

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 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 such as department issued smart phones and digital recorders.**

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

424.2 POLICY

The Fargo 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.

424.3 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.

424.4 SURREPTITIOUS USE OF THE PORTABLE RECORDER

North Dakota law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (N.D.C.C. § 12.1-15-02).

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.

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 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 will report the failure to his/her supervisor, and obtain a functioning device as soon as 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.

Portable Audio/Video Recorders

When using a portable recorder, the assigned member when feasible, should record his/her name, FPD employee number and the current date and time at the beginning and the end of the period of use. 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. Any recordings which have evidentiary value shall be logged into the appropriate evidence storage system at the end of the officer's shift.

Members shall 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.

424.6 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 investigations of domestic assault or related crimes such as a violation of a protection order.
- (b) All in custody interviews pertaining to felony crimes or misdemeanor personal crimes.
 - (a) In custody will refer to all situations where a person is under arrest or detained in a manner to which a reasonable person would believe they are not free to leave.
 - (b) The issuing of the Miranda warnings and subsequent interview in its entirety will be recorded either by an audio or audio/video recording device
- (c) In addition to the above, during criminal investigations the officer may choose to record, at their discretion, any interview which they believe may be necessary in furtherance of the investigation or which has a likelihood of the person being interviewed to recant or challenge the account of the interview.
- (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 practicable.

Portable Audio/Video Recorders

Officers will document within the case synopsis/narrative or supplemental report that a recording was made and that a copy of the recording has been placed into laserfiche. A narrative report will summarize the relevant content of the interview. The summary need not detail the entire content of the recorded statement, but rather the pertinent information as to the elements of the offense or specific facts relevant to the investigation. Officers should make sure all recordings are thoroughly reviewed prior to completing a narrative summary.

424.6.1 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member's 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.

424.6.2 USE OF PORTABLE RECORDER IN DRUG OFFENSE INVESTIGATIONS

Officers may use a portable recorder to intercept wire or oral communications in drug offense investigations in compliance with a court order (N.D.C.C. § 29-29.2-02). Upon expiration of the order, the officer designated in the court order shall provide the issuing judge all documents and other information pertaining to the communications pursuant to the order or as required by law.

Intercepted communications shall be maintained in their entirety, without editing or alteration, and shall be maintained in accordance with Records Retention Policy.

424.7 PROHIBITED USE OF PORTABLE RECORDERS

While using department issued recording devices, such as a cell phone or digital recorder, members 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 Shift 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.

424.8 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.

Portable Audio/Video Recorders

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 North Dakota Open Records Law (N.D.C.C. § 44-04-18.7).

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.

424.9 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) 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 or Office of Professional Standards 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.

Portable Audio/Video Recorders

424.10 RETENTION OF RECORDINGS

Portable recordings are public records (N.D.C.C. § 44-04-17.1(16)). All recordings prepared for use in connection with public business, or which contain information relating to public business 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 180 days. However, once an officer has transferred the recording to evidence the officer may remove the recording from his/her portable recording device.

424.10.1 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.