

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 office while in the performance of their duties (Minn. Stat. § 626.8473). 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 Beltrami County Sheriff's Office facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

421.1.1 DEFINITIONS

Definitions related to this policy include:

Portable recording system - A device worn by a member that is capable of both video and audio recording of the member's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and as provided in Minn. Stat. § 13.825.

421.2 POLICY

The Beltrami County Sheriff's Office shall provide members with access to portable recorders 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. Members of the Beltrami County Sheriff's Office that violate this policy will be subject to progressive discipline.

421.3 MEMBER PRIVACY EXPECTATION

All recordings made by members on any office-issued device at any time or while acting in an official capacity of this office, regardless of ownership of the device, shall remain the property of the Office. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

421.4 MEMBER RESPONSIBILITIES

Prior to going into service, uniformed members will be responsible for making sure that they are equipped with a portable recorder issued by the Office, and that the recorder is in good working order (Minn. Stat. § 13.825). 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 their supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner at or above the mid-line of the waist and notify persons that they are being recorded, whenever reasonably practicable (Minn. Stat. § 626.8473).

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

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conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Members should wear their assigned BWC on their outermost garment positioned at or above the mid-line of the waist (Minn. Stat. § 626.8473). Members are responsible for ensuring there are no obstructions and that the BWC remains in a position suitable for recording.

When using a portable recorder, the assigned member shall record their name, employee 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 (Minn. Stat. § 626.8473). Members should include the reason for deactivation.

Members shall comply with this policy's provisions while performing law enforcement activities under the command and control of another law enforcement agency (Minn. Stat. § 626.8473).

421.5 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 (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) 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.

Deputies will not activate or record with a Portable recording device in the Beltrami County Jail Control Rooms or Administrative offices.

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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.

421.5.1 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. When ceasing the recording, the Deputy shall narrate the intent and reason, if applicable, the ending the recording.

421.5.2 SURREPTITIOUS RECORDINGS

Minnesota law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Minn. Stat. § 626A.02).

Members of the Office 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 office member without a court order unless lawfully authorized by the Sheriff or the authorized designee.

421.5.3 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.

421.6 IDENTIFICATION AND PRESERVATION OF RECORDINGS

To assist with identifying and preserving data and recordings, members should download, tag or mark the recordings 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 under-cover officer or confidential informant.
- (g) The recording or portions of the recording may be protected under the Minnesota Data Practices Act.

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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.

421.7 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) By a supervisor as part of internal audits and reviews as required by Minn. Stat. § 626.8473.
- (b) 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.
- (c) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (d) By media personnel with permission of the Sheriff or the authorized designee.
- (e) In compliance with the Minnesota Data Practices Act request, if permitted or required by the Act, including pursuant to Minn. Stat. § 13.82, Subd. 15, 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 are clearly offensive to common sensibilities should not be publicly released unless disclosure is required by law or order of the court (Minn. Stat. § 13.82, Subd. 7; Minn. Stat. § 13.825, Subd. 2).

421.8 COORDINATOR

The Sheriff or the authorized designee should designate a coordinator responsible for (Minn. Stat. § 626.8473; Minn. Stat. § 13.825):

- (a) Establishing procedures for the security, storage, and maintenance of data and recordings.
 - 1. The coordinator should work with the Custodian of Records and the member assigned to coordinate the use, access, and release of protected information to ensure that procedures comply with requirements of the Minnesota Government Data Practices Act (MGDPA) and other applicable laws (Minn. Stat. § 13.01 et seq.) (see the Protected Information and the Records Maintenance and Release policies).

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2. The coordinator should work with the Custodian of Records to identify recordings that must be retained for a specific time frame under Minnesota law (e.g., firearm discharges, certain use of force incidents, formal complaints).
- (b) Establishing procedures for accessing data and recordings.
 1. These procedures should include the process to obtain written authorization for access to non-public data by BCSO members and members of other governmental entities and agencies.
- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging, or marking events.
- (e) Establishing an inventory of portable recorders including:
 1. Total number of devices owned or maintained by the Beltrami County Sheriff's Office.
 2. Daily record of the total number deployed and used by members and, if applicable, the precinct or district in which the devices were used.
 3. Total amount of recorded audio and video data collected by the devices and maintained by the Beltrami County Sheriff's Office.
- (f) Preparing the biennial audit required by Minn. Stat. § 13.825, Subd. 9.
- (g) Notifying the Bureau of Criminal Apprehension (BCA) in a timely manner when new equipment is obtained by the Beltrami County Sheriff's Office that expands the type or scope of surveillance capabilities of the office's portable recorders.
- (h) Ensuring that this Portable Audio/Video Recorders Policy is posted on the Office website.

421.9 PROHIBITED USE OF AUDIO/VIDEO 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 their 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.

For security purposes members will turn off their Portable recorders when entering the secure footprint of the Beltrami County Jail.

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

421.10 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 90 days.

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The following retention periods apply to the following recorded video event descriptions before the videos are purged from the system whether it is the network server or evidence room.

Event Description Retention Period

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|---------------------------------------|------------------------|
| 1. Junk ----- | 90 days |
| 2. Traffic Stop Warning ----- | 90 days |
| 3. Traffic Stop Citation ----- | 90 days |
| 4. DWI ----- | 365 days |
| 5. Pursuit ----- | 365 days |
| 6. Arrest ----- | Until Case is resolved |
| 7. Accident----- | 90 days |
| 8. Audio domestic----- | 365 days |
| 9. Homicide/Sex Assault/Forever ----- | Forever |
| 10. Evidence ----- | Until Case is resolved |
| 11. Medical ----- | 90 days |
| 12. Statutory 6 Year Req ----- | 6 years |

13. The following will be retained for a minimum of one year:

- Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review including the use of force by a Deputy that results in substantial bodily harm
- Data that documents the discharge of a firearm by a Deputy in the course of his duties
- Data documenting circumstances that have given rise to a formal complaint against an officer

14. Any use of deadly force (not limited to if a death occurred) will be maintained in an unredacted form indefinitely

Upon written request by a BWC and SCVC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.

Members are prohibited from altering, erasing, or destructing any data prior to the expiration of above retention periods

421.10.1 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.

421.10.2 ACCESS TO RECORDINGS

Except as provided by Minn. Stat. § 13.825, Subd. 2, audio/video recordings are considered private or nonpublic data.

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Any person captured in a recording may have access to the recording. If the individual requests a copy of the recording and does not have the consent of other non-law enforcement individuals captured on the recording, the identity of those individuals must be blurred or obscured sufficiently to render the subject unidentifiable prior to release. The identity of on-duty peace officers may not be obscured unless their identity is protected under Minn. Stat. § 13.82, Subd. 17.

Notwithstanding any law to the contrary, when an individual dies as a result of a use of force by a member of this office, the Beltrami County Sheriff's Office must allow the following individuals, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident within five days of the request, except as otherwise provided in this clause.

- (a) The deceased individual's next of kin;
- (b) The legal representative of the deceased individual's next of kin; and
- (c) The other parent of the deceased individual's child.

When an individual dies as a result of a use of force by a member of this office, the Beltrami County Sheriff's Office shall release all portable recording system data, redacted no more than what is required by law, documenting the incident no later than 14 days after the incident, unless the Sheriff asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified under Minnesota section 13 Government Data Practices.

421.11 ACCOUNTABILITY

Any member who accesses or releases recordings without authorization may be subject to discipline (see the Standards of Conduct and the Protected Information policies) (Minn. Stat. § 626.8473).