



# POLICY & PROCEDURE

## ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **MOBILE AUDIO/VIDEO RECORDING EQUIPMENT**

NUMBER: 9.03

SCOPE: All Sworn Personnel  
DISTRIBUTION: Policy & Procedure Manual

ISSUED: 03/19/2020  
EFFECTIVE: 03/19/2020  
 RESCINDS 9.03 Dated 6/1/2015  
 AMENDS

REFERENCE: WI State Statutes: 19.32(2), 165.87,  
175.22, 973.06(1)(av)

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INDEX AS: Audio/Video Recording Equipment  
Body Worn Camera  
Mobile Audio/Video Recording System (MVARs)  
Video Recording Equipment

PURPOSE: The purpose of this Policy & Procedure is to establish guidelines to be followed by members of the Elkhart Lake Police Department during the use of mobile audio/video recording equipment (MVARs).

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROGRAM OBJECTIVES
- IV. OPERATING PROCEDURES
- V. RECORDING CONTROL AND MANAGEMENT

## I. POLICY

A. All uniformed officers assigned to road patrol duties shall be issued MVARs equipment prior to beginning of each duty assignment. This includes uniformed Supervisors who perform patrol duties. Non-uniformed members may be issued MVARs equipment at the discretion of the Chief of Police or his/her designee or for certain circumstances.

1. Any member wearing, using, maintaining, storing, or releasing data from MVARs equipment shall be trained in its use and data retention and release requirements prior to using the equipment or releasing data.

B. Whenever an officer has reason to believe that a contact has an enforcement nature, or believes it is in the best interest of the Elkhart Lake Police Department, the contact should be recorded. In general, contacts of an enforcement nature include but are not limited to:

1. Citations

2. Arrests

3. Warnings

4. Investigations to be submitted for Complaint

5. When in Medical Facilities: Officers should be conscious to not record other patients in a medical setting. Officers will not turn on their body camera in a medical facility unless it is necessary to capture the following circumstances. Officers shall take into consideration the HIPAA laws that protects patients:

a) When responding to a crime or a situation where we are there to prevent a potential serious or imminent threat (out of control person) to an individual or the public.

b) Officer believes that they are able to obtain evidence of a crime that occurred on the premises.

c) When there is a death at the medical facility that resulted from criminal conduct.

d) When responding to an off-site medical emergency, where the victim came into the emergency room (example: for a gunshot wound, stabbing, etc.).

e) When a search warrant/arrest warrant has been obtained and is being executed.

f) When responding to identify/locating a suspect of a crime, fugitive, material witness or missing person.

- g) When bringing a suspect or victim to the medical facility or responding to the medical facility to talk to a suspect or a victim of a crime (adult or child), when collecting evidence or obtaining evidence from talking to them.
- h) The Police Department will not release any information/video per policy that would be captured on our cameras that would violate the HIPAA laws or that contain medical information.

## II. DEFINITIONS

- A. **USE OF FORCE INCIDENT:** Any amount of force beyond cooperative handcuffing used by an officer to control an uncooperative person.
- B. **BODY WORN CAMERA/TRANSMITTER:** A portable audio and/or video recording device which can be worn on an officer's body.
- C. **(MVARs) MOBILE AUDIO/VIDEO RECORDING SYSTEM (EQUIPMENT):** Portable, wireless, electronic devices designed for capturing audio and/or video recordings. This includes body worn cameras, and/or in squad mobile video/audio recording system.

## III. PROGRAM OBJECTIVES

- A. The Elkhart Lake Police Department has adopted the use of mobile audio/video recording equipment (MVARs) in order to accomplish the following objectives:
  - 1. Accurate documentation of events, actions, conditions, and statements made during arrests and critical incidents so as to enhance officer reports, collection of evidence and testimony in court.
  - 2. The enhancement of the Department's ability to review probable cause for arrest, arrest procedures, officer/suspect interaction, evidence for investigative purposes, as well as officer evaluation and training.
  - 3. Protect officers from false allegations of improper police conduct.
- (a) Note...Under s. 973.06 (1) (av) the costs, fees, and surcharges taxable against the defendant shall consist of the following items and no others if a defendant violates s. 946.41 by obstructing an officer; the reasonable costs expended by a state or local law enforcement agency or emergency response agency to respond to or investigate the false information that the defendant provided or the physical evidence that the defendant placed.

Costs allowable under this paragraph may include personnel costs and costs associated with the use of police or emergency response vehicles.

#### IV. OPERATING PROCEDURES

- A. Care and use of the mobile audio/video recording equipment is the responsibility of the officer assigned to that equipment and shall be used in conformity with Department policy and training.
- B. Prior to each shift, officers shall determine whether their recording equipment is working properly and shall report any problems to a supervisor as soon as practical.
  - 1. Officers will power on the MVARs and ensure it is functioning properly throughout their shift.
  - 2. The systems power supply will be checked by all three available methods: manually, activating emergency lights, and activating remote wireless microphone/transmitter.
  - 3. The officer will ensure the encoded date/time is accurate.
  - 4. The video camera should be zoomed back to its widest point of view and positioned to record events.
  - 5. The "Time Left" on the media display shall be checked. If there are 20 minutes or less remaining a supervisor shall be notified.
  - 6. Verify that the assigned microphone/transmitter is properly functioning.
  - 7. Any malfunction shall be reported to a supervisor as soon as practicable.
- C. Body worn wireless microphone transmitters and carrying case are assigned to each marked squad car. These wireless transmitters should generally be worn on the officer's uniform in a manner as to not interfere with the recording (shirt pocket, lapel, etc.).
  - 1. The purpose is to put the transmitter in the best position to record as much information as possible.
  - 2. Officers are not expected to jeopardize their safety in exchange for obtaining better audio recordings.
- D. OPERATING GUIDELINES:
  - 1. The MVARs record mode will be automatically activated whenever the emergency lights are activated.
  - 2. Once recording, personnel shall ensure there are no obvious obstructions to recording.
  - 3. Once recording has begun it shall remain on until the incident has reached its conclusion or the officer has left the scene. Officers must remember to turn off the recording at the conclusion of the incident.

4. With automatic activation, officers will record all of the events outside and inside the squad and the recording unit will not be powered off until after the officer the officer clears the scene or unless directed by a supervisor. Automatic activation occurs at a specific preset speed and upon a collision.
  5. Manual activation is required for any citizen contact other than the listed exceptions, any situation where there is potential evidence to be recorded or where directed by a supervisor.
    - a) Manual activation is accomplished by:
      - (3) Pressing the record button on the wireless transmitter
  6. Manual activation is not required for:
    - a) Station calls
    - b) Lunch breaks; breaks
    - c) Foot patrols
    - d) Non-investigative contacts
    - e) Report taking investigations where the officer is not dealing with the suspect.
  7. Officers should record their interactions while in direct contact with the public on incidents or contacts as outlined above. Additional examples include but are not limited to:
    - a) All officer/subject contacts during traffic stops.
    - b) All officer/subject contacts during an arrest including approach, custody, statements, transportation, Department booking process and release.
    - c) All officer/subject contacts of arrested subjects taken to the Sheboygan County Criminal Justice Facility or Juvenile Detention Center. Recordings will cease upon entry to these facilities unless approved by facility staff.
    - d) Any other contacts with persons under circumstances that lead the officer to believe that the specifics of the contact may need to be retrieved or reviewed.
- E. Continuous, non-stop recording during contacts or incidents of an enforcement nature is not required when officers are not in direct contact with the suspect, or other persons involved. Examples when officers may choose to deactivate their recording equipment include, but are not limited to:
1. Running checks and completing paperwork in a squad car, away from the violator, during a traffic stop.

2. Conferring with backup officers away from the suspect or any person involved in the incident.
  3. While speaking with anyone who is not directly involved in the incident such as medical or fire personnel.
- F. The equipment may be deactivated during non-enforcement activities such as protecting accident scenes from other vehicular traffic or perimeter assignments at critical incidents.
- G. Officers shall document in all incident reports whenever recordings are made during an incident in question. This should be done at the beginning of the report when the officer(s) identify if bank or juvenile information is included in the report.
- H. Officers are encouraged to inform their supervisors of any recorded sequences that may be of value for training purposes, court, or unusual circumstances or events.
- I. Officers shall not intentionally alter or attempt to alter recordings in any way.
- J. Officers shall not use mobile audio/video recording equipment to record administrative conversations, i.e. disciplinary actions, supervisor's directives, or talks between employees.
- K. Use of MVARs is for on-duty, official police business only.

## V. RECORDING CONTROL AND MANAGEMENT

- A. Recordings are subject to existing State of Wisconsin open records laws.
1. The Records Custodian will establish a reproduction fee for the duplication of recordings. The fee will include the cost of storage media and the actual necessary costs of the reproduction effort.
  2. Recordings may be duplicated for another criminal justice agency when required for trial, or otherwise authorized by the Chief or designee.
- B. Recordings may be shown to Elkhart Lake Police Department employees for training and evaluation purposes.
1. Recordings may be shown to persons other than Elkhart Lake Police Department employees provided prior approval is obtained from the Chief or designee.
- C. Storage of Media

MVARs media will be downloaded at a minimum weekly by an assigned supervisor to an allocated hard drive. This hard drive shall be kept in a secured location only accessible by the assigned supervisor.

1. Storage of Media as Evidence; the recording media will be recorded as evidence when any of the following events are captured:
  - a) Operating while intoxicated arrests
  - b) Physical altercation(s) or any use of force
  - c) Patrol vehicle collision
  - d) Injury to officer or citizen
  - e) Pursuit
  - f) Any custodial arrest
  - g) Any death related to a shooting/use of force incident (actual/alleged)
  - h) Incident involving citizen complaint
  - i) Any search conducted during temporary questioning (a "Terry Stop") provided in Wisconsin State Statute 968.25
  - j) Any other incident in the officers or supervisors judgment that should be secured as evidence
2. Storage of Media not held as evidence
  - a) The assigned supervisor shall remove the recorded media weekly from each squad car and download onto the assigned hard drive.
  - b) After 120 days, pursuant to Policy & Procedure 10.05: Retention of Records, the recorded data will be erased.

#### D. Media integrity

1. The MVARs recordings generated are property of the Department.
2. MVARs recordings are subject to Wisconsin Open Records Laws.
3. Release of copies of recordings for prosecution shall be coordinated through the District Attorney and/or the Village Attorney's Office.
4. Release of copies of recordings for civil proceedings shall be coordinated through the Village Attorney's Office.
5. All MVARs media and recordings are possessions of the Department. As such, no recording shall be released, shared, duplicated or distributed without authorization from the Department records custodian.

#### E. Miscellaneous

1. It is not necessary for officers to volunteer the fact that the enforcement contact is being recorded. However, if asked, officers shall advise persons as to whether the MVARs are recording or not.
2. Officers are not required to cease or initiate recording based on the demand on of a citizen, involved party, or suspect.
3. No employee shall attempt to erase, alter, or cause to be erased or altered, any MVARs media. The only exception would be pursuant Policy & Procedure: 10.05 Retention of Records.
4. Supervisors will coordinate the repair or replacement of MVARs equipment.
  - a) Supervisors will perform periodic reviews to ensure officers follow established procedures for the storage, use of, and maintenance of MVARs equipment and the proper documentation of its use.
  - b) In addition, The Chief or his/her designee will perform periodic reviews of the release of data to ensure established procedures in this policy are followed.
5. Recordings used for training purposes.
  - a) When an incident that is recorded that is perceived to be of value as a training aid, the officer responsible for the recording will notify his/her supervisor.
  - b) The supervisor will review the recording to determine the value for training.
  - c) The supervisor will obtain expressed permission from the Chief of Police or designee to use the recording for training.
6. Tape review.
  - a) The MVARs recordings may be routinely or randomly reviewed by supervisors to monitor officer performance.
  - b) Field Training Officers should routinely use the recordings of probationary officers during the FTO process for constructive critique review.
  - c) Officers may review their own recordings within the squad car prior to the data being downloaded. (This may be beneficial when dictating a report).
  - d) No recording shall be used or shown for the purpose of officer ridicule or embarrassment.
7. This policy shall be made available to the public on any internet site the Department maintains or is maintained on its behalf.

#### F. Restrictions on Using Recording Devices



1. Recording Devices shall only be used in conjunction with official duties primarily including but not limited to the investigation and/or reporting of crimes or other violations of the law.
2. Officers may not activate Recording Devices to surreptitiously record:
  - a) Communications with other police personnel without the permission of the Chief of Police.
  - b) Conversations that concern matters over which the person being recorded would have a reasonable expectation of privacy.
3. Recording Devices are utilized primarily by sworn personnel as authorized by this agency. Officers who are assigned Recording Devices must utilize such equipment unless otherwise authorized by supervisory personnel.
  - a) All Department issued Recording Devices and recorded media in any form issued by the Department remain the exclusive property of the Department for use only as outlined in this Policy & Procedure.
  - b) No privately owned Recording Devices will be utilized by Department personnel while on duty for any reason without the prior authorization of the Chief of Police.

#### G. Recordings Retention; 120 Day Hold

1. Recordings are considered records as defined by Wisconsin Statute 19.32(2). Pursuant Policy & Procedure 10.05: Retention of Records, recordings will be saved at minimum 120 days.
2. Recordings noted as evidence shall be retained until final disposition of any investigation, case, or complaint to which it pertains.
3. For further guidance and additional information regarding recordings retention and release refer to Wisconsin State Statute 165.87 (2) and (3).

Michael Meeusen  
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

Initial 06/01/2015