

Portable Audio/Video Recorders

450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by employees 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.

This policy does not apply to mobile audio/video recordings, interviews or interrogations conducted at any Elk Grove Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

450.2 POLICY

The Elk Grove Police Department may provide employees 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 employees of the Department and the public.

450.3 EMPLOYEE PRIVACY EXPECTATION

All recordings made by employees on any department-issued device at any time, and any recording made while acting in an official capacity for this department, regardless of ownership of the device it was made on, shall remain the property of the Department. All evidence obtained is Department property, regardless of the device on which it was recorded. Any evidence recorded on a personal device should be uploaded to the Department's audio and video storage software as soon as practical. Employees shall have no expectation of privacy or ownership interest in the content of these recordings.

450.4 EMPLOYEE RESPONSIBILITIES

Prior to going into service, each uniformed employee will be responsible for making sure that they are 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 employee becomes aware of a malfunction at any time, the employee shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed employees should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Any employee 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 employees 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 employee shall record their name, Elk Grove Police Department identification number and the current date and time at the beginning and the end of the

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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.

Employees 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. Employees should include the reason for deactivation.

450.4.1 SUPERVISOR RESPONSIBILITIES

Supervisors should take custody of a portable audio recording device as soon as practicable when the device may have captured an incident involving the use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

450.5 ACTIVATION OF THE PORTABLE 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. Employees 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:

- (a) All enforcement and investigative contacts including stops 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 the Dispatch Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Employees 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 employees 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 an employee 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.

450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

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

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

450.5.2 CESSATION OF RECORDING

Once activated, the portable audio 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.

Employees shall cease audio 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).

450.5.3 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.

450.6 PROHIBITED USE OF PORTABLE RECORDERS

Employees 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.

Employees 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. Employees shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Employees are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any employee 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 employee for the purpose of embarrassment, harassment, or ridicule.

450.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS

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

An employee should transfer, tag, or mark recordings when the employee 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.

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- (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.

Any time an employee reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the employee should promptly notify a supervisor of the existence of the recording.

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 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, employees should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, employees shall not retain personal copies of recordings. Employees 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.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any employee 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.
- (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 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.