
Portable Audio/Video Recorders

425.1 PURPOSE AND SCOPE

Contemporary police departments increasingly utilize an array of audio/video technology to further the mission of their organizations. The Santa Monica Police Department is incorporating portable audio/video recording technology, in the form of body-worn cameras, into its inventory to provide supplement documentary evidence for criminal investigations, internal or administrative investigations, and to review police procedures and tactics.

This policy provides the Department's members, both sworn and civilian field and custody personnel, with guidance on the use of portable audio/video recording devices during their official duties. Portable audio/video recording devices include all recording systems, whether body-worn, hand-held or integrated into portable equipment. Members are to utilize these devices in accordance with the provisions of this policy to maximize the effectiveness of the audio/video documentation, to achieve operational objectives, and to ensure evidence integrity.

This policy does not apply to interviews or interrogations conducted at any Santa Monica Police Department facility or authorized under cover operations utilizing wiretaps or concealed listening devices.

425.2 POLICY

The Santa Monica 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.

425.3 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 for 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.

425.4 MEMBER RESPONSIBILITIES

Each member issued a Department-authorized portable/audio video recorder will be responsible for making sure that he/she is equipped with the recorder before going into service. It is the member's responsibility to ensure the recorder is generally in good working order by verifying that the battery is fully charged, the visual display screen is functioning, and the microphone is not obstructed. Members shall not wear an audio/video recorder that is clearly damaged or otherwise is not functioning properly due to low battery charge, damage, malfunction or memory exceeding capacity. If the recorder is not in good working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as

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practicable. Members shall report unresolved equipment malfunctions/problems to the System Administrator for replacement of the audio/video recorder.

It is the responsibility of the member to position and securely attach the audio/video recorder to the front of his/her uniform or uniform equipment (as the primary location) to provide the best vantage point to record contacts with the public. Any member assigned to the field or jail shall set their body worn camera to standby or "buffering mode" before going into service and ensure the body worn camera is turned on for the duration of the member's shift, except during personal bathroom breaks, authorized breaks in the Public Safety Facility, or when the recorder needs to be downloaded or charged.

At the end of his/her shift or other period of use or, if needed, during his/her shift, the member shall dock his/her issued audio/video recorder in the appropriate docking station to ensure the device's storage capacity is not exceeded.

An officer assigned to the Traffic Section's Motorcycle Unit who operates a Department motorcycle shall dock his/her camera at the end of his/her shift and then take his/her assigned motorcycle home. It is the responsibility of the officer to pick up his/her camera as soon as practical at the beginning of his/her next shift/assignment. It is recognized that motorcycle officers may make enforcement stops while traveling to and from work which may result in those stops not being recorded on the portable audio/video recorder.

Members shall 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 shall include the reason for deactivation.

425.4.1 SUPERVISOR RESPONSIBILITIES

Supervisors should take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving the use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

425.5 CONFIDENTIALITY

In accordance with current state law, no person may record a confidential communication without the consent of all parties; however, law enforcement officers are exempt from this requirement when acting within the scope of their authority (Penal Code § 632(a); Penal Code § 633). It is the responsibility of sworn and non-sworn members to abide by all applicable laws when it comes to recordings of a confidential nature.

Sworn members are not required to obtain consent to record from a private person when:

- (a) In a public place.
- (b) In a location where there is no reasonable expectation of privacy (i.e. inside of a building or dwelling where the officer is lawfully present and engaged in the performance of official duties).

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Although it is not required, upon initial contact with the public, sworn members should make a reasonable effort to inform the person contacted that he/she is being recorded if doing so facilitates cooperation and/or compliance, assists with an investigation, does not interfere with the investigation being conducted or does not compromise officer safety.

Sworn members who are assigned to non-uniform position may carry an approved portable audio/video recorder at any time the member believes that such device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed sworn members should wear the recorder in a conspicuous manner when in use or otherwise notify the persons that they are being recorded whenever reasonably practicable.

Non-sworn members wearing the portable audio/video recorder shall notify the person(s) contacted that he/she is being recorded as close to inception of the encounter as possible.

425.6 ACTIVATION OF THE PORTABLE RECORDER

There are many situations where the use of a portable audio/video recorder is appropriate. This policy is not intended to describe every possible situation in which the portable audio/video recorder should be used. In addition to the required activation criteria, a member should activate the portable audio/video recorder any time he/she believes it would be appropriate and/or valuable to record the incident.

Unless it is unsafe or impractical to do so, or mechanical issues which impede the use of the device are present, the wearer (including both primary and any/all assisting personnel) of a portable audio/video recorder shall make a reasonable effort to activate his/her audio/video recorder before making contact in any of the following circumstances:

- (a) Enforcement encounters where there is a reasonable suspicion that the person is involved in criminal activity or a violation of law. This includes, but is not limited to, dispatched calls for service, self-initiated activities, traffic stops, stranded motorist assistance stops, crime interdiction stops (wall stops), pedestrian checks, or any other investigative detentions, arrests, or enforcement encounters.
- (b) Consensual encounters made to confirm or dispel a suspicion that the citizen may be involved in criminal activity as a suspect, victim, or witness. This does not include victims of sexual assault.
- (c) Assessment or evaluation for a psychiatric detention/hold (Welfare & Institutions Code § 5150).
- (d) Serving search or arrest warrant.
- (e) Conducting any of the following searches of a person and/or property:
 1. Incident to arrest
 2. Cursory
 3. Probable cause
 4. Probation/Parole

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5. Consent
 6. Inventory
 7. **Exception:** Strip searches **shall not** be recorded; it shall be a violation of this policy to audio/video record any strip search.
- (f) Any other contact that becomes adversarial after the initial contact if the situation would not otherwise require recording.
 - (g) A member may activate the audio/video recorder before or during any other incident at his/her discretion provided the recording of the incident is not otherwise prohibited by the provisions of this policy.
 - (h) Any time the mobile/in-car camera system is activated and the member is outside of the police vehicle.
 - (i) Upon direct order of a higher ranking member.
 - (j) During crowd control, protest, or mass arrest incidents.

Members shall be sensitive to the dignity of all individuals being recorded. Members are to exercise sound judgment and exercise discretion when the respect for privacy indicates that discontinuing audio/video recording is prudent because it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in the recording. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Requests by members of the public to stop recording should be considered using the activation criteria listed above; however, if the employee believes the contact remains consistent with the activation criteria, the employee shall continue to record the contact.

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

Unless articulable circumstances exist, members who are assigned a portable audio/video recorder should not record or should discontinue recording when the following situation(s) exist:

- (a) Interviewing the victim of a sexual assault or domestic violence after the initial response to the call-for-service.
- (b) Interviewing a minor child who is the victim of any crime after the initial response to the call-for-service.
- (c) In a hospital emergency room or other medical facility where the privacy of patients, including patients not part of the member's call/activity, should be considered.
- (d) When in view of a medical or other personal procedure. This includes when a person's private health information is being discussed.
- (e) When a member of the public is in any state of undress or other compromising situation. **Except:** If the officer is intending/attempting to arrest or detain the person. In cases of encounters with nude subject(s), a reasonable effort shall be made to cover the individual as soon as is practical.

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- (f) An ambulance response to a traffic collision or report of an illness/injury when the victim(s)/party is not involved in any criminal activity.
- (g) Any reasonable and articulable circumstance where the privacy of the individual(s) to be recorded outweighs any investigative need or need for audio/video documentation.
- (h) During non-enforcement contacts including, but not limited to, community meetings, in houses of worship, when providing directions or information, etc.
- (i) Meeting with a confidential informant as defined in Department Policy.
- (j) Guard duty at a medical, psychiatric, Jail/Detention facility. Members shall assess the circumstances of each guard assignment; on a continuing basis to determine whether prudence warrants activating or deactivating the audio/video recorder.

425.6.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Sworn members of the Department 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 (Penal Code § 633).

No member shall surreptitiously record another Department member without a court order unless lawfully authorized by the Chief of Police or his/her designee.

425.6.2 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.

425.7 DEACTIVATION OF RECORDING DEVICE

Once activated, the portable audio/video recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording should be stopped during significant periods of inactivity such as report writing, meal breaks, or other breaks from direct participation in an incident when it is reasonable to believe no criteria for a required activation are present.

Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

Other reasons for deactivating audio/video recorders when the device was activated as required by this policy include:

- (a) Member receives a direct order from a higher ranking member.
- (b) During discussions of administrative, tactical or law enforcement sensitive information which are away from the public.
- (c) Member is at a location where he/she is not likely to have an interaction or chance interaction with a suspect/person of interest (i.e., outer perimeter post, traffic control post, etc.).

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- (d) The searches requiring activation have concluded and the member reasonably believes he/she will have no further interaction with the person searched.
- (e) The location of the recording may compromise privacy or patient confidentiality.
- (f) The member is interviewing an informant for the purpose of intelligence gathering. At the conclusion of the interview, the audio/video recorder shall be re-activated until no longer required by policy.

After a member deactivates his/her audio/video recorder, it is his/her responsibility to ensure the audio/video recorder is reactivated should the circumstances necessitate activation.

When a member activates his/her audio/video recorder and the activation was not required by policy and the circumstances do not require continued recording, he/she may use his/her discretion when deciding to deactivate the audio/video recorder.

425.8 DOCUMENTATION OF AUDIO/VIDEO RECORDINGS

Members shall document the existence and review of recordings in any report or other official record. Instances where the audio/video recorder malfunctioned or the member delayed activation or deactivated the audio/video recorder shall also be documented. When the recorder activation is delayed or the recorder is deactivated, the reason for these actions shall be included in the report.

Documentation shall be provided in at least one of the following reports, as appropriate:

- (a) Crime/Incident Report
- (b) Arrest Report
- (c) Citation or Notice to Appear
- (d) Field Interview Card
- (e) CAD Notes

Members shall continue to prepare crime and incident reports, citations, arrest reports, field interview cards, and CAD notes in the same manner as before the implementation of the audio/video recording system. Members are not to substitute “refer to video” in lieu of preparing detailed thorough reports. Members need not quote entire verbatim statements made in the video recording, but should represent statements in their reports as a summary of what is contained in the video with occasional quoted references where necessary.

425.9 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from wearing or using personally owned video recording devices in place of (or in conjunction with) their issued audio/video recorder while acting in an official capacity. Only department-authorized and issued equipment is to be used on-duty.

Members shall not remove, dismantle, or tamper with any hardware/software component or part of the audio/video recorder.

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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 any official capacity.

Unauthorized use, duplication, editing, deletion, and/or distribution of audio/video recorded files is prohibited. Members are strictly prohibited from using a recording device such as a phone camera or secondary video camera to record audio/video files.

Members are prohibited from retaining recordings of activities or information obtained while on-duty or while acting in any official capacity whether or not the recording was created with department-issued or personally owned audio/video recorders.

Members shall not duplicate or distribute any audio/video recordings, except for authorized legitimate Department business purposes.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. Audio/video recorders shall not be used to record off-duty or non work-related activity. Audio/video recorders shall not be activated in places where a reasonable expectation of privacy exists, such as locker rooms, dressing rooms, or restrooms.

Members shall not use the audio/video recording functions to record any personal conversation of or between another Department member without the recorded member's/employee's knowledge or permission.

All recorded images and audio from the portable audio/video recorders are the property of the Santa Monica Police Department and shall not be copied, released, or disseminated in any form or manner outside the parameters of this policy without the express written consent of the Chief of Police or his/her designee.

425.10 REVIEW OF RECORDINGS

Although data captured by the portable audio/video recorder is not considered Criminal Offender Record Information (CORI), it shall be treated in the same manner as CORI data. All access to the audio/video data storage system is logged and is subject to audit and inspection at any time. Access to the data from the system is permitted on a right-to-know, need-to-know basis. Employees authorized pursuant to this policy may review audio/video recording according to the provisions of this policy.

Once uploaded to the data storage system, a member may view his/her own audio/video data. The system will automatically date/time stamp each access by officer name.

A member may review audio/video files as doing so relates to:

- (a) His/her involvement in an incident for the purposes of preparing official reports and completing a criminal investigation.
- (b) When exigent circumstances occur, such as an employee being injured, and reviewing the video would facilitate identifying the suspect or providing other pertinent information.

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- (c) Before providing courtroom testimony or for a courtroom presentation.
- (d) During the course of preliminary investigations of alleged misconduct or reports of meritorious conduct where such recordings would be beneficial in reviewing the member's performance.
- (e) Providing a statement pursuant to any administrative investigation.

Supervisor Review

- (a) On a monthly basis, each member's supervisor shall conduct a random review of no more than five incidents captured on the audio/video recorders of each of his/her subordinate personnel.
- (b) Following a review of any associated reports, CAD/RMS print-outs, in-car camera video, and radio transmissions, the supervisory review of subordinate audio/video recordings shall include an assessment of:
 - 1. Performance
 - 2. Training needs
 - 3. Policy compliance
 - 4. Consistency between written reports and video files.
- (c) Where performance concerns are identified, these concerns are to be discussed with the affected employee in accordance with existing Department policies.
- (d) When a supervisor is conducting the preliminary investigation concerning a use of force or vehicle pursuit, he/she shall review the audio/video recordings of the members who were directly involved or who were witnesses.
- (e) A supervisor may have the ability to immediately resolve a citizen complaint(s) by reviewing audio/video recordings. In those circumstances where a complaint is resolved with no further action needed, the supervisor shall document the circumstances in a Department memorandum and forward the memorandum to the Professional Standards Section: Internal Affairs Unit. This will allow Professional Standards personnel to capture and track incidents that are resolved by the audio/video system.
- (f) It shall be deemed a violation of this policy for any supervisor/manager to review recordings for the sole purpose of searching for violations of Department policy not related to a specific complaint or incident not associated with the assessment of employee performance as indicated elsewhere in this policy.

Criminal Investigations

- (a) When conducting a criminal investigation, CID detectives shall notify the System Administrator to restrict the public disclosure of the audio/video file, as necessary.
- (b) CID detectives shall determine whether the audio/video file is of evidentiary value and process it in accordance with established protocols for technology-based evidence.
- (c) CID detectives shall notify the System Administrator to remove the access restriction when the criminal investigation is closed.

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425.11 REQUESTS FOR AUDIO/VIDEO DATA FILES

- A. Departmental Requests
 - 1. Any member who requires a copy of an audio/video file(s) for court shall contact his/her immediate supervisor/sergeant or administrator/lieutenant. If neither is available, the member shall contact the System Administrator.
 - (a) Any copy(ies) of an audio/video recording which is not entered into evidence shall be returned to the supervisor/manager or the System Administrator for destruction.
- B. Audio/Video File Requests for Training
 - 1. An audio/video file may be utilized as a training tool for individuals, specific units, and/or the Department as a whole. A recommendation to utilize an audio/video file for such purpose may come from any source.
 - 2. A person recommending the utilization of an audio/video recording file for training purposes shall submit a memorandum documenting the reason for the request through the chain-of-command to the Commanding Officer of the Department's Professional Standards Section: Training Unit. The Training Section supervisor shall review the recommendation and determine how to best utilize the audio/video file. Decisions to utilize the audio/video file must consider the person(s) involved, the sensitivity of the incident, and the benefit of utilizing the video file versus other means of delivering the training (i.e. Training Bulletin, Incident Debrief, etc.).
 - (a) If the involved employee objects to the showing of an audio/video recording, his/her objection will be submitted to the Chief of Police or his/her designee to determine if the employee's objection outweighs the training value.
- C. External Requests
 - 1. All other requests for audio/video data files shall be accepted and processed in accordance with federal, state and/or local statutes, and City/Police Department policy (i.e., Public Records Act requests).
 - 2. Media inquiries and/or requests shall be received and processed in accordance with Department policy.
- D. The Chief of Police shall retain sole discretion regarding the public release of audio/video files in those circumstances where the value of preserving community confidence and safety outweighs the interests associated with not releasing the audio/video files. The Chief of Police, or his/her designee, will notify the concerned employee(s) within a reasonable time before publicly releasing the video footage.

425.12 IDENTIFICATION AND PRESERVATION OF RECORDINGS

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

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A member shall transfer, tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

425.13 COORDINATOR

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

425.14 RETENTION OF RECORDINGS

Recordings of the following should be retained for a minimum of two years (Penal Code § 832.18):

- (a) Incidents involving use of force by a sworn officer
- (b) Officer-involved shootings
- (c) Incidents that lead to the detention or arrest of an individual
- (d) Recordings relevant to a formal or informal complaint against a sworn officer or the Santa Monica Police Department

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Recordings containing evidence that may be relevant to a criminal prosecution should be retained for any additional period required by law for other evidence relevant to a criminal prosecution (Penal Code § 832.18).

All other recordings should be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

Records or logs of access and deletion of recordings should be retained permanently (Penal Code § 832.18).

425.14.1 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.