

MONTPELIER POLICE DEPARTMENT

Cellular Telephone Policy	Related Policies: Social Networking Policy Cellular Telephones in Dispatch
<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: VT law prohibiting hand-held devices while driving (10/01/2014)	
CALEA Standard:	
Date Implemented: August 27, 2014	Review Date: February 1, 2023

- I. **Purpose:** The purpose of this policy is to ensure the safety of officers by providing complete information through the most effective means available and providing for the efficient operation of the agency.
- II. **Policy:** This policy sets forth the agency rules and regulations regarding the use of agency issued cellular phones as well as the use of personal cellular phones while on duty as a member of this agency.
- III. **Procedure:** For use of an agency issued ("AI") cellular phone:
 - A. General Use. Cellular Phones are assigned to each officer, providing dual use as on duty personnel access to cellular phone communication in order to enhance the efficiency of the department. Employees who have access to these phones should make every effort to utilize other means of communication where possible and appropriate.
 - B. Personal cell phones covered by agency service plans are considered AI for the purpose of this policy, but are exempt from Section III Procedure A, and C, of this section. However, they are subject to state law regarding motor vehicle operation and the use of hand-held portable electronic devices. The agency acknowledges that employees have a right to privacy in their personal property such as containers and electronic media devices including, without limitation, cell phones, computers, tablets, iPads, and iPods, regardless of whether such items are brought onto agency property or used for agency purposes. This right to privacy extends to, without limitation, data, texts, phone numbers, photos, and other information contained in the memory of such devices.
 - C. AI cellular phones shall only be used for agency business when reasonably possible.
 - D. Miscellaneous issues relating to cellular phone use.

- a.** Car to car communications: Officers should refrain from using cellular phones in order to relay information about a law enforcement incident where such information might jeopardize the safety of all officers responding to the incident. The information should be communicated to all officers through the dispatcher. If there is an operational need to communicate critical information by utilizing a cellular telephone, it is incumbent upon that officer and/or dispatcher to make sure appropriate information is relayed to other officers in a timely manner, ensuring officer safety.
- b.** Operating an agency vehicle: Except in an emergency when other official means of communication have been severed, or when police operational circumstances justify the need to communicate using a cellular phone; officers shall not operate an agency vehicle while using a cellular phone. Unless faced with such an emergency or operational need, all calls shall be made from a stationary position.
- c.** All cellular phones may be used for photographing crime scenes, evidence, accident, death scenes. The photos, audio and video recordings shall be done using the Visual Labs body camera software. In no case will any photograph, digital or other media, be published in any manner outside of proper investigative practices.
- d.** No employee shall utilize the text messaging function of a communication device when in operation of an agency vehicle. Officers shall not use a wireless handset to compose, read, or send a text message while operating an agency vehicle.

IV. Procedure for use of privately owned cellular phones while on duty.

- A.** Operating an agency vehicle: Except in an emergency when other official means of communication have been severed, or when police operational circumstances justify the need to communicate using a cellular phone; officers shall not operate an agency vehicle while using a cellular phone. Unless faced with such an emergency or operational need, all calls shall be made from a stationary position.
- B.** Officers shall limit their use of personal cellular phones such that their duties to the agency are not compromised.
- C.** Police communication: Except in an emergency or where necessary as a matter of a strategic plan to overcome the possibility that communications will be overheard or when other official agency communication methods are unavailable, officers shall not use a personal cellular phone to by-pass official means of communication. Officers shall refrain from using cellular phones in order to relay information about a police incident where such information might compromise the safety of all units responding to the incident. This information should be communicated to all officers through the dispatcher.
- D.** Car to car communications and supervisory assistance shall be done via the police radio in order to enhance officer safety and to establish and maintain a taped record.

V. Personal cellular phones and administrative investigations.

- A.** Production of cellular telephone records: Employees who elect to carry cellular phones during work hours, either agency issued or personal, shall provide telephone

usage records during administrative investigations, when requested. These records requested shall be limited to the for the specific dates and specific times of within the working hours of the officer under investigation and only when relevant to a specific allegation of misconduct for which reasonable suspicion exists supported by evidence independent of the records. The sole purpose of the requested information shall be to establish that the officer under investigation was using a cell phone or other electronic device contrary to agency policy. All non-relevant information may be redacted by the officer and the officer's representatives before the records are produced. The independent evidence shall be presented to the officer under investigation before the requested records are produced. If the officer under investigation admits the violation, the records will be deemed irrelevant and shall not be produced.

- B.** Employees shall produce personal and/or agency issued cellular telephone records during administrative investigations regardless of the time of usage when the usage concerns an allegation of misconduct that is "directly, narrowly, and specifically related to the employee's performance of duty or fitness to perform." These records shall be limited to service provider invoices/monthly bills and the information requested shall be limited to the specific dates and specific times relevant to the allegation of misconduct that is the subject of investigation and only when reasonable suspicion exists supported by evidence independent of the records. The sole purpose of the requested information shall be to establish that the officer under investigation was using a cell phone or other electronic device as an instrumentality to violate agency policy (e.g. harassing messages or photographs sent to coworkers). All non-relevant information may be redacted by the officer and the officer's representatives before the records are produced. The independent evidence shall be presented to the officer under investigation before the requested records are produced. If the officer under investigation admits the violation, the records will be deemed irrelevant and shall not be produced.
- C.** All officers shall be aware that syncing personal devices with department devices, i.e. phones, computers, emails, calendars, etc. may bring the officer's private communications within the realm of a public record.
- D.** An officer's use of a personal cellular phone during work hours may also make the data stored within the cellular phone as well as data stored on a server, subject to the civil and criminal discovery process. Any request, demand, or subpoena for such information shall be made known to the affected officer(s) immediately in order to provide the officer ample time to object.