

## Portable Audio/Video Recorders

### 432.1 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 City of Menasha Police Department facility, authorized undercover operations, wiretaps, or eavesdropping (concealed listening devices).

### 432.2 POLICY

The City of Menasha 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.

### 432.3 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.

### 432.4 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 issued a portable audio/visual recorder should activate the recorder during any of the following situations including but not limited to:

- (a) All enforcement and investigative contacts including 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
- (e) During or after transport of in-custody individuals in areas not already audio/video recorded such as sally ports, hospitals, etc.

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In arrest situations where the subject is uncooperative and/or combative the officer shall leave the recorder on until the subject is fully released to jail, hospital, or other applicable staff (this includes during vehicle or ambulance transports).

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.

### 432.4.1 EMERGENCY CALLS

Officers shall activate their portable audio/visual recorder when responding to emergency calls in conjunction with the activation of their emergency lights and siren. These situations would include but are not limited to:

- (a) Active shooter/Shots fired calls
- (b) In progress burglaries/robberies
- (c) Physical disturbances
- (d) Officer call for emergency assistance
- (e) Alarms (If responding emergency)
- (f) Medical calls involving PNB subjects, suicidal subjects, etc.

### 432.4.2 COMMUNITY SERVICE OFFICERS

Portable audio/visual recorders will be made available to Community Service Officers. Use of the recorders is encouraged especially when taking enforcement action however is not required.

### 432.4.3 SURREPTITIOUS USE OF THE PORTABLE RECORDED

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.

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#### 432.4.4 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.

#### **432.5 DEACTIVATION OF THE AUDIO/VIDEO RECORDER**

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 when any of the following situations apply:

- (a) Discussion of a case on-scene with other officers provided the officers are no longer in direct contact with individuals involved
- (b) On-scene tactical planning
- (c) Significant periods of inactivity
- (d) When circumstances no longer fit the previously outlined criteria for activation

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 at issue unless the circumstances no longer fit the criteria for recording.

#### **432.6 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 Shift Commander. 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.

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### **432.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

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

A member should 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.
- (g) The recording or portions of the recording may be protected under the Public Records Law (Wis. Stat. § 19.31 et seq.).

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.

When any of the above situations are met and a recording must be saved, officers shall label all videos associated with the incident with relevant report number(s) and complete a video download sheet. The video download sheet shall be handed in with the report. If a supervisor notices a report indicates there is video footage, but no video download sheet was submitted, the supervisor will send the report back to the investigating officer(s) requesting the sheet be completed.

### **432.8 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should 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 relevant recordings any time they are investigating alleged misconduct, or reports of meritorious conduct, or whenever such recordings would be beneficial in reviewing the member's performance.

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.

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- (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)).

### **432.9 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.
- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging, or marking events.
- (e) Coordinating with the Deputy Chief to provide 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.
- (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 on the Department's website.

### **432.10 RETENTION OF RECORDINGS**

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).

#### **432.10.1 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.

#### **432.10.2 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

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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.