

## Body Worn Cameras and Audio Recorders

### 423.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of body worn cameras (BWC) and 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 (Wis. Stat. § 165.87).

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

### 423.2 POLICY

The Hobart-Lawrence Police Department 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 Department by accurately capturing contacts between members of the Department and the public.

### 423.3 COORDINATOR

The Chief of Police or the authorized designee should designate a coordinator responsible for (Wis. Stat. § 165.87):

- (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 Training Officer to provide training on this policy to:
  1. Officers who are authorized to use portable audio/video recorders.
  2. Members of the Department who use, maintain, store, or are responsible for the release of records and recordings.
- (f) Periodically reviewing the Department's practices relating to the use, maintenance, and storage of body cameras and data to confirm compliance with this policy.
- (g) Ensuring this policy is available to the public on the Department's website.

### 423.4 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 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.

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#### **423.5 MEMBER RESPONSIBILITIES**

Prior to going into service, each officer will be responsible for making sure that he/she is equipped with a BWC issued by the Department, and that the recorder is in good working order. To function check the BWC and ensure it is in good working order, the officer is to periodically check of the following:

- Video recording
- Audio Recording
- Accurate time/date and other information on the display
- Pre-shift function checks shall be classified as "non-evidentiary" video
- Throughout the officer's shift or at the end of the officer's shift, recorded video files shall be given a classification code and the officer should ensure the auto labeling process assigned the appropriate corresponding incident number
- Activity not requiring an assigned incident number shall be classified with an appropriate code (ie. non-evidentiary, training, etc.)
- At the end of the officer's shift, the officer shall return the body worn camera to the evidence.com dock to upload the digitally encrypted data to the web-based storage facility and recharge the battery. Officers are responsible for ensuring the BWC is functioning with a GREEN battery status

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.

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.

#### **423.6 ACTIVATION OF BODY WORN CAMERA AND AUDIO RECORDERS**

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.

BWC'S shall be placed in buffering mode at all times during an officer's shift unless the officer is inside the locker room or restroom, or during confidential discussion with a supervisor. When in

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buffering mode, BWC'S will be automatically activated when an officer's handgun from any holster equipped with an activation sensor is drawn. This automated response will also activate the BWC of each officer within close proximity to the officer who has drawn his or her handgun, if the body worn camera is in buffering mode.

Members should activate the recorder 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 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 Communications Center
- (d) Courtesy transports
- (e) Prisoner transports
- (f) Motor vehicle accidents
- (g) All emergency vehicle operations
- (h) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Officers may activate their BWC at their discretion for other types of incidents the officer believes should be recorded. Officers are encouraged to activate the system for any citizen contact and suspicious or unexplained circumstances.

Circumstances with a BWC may not be used include, but are not limited to:

- Officer safety prohibits due to a sudden assault or unexpected altercation
- Speaking with an informant or community member providing information who request deactivation of recorder prior to providing information
- A health care provider is discussing medical issues with a patient
- While in the hospital waiting for a person in custody to be medically cleared unless their behavior dictates the need for continued activation of the recorder
- While debriefing with other officers regarding specific details or tactics on a call for service
- When developing a tactical plan or creating a safety plan for a victim
- Any other incident where the officer can articulate the necessity and totality of the circumstances that led to not activating the recorder

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

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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.

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.

#### **423.6.1 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 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 or as outlined in the *Activation of Body Camera and Audio Recorders* section noted above.

The BWC can be placed into the buffering mode when the officers is reasonably certain nothing of significance would be recorded. Officers shall reactivate their BWC if the situation changes and evidence might be captured on video.

Should officers find it necessary to mute the audio portion of the recording, they shall state on camera prior to muting the audio the reason for doing so.

#### **423.6.2 SURREPTITIOUS USE OF THE PORTABLE RECORDER**

Wisconsin law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Wis. Stat. § 968.31(2)(b)).

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.

#### **423.6.3 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.

#### **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 their 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

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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 or OIC. Any member 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 member for the purpose of embarrassment, harassment or ridicule.

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

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.

A member should 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 health information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.
- (g) The recording or portions of the recording may be protected under the Public Records Law (Wis. Stat. § 19.31 et seq.).

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.

#### **423.9 RETENTION OF RECORDINGS**

All recordings shall be retained for a period consistent with the requirements of the established records retention schedule but in no event for a period less than 120 days (Wis. Stat. § 165.87).

##### **423.9.1 EXCEPTIONS TO RETENTION REQUIREMENTS FOR BODY-WORN CAMERAS**

Exceptions to the 120-day retention period for body-worn cameras are as follows (Wis. Stat. § 165.87):

- (a) Recordings should be retained until the final disposition of any investigation, case, or complaint to which the recordings pertain to any of the following:

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1. Death or actual or alleged physical injury to any person in the recording
  2. An encounter resulting in custodial arrest
  3. A search during a temporary detention pursuant to Wis. Stat. § 968.25
  4. An encounter resulting in the use of force except when the only use of force involves the use of a firearm to euthanize an injured wild animal
- (b) Recordings used in any criminal, civil, or administrative proceeding may not be destroyed except upon a final disposition from the court or hearing officer after a determination the recordings are no longer needed, or by an order from the court or hearing officer.
- (c) Recordings may be retained for a period beyond 120 days if a request or directive to preserve the recordings is made before the expiration of that time period by an officer from this department or another law enforcement agency, member of a board of fire and police commission, prosecutor, defendant, or a court.

#### 423.9.2 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.

#### **423.10 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 (Wis. Stat. § 165.87(3)).

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#### **423.11 ADMINISTRATIVE APPLICATIONS OF DIGITAL VIDEO**

Supervisors may review videos depicting performance by their assigned officers, with emphasis on reviewing recordings of pursuits, use of force incidents, consent searches, and citizen complaints, for the purpose of:

- Assessing officer performance and safety;
- Determining whether the equipment is functioning and being used in accordance with policy;
- Identifying video that may have training value.

Video that contains material deemed beneficial for training purposes may be used for that purpose with the approval of the Captain.

- Officers may notify a supervisor when they are aware of a video that may be appropriate of training.
- Under no circumstances shall a recording be used or shown for the purpose of ridicule or embarrassing the employee.