

Portable Audio/Video Recorders

424.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices to include the surreptitious use of audio/video recorders/monitors by Members of this Department while in the performance of their duties. Portable audio/video recording devices include equipment issued by the Orange County Sheriff's Department or contract partner such as digital recorders, cameras, body wires, key fob recorders, and cellular phones and applications with similar recording functions.

This policy does not apply to mobile audio/video recordings (see Policy 446 Patrol Video System (PVS)) or body worn cameras (see Policy 447 Body Worn Camera).

424.2 POLICY

The Department or contract partner may provide Members with portable recorders, either audio or video or both, for use in the performance of their duties. Members working investigative details may be provided recorders/monitors for surreptitious use. All devices and/or applications shall require approval from the Sheriff or appropriate designee.

The use of recorders and/or monitors is intended to:

1. Accurately capture statements and interactions between Members of the Department and the public, including interviews with suspects, victims, and witnesses
2. Provide evidence for criminal prosecution and improve subsequent courtroom testimony
3. Assess allegations of Departmental wrongdoing
4. Provide evidence during civil litigation
5. Enhance officer safety and the safety of informants
6. Increase report writing proficiency

Use of personally owned portable audio/video recording devices or camera, including a personal cell phone, absent critical evidentiary issues, is prohibited. In a critical situation with an urgency to collect/document evidence which may dissipate or otherwise be destroyed, a Member may use a device other than what is Department-issued. The supervisor should be advised as soon as possible and the necessity thoroughly documented in a report.

424.3 MEMBER PRIVACY EXPECTATION

All recordings made by Members acting in their official capacity as Members of this Department are the property of the Department and should not be considered private, regardless of whether

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those recordings were made with Department-issued or personally owned devices. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

Any device, regardless of whether it is Department-issued or personally owned, used for recording, documenting, or photographing in an official capacity may be subject to a discovery request, subpoena, or Public Records Act request.

424.4 MEMBER RESPONSIBILITIES

Members using a portable recording device should make sure it is in good working order. Any portable recording device should also produce universally accepted audio/video files and not be proprietary to the device.

When using a recorder, the Member should, when possible, verbally record his/her name, Member number, case number if applicable, and the current date and time at the beginning or the end of the period of use (i.e. interview, activity, etc.). 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. Recordings and/or photographs are to be booked in accordance with Policy 802. Under extenuating circumstances, a supervisor may authorize a Member to maintain their recordings and/or photographs on personal devices until such time when the file(s) can be converted to a data storage device (i.e. flash drive, hard drive, cd/dvd rom) for evidence/booking purposes.

Members shall document the existence of a recording (audio or visual) in any report, daily log, 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. After recordings and/or photographs of evidentiary or investigative value are transferred out of the recording device and onto a "data storage device", the Member shall document the removal of the media from the original device.

424.5 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. Members should activate the recorder any time the Member believes it would be appropriate or valuable to record an incident.

The following situations are examples of activities where a portable recording may be useful:

1. All enforcement and investigative contacts including stops and field interview (FI) situations
2. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
3. Self-initiated activity in which a Member would normally notify dispatch
4. Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

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The following situations are examples of activities where the surreptitious use of a recording/monitoring device may be useful:

1. Criminal investigations utilizing undercover investigators and/or testifying informants
2. VICE operations such as illicit massage parlor investigations, prostitution stings and "John" Operations
3. Murder for hire investigations
4. Any other investigation where covert recording/monitoring would increase officer safety or assist in successful prosecution

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 it is safe to do so.

424.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

1. Penal Code 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief that the conversation was private or confidential. Penal Code 633 provides a law enforcement exception to the normal prohibition against surreptitious recording of certain conversations. This includes the Sheriff, Undersheriff, Deputy Sheriffs, or any other person acting pursuant to the direction of one of these law enforcement officers. However, this exception does not ordinarily cover non-sworn personnel, unless the Member is acting at the direction of a Deputy Sheriff during the course of a criminal investigation, with supervisor approval. Accordingly:
 - (a) **Non-sworn personnel** wearing a conspicuously mounted recording device, or using a recording device that is reasonably recognizable as a recording device, may record any member of the public without notice in a public setting where there is no objectively reasonable expectation of privacy, such as in the public area of a business or outside of a residence front door (i.e. while taking a traffic collision report).
 - (b) If **non-sworn personnel** have a citizen contact in a private area of a business or residence, the Member **shall** notify the other party that the conversation is about to be recorded, unless the Member is acting at the direction of a Deputy Sheriff to surreptitiously record the conversation, with supervisor approval. If the Member was acting at the direction of a Deputy Sheriff, this shall be documented in a Department Report (DR) or daily log.
2. **Non-sworn personnel** shall not record a person in a private or confidential setting if the person objects after notification and the objection shall be documented in their DR or daily log.
3. No Member of the Department may surreptitiously record/monitor a conversation of any other Member of this Department without the expressed knowledge and consent of all other parties. This prohibition does not apply to any criminal investigation involving said Departmental Member.

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424.5.2 CESSATION OF RECORDING

Once activated, the portable recorder/monitor 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.

Members shall document any instance where the recorder malfunctioned or the Member deactivated the recording. Members should include the reason for the deactivation.

424.5.3 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.

424.6 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using Department-issued or personally owned portable recorders and recording media for personal use. Any Member who uses a Department-issued or personally owned recorder for Department-related activities shall comply with the provisions of this policy, including retention and release requirements. Any Member who may have questions regarding the application of this policy is encouraged to seek clarification from supervisory personnel.

424.7 RETENTION OF RECORDINGS

Any time a Department Member submits any portion of a contact that he/she reasonably believes constitutes evidence in a criminal case, the Member shall document the date and time, location and associated case number (if known).

The entire recording of the contact shall be converted to disc format, submitted into evidence in accordance with Policy 802 and the existence of the disc shall be documented in the related case report number. If the recordings are completed within one shift in their entirety, this procedure shall be done at the end of each shift. In investigations where the conversation and recordings have a potential to span over multiple days, this procedure shall be done at the conclusion of the conversation in its entirety for continuity purposes with supervisor approval.

Once the evidentiary material has been transferred from the device used by the Member and the evidence has been booked into the Sheriff's Property/Evidence Bureau, the device's memory shall be cleared of the evidentiary material.

Any time a Member reasonably believes a recorded contact may be beneficial in a non-criminal matter (i.e. a hostile contact), the Member should request a DR number for an information report, convert the file to disc format, and submit it into evidence under the associated case report.

424.7.1 RETENTION REQUIREMENTS

All recordings submitted into evidence shall be retained for a minimum of two years (per approved Board of Supervisors Retention and Disposition Schedule) unless the recordings are evidence in any claim, civil litigation, or criminal case.

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If a notice of a "litigation hold" is issued by Risk Management, County Counsel, or otherwise, any recording related to a claim or lawsuit and/or subject to litigation hold shall be retained and/or copy provided at the direction of Risk Management.

424.8 REVIEW OF RECORDINGS

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 use the recording as a substitute for their own perceptions and observations. When writing a report, Members shall indicate, in their report, that a recording of the incident exists and that the recording was reviewed prior to the report being written.

Review of recordings by a supervisor without a specific reason to do so is prohibited. Specific reasons to review recordings may include but are not limited to commendations, training, the investigation of complaints, reasonable concern for unprofessional conduct, quality assurance, and the review of critical incidents.

Recorded files may also be reviewed:

1. 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, or criminal investigation.
2. Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
3. By media personnel with permission of the Sheriff or the Sheriff's authorized designee.
4. In compliance with a public records act request, if permitted, and in accordance with the Records Maintenance and Release Policy.

424.9 RELEASE OF RECORDINGS

Recordings made using portable recording devices pursuant to this policy are Department records and may only be released as provided by the California Public Records Act or pursuant to a court order, District Attorney's discovery request or proper subpoena, or for other authorized legitimate Department business purposes.