

Portable Audio/Video Recorders

424.1 PURPOSE AND SCOPE

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. 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 Schoharie County Sheriff's Office facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

424.2 POLICY

The Schoharie County Sheriff's Office will 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 accurately capturing contacts between members of the Office and the public, to enhance Deputy and Investigator's safety and ability to document and review statements and actions for both internal reporting requirements and for courtroom presentation, to provide an impartial measurement for self-critique and field evaluation for new deputy training, to capture visual and audio information for use in current and future investigations and most importantly, to enhance the public trust by preserving factual representation of Deputy/ Investigator interactions with the public in the form of audio and video recordings.

424.3 COORDINATOR

The Sheriff or authorized designee(s) 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.

424.4 MEMBER PRIVACY EXPECTATION

All recordings made by members on any office-issued device at any time, and any recording made while acting in an official capacity of this office, regardless of ownership of the device it was made on, shall remain the property of the Office. Members shall have no expectation of privacy or ownership interest in the content of recordings of a member conducting their official duties.

424.5 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 Office, and that the recorder is in good working order. If the recorder is not in working order or if 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

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device as soon as reasonably practicable. Members shall promptly report any lost, damaged or missing part of any recording system to their supervisor and will subsequently document such issue in memo form.

Any member assigned to a non-uniformed position should 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.

Members shall document in any report or other official record of the contact, any instance where the recorder malfunctioned.. If a member deactivates the recording device for reasons other than routine and allowable reasons (i.e. report preparation, return to vehicle for information or other break from direct participation in the event), Members shall include the reason for de-activation.

424.6 ACTIVATION OF THE AUDIO/VIDEO RECORDER

This policy is not intended to describe every possible situation in which the 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 recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview 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 deputy would normally notify Dispatch.
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

Members will avoid recording a child victim of any sex offense. in the event that a report of a sexual offense is disclosed following a Deputy or Investigator initiating video recording, every effort should be made to discontinue the recording promptly.

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. The Office recognizes that there will be times when, due to the nature of law enforcement work, exigent circumstances prevent the member from activation the recording system. In such instances the reason for not activating the recording system shall be documented in any report of the incident.

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Recording systems will not generally be used to record courtroom testimony. This does not apply to members assigned as court security or to members engaged in transportation of inmates or arrested subjects to court appearances.

424.6.1 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until his/her direct participation in the incident is complete. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident. Any time the scene will be further documented by photographs and Evidence Technician(s) will be responding to do so (i.e. death investigations, burglaries, etc.) recording device may be deactivated upon the arrival of the investigator and/or evidence technician. Any such discontinuation of recording shall be documented in any report the member makes of the incident.

424.6.2 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER

New York law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission. 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.

424.6.3 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.

424.7 PROHIBITED USE OF PORTABLE RECORDERS

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 an official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with office-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate office business purposes. All such recordings shall be retained at the Office.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Sheriff. 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 shall notify their supervisor prior to such use..

Recordings shall not be used by any member for the purpose of embarrassment, harassment or ridicule. This does not preclude recordings from being used for training purposes.

Recording systems should not be intentionally used to record personal activities, if such a recording is inadvertently made it shall be the responsibility of the Office to ensure that those such portions of any recording not be released in any fashion either publicly or for courtroom purposes.

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Recording systems shall not be intentionally activated to record conversations of/with fellow employees without their knowledge during routine, non-law enforcement related activities.

424.8 IDENTIFICATION AND PRESERVATION OF RECORDINGS

Members should, at least once per shift, place the recording system into the docking station to allow the transfer of data onto the storage server.

To assist with identifying and preserving data and recordings, members shall complete a "Pull Request Form" for any incident in which recordings are routinely requested or produced (issuance of a UTT, Appearance Ticket or other arrest is made) and place the form in a designated file in accordance with current procedure and document the existence of the recording in any related case report.

A member should complete a "Pull Request Form" 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.

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.

A 710.30 Notice shall be prepared or the District Attorney's Office shall be notified if a member intends to use any of the defendant's recorded statements or actions as evidence against them.

424.9 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 180 days.

424.9.1 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.

424.10 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.

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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 a member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Office 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 Sheriff 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 Records Access Officer 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 (Public Officers Law § 89).