

Portable Audio/Video Recorders

423.1 PURPOSE AND SCOPE

State

This policy provides guidelines for the use of portable audio/video recording devices by members of this office while in the performance of their duties (RCW 10.109.010). Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

423.2 POLICY

Best Practice

The Whatcom County Sheriff's Office 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 Office by capturing contacts between members of the Office and the public, and providing valuable evidence in criminal prosecutions.

The Whatcom County Sheriff's Office acknowledges that video recordings provide only a two-dimensional perspective (with limited vantage points) of an incident. A camera likely will not capture everything that a deputy see's or hears and may capture something that the deputy may not have seen or heard. Consequently, the Sheriff's Office shall never rely solely upon video recordings as the basis of an event. In every event the Sheriff's Office shall review and consider all evidence, (such as witness statements, deputy interviews, forensic analysis, documentary evidence, etc.) when making decisions about an event

423.3 COORDINATOR

State

The Sheriff or the authorized designee should appoint a coordinator responsible for (RCW 10.109.010):

- (a) Establishing procedures for the security, storage and maintenance of data and recordings.
- (b) Establishing procedures for transferring, downloading, tagging or marking events.
- (c) Establishing procedures for members communicating to non-English speakers, those with limited English proficiency or those who are deaf or hard of hearing that a portable recorder is being used.
- (d) Establishing procedures for accessing data and recordings.
- (e) Establishing procedures for logging or auditing access.

423.4 MEMBER PRIVACY EXPECTATION

Best Practice

Recordings made by members on any office-issued device, and recordings made while acting in an official capacity of the office shall remain the property of the Office. Members shall have no expectation of privacy or ownership interest in the content of these recordings intentionally made by the member (see also 423.12 Inadvertent Recordings).

423.5 MEMBER RESPONSIBILITIES

Discretionary

Members will be responsible for making sure that any portable recorder issued by the Office 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.

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 and the current date and time at the beginning of the recording. 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 (RCW 10.109.010).

423.6 ACTIVATION OF THE BODY WORN CAMERA (BWC)

State

This policy is not intended to describe every possible situation in which the BWC should be used, although there are many situations where its use is appropriate. Once activated, recordings should continue without interruption until the contact ends. An event has concluded when both of the following apply:

- a) The employee has completed his or her part of the active investigation; and
- b) There is little possibility that the employee will have further contact with any person involved in the event.

For transports to a County jail facility, the event concludes just before the employee enters the sally port of the facility.

For transports to medical facilities, the event concludes when the employee reaches the transport destination, and the employee is exiting the vehicle.

For transports to other locations, the event concludes when the employee reaches the transport destination, and the subject has been taken into the destination.

At no time is a deputy expected to jeopardize their safety or that of the public in order to activate a BWC system. Deputies suddenly confronted with an unexpected event should react to any potential threats and protect themselves and others before attempting to activate their BWC systems.

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Members should activate the BWC any time the member believes it would be appropriate or valuable to record an incident.

The BWC should be activated in any of the following situations:

- (a) All face-to-face 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 WhatComm
- (d) Any other contact that could reasonably be foreseen to become adversarial, or where video/audio evidence of the interaction might be useful.

Interactions with law enforcement are not private, and recording can continue even when a citizen objects. However, 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. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Members reasonably exercising discretion under this policy will not be subject to discipline for the decision to record or not record those portions of an event.

Unless otherwise prohibited by this policy, employees may initiate recording any time they determine it would be beneficial to capture an event or activity.

No member of this office may record a face-to-face conversation without first announcing that the conversation is being recorded and ensuring the announcement is recorded except pursuant to a warrant, or when the communication is of an emergency nature or relates to communications by a hostage holder or barricaded suspect (RCW 9.73.030).

At no time is a member expected to jeopardize his/her safety or that of the public in order to activate a portable recorder, make a recording announcement, or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

423.6.1 RECORDING PERSONS UNDER ARREST

No member of this office may record a person who is under arrest without first notifying them on the record that they are being recorded, noting the time the recording begins and ends, and capturing the reading of their Miranda warnings (RCW 9.73.090).

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423.6.1 CESSATION OF RECORDING

Best Practice

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.

Circumstances under which employees may deactivate cameras during a contact include, but are not necessarily limited to:

- (a) Conversations with victims, witnesses or other citizens who wish to report criminal activity.
- (b) Discussions with other law enforcement personnel (e.g. exchanging information, tactical planning).
- (c) Encounters with undercover law enforcement officers or confidential informants.
- (d) Prolonged periods of inactivity (e.g. report writing).
- (e) Considering the possible sensitivity of certain situations, employees shall have the discretion to turn off the camera; but in doing so, will provide the reason for such action (e.g. medical facility).

Anytime a deputy turns off the BWC prior to the conclusion of an interaction or contact, the officer shall document the reason for turning off the BWC in his or her police report.

423.6.2 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER

State

Washington law prohibits any individual from surreptitiously recording any conversation, except as provided in RCW 9.73.040, RCW 9.73.090 and RCW 9.73.210.

Members shall not surreptitiously record another office member without a court order unless lawfully authorized by the Sheriff or the authorized designee.

423.6.3 EXPLOSIVE DEVICE

Best Practice

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.

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423.7 PROHIBITED USE OF PORTABLE RECORDERS

Best Practice

Members are prohibited from using office-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 as a result of the performance of official duties, whether the recording was created with an agency-issued or personally owned recorder. Members shall not duplicate or distribute such recordings, except for authorized legitimate office business purposes. All such recordings shall be retained by the Office.

Members are prohibited from using personally owned recording devices for office related activities without the express consent of the Patrol Sergeant. Any member who uses a personally owned recorder for office-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.

423.8 IDENTIFICATION AND PRESERVATION OF RECORDINGS

Best Practice

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

423.9 RETENTION OF RECORDINGS

Best Practice

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule in accordance with the guidance from the Washington Office of The Secretary of State.

423.9.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Best Practice

Requests for the release of audio/video recordings shall be processed in accordance with applicable laws or with specific permission from a command staff member. A member shall be provided at least thirty-six (36) hours advance notice prior to such release, unless specifically mandated by law. Recordings may be released prior to thirty-six (36) hours with the mutual agreement of command staff and the member or the members labor representative.

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423.10 REVIEW OF RECORDED MEDIA FILES

Best Practice

When preparing written reports, members may review recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for additional 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. Deputies may view audit reports for their own digital evidence.

Members are prohibited from accessing the cloud storage site Evidence.com except for official law enforcement purposes, including authorized review as described in this policy. Any member who accesses video in the Evidence.com system should provide a note in the system documenting their reason for video review.

Supervisors shall not review recordings for the purpose of general performance review, for routine preparation of performance reports/evaluations or to discover violations of Sheriff's Office directives without an indication that a specific violation may have occurred.

Recorded files may also be reviewed:

- (a) By any member of the Office, or their legal representatives, who are participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) By a legal or collective bargaining representative who is involved in representing a member in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation.
- (c) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (d) For training purposes with the consent of any involved members.

All recordings should be reviewed by the Custodian of Records prior to public release. 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.

423.11 TRAINING

State

The Administrative Sergeant should ensure that those members issued a portable recorder receive initial training upon issue and periodic training thereafter (RCW 10.109.010).

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423.12 INADVERTENT RECORDINGS

A member may inadvertently/accidentally record themselves, or others, while the BWC is activated. These particular inadvertent/accidental recordings do not meet the statutory definition of a public record as described in RCW 40.14.100 because they are not made in connection with the transaction of public business, and as such may be deleted. A member may have a privacy interest in the content of inadvertent/accidental recordings (e.g. a recording made inside of a member's home).