

## Portable Audio/Video Recorders

### 424.1 PURPOSE AND SCOPE

This policy provides specific guidelines for the use of body-worn camera (BWC) portable audio/video recording devices by members of this department while in the performance of their duties. This policy also pertains to all other portable audio or video recording devices utilized by Department members to include handheld or integrated 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 BWC's and/or 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. In addition, the use of BWC's is intended to enhance the investigative competency of the Department, as well as contribute to the growth of community trust and transparency.

It is understood that while the use of the BWC's provides additional information and accountability mechanisms, there are also limitations to the use of the BWC's as definitive determiners of fact in some instances.

### 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. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### 424.4 SURREPTITIOUS USE OF THE BODY-WORN CAMERA OR OTHER 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.

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### **424.5 MEMBER RESPONSIBILITIES**

Except for members above the rank of Lieutenant, prior to going into service, each uniformed sworn member shall be responsible for making sure that he/she is equipped with a BWC 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 report the failure to his/her supervisor, and obtain a functioning device as soon as reasonably practicable. Sworn uniformed members should wear the recorder in a conspicuous manner and in a position approved by the Department to capture the best view of law enforcement activities without compromising safety or access to other equipment.

Except for members above the rank of Lieutenant, any member assigned to a non-uniformed sworn position shall be equipped with an approved BWC and utilize it any time the member believes that such a device may be useful or as otherwise required by policy. Unless conducting a lawful recording in an authorized undercover capacity, sworn non-uniformed members should wear the recorder in a conspicuous manner when in use and in a position approved by the Department to capture the best view of law enforcement activities without compromising safety or access to other equipment.

When using a replacement BWC, the assigned member shall record his/her name, FPD employee number and the current date and time at the beginning and the end of their 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. All recordings shall be properly tagged and assigned to correct case files as appropriate prior to the end of the member's shift in order for them to be accurately uploaded into the cloud-based evidence storage system.

Members shall document in the related report or other official record of the contact, any instance where the recorder malfunctioned wasn't utilized pursuant to policy or the member deactivated the recording. Members shall include the reason for deactivation.

#### **424.5.1 MEMBERS ASSIGNED TO A FEDERAL OR STATE TASK FORCE**

Department members assigned to or temporarily working on a federal or state task force shall comply with this policy unless superseded by law or approved memorandum of understanding.

### **424.6 ACTIVATION OF THE BODY-WORN CAMERA**

This policy is not intended to describe every possible situation in which the BWC 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, interview, etc. The Department-issued BWC is designed to start recording whenever a conducted energy weapon (CEW) or other BWC is activated within 30 feet, the squad light bar is activated, an officer removes their duty sidearm from the holster, or the rifle lock is triggered.

The BWC 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.

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- (b) All enforcement and investigative contacts including temporary detentions, searches or frisks, and assignments or official requests for response as a School Resource Officer (SRO) within a school.
- (c) Traffic stops including, but not limited to, traffic violations, stranded motorists assistance, suspicious vehicles, or traffic stops related to criminal activity.
- (d) All self-initiated activity in which a member would normally notify the communications center except for COP contacts that do not involve a licensed liquor establishment.
- (e) When responding to an in-progress or priority response (assist officer, etc.)
- (f) Upon entering the area of any dispatched call for service preceding notification to the communications center of an on-scene (10-23) status.
- (g) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.
- (h) All in-custody interrogations unless conducted in a recorded department interview room. In custody means all situations where a person is under arrest. The recording shall include the advisement of Miranda warnings and waiver by the subject.
- (i) Any interview related to a criminal investigation.

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 BWC or change the recording media. However, the recorder should be activated in situations described above as soon as practicable.

Members conducting interrogations shall prepare a narrative report summarizing the relevant content of the interrogation. 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 and the arrested subjects involvement that will assist the prosecutorial review and charging decision.

#### 424.6.1 CESSATION OF RECORDING

Once activated, the BWC 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. Members shall verbally record the reason for deactivating the BWC. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Situations in which a BWC may not be activated or may be turned off include, but are not limited to:

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- (a) While in a hospital setting awaiting medical clearance of a prisoner/detainee unless their behavior dictates the need for continued activation of the BWC or when confidential medical information is being discussed.
- (b) While debriefing with other officers regarding specific details or tactics of a call for service, operation, or information exchange.
- (c) When developing a tactical plan, operating within a command post at a tactical crisis, or other large scale operation.
- (d) While creating a mental health safety plan for a victim.
- (e) When interviewing a confidential informant in the field.
- (f) During personal breaks
- (g) When inside a police department facility performing administrative or preparatory tasks, etc.
- (h) As otherwise provided for in this policy.

#### **424.6.2 EXPLOSIVE DEVICE**

Many portable recorders, including BWC's and audio/video transmitters, emit radio signals which could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

#### **424.6.3 USE OF PORTABLE RECORDER IN DRUG OFFENSE INVESTIGATIONS**

Officers may use a BWC or other Department-issued or approved 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 (804).

#### **424.7 PROHIBITED USE OF PORTABLE RECORDERS**

Members are prohibited from using Department-issued BWC's or other recording equipment 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 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

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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 shall download, tag or mark these in accordance with procedure and document the existence of the recording in any related case report. If the incident was required by policy to be captured on a BWC, but was not captured, the officer shall document in his/her report the reason the incident was not recorded.

Members shall transfer and tag all recordings utilizing the categories approved by the Department within the cloud-based evidence storage system. Special tagging categories may also be added when the member reasonably believes:

- (a) The recording contains evidence relevant to potential civil or administrative matters.
- (b) A crime victim has requested non-disclosure pursuant to Marsy's Law (Article 1, Section 25, ND Constitution).
- (c) The recording contains an unreasonable violation of someone's privacy or protected medical or mental health information.
- (d) The recording contains an undercover officer or confidential informant.
- (e) 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 shall promptly notify a supervisor of the existence of the recording and circumstances involved. The supervisor shall ensure the recording is properly tagged and any appropriate notifications made (PAU, etc.).

### **424.9 REVIEW OF RECORDED MEDIA FILES**

Except for police critical incidents as identified in the Officer-Involved Shootings and Deaths policy (305), when preparing written reports, members should review their recordings as a resource. 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. Members who did not create the recording, but were involved in the investigation or activity, except in the event of a police critical incident, may view the BWC recording to facilitate their report or investigation.

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. Supervisor's and other approved members may view BWC's in real time to facilitate situational awareness during events.

Recorded files may also be reviewed:

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- (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 regarding the conduct of a Department member.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By a state, city or federal prosecutor to facilitate the prosecution of a crime or ordinance violation.
  - 1. The Department's cloud-based evidence storage system allows for these individuals to have direct login access to facilitate prosecution.
- (d) By media personnel through proper legal process or with permission of the Chief of Police.
- (e) To assess possible training value or other legitimate law enforcement purpose.
  - 1. Recordings may be shown for training purposes. If an involved officer objects to showing a recording, his/her objection will be submitted to the Professional Standards Division Commander to determine if the training value outweighs the officer's objections.
  - 2. In no event shall any recording be used or shown for the purpose of ridiculing or embarrassing any employee.
- (f) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy (804).

Portions of BWC footage from a police critical incident may be released with the approval of the responsible prosecutor and Chief of Police to facilitate public transparency. In these instances the Department will work with the prosecutors office to release the footage within 72 hours of the incident.

All recordings should be reviewed by the Custodian of Records or Professional Accountability Unit, as applicable, prior to public release (see the Records Maintenance and Release Policy 804). 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.

#### **424.10 BODY-WORN CAMERA COORDINATOR**

The Assistant Chief of Police is designated as the BWC coordinator and is responsible for ensuring:

- (a) Procedures for the security, storage, and maintenance of data and records are established.
- (b) Procedures for accessing data and recordings are established.
- (c) Procedures for logging or auditing access are established.
- (d) Procedures for transferring, downloading, tagging, or marking events are established.
- (e) Coordination with the Professional Standards Division commander to provide training on this policy to:

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1. All members who are authorized to use BWC's or other portable recording devices.
  2. Members of the Department who use, maintain, store, or are responsible for the release of records and recordings.
- (f) An annual review of the Department's practices relating to the use, maintenance, and storage of BWC's and data to confirm compliance with this policy.
- (g) This policy is available to the public on the Department's website.

#### **424.11 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.

##### **424.11.1 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 (804).