

# Mobile and Portable Audio/Video Recorders (includes Body Worn Devices)

## 423.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of audio/video recording devices by members of this department while in the performance of their duties. Audio/video recording devices include all recording systems whether body-worn, hand-held or integrated into portable equipment, such as the MVR system. This policy does not apply to audio/video recordings, interviews or interrogations conducted at any South Bend Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

## 423.2 POLICY

The South Bend Police Department may provide members with access to mobile/portable recorders, either audio, video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department and provide mutual accountability by accurately capturing contacts between members of the Department and the public.

## 423.3 MEMBER PRIVACY EXPECTATION

All recordings made by members on any department-issued device at any time, and all recordings 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.

## 423.4 COORDINATOR

The Chief of Police or the authorized designee should designate a coordinator responsible for:

- (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 Director of Records to obscure information captured in recordings consistent with I.C. § 5-14-3-5.2.

## 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 mobile/portable recorder, issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as

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soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

Any member assigned to a non-uniformed position may carry an approved mobile/portable recorder at any time the member believes that such a device may be useful.

When using a recorder, the assigned member shall ensure the proper functioning of the device, recording his/her name, SBPD 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 shall 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 de-activated the recording. Members shall include the reason for de-activation.

#### **423.6 ACTIVATION OF THE RECORDER**

This policy is not intended to describe every possible situation in which the 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 recorder shall be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview situations (including assisting/back-up officers)
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops (including assisting/back-up officers)
- (c) Self-initiated activity in which an officer would or should normally notify Communication Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should remain sensitive and respectful to the dignity of all individuals being recorded and exercise sound discretion to respecting privacy by discontinuing recording whenever it reasonably appears 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.

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#### 423.6.1 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER

Indiana law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (I.C. § 35-31.5-2-176; I.C. § 35-33.5-2-1 et seq.).

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.

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

#### 423.6.2 CESSATION OF RECORDING

Once activated, the portable recorder shall remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer meets 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.

Before a member may deactivate his/her recording device, he/she must state orally into the recording device the reason for the deactivation in order to document the reason(s) for discontinuing the recording.

#### 423.6.3 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could potentially trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

### **423.7 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 an 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 all provisions of this policy, including retention and release requirements, and shall 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.

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#### **423.8 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

To assist with identifying and preserving data and recordings, members shall download, tag or mark these in accordance with procedure and training, and document the existence of the recording in any related case report.

A member shall 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 information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.
- (g) The recording or portions of may be protected under the Public Records Act (I.C. § 5-14-3-4).
- (h) As directed by the Chief of Police and/or designee (e.g., mandated use in all public interactions).
- (i) Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., hostile contact), the member should promptly notify a supervisor of the existence of the recording.

##### **423.8.1 RETENTION REQUIREMENTS FOR RECORDINGS PURSUANT TO A WARRANT**

All recordings made pursuant to a warrant, shall immediately be sealed upon the expiration of the warrant. The recordings shall be retained for a period of not less than 10 years. Recordings made pursuant to a warrant may only be destroyed pursuant to an order of court (I.C. § 35-33.5-5-2).

#### **423.9 REVIEW OF RECORDED MEDIA FILES**

When preparing reports or statements, members should 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 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 a member's performance.

Recorded files may also be reviewed:

- (a) Upon Chief's approval, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.

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- (c) Upon Chief's approval to ensure policy compliance or randomly to ensure policy compliance and performance.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy. All video recordings should be reviewed by the Custodian of Records and the City Legal Department prior to public release (see the Records Maintenance and Release Policy). Video that unreasonably violates a person's privacy or sense of dignity or is otherwise prohibited by I.C. §5-14-3-5.2(a) or I.C. § 5-14-3-5.2(e) should not be publicly released unless disclosure is required by law or order of the court.

#### 423.9.1 SUPERVISORY PERIODIC AUDITS

At a minimum, each month, sergeants must select a random sample of at least five (5) videos of those they supervise. Sergeants shall equally review all supervisees, and, by the end of the year, sergeants will have reviewed at least 15 minutes of footage for each supervisee at least three (3) times as a part of their monthly rotational review. Sergeants will confirm that the video account of the incident matches the officer's written report of the incident. Sergeants shall submit an officer's report to the lieutenant containing the positive and negative observations in each video. The primary purpose of the audits will be for safety and tactics review/training purposes and to ensure adherence to departmental guidelines.

Lieutenants will ensure sergeants are completing the appropriate reviews of member videos. Lieutenants shall also bring discrepancies between the video recordings and any written report to the Captain's attention.

#### **423.10 RETENTION OF RECORDINGS**

Members should transfer the recording, in accordance with current procedure for storing recordings, at the end of their shift and any time the storage capacity is nearing its limit.

All recordings shall be retained in an unaltered and unobscured condition for at least 190 days. Recordings shall be retained for longer periods as follows (I.C. § 5-14-3-5.3):

- (a) As provided in I.C. § 5-14-3-5.1 for at least two years upon written request:
  - 1. Of a person who is depicted or whose property is depicted in the recording.
  - 2. Of a victim.
- (b) For at least two years if a formal or informal complaint is filed regarding a law enforcement activity as provided in I.C. § 5-14-3-2(j).
- (c) Until the final disposition of all appeals and an order from the court if a recording is used in a criminal, civil or administrative proceeding.

The South Bend Police Department may retain a recording for training purposes for any length of time (I.C. § 5-14-3-5.3).

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### 423.10.1 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.