

## **Portable Audio/Video Recorders**

### **425.1 PURPOSE AND SCOPE**

Contemporary police departments increasingly utilize an array of audio/video technology to further the mission of their organizations. The Santa Monica Police Department is incorporating portable audio/video recording technology, in the form of body-worn cameras, into its inventory to provide supplement documentary evidence for criminal investigations, internal or administrative investigations, and to review police procedures and tactics.

This policy provides the Department's members, both sworn and civilian field and custody personnel, with guidance on the use of portable audio/video recording devices during their official duties. Portable audio/video recording devices include all recording systems, whether body-worn, hand-held or integrated into portable equipment. Members are to utilize these devices in accordance with the provisions of this policy to maximize the effectiveness of the audio/video documentation, to achieve operational objectives, and to ensure evidence integrity.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes, or to mobile audio/video recordings. (Also refer to Policy Manual § 446 Mobile Audio Video for in-car camera system.)

### **425.2 POLICY**

The Santa Monica Police Department may provide its members with access to portable body worn audio/video recorders for use during the performance of their official duties. The use of portable audio/video recorders is intended to enhance the mission of the Department by accurately capturing on-duty interactions between members of the Department and the public.

Portable audio/video recorders shall be issued only after the device has been configured so the "record after the fact" function has been disabled; enabling this feature at any point shall be considered a violation of this policy.

### **425.3 MEMBER PRIVACY EXPECTATION**

All recordings made by members acting in their official capacity shall remain the property of the Department whether or not those recordings were made with department-issued audio/video recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### **425.4 MEMBER RESPONSIBILITIES**

Before going into service, each member will be responsible for making sure that he/she is equipped with a portable audio/video recorder issued by the Department. It is the member's responsibility to ensure the recorder is generally in good working order by verifying that the battery is fully charged, the visual display screen is functioning, and the microphone is not obstructed. Members shall not wear an audio/video recorder that is clearly damaged or otherwise is not functioning properly due to low battery charge, damage, malfunction or memory exceeding capacity. If the recorder is not in good working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Members shall report unresolved equipment malfunctions/problems to the System Administrator for replacement of the audio/video recorder.

It is the responsibility of the member to position and securely attach the audio/video recorder to the front of his/her uniform or uniform equipment (as the primary location) to provide the best vantage point to record contacts with the public.

Upon initial contact with the public, members should make a reasonable effort to inform the person contacted that he/she is being recorded if doing so facilitates cooperation and/or compliance, assists with an investigation, does not interfere with the investigation being conducted or does not compromise officer safety.

At the end of his/her shift or other period of use or, if needed, during his/her shift, the member shall dock his/her issued audio/video recorder in the appropriate docking station to ensure the device's storage capacity is not exceeded.

An officer assigned to the Traffic Section's Motorcycle Unit who operates a Department motorcycle shall dock his/her camera at the end of his/her shift and then take his/her assigned motorcycle home. It is the responsibility of the officer to pick up his/her camera as soon as practical at the beginning of his/her next shift/assignment. It is recognized that motorcycle officers may make enforcement stops while traveling to and from work which may result in those stops not being recorded on the portable audio/video recorder.

#### 425.5 ACTIVATION OF THE PORTABLE RECORDER

There are many situations where the use of a portable audio/video recorder is appropriate. This policy is not intended to describe every possible situation in which the portable audio/video recorder should be used. In addition to the required activation criteria, a member should activate the system any time he/she feels the use of an audio/video recorder would be appropriate and/or valuable to document the incident.

Unless it is unsafe or impractical to do so, or mechanical issues which impede the use of the device are present, the wearer (including both primary and any/all assisting personnel) of a portable audio/video recorder shall make a reasonable effort to activate his/her audio/video recorder before making contact in any of the following circumstances:

- a. Enforcement encounters where there is a reasonable suspicion that the person is involved in criminal activity or a violation of law. This includes, but is not limited to, dispatched calls for service, self-initiated activities, traffic stops, stranded motorist assistance stops, crime interdiction stops (Wall stops), pedestrian checks, or any other investigative detentions, arrests, or enforcement encounters.
- b. Consensual encounters made to confirm or dispel a suspicion that the citizen may be involved in criminal activity as a suspect, victim, or witness. This does not include victims of sexual assault.
- c. Assessment or evaluation for a psychiatric detention/hold (WIC 5150)
- d. Serving search or arrest warrant.
- e. Conducting any of the following searches of a person and/or property:
  - a. Incident to arrest
  - b. Cursory
  - c. Probable cause
  - d. Probation/Parole
  - e. Consent
  - f. Inventory

**Exception:** Strip searches **shall not** be recorded; it shall be a violation of this policy to audio/video record any strip search.

- f. Any other contact that becomes adversarial after the initial contact if the situation would not otherwise require recording.
- g. A member may activate the audio/video recorder before or during any other incident at his/her discretion provided the recording of the incident is not otherwise prohibited by the provisions of this policy.
- h. Any time the mobile/in-car camera system is activated and the member is outside of the police vehicle.
- i. Upon the order of a higher ranking member.
- j. During crowd control, protest, or mass arrest incidents, members shall use their audio/video recorders consistent with this policy unless otherwise directed by the Incident Commander. The Incident Commander shall document his/her orders in the appropriate reports (Operations Plan or After Action Report). The Incident Commander is to provide the order to all personnel.

Members shall be sensitive to the dignity of all individuals being recorded. Members are to exercise sound judgment and exercise discretion when the respect for privacy indicates that discontinuing audio/video recording is prudent because it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in the recording. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Requests by members of the public to stop recording should be considered using the activation criteria listed above; however, if the employee believes the contact remains consistent with the activation criteria, the employee shall continue to record the contact.

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

Unless articulable circumstances exist, members who are assigned a portable audio/video recorder should not record or should discontinue recording when the following situation(s) exist:

- a. Interviewing the victim of a sexual assault or domestic violence after the initial response to the call-for-service.
- b. Interviewing a minor child who is the victim of any crime after the initial response to the call-for-service.
- c. In a hospital emergency room or other medical facility where the privacy of patients, including patients not part of the member's call/activity, should be considered.
- d. When in view of a medical or other personal procedure. This includes when a person's private health information is being discussed.
- e. When a member of the public is in any state of undress or other compromising situation. **Except:** If the officer is intending/attempting to arrest or detain the person. In cases of encounters with nude subject(s), a reasonable effort shall be made to cover the individual as soon as is practical.
- f. An ambulance response to a traffic collision or report of an illness/injury when the victim(s)/party is not involved in any criminal activity.
- g. Any reasonable and articulable circumstance where the privacy of the individual(s) to be recorded outweighs any investigative need or need for audio/video documentation.
- h. During non-enforcement contacts including, but not limited to, community meetings, in houses of worship, when providing directions or information, etc.
- i. Meeting with a confidential informant as defined in Department Policy.
- j. Guard duty at a medical, psychiatric, Jail/Detention facility. Members shall assess the circumstances of each guard assignment; on a continuing basis to determine whether prudence warrants activating or deactivating the audio/video recorder.

Members are not required to obtain consent to record from a private person when:

1. In a public place.
2. In a location where there is no reasonable expectation of privacy (i.e., inside a building or dwelling where the officer is lawfully present and is engaged in the performance of official duties).

#### 425.5.1 DEACTIVATION OF RECORDING DEVICE

Once activated, the portable audio/video recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording should be stopped during significant periods of inactivity such as report writing, meal breaks, or other breaks from direct participation in an incident when it is reasonable to believe no criteria for a required activation are present.

Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

Other reasons for deactivating audio/video recorders when the device was activated as required by this policy include:

- a. Member receives an order from a higher ranking member.
- b. During discussions of administrative, tactical or law enforcement sensitive information which are away from the public.
- c. Member is at a location where he/she is not likely to have an interaction or chance interaction with a suspect/person of interest (i.e., outer perimeter post, traffic control post, etc.).
- d. The searches requiring activation have concluded and the member reasonably believes he/she will have no further interaction with the person searched.
- e. The location of the recording may compromise privacy or patient confidentiality.
- f. The member is interviewing an informant for the purpose of intelligence gathering. At the conclusion of the interview, the audio/video recorder shall be re-activated until no longer required by policy.

After a member deactivates his/her audio/video recorder, it is his/her responsibility to ensure the audio/video recorder is reactivated should the circumstances necessitate activation.

When a member activates his/her audio/video recorder and the activation was not required by policy and the circumstances do not require continued recording, he/she may use his/her discretion when deciding to deactivate the audio/video recorder.

#### 425.5.2 DOCUMENTATION OF AUDIO/VIDEO RECORDINGS

Members shall document the existence and review of recordings in any report or other official record. Instances where the audio/video recorder malfunctioned or the member delayed activation or deactivated the audio/video recorder shall also be documented. When the recorder activation is delayed or the recorder is deactivated, the reason for these actions shall be included in the report.

Documentation shall be provided in at least one of the following reports, as appropriate:

1. Crime/Incident Report
2. Arrest Report
3. Citation or Notice to Appear
4. Field Interview Card
5. CAD Notes

Members shall continue to prepare crime and incident reports, citations, arrest reports, field interview cards, and CAD notes in the same manner as before the implementation of the audio/video recording system. Members are not to substitute "refer to video" in lieu of preparing detailed thorough reports. Members need not quote entire verbatim statements made in the video recording, but should represent statements in their reports as a summary of what is contained in the video with occasional quoted references where necessary.

#### 425.5.3 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Members of the Department 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 (Penal Code § 633).

Members shall not surreptitiously record another Department member without a court order and the express approval of the Chief of Police or his/her designee.

#### 425.6 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from wearing or using personally owned video recording devices in place of (or in conjunction with) their issued audio/video recorder while acting in an official capacity. Only department-authorized and issued equipment is to be used on-duty.

Members shall not remove, dismantle, or tamper with any hardware/software component or part of the audio/video recorder.

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 any official capacity.

Unauthorized use, duplication, editing, deletion, and/or distribution of audio/video recorded files is prohibited. Members are strictly prohibited from using a recording device such as a phone camera or secondary video camera to record audio/video files.

Members are prohibited from retaining recordings of activities or information obtained while on-duty or while acting in any official capacity whether or not the recording was created with department-issued or personally owned audio/video recorders.

Members shall not duplicate or distribute any audio/video recordings, except for authorized legitimate Department business purposes.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. Audio/video recorders shall not be used to record off-duty or non-work-related activity. Audio/video recorders shall not be activated in places where a reasonable expectation of privacy exists, such as locker rooms, dressing rooms, or restrooms.

Members shall not use the audio/video recording functions to record any personal conversation of or between another Department member without the recorded member's/employee's knowledge or permission.

All recorded images and audio from the portable audio/video recorders are the property of the Santa Monica Police Department and shall not be copied, released, or disseminated in any form or manner outside the parameters of this policy without the express written consent of the Chief of Police or his/her designee.

#### 425.7 REVIEW OF RECORDINGS

Although data captured by the portable audio/video recorder is not considered Criminal Offender Record Information (CORI), it shall be treated in the same manner as CORI data. All access to the audio/video data storage system is logged and is subject to audit and inspection at any time. Access to the data from the system is permitted on a right-to-know, need-to-know basis. Employees authorized pursuant to this policy may review audio/video recording according to the provisions of this policy.

Once uploaded to the data storage system, a member may view his/her own audio/video data. The system will automatically date/time stamp each access by officer name.

A member may review audio/video files as doing so relates to:

- a. His/her involvement in an incident for the purposes of preparing official reports and completing a criminal investigation.
- b. When exigent circumstances occur, such as an employee being injured, and reviewing the video would facilitate identifying the suspect or providing other pertinent information.
- c. Before providing courtroom testimony or for a courtroom presentation.
- d. During the course of preliminary investigations of alleged misconduct or reports of meritorious conduct where such recordings would be beneficial in reviewing the member's performance.
- e. Providing a statement pursuant to any administrative investigation.

#### Supervisor Review

1. On a monthly basis, each member's supervisor shall conduct a random review of no more than five incidents captured on the audio/video recorders of each of his/her subordinate personnel.
2. Following a review of any associated reports, CAD/RMS print-outs, in-car camera video, and radio transmissions, the supervisory review of subordinate audio/video recordings shall include an assessment of:

- a. Performance
- b. Training needs
- c. Policy compliance
- d. Consistency between written reports and video files.

Where performance concerns are identified, these concerns are to be discussed with the affected employee in accordance with existing Department policies.

3. When a supervisor is conducting the preliminary investigation concerning a use of force or vehicle pursuit, he/she shall review the audio/video recordings of the members who were directly involved or who were witnesses.
4. A supervisor may have the ability to immediately resolve a citizen complaint(s) by reviewing audio/video recordings. In those circumstances where a complaint is resolved with no further action needed, the supervisor shall document the circumstances in a Department memorandum and forward the memorandum to the Professional Standards Section: Internal Affairs Unit. This will allow Professional Standards personnel to capture and track incidents that are resolved by the audio/video system.
5. It shall be deemed a violation of this policy for any supervisor/manager to review recordings for the sole purpose of searching for violations of Department policy not related to a specific complaint or incident not associated with the assessment of employee performance as indicated elsewhere in this policy.

#### Criminal Investigations

1. When conducting a criminal investigation, CID detectives shall notify the System Administrator to restrict the public disclosure of the audio/video file, as necessary.
2. CID detectives shall determine whether the audio/video file is of evidentiary value and process it in accordance with established protocols for technology-based evidence.
3. CID detectives shall notify the System Administrator to remove the access restriction when the criminal investigation is closed.

#### 425.8 REQUESTS FOR AUDIO/VIDEO DATA FILES

##### A. Departmental Requests

Any member who requires a copy of an audio/video file(s) for court shall contact his/her immediate supervisor/sergeant or administrator/lieutenant. If neither is available, the member shall contact the System Administrator.



1. Any copy(ies) of an audio/video recording which is not entered into evidence shall be returned to the supervisor/manager or the System Administrator for destruction.

#### B. Audio/Video File Requests for Training

An audio/video file may be utilized as a training tool for individuals, specific units, and/or the Department as a whole. A recommendation to utilize an audio/video file for such purpose may come from any source.

A person recommending the utilization of an audio/video recording file for training purposes shall submit a memorandum documenting the reason for the request through the chain-of-command to the Commanding Officer of the Department's Professional Standards Section: Training Unit. The Training Section supervisor shall review the recommendation and determine how to best utilize the audio/video file. Decisions to utilize the audio/video file must consider the person(s) involved, the sensitivity of the incident, and the benefit of utilizing the video file versus other means of delivering the training (i.e. Training Bulletin, Incident Debrief, etc.).

1. If the involved employee objects to the showing of an audio/video recording, his/her objection will be submitted to the Chief of Police or his/her designee to determine if the employee's objection outweighs the training value.

#### C. External Requests

1. All other requests for audio/video data files shall be accepted and processed in accordance with federal, state and/or local statutes, and City/Police Department policy (i.e., Public Records Act requests).
2. Media inquiries and/or requests shall be received and processed in accordance with Department policy.

D. The Chief of Police shall retain sole discretion regarding the public release of audio/video files in those circumstances where the value of preserving community confidence and safety outweighs the interests associated with not releasing the audio/video files. The Chief of Police, or his/her designee, will notify the concerned employee(s) within a reasonable time before publicly releasing the video footage.

## 425.9 RETENTION OF RECORDINGS

### 425.9.1 RETENTION REQUIREMENTS

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule.