

Portable Audio/Video Recorders

423.1 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 Tomah Police Department facility, authorized undercover operations, wiretaps, or eavesdropping (concealed listening devices).

423.2 POLICY

The Tomah Police Department shall 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.

423.3 COORDINATOR

The Police Chief or the authorized designee should designate a coordinator, who shall be the Assistant Police Chief, responsible for (Wis. Stat. § 165.87):

1. Establishing procedures for the security, storage, and maintenance of data and recordings.
2. Establishing procedures for accessing data and recordings.
3. Establishing procedures for logging or auditing access.
4. Establishing procedures for transferring, downloading, tagging, or marking events.
5. Coordinating with the Lieutenant to provide training on this policy to:
 - (a) Officers who are authorized to use portable audio/video recorders.
 - (b) Members of the Department who use, maintain, store, or are responsible for the release of records and recordings.
6. Periodically reviewing the Department's practices relating to the use, maintenance, and storage of body cameras and data to confirm compliance with this policy.
7. Ensuring this policy is available to the public on the Department's website.

423.4 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, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

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423.5 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 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. The camera shall be mounted in a location and orientation that provides an accurate representation of what the member is seeing.

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 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, TPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not 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.

423.6 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 the member believes it would be appropriate or valuable to record an incident.

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

1. All enforcement and investigative contacts including stops and field interview (FI) situations
2. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
3. Self-initiated activity in which a member would normally notify Monroe County Communications Center
4. Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
5. The transportation of any subject

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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.

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.

423.6.1 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 or other breaks from direct participation in the incident. Members may not cease recording during the transport of subjects.

Members may choose to not activate, deactivate or mute the audio during an event in which contact with citizens or activities related to enforcement is not likely. Generally, members may do so under the following circumstances:

1. Member to member conversations about crime charging issues, arrest decisions, tactical conversations or conversations about confidential sources/information.
2. Fire scenes, crime scenes or crash scenes when the officer's likelihood of being involved in enforcement action is low.
3. Lengthy hospital stays awaiting medical clearance unless enforcement actions are likely, the likelihood of criminal activity or escape attempt is high, the suspect is making voluntary statements or the officer is gathering further evidence.
4. Where otherwise authorized in this policy.

Members shall make a verbal notation on the recording anytime he/she plans to intentionally stop or mute a recording prior to the completion of an event or incident that would otherwise be required to record. The verbal notation shall include the reason why the member stopped the recording.

423.6.2 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 Police Chief or the authorized designee.

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423.6.3 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.

423.7 USE OF PORTABLE AUDIO/VIDEO RECORDERS DURING COMBINED TACTICAL UNIT (CTU) OPERATIONS

Tactical operations present a unique challenge for audio/video recording purposes. These high-risk operations involve planning, tactics, and tools that can be countered if made public. Due to these concerns, there are alternative criteria for recording these events that differ from standard patrol activities.

423.7.1 UNPLANNED EVENTS

During hostage situations, barricaded subjects, or any other unplanned event, the camera will be in the "off" position until the member deploys from the staging location. It is unnecessary to record strategic planning, deployment, and tactics. Once deployed to the target location, the member will switch their camera to the "on" position. When staged for long periods of time in a capacity where members are not in direct contact with the public, the camera will remain in "standby mode". "Standby mode" captures 30 seconds of recording if an issue arises and action needs to be taken. When the member comes into direct contact with the public or when the situation dictates action be taken, the member will begin recording video and audio as soon as practical. (Examples of this include scouting teams, gas teams, entry teams, etc.)

423.7.2 PRE-PLANNED EVENTS

Pre-planned events, such as warrant service or drug buy-busts, afford CTU the opportunity to conduct briefings, rehearsals, and staging prior to the onset of the operation. Planning, briefing, rehearsals, and staging will not be recorded during these events. CTU members will switch their camera to the "on" position while in route to the target location. CTU members will begin recording video and audio prior to exiting their transportation to the target location. CTU members may switch their camera to "standby mode" once the primary objective of the operation is complete and the member has no reasonable expectation of interacting with the public or evidence.

423.7.3 IMMEDIATE ACTION

If CTU personnel respond to an event that requires immediate action, such as an active killer, they shall immediately switch their camera to the "on" position and activate video and audio recording.

423.7.4 SNIPER DEPLOYMENTS

The body worn camera is not designed to capture person to person contacts for snipers deployed in a traditional role. Long distances and covert hidden deployment preclude the use of the camera as intended. Snipers shall activate their camera as practical or when in direct contact with the public.

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423.8 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 Supervisor. 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.

423.9 IDENTIFICATION AND PRESERVATION OF RECORDINGS

To assist with identifying and preserving data and recordings, members should upload files in accordance with established procedure and document the existence of the recording in any related incident report.

At the conclusion of a member's shift, he/she should add the appropriate metadata to each recording and upload the files to evidence.com.

423.10 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).

423.10.1 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)

1. Recordings should be retained until the final disposition of any investigation, case or complaint to which the recordings pertain to any of the following:
 - (a) Death or actual or alleged physical injury to any person in the recording
 - (b) An encounter resulting in a custodial arrest
 - (c) A search during a temporary detention pursuant to Wis. Stat. 968.25
 - (d) 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
2. 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

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determination that the recordings are no longer needed, or by an order from the court or hearing officer.

3. Recordings may be retained for a period beyond 120 days if a request or directive to preserve the recordings is made before the examination 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.

423.11 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. This review shall be documented in Guardian Tracking as a BWC Review if only a portion of the video or videos is being watched. An audit consists of watching a video in its entirety to assess the performance of the officer(s) related to the recording, and should be documented in Guardian Tracking as a BWC Audit.

Recorded files may also be reviewed:

1. 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.
2. Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
3. By media personnel with permission of the Police Chief or the authorized designee.
4. 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)).