

Portable Audio/Video Recorders

417.1 PURPOSE AND SCOPE

Best Practice **MODIFIED**

This policy provides guidelines for the use of portable audio/video recording devices by employees of the Office of Protective Services (OPS) 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 California Department of State Hospitals (DSH) facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

417.2 POLICY

Best Practice **MODIFIED**

DSH may provide employees 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 OPS by accurately capturing contacts between employees of OPS, other DSH employees, patients, and the public. DPS will record all interviews conducted.

417.3 COORDINATOR

State **MODIFIED**

The Hospital Police Chief or the authorized designee shall appoint an OPS employee to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Pen. Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

417.4 EMPLOYEE PRIVACY EXPECTATION

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Portable Audio/Video Recorders

All recordings made by employees on any DSH-issued device at any time, and any recording made while acting in official capacity for DSH, regardless of ownership of the device it was made on, shall remain the property of DSH. Employees shall have no expectation of privacy or ownership interest in the content of these recordings.

417.5 EMPLOYEE RESPONSIBILITIES

Discretionary **MODIFIED**

Prior to going into service, all DPS uniformed employees shall be responsible for ensuring that they are equipped with a portable recorder issued by DSH. Their assigned recorder shall be in good working order before going on shift. If the recorder is not in working order or the employee becomes aware of a malfunction at any time, the employee shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably as possible. All DPS employees who may be wearing a portable recorder shall wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever practicable.

Any employee assigned to a non-uniformed position may carry an approved portable recorder at any time the employee believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed employees who may be wearing a portable recorder shall wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever practicable.

When using a portable recorder, the assigned employee shall record his/her name, Centralized Human Resource Management System (ChArms) identification 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.

Employees shall document the existence of a recording in any report as well as other official record of the contact, including any instance where the recorder malfunctioned or the employees deactivated the recording. Employee shall include the reason for deactivation.

417.5.1 SUPERVISOR RESPONSIBILITIES

State **MODIFIED**

Supervisors shall take custody of a portable audio/video recording device as soon as possible when the device may have captured an incident involving the use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded (Pen. Code § 832.18).

417.6 ACTIVATION OF THE PORTABLE RECORDER

Best Practice **MODIFIED**

This policy is not intended to describe every possible situation in which the portable recorder shall be used, although there are many situations where its use is appropriate. Employees shall activate the recorder any time the employee believes it would be appropriate or valuable to record an

Portable Audio/Video Recorders

incident. The use of access number is no longer required, activation shall take place prior to any contact thus allowing for recording of possible declination.

The portable recorder shall be activated in any of the following situations:

In the event of a malfunction, the supervisor shall be notified and a new recorder shall be acquired. DSH requires mandatory recording of interviews conducted by officers for incidents involving rape and sexual assault allegations, physical abuse allegations, all felony investigations, circumstances surrounding deaths, and any recantation by a patient, except in cases where the recording of the interview would make a patient anxious, uncomfortable, or result in their refusal to participate in the interview. In cases where officers do not record interviews based on the exceptions listed, officers shall document, in their report, the reasoning for not making the recording. Officers shall refer to the Investigation and Prosecution policy when conducting custodial interrogations.

The portable 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 an employee 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.
- (e) DSH requires mandatory recording of interviews conducted by officers for incidents involving rape and sexual assault allegations, physical abuse allegations, all felony investigations, circumstances surrounding deaths, and any recantation by a patient, except in cases where the recording of the interview would make a patient anxious, uncomfortable, or result in their refusal to participate in the interview. In cases where officers do not record interviews based on the exceptions listed, officers shall document, in their report, the reasoning for not making the recording. Officers shall refer to the Investigation and Prosecution policy when conducting custodial interrogations
- (f) DSH requires the recording of the staff refusal.

Employees shall 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 employee that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by employees of the public to stop recording shall be considered using this same criterion. Recording shall resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is an employee expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder shall be activated in situations

Portable Audio/Video Recorders

described above as soon as possible. If there is a refusal, OPS staff shall document it and must report the circumstances surrounding the refusal of being recorded.

417.6.1 CESSATION OF RECORDING

State MODIFIED

Once activated, the portable recorder shall remain on continuously until the employee 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.

Employees shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

417.6.2 SURREPTITIOUS USE OF THE PORTABLE RECORDER

State MODIFIED

Employees shall not surreptitiously record another DSH employee.

417.6.3 EXPLOSIVE DEVICE

Best Practice MODIFIED

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices shall not be used where an explosive device may be present.

417.7 PROHIBITED USE OF PORTABLE RECORDERS

Best Practice MODIFIED

Employees are prohibited from using OPS-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.

Employees are also prohibited from retaining recordings of activities or information obtained while on-duty. Employees shall not duplicate or distribute such recordings, except for authorized legitimate OPS business purposes. All such recordings shall be retained at the OPS facility.

Employees are prohibited from using personally owned recording devices while on-duty.

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

417.8 IDENTIFICATION AND PRESERVATION OF RECORDINGS

Best Practice MODIFIED

To assist with identifying and preserving data and recordings, employees shall download, tag or mark these in accordance with procedure and document the existence of the recording in any related case report.

An employee shall transfer, tag or mark recordings when the employee reasonably believes:

Portable Audio/Video Recorders

- (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 an employee reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the employee shall promptly notify a supervisor of the existence of the recording.

417.9 REVIEW OF RECORDINGS

Best Practice **MODIFIED**

When preparing written reports, employees shall review their recordings as a resource (see the Officer-Involved Shooting and Death Policy for guidance in those cases). However, employees shall not retain personal copies of recordings. Employees shall 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 employee's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any employee of OPS 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 Communications Office, DSH, Sacramento and the Chief of Law Enforcement.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

All recordings shall be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity shall not be publicly released unless disclosure is required by law or order of the court.

417.10 RETENTION OF RECORDINGS

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Portable Audio/Video Recorders

Recordings of the following shall be retained for a minimum of two years (Pen. Code § 832.18):

- (a) Incident involving use of force by an officer.
- (b) Officer-involved shootings.
- (c) Incidents that lead to the detention or arrest of an individual.
- (d) Recordings relevant to a formal or informal complaint against an officer or DSH.

Recordings containing evidence that may be relevant to a criminal prosecution shall be retained for any additional period required by law for other evidence relevant to a criminal prosecution (Pen. Code § 832.18).

All other 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 180 days.

Records or logs of access and deletion of recordings shall be retained permanently (Pen. Code § 832.18).

417.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Best Practice **MODIFIED**

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.