

Portable Audio/Video Recorders (Body Worn Cameras)

427.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members 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 Sterling Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

427.1.1 DEFINITIONS

Definitions related to this policy include:

Portable recorder - Any compact device used for the recording of audio or audio and video data to include body worn cameras

Enforcement- Any action or statement made by a law enforcement officer that utilizes their sworn authority to instruct, order, detain, frisk, arrest, search and/or use any type of force against an individual(s).

427.2 POLICY

The Sterling Police Department should 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 Department by accurately capturing contacts between members of the Department and the public (CRS § 24-31-902).

427.3 MEMBER PRIVACY EXPECTATION

All recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity, 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.

427.4 ACTIVATION OF THE AUDIO/VIDEO 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. It is understood that not all situations will clearly start out as necessitating documentation by the portable recorder nor will all recorded events have a clear ending for when the recorder is no longer required. Officers are expected to follow departmental policy and procedure, utilizing ethical and legal discretion as well as good judgment when activating or deactivating the recorder. Members should activate their recorder at the initiation of any encounter between the officer and a member(s) of the public

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where there is potential for enforcement and/or criminal investigation and/or any time the member believes it would be appropriate or valuable to record an incident.

The Sterling Police Department recognizes there are certain circumstances where officers in a proactive (non-dispatched) capacity may become involved in a situation requiring immediate action to prevent injury, make an arrest and/or prevent the destruction of evidence or escape. 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 will be activated at the first opportunity after the immediate threat or concern has been addressed.

Required Activation:

All officers will place the portable recorder in event mode after being dispatched and prior to arriving to the following calls for service and prior to any officer initiated contacts involving actual or potential violations of the law including:

- (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 an officer would normally notify Sterling Emergency Communication Center
- (d) Reported weapons call
- (e) All calls involving suicidal individuals
- (f) When engaging in a foot chase (if the portable recorder was not placed in event mode [for body camera] prior to the foot chase), officers are required to do so as soon as the situation has stabilized and is safe to do so.
- (g) When engaging in forced entry
- (h) To assist in documenting warrantless consensual searches of individuals, vehicles, building or other places
 - The portable recorder will be utilized to record the request for consent. This recording is intended to enhance a documented consent; it is not intended to replace the use of the Consent to Search Form.
 - The existence of the recorded request will be documented in the officer's statement/report.
 - The recorder can be used to record the search.
- (i) To assist in documenting an individual's Miranda Advisement
 - The portable recorder will be utilized to record the advisement and the subject's responses when practical. This recording is intended to enhance a documented consent. It is not intended to replace the use of any advisement waiver forms.
- (j) All arrests and/or citations

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(k) Any situation that the officer believes the use of the portable recorder would be appropriate and would provide valuable documentation if not already activated per policy

(l) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Additional arriving officers that are equipped with a portable recording device will activate their recorder and begin recording the situation upon their arrival until the enforcement members leaves the scene and as required by this policy.

If an officer fails to activate their portable recorder (Body Worn Camera), fails to record the entire contact, or interrupts the recording, the officer shall document why the recording was not made, interrupted or terminated. Appropriate disciplinary action shall be taken against any officer who is found to have intentionally failed to adhere to the recording or retention requirements contained in this policy, or to have intentionally interfered with a recorder's ability to accurately capture video footage. Officers who repeatedly fail to activate their recorder or displays a pattern of not activating or recording the entire contact may be subject to discipline as well.

Citizen Privacy:

(1) 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. 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.

(2) During consensual encounters in locations where members of the public have a reasonable expectation of privacy, such as a residence, the member should, as soon as feasible, ask the subject if they want the member to discontinue recording. If the subject responds affirmatively, the members should immediately discontinue use of the portable recorder. (Recording made pursuant to an arrest or search of the residence of person(s) is not considered a consensual encounter for the purposes of this policy. The portable recorder should remain activated until the event is completed in order to ensure the integrity of the recording.)

(3) When interacting with an apparent victim of a sensitive persons crime, such as sexual assault or domestic violence, the member should, as soon as feasible, ask the apparent crime victim if they want the member to discontinue recording. If the victim responds affirmatively, the member should immediately discontinue use of the recorder unless the law enforcement officer believes it is necessary to continue recording the event for the officer's safety, the safety of others, or to insure an accurate account of the event, and the officer acknowledges the need for respect, dignity and fairness toward the victim as provided in the Colorado Victim's Rights Act.

(4) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a member should, as soon as feasible, ask the person seeking to remain anonymous, if they would like to remain anonymous and would like the member

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to discontinue recording. If the person responds affirmatively, the member should immediately discontinue use of the portable recorder unless the law enforcement officer believes it is necessary to continue recording the event for the officer's safety, the safety of others, or to insure an accurate account of the event.

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.

427.4.1 INTERCEPTION OF COMMUNICATIONS

An Officer may use an audio recorder to intercept wire or oral communications in compliance with a court order or pursuant to Colorado wiretapping and eavesdropping laws (CRS § 16-15-102, CRS § 18-9-303, CRS § 18-9-304). Upon expiration of the order, the officer designated in the court order shall provide the issuing judge all documents and other information pertaining to the communications pursuant to the order or as required by law. Intercepted communications shall be maintained in their entirety, without editing or alterations, and not destroyed without a judge's order.

427.4.2 EMERGENCY INTERCEPTION OF COMMUNICATIONS

An officer may conduct an emergency interception of wire or oral communications if (CRS § 16-15-102(18)(a) and CRS § 18-9-312):

- (a) The officer has been specially designated by the Attorney General or District Attorney.
- (b) The period of interception does not exceed 24 hours.
- (c) The officer reasonably determines that an emergency situation exists that involves immediate danger of death or serious physical injury to any person that requires a communication be intercepted.
- (d) Grounds to issue a warrant exist.
- (e) Written application for the warrant is submitted within 24 hours.

427.4.3 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER

Colorado law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (CRS § 18-9-303).

Members 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 unless lawfully authorized by the Chief of Police or the authorized designee.

427.4.4 CESSATION OF RECORDING

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

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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.

Deliberative process conversations involving law enforcement, which are not participated in by citizens, which include but are not limited to discussions on charging decisions, comparing witness accounts, administrative, and tactical/management should not be recorded. **For this type of circumstance, muting is preferred over cessation in order to maintain continuity in the recording.**

If an officer is on a perimeter post or assigned to a static post where he/she is not in contact with citizens, involved in an enforcement action or actively part of the investigation, then he/she may deactivate the recorder to conserve battery life. The recorder will be activated if any of these fail to apply.

The recorder should be turned off if there is personal information being shared that is not case sensitive, such as victim family information/discussion, protected personal information, or personal medical information.

Officers will document the reason that the portable recorder has been deactivated in the form of a recorded announcement on the recorder prior to deactivation and in the officer's written report.

427.4.5 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.

427.4.6 EXAMPLES

The recorder should be deactivated when any of the following apply:

- (a) When a crime victim requests not to be recorded
- (b) In situations where medical or patient privacy is warranted
- (c) When on the premises of any public or private elementary or secondary school, unless the member is responding to an imminent threat to life or health where there is potential for enforcement or criminal investigation
- (d) When an individual requests to remain anonymous or is a confidential informant
- (e) When personal information is being relayed that is not case related
- (f) When discussing administrative, tactical or management issues

427.5 PROHIBITED USE OF PORTABLE RECORDERS AND/OR STORED MEDIA

a. Officers will only use a portable recorder (BWC) that has been approved and issued by the Sterling Police Department. The use of personal recorders is prohibited.

b. 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 their official capacity.

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c. 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 audio, images and media associated with the portable recorder are the property of the Sterling Police Department and these items are not to be edited, altered, erased, copied, released or disseminated in any form or manner outside the parameters of this policy without the expressed written consent of the Chief of Police. Under no circumstances will any employee of the Sterling Police Department make a personal copy of any recorded event without the written consent of the Chief of Police (e.g. using a cellular telephone or other recording device to record portable recording device media). All such recordings shall be retained at the Department.

d. Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

e. The portable recorder will not be activated in places where a reasonable expectation of privacy exists (such as detox, medical, and/or other healthcare facilities, locker rooms or restrooms, ect.) unless the activation is for the purpose of official law enforcement activity such as a call for service or if the activation is required by policy. Officers will only use the recorder in patient care areas of a healthcare facility and/or ambulances when the recording is for official purposes and caution should be used to record only the parties involved in the event being investigated. Officers shall not record patients during medical or psychological evaluations by a clinician or similar professional, or during treatment.

f. The portable recorder should not be activated on the grounds of any public, private or parochial elementary or secondary school, except for the following exceptions:

1. during times when all parties being visibly or audibly recorded are in a private room with consent for such recording;

2. while affecting an arrest;

3. while controlling a person through response to resistance techniques; or

4. while in direct physical control of a restrained person;

5. when responding to an imminent threat to life or health where there is a potential for enforcement and/or criminal investigation or

6. any other circumstances that are extraordinary.

g. Officers are not authorized to playback portable recorder media for citizen viewing.

h. Portable recorders shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between an officer of this agency and a member of the public.

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i. The illegal clandestine audio recording of a private conversation is prohibited by law as described by state wiretapping and eavesdropping statutes.

j. The Department shall not utilize any biometric technology, such as facial recognition, to conduct searches of video files. Stored video and audio data from a BWC shall not:

1. Be used to create a database or pool of mug shots;
2. Be used as fillers in photo arrays; or
3. Be searched using facial recognition software.

Exception: This subsection does not prohibit the members from using a recognition software to analyze the recording of a particular incident when a member has reason to believe that a specific suspect or person in need of assistance may be subject of a particular recording. The exception must be approved by a division commander.

k. The TASER® Axon View application is prohibited from being downloaded to any smart device, whether personally or department owned.

427.6 TRANSFER, RELEASE AND DATA STORAGE OF RECORDINGS

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files and document the existence of the recording in the related case report. Transfers should occur at the end of the member's shift, or any time the storage capacity is nearing its limit.

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

Access to all portable recorder stored media will be restricted to authorized users and the viewing of any recorder footage will be restricted to legitimate law enforcement or administrative purposes. Any request for recorder media made from outside the Sterling Police Department will comply with records disclosure and management policies of this department and Colorado's Criminal Justice Records statutes. Only members approved by the Chief of Police will be able to access general videos and disseminate files for legitimate law enforcement purposes.

Any third-parties acting as an agent in maintaining recorded footage shall not be permitted to independently access, view or alter video footage, except to delete videos as required by law or this agency's retention policies.

While it is the goal of this policy to support and promote openness in government by releasing nonconfidential video recording to the public upon request, this policy must also ensure that the privacy of victims, witnesses and suspects is maintained whenever feasible. Recorder video footage should not be divulged or used for any commercial or other non-law enforcement purpose. This policy will not affect the release of recording pursuant to a court order or subpoena.

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Nothing in this policy shall be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations or prosecutions.

Data gathered by a recorder may be used and shared with the District Attorney's office or other law enforcement agencies only as permitted by law.

All access to portable recorder data must be specifically authorized by the Chief of Police or his/her designee.

427.7 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for 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.

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 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.
- (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.

427.8 PROCEDURES FOR PORTABLE RECORDER USE AND OFFICER RESPONSIBILITIES

Portable recording equipment (Body Camera) is issued primarily to uniformed personnel as authorized by this agency. Only members with enforcement authority are permitted to wear portable recorders. Members who are assigned a portable recorder are required to use the equipment unless otherwise authorized by supervisory personnel.

a. Officers are responsible for the care and maintenance of the portable recorder assigned to them. The recorder is to be operated and maintained according to the manufacturer's instructions and recommendations. If an officer has recorder equipment that is not functioning or appears to be

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damaged/broken, they will immediately notify their supervisor, document and obtain a functioning device as soon as practicable. If a device is not available, that will be documented as well.

b. Portable recorders (BWC) should be worn in a location and manner that maximizes the camera's ability to capture video footage of the enforcement member's activities and a location that has been approved by the department

c. In order to record all situations required by this policy, the officer must maintain the recorder in a constant state of operational readiness. Operational readiness means that the recorder has adequate battery life/available storage, remains properly affixed to the officer's uniform and is set to BUFFERING mode.

d. Officers will document the use of the recorder within reports, citations, arrest booking sheets and any other appropriate location.

e. Officers are not required to notify the public that they are being recorded (exception: See 427.4 of this policy) . Officers have the discretion to advise citizens they are being recorded based on the circumstances of the situation. If asked, officers shall advise citizens they are being recorded.

f. Officers will transfer and store files in accordance with current procedure and in accordance with 427.6adn 427.6.1 of this policy.

h. Nothing in this policy requires portable recorders to be worn during assignments that may be compromised by their presence. These include, but are not limited to, plains clothes or undercoverduties.

i. Whenever a member believes that a recorded contact may lead to a complaint, they should bring the recording to the attention of their supervisor as soon as practical.

j. Enforcement members engaging in off-duty/secondary duty assignments shall adhere to this policy while fulfilling such obligation in any capacity for the Department.

427.9 AUDITING

A. BWC will be audited by a designated supervisor on a periodic basis. Documented audits should be completed on the most recently available devices and by selecting downloads at random. These audits will focus on the following areas:

- 1.customer service;
- 2.training;
- 3.lighting issues (primarily for traffic stops made at night);
- 4.enforcement member's articulation for the audio (ie; advising on the BWC why turning off camera, ect.)'
- 5.enforcement member safety issues;
- 6.any other issue that could result in generating a citizen complaint, a hindrance to prosection or liability for the enforcement member or this Department and;

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7. the proper use of the body cam and how it is being used effectively in capturing valuable video/ audio in the performance of the officers duties.

B. The designated auditing supervisor shall keep a log documenting findings during the device auditing.

427.10 TRAINING REQUIREMENTS

Enforcement members and supervisors will be provided adequate training in the use of BWC devices prior to being allowed to use the equipment.

427.11 RETENTION OF RECORDINGS

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 (CRS § 24-31-902).

Data gathered by the recorder shall be retained and stored by this Department or an authorized third-party for a minimum of one (1) year from the date of creation however shall not exceed three (3) years unless it has evidentiary or exculpatory value in a criminal or civil action. In those circumstances, the applicable data should be downloaded from the server and booked into Evidence and will be retained following the City of Sterling Retention Schedule.

Data gathered by the recorder shall be retained and stored by this Department for a minimum of three (3) years if the video footage captures images involving:

- 1) any use of force
- 2) events leading up to and including an arrest for a felony-level offense, or events that constitute a felony-level offense; or
- 3) an encounter about which a complaint has been registered by a subject of the video footage;
- 4) or any other video footage determined to have evidentiary or exculpatory value in a criminal or civil action.

Data gathered by the recorder shall be retained and stored by this Department for a minimum of three (3) years if a longer retention period is voluntarily requested by:

- 1) an enforcement member, if the video footage is being retained solely and exclusively for Department training purposes;
- 2) any member of the public who is a subject of the video footage;
- 3) any parent or legal guardian of a minor who is the subject of the video footage;
- 4) a deceased person's next of kin or legally authorized designee.

Any member of the public, parent or legal guardian of a minor, or deceased subject's next of kin or legally authorized designee who is a subject of video footage, shall be permitted to review that specific video footage in order to make a determination as to whether they will voluntarily request it to be subject to a three (3) year retention period.

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In the event of an unintentional activation of the recorder during a nonenforcement or non investigative activity, including but not limited to, restroom, meal break, or other areas where a reasonable expectation of privacy exists, officers may request the recording to be deleted. A memorandum detailing the circumstances of the unintentional recording will be forwarded via chain of command to the Chief of Police. If approved, the actual deletion requires two-party authorization. One of these will be the Chief of Police or designee and the other party will be the Support Services Commander.

427.11.1 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.

427.12 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.