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## Use of Portable Audio/Video Recorders

### 450.1 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.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes or to mobile audio video recordings (see the Mobile Audio Video Policy).

### 450.2 POLICY

The Modesto 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.

### 450.3 PRIVACY

All recordings made by personnel acting in their official capacity as members of this department shall remain the property of the Department and should not be considered private, regardless of whether those recordings were made with department-issued or personally owned recorders.

### 450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable video recording system (PVRS), issued by the Department, and that the PVRS is in good working order and positioned on their uniform to facilitate optimum recording field of view. Members shall not remove, dismantle or tamper with any hardware and/or software component or part of the PVRS. Uniformed members should wear the PVRS in a conspicuous manner and shall at all times operate the PVRS controller in the buffering mode unless privacy concerns dictate turning off the controller.

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.

When using a PVRS, the assigned member shall record his/her name, employee 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.

### 450.5 ACTIVATION OF THE AUDIO RECORDER

Members should activate PVRS during all contacts and any other time the member reasonably believes that a recording of an on-duty contact may be useful. Once started, recordings should continue without interruption until the contact ends, if feasible. A recording may be terminated to protect tactical or confidential discussions or briefings.

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Members are not required to activate PVRs during routine, incidental contact with a citizen, e.g. giving directions or lunch breaks.

At no time is a member expected to jeopardize his/her safety in order to activate PVRs or change the recording media. However, PVRs should be activated in required situations as soon as practicable.

Personnel should be aware of surroundings when operating the PVRs, such as in a hospital emergency room where privacy of patients should be considered when operating the PVRs.

#### **450.5.1 SURREPTITIOUS USE OF THE AUDIO RECORDER**

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order or unless lawfully authorized by the Chief of Police or the authorized designee.

#### **450.6 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. PVRs shall not be activated in places where a reasonable expectation of privacy exists, such as locker rooms, dressing rooms or restrooms.

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 Watch 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.

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

Any member who may have questions regarding the application of this policy is encouraged to seek clarification from supervisory personnel.

#### **450.7 RETENTION OF RECORDINGS**

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and download the file in accordance with the Computers and Digital Evidence Policy and document the existence of the recording in the related case report.

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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.

Members shall dock their issued camera for automated upload of PVRs data files daily at the end of their shift at the docking station to ensure storage capacity is not exceeded and/or to view uploaded audio/video.

Members operating Department Motorcycles may dock their PVRs at the end of their shift and then take their assigned motorcycle home. It will be the Traffic Unit personnel's responsibility to pick up their PVRs as soon as practical at the beginning of their next shift. It is recognized Traffic Unit personnel make enforcement stops to and from work which may result in those stops not being recorded.

#### **450.7.1 RETENTION REQUIREMENTS**

All recordings shall 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.

#### **450.8 RELEASE OF RECORDINGS**

Recordings made using portable recording devices pursuant to this policy are department records and may only be released as provided in the Release of Records and Information Policy or for other authorized legitimate department business purposes.

#### **450.9 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members may review their recordings as a resource. However, 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, 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, criminal investigation, or courtroom testimony preparation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (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 Release of Records and Information Policy.
- (e) Potential training purposes.