

# Portable Audio/Video Recorders

## 526.1 PURPOSE AND SCOPE

### Agency Content

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 Kenosha County Sheriff's Department facility, authorized undercover operations, wiretaps, or eavesdropping (e.g., concealed listening devices).

## 526.2 POLICY

### Agency Content

The Kenosha County Sheriff's 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 Department's mission by accurately capturing contacts between members of the Department, inmates, and the public. Only authorized Department issued recorders are allowed inside of secure areas of Department facilities.

## 526.3 MEMBER PRIVACY EXPECTATIONS

### Agency Content

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.

## 526.4 MEMBER RESPONSIBILITIES

### Agency Content

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 that the recorder is worn in the manufacturer described manner, unobstructed in any way consistent with training, and 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. Members should notify persons that they are being recorded unless doing so would be unsafe, impractical, or impossible.

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

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in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Full-time security employees (FTE's) shall be issued a portable recorder. Casual Correctional Employees (CCE) shall obtain and utilize a device on an assigned basis. In such a circumstance, CCE's shall record his/her name, KSD identification number, and the current date and time at the beginning and the end of the shift, regardless of whether any activity was recorded.

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.

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

##### **Agency Content**

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 they engage in work-related interactions as indicated below or any time members believe it would be appropriate or valuable to record an incident.

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

- (a) During interactions with inmates or when in any area where there is a potential for visual or physical inmate contact. This includes but is not limited to:
  1. Inmate housing units/dorms/blocks
  2. Officer station in inmate housing units/dorms/blocks
- (b) During interactions with the public

Members should remain sensitive to the dignity of all individuals being recorded. When inmates are showering, performing bodily functions, are changing or exchanging clothing, or during medical escorts, strategic aiming of the device (NOT OBSTRUCTING) by security staff may address these concerns while acknowledging the existence of a legitimate interest in recording

All staff utilizing the portable audio/video recording system shall successfully complete instruction and training on this policy and the use/care of equipment and media. There shall be periodic training to ensure continued and effective use of the equipment.

#### **526.6 CESSATION OF RECORDING**

##### **Agency Content**

Once activated, the portable recorder should remain on continuously. Recording may be stopped during authorized work breaks. It is of the utmost importance in such a circumstance that staff remembers to reactivate the recording device upon return to work. A failure to reactivate the recording device after cessation of recording is a serious infraction and liability, violations may result in progressive disciplinary action, up to and including suspension or termination.

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#### **526.7 EXPLOSIVE DEVICE**

##### **Agency Content**

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.

#### **526.8 PROHIBITED USE OF PORTABLE RECORDERS**

##### **Agency Content**

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. 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 reproducing any visual or sound recording of a "Strip Search" of an inmate. (Wis. Stat. § 968.255 (2) (c))

Members are prohibited from using personally owned recording devices while on duty.

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

Recordings may be utilized for training purposes upon the approval of the Division Commander.

#### **526.9 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

##### **Agency Content**

To assist with identifying and preserving data and recordings, members should upload, tag, or mark the recordings in the specified system in accordance with procedure, and document the existence of the recording in any related case 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.).

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

The transfer, tagging or marking of recordings shall not alter the retention period for the records, but will assist members in determining what records or portions of a record can be released.

#### **526.10 REVIEW OF RECORDED MEDIA FILES**

##### **Agency Content**

When preparing written reports, members may review their recordings as a resource. However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made to write a less detailed report.

Supervisors or members of the Human Resources Department are authorized to review relevant recordings any time they investigate alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance or for training purposes.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the department participating in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation.
- (b) By a member of the Human Resources Department or the Corporation Counsel's Office who is involved in any personnel matter, complaint, or investigation where it is determined by Human Resources or the Corporation Counsel's Office that the recordings may be relevant or necessary to the personnel matter, complaint or investigation.
- (c) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (d) By media personnel with permission of the Sheriff or the authorized designee.
- (e) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy. All public records requests regarding the review of recorded media files will be referred to the Captain of Administration or designee.

Non-Supervisory staff shall not utilize the recording system's resources without a legitimate and objective purpose. A system audit trail exists and may be utilized to ensure compliance with this section.

Recordings shall not be shared by security staff with inmates or anyone other than Security Personnel, KSD Supervision, and Administration.

To maintain the ability to conduct thorough and effective investigations and incident reviews involving sexual abuse, sexual harassment, and other misconduct, appropriately trained internal and external investigators and senior facility and agency administrators are not prohibited from

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viewing any cross-gender recorded camera footage in conjunction with an investigation or incident review.

The Custodian of Records should review all recordings before public release. Data from recording devices are subject to the right of inspection and copying under Wis. Stat. § 19.35 (1), except as provided for in Wis. Stat. § 165.87 (3)(c), as may be amended from time to time. 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)). Redaction of video may be made as reasonably justified to maintain the dignity or privacy of anyone.

#### **526.11 COORDINATOR**

##### **Agency Content**

The Sheriff or the authorized designee should designate a coordinator and a backup 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 Training Sergeant 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) Every five years 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.
- (h) The Sheriff or the authorized designee shall consult with the Kenosha County Division of Information Technology (IT) to ensure proper coordination between the Department, IT, and any outside vendor/parties responsible for carrying out the provisions of this policy.

#### **526.12 RETENTION OF RECORDINGS**

##### **Agency Content**

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).

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

##### **Agency Content**

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

#### 526.12.2 EXCEPTIONS TO RETENTION REQUIREMENTS FOR BODY-WORN CAMERAS

##### Agency Content

The member recordings shall be retained for a minimum of 120 days after the date of the recording. Exceptions to the 120-day retention period for body-worn cameras, where records may be kept longer than 120 days, 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. An encounter that resulted in the death of any individual 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 by a law enforcement officer or detentions staff.
- (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 the Department Administration, a deputy from this Department or another law enforcement agency, member of a board of fire and police commission, prosecutor, defendant, or a court.