
- C. The entire recording is available to be shown by the defense at trial if the defendant so desires regardless of whether it was introduced by the State; and
- D. The defendant or his/her counsel is afforded an opportunity to view the entire recording at a reasonable time before the trial in order to prepare an adequate defense; and
- E. Recordings shall be used for official purposes only, which shall include:
 - a. Viewing in court;
 - b. Viewing by the prosecution and defense in preparation for a trial; and
 - c. Viewing for purposes of administrative reviews and official administrative proceedings. Recordings shall otherwise be considered as confidential records; and
 - d. MVR recordings shall be maintained for three years after the incidents that are recorded except as follows:
 - i. Any MVR recording that documents an incident that is the subject of a pending misconduct investigation or a civil or criminal proceeding shall be maintained at least until the misconduct investigation or the civil or criminal proceeding is finally resolved;
 - ii. Any MVR recording that documents an incident that is the subject of a substantiated misconduct investigation, or an incident that gave rise to any finding of criminal or civil liability, shall be maintained during the employment of the officers whose conduct is recorded by the MVR;
 - iii. After all appeals have been exhausted arising from any criminal or traffic case filed as a result of the recording;
 - iv. At the conclusion of any civil case arising from events depicted on the videotape or film; or

- v. At the conclusion of the exhaustion of all appeals arising from any law enforcement agency administrative proceedings arising from events depicted on the videotape or film.
- F.** When a police officer makes a video of any transaction covered by this policy and a ticket is issued or an arrest is made, the officer shall note on the traffic ticket that a recording has been made of the transaction.