

Portable Audio/Video Recorders

425.1 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 vehicle/mobile audio/video recordings, interviews, or interrogations conducted at any Kenosha County Sheriff's Department facility, authorized undercover operations, wiretaps, or eavesdropping (concealed listening devices).

425.2 POLICY

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 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 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.

425.4 MEMBER RESPONSIBILITIES

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 trained manner for their assignment, and is in good working order. The recorder shall be placed in "On Duty" mode prior to going into service and remain in this mode until uniformed member ends their shift. 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. 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 shall carry an approved portable recorder at any time the member is engaging in activity that would require the activation of the recorder. Unless conducting a lawful recording 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.

When using a portable recorder, the assigned member shall record his/her name, KSD identification number, and the current date and time in the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not

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required when the recording device and related software captures the user's unique identification and the date and time of each recording.

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.

425.5 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 should activate the recorder any time they engage in work-related interactions with any members of the public or any time members believe it would be appropriate or valuable to record an incident. This requirement does not require members working in an undercover capacity to activate a camera.

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

- (a) All enforcement and investigative contacts including, calls for service, and 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 Dispatch
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
- (e) Search warrant entry and execution; and
- (f) While escorting, transporting, or guarding inmates and arrestees. (i.e., hospital guard, court escorts, and proceedings)

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. If the member of the public refuses to be recorded this refusal should be recorded on camera. The member shall have the discretion to stop the recording if the member deems that the information being obtained is of greater importance than a video record of the interview. The recording should resume when privacy is no longer an issue unless the circumstances no longer fit the criteria for recording.

Members have the discretion not to activate the recorder during potentially sensitive events or circumstances. (e.g, victims of sexual assault, child victim statements/interviews, nude persons who are not the target of enforcement action.)

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

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425.5.1 PHOTOGRAPHS AND AUDIO ONLY RECORDING

When a member needs to use the portable recorder to take photographs or use the audio-only recording mode, the member shall ensure the scene is safe and the video recorder is no longer needed for evidentiary purposes. When appropriate, the member may stop a video recording to take photographs or audio recordings. After taking photographs or using the audio-only recording mode, the member shall properly exit the photo camera mode or the audio-only recording mode on the portable recorder. Once the member exits the photo camera or audio-only recording mode, the recorder shall be placed back into the holster and worn in the manufactured described manner. At no time is a member expected to jeopardize his/her safety in order to take photographs or use the audio-only recording mode on the portable recorder.

425.5.2 CESSATION OF RECORDING

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 the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing, tactical discussion outside of the presence of members of the public, or other breaks from direct participation in the incident.

425.5.3 SURREPTITIOUS USE OF THE PORTABLE RECORDER

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 Sheriff or the authorized designee.

425.5.4 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.

Members assigned to the Bomb Squad are exempt from the body camera use requirement while actively deployed at the scene of the Bomb Squad-related incident.

425.5.5 COURTROOMS

At the request of the Kenosha County Judiciary, deputies shall deactivate the portable recorder upon entering courtrooms, unless activation is requested or allowed by the presiding judge or commissioner.

The deputy shall deactivate the recorder during meetings or consultations between an inmate and their attorney.

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The deputy shall activate the recorder if an incident occurs that Department policy requires activation. (i.e. an inmate becomes disruptive or resistive, imminent use of force, or behavior by others in the court that would cause the deputy to take law enforcement action, etc.).

425.6 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.

425.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS

To assist with identifying and preserving data and recordings, members should download, tag or mark these 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.).

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.

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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 portion of a record can be released.

425.8 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 or members of the Human Resources Department 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, or for training purposes

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) By any 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 recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). 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)).

425.9 COORDINATOR

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.

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- (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. Deputies 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.

425.10 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).

425.10.1 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.

425.10.2 EXCEPTIONS TO RETENTION REQUIREMENTS FOR BODY-WORN CAMERAS

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 are as follows, where recordings may be kept longer than 120 days, (Wis. Stat. § 165.87):

- (a) Recordings shall be retained until the final disposition of any investigation, case, or complaint to which the recordings pertaining 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
 - 3. A search during temporary detention pursuant to Wis. Stat. § 968.25
 - 4. An encounter resulting in the use of force by a law enforcement officer except when the only use of force involves the use of a firearm by the officer to euthanize an injured or 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.

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- (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 a deputy from this Department or another law enforcement agency, member of a board of fire, and police commission, prosecutor, defendant, or a court.