
Portable Audio/Video Recorders

421.1 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 Fresno State Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

421.2 POLICY

The Fresno State 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.

421.3 COORDINATOR

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

421.4 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 for 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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421.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is 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 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 working a non-uniformed assignment and/or duties shall carry an approved BWC at any time such a device may be necessary in an official capacity. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members shall wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

In certain situations, where police tactics or confidentiality may jeopardize officer safety or case sensitive information, activations of the BWC may not be warranted. The reason as to why a recording was paused or not made at all is to be documented in the police report.

When using a portable recorder, the assigned member shall record his/her name, CSU identification number and the current date and time at the beginning and the end of the 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.

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.

421.5.1 SUPERVISOR RESPONSIBILITIES

Supervisors should take custody of a portable audio/video 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).

421.6 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 portable recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations

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

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.

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.

421.6.1 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.

Members 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).

421.6.2 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Members of the Department 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 (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee. Nothing in this section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code section 3303(g).

421.6.3 LIVE STREAMING & GPS LOCATION

When an officer is not responding to radio requests, phone contact or unable to provide their location, authorized personnel may access the GPS location function. If GPS signal is not available, authorized personnel may access the live streaming function.

The circumstances where personnel who are authorized to access either the live streaming or GPS location function include:

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- When responding to or engaged in an active shooter incident
- At a member's request
- While assigned to First Amendment activities, protest activities, or an incident declared to be an unlawful assembly or riot
- When a device is lost, or has been stolen

For operational and tactical decision making during events, such as sporting events or on campus concerts, that require coordination of multiple units Authorized users of the live streaming or GPS functions shall not access a member's BWC for purposes not related to the above mentioned functions. When practicable, notice to the officer shall be given prior to remote activation of a PAV device. Remote activation shall be documented in an appropriate manner.

421.6.4 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.

421.7 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 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 Watch Commander. 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.

421.8 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.

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- (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.

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.

421.9 RETENTION OF RECORDINGS

Recordings of the following should be retained for a minimum of two years (Penal Code § 832.18):

- (a) Incidents involving use of force by an officer
- (b) Officer-involved shootings
- (c) Incidents that lead to the detention or arrest of an individual
- (d) Recordings relevant to a formal or informal complaint against an officer or the CSU Police Department

Recordings containing evidence that may be relevant to a criminal prosecution should be retained for any additional period required by law for other evidence relevant to a criminal prosecution (Penal Code § 832.18).

All other recordings should 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.

Records or logs of access and deletion of recordings should be retained permanently (Penal Code § 832.18).

421.9.1 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.

421.10 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.

Recorded files may also be reviewed:

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- (a) By any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation, or the assessment of a concern expressed by a member of the public that could be addressed in the course of regular supervision.
- (b) By any member of the department who is assigned to assess or review performance during a probationary Field Training Program, or as part of a Performance Improvement Program.
- (c) By command staff five recording per officer may be selected each month and reviewed. Any system deficiencies will be documented and remedied. Any performance issue will be addressed as appropriate. Violations of policy will be reviewed using the campus' procedures for conducting Internal Affairs Investigations. Command Staff shall be notified and the campus' procedures for conducting Internal Affairs Investigations will guide the review. It is not the intent of the Department to review recordings for the purpose of normal preparation of performance reviews, or to proactively discover policy violations. Supervisors who inadvertently discover minor, non-criminal policy violations will continue to have discretion to resolve the violation with training or informal counseling. Should the policy violation rise to the level of more formal discipline, the supervisor will adhere to policy and law.

Video and/or audio recordings may be played for the purposes of training with written approval from the Chief of Police or his/her designee. If an involved officer objects to the playing of an audio/video recording, his or her objection will be submitted to the Chief of Police or his/her designee to determine if the training value outweighs the officer's objection to have others review the audio/video file.

Command staff retains the authority to audit the storage system at random in order to ensure authorized users are accessing the data for legitimate and authorized purposes.

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.

421.11 TRAINING PROGRAMS

Police personnel who are assigned BWCs shall complete a training program to ensure proper use and operations of the equipment prior to deployment in field operations. Future training may be periodically required to ensure the continued effective use and operation of the equipment, proper calibration, performance, and to incorporate changes, updates, or other revisions in policy and equipment.

421.12 FINANCIAL RESPONSIBILITY

On-duty uniformed officers shall not be held financially responsible for damaged, broken or inoperable BWC equipment unless the equipment is intentionally damaged or broken. Any equipment malfunctions shall be brought to the attention of the officer's on-duty supervisor via

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a memorandum outlining the circumstances that led to the affected BWC so a replacement unit may be procured.

421.13 NEGOTIATED BODY WORN CAMERAS

SUPA acknowledges that the campuses have managerial prerogative with regard to the type of body cameras they can purchase. SUPA is not waiving its rights to meet and confer with individual campuses regarding the technological abilities of those cameras. During the meet and confer process, the parties discussed SUPA's desire to meet and confer about how the administration intends to use certain technological abilities (i.e., remote activation of body cameras by the administration) as it relates to SUPA members' working conditions and potential discipline.

SUPA, however, agrees that use of the following Body Worn Camera (BWC) equipment is hereby approved and does not require additional notice to the union:

- (a) **Firearm:** Automatic activation of BWC when police officer draws their firearm from the police officer's holster. The automatic activation may include activation of all police officers' BWCs within the area of approximately 30-50 feet from the officer who manually activated their firearm.
- (b) **Taser:** Automatic activation of BWC upon the manual activation of the Taser. The automatic activation may include activation of all police officers' BWCs within the area of approximately 30-50 feet from the officer who manually activated their taser.
- (c) **Patrol Vehicle's Light Bar:** Automatic activation of BWC upon the activation of a patrol vehicle's light bar. The automatic activation may include activation of all police officers' BWCs within the area of approximately 30-50 feet from the patrol vehicle whose light bar was activated.
- (d) **Patrol Vehicle's Rear Door Opening:** Automatic activation of BWC upon the opening of a patrol vehicle rear door(s). The automatic activation may include activation of all police officers' BWCs within the area of approximately 30-50 feet from the patrol vehicle whose rear door is opened.