

Mobile and Portable Audio Video Recorders

706.1 PURPOSE

The purpose of this policy is to establish guidelines regarding Missoula Police Department (MPD) employees' use of recording devices and managing and retaining the recordings created by these recording devices.

The MPD provides certain employees access to in-car camera systems, body-worn camera (BWC) systems, interview room camera systems, digital cameras, mobile phones, and /or portable audio recorders. These recording devices are provided for official work purposes only and are approved to assist in preserving factual representations of police activity, identify training needs, enhance officer safety and maintain and increase public trust.

706.2 DEFINITIONS

Axon Capture™ - An app that allows users to capture still photographs, record audio/video, and create a community request from a mobile phone. Using Axon Capture also allows users to have GPS coordinates and CFS numbers assigned to the content. Using Axon Capture™ does not store any data on the user's device as it is all uploaded directly to Evidence.com.™

Child File –An exact reproduction of an audio/video recording of a "parent file". Child files may be used for redaction or clipping for approved, lawful/appropriate dissemination.

Evidence.com™- Cloud-based data storage owned by Axon™ where digital evidence is stored.

Parent File –The original audio/video recording contained in Evidence.com™. Parent files may not be edited, redacted, or deleted outside of the automated retention schedule.

Passive Recording – A function within a body-worn camera (BWC) and in-car recording systems which captures video recordings to the device for a previously defined amount of time without the recording system being activated.

Pre-Record – A function within BWC and in-car recording systems which captures video recordings for a previously defined amount of time once the system recording is activated.

Recordings - For the purpose of this policy, the term "recording(s)" refers to any electronic video and/or audio recording or still photography of any conversations or other activities.

Recording Devices - For the purpose of this policy, the term "recording device(s)" refers to any personally owned or department issued equipment designed to obtain recordings and includes but is not limited to body worn cameras, in-car camera system, interview room camera system, digital pocket audio recorders, digital cameras and mobile phones when used to record audio, video or still pictures.

Axon Respond™ - Axon's real-time situational awareness technology which allows location services whenever a BWC recording is activated. If the BWC is on and recording Axon Respond enables live stream and to upload evidence directly from the camera, and

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bi-directional communications. When Axon Respond™ is activated, the user is notified of live streaming via a visual, audible and vibrating alert.

Signal Sidearm™ - An Axon device, which when installed on a holster, activates BWC when a firearm is drawn from a holster.

Watch Me™ - A feature within Axon recording systems which allows users to send a notification to a supervisor via the mobile app to request a supervisor engage with Axon Respond™ to monitor that user's BWC in real time.

706.3 POLICY

It is the policy of the Missoula Police Department to consistently use recording devices to effectively and accurately document police activities, while considering individual privacy interests, officer and public safety and constitutional rights.

Any features related to MPD approved recording devices which may become available in the future will be assessed to determine if there is an impact to working conditions. No features that impact working conditions will be implemented until negotiated with the Missoula Police Officer Association and approved through this policy.

706.4 GUIDELINES

706.4.1 BODY-WORN CAMERA (BWC) SYSTEM

- (a) Whenever functioning BWCs are available, all uniformed MPD officers assigned as first responders must wear and use a BWC. This requirement extends to Field Training Officers (FTOs) serving in their evaluation role throughout all phases of the Field Training and Evaluation Program (FTEP), including phase 4 when working in plain clothes. The BWC must be activated while on a call for service, during officer-initiated activity, conducting a criminal investigation, transporting any person in an MPD vehicle (other than an MPD employee or authorized citizen observer) and other police activity reasonably expected to justify recording, except as provided for below.
- (b) Employees who are expected to be wearing and utilizing a BWC during their normal course of duties may remove the BWC or power down the BWC when they are in a circumstance where passive recording would unreasonably infringe upon a person's right to privacy, including, but not limited to using the restroom or being in a private residence during an authorized break.
- (c) Any employee utilizing a BWC must use the system consistent with their training and this policy.
- (d) Reserve Officers, detectives and designated civilian staff, including but not limited to crash investigators, crime scene technicians and property technicians, may be directed by the Chief of Police to use a BWC when equipment is available and the circumstance justify its use.
- (e) Activation of BWC
 - 1. BWCs can be manually activated to begin recording.

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2. BWCs are also automatically triggered for activation by the following:
 - (a) Activation of paired in-car camera system
 - (b) Drawing the firearm from the officer's holster with Signal Sidearm™, if equipped.
 - (c) Deploying a TASER™ will activate all nearby cameras.
 - (d) When an officer's BWC is logged in to a patrol car and the patrol car's emergency lights are activated to stage two or stage three and the BWC is within Bluetooth™ range.

706.4.2 IN-CAR CAMERA SYSTEM

- (a) Whenever marked patrol cars with functioning in-car camera systems are available, MPD uniformed officers must utilize those available vehicles and in-car camera system. A supervisor may exempt an officer from use of these vehicle assignments for unique circumstances or assignments. In-car camera systems must be utilized for all circumstances when BWCs are required to be used.
- (b) Activation of In-car camera system
 - (a) In-car camera systems can be manually activated to begin recording.
 - (b) In-car camera systems are also automatically triggered to activate by the following:
 - (a) Activating emergency lighting to stage two or stage three
 - (b) Opening the rear passenger door on the patrol car
 - (c) Vehicle speed of 85 MPH or higher

706.4.3 INTERVIEW ROOM CAMERA SYSTEM

- (a) Whenever an interview, interrogation, DUI process, or other official police function is being conducted in a room equipped with an interview room camera system, the camera system must be used to record those activities, whenever the system is operational and available.
- (b) Because confidential or privileged conversations or activities often occur in the interview rooms, the passive recording will not be enabled in any of the rooms equipped with interview room camera systems.
- (c) Particular care should be taken when officers are interviewing subjects in a felony investigation at a place of detention. Since such interviews are reasonably likely to elicit a self-incriminating response, that interview must be recorded to be in compliance with 46-6-411 MCA.
 1. Employees conducting suspect, witness, and/or victim interviews are encouraged to utilize a portable audio recorder as a back-up device in the event the interview room camera system is later found inoperable or malfunctions during an interview.
- (d) Activation of the Interview Room camera

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1. Interview room camera systems can be manually activated to begin audio and video recording.
2. Interview room camera systems are automatically activated by turning on the interview room light. In circumstances where a confidential or privileged conversation or activity is occurring in the interview room, the recording device should be immediately stopped prior to the confidential or privileged conversation or activity begins.

706.4.4 MOBILE PHONE, DIGITAL CAMERAS AND POCKET RECORDERS

- (a) MPD employees may use department issued mobile phones for photographing, video recording or audio recording any official duties and submit the recording to Evidence.com™
- (b) MPD employees may only use personally owned mobile phones, personal digital cameras or personal pocket recorders under urgent circumstances where there is no other preferred option reasonably available and the need to capture the recording is so important that it justifies not using department owned equipment.
- (c) MPD employees may use department issued cameras and audio pocket-recorders to record any official duties.

706.4.5 RECORDING DEVICE FUNCTION TESTING

- (a) Prior to each shift, MPD uniformed officers must examine, and test run the BWCs and in-car camera systems to ensure they are functioning properly.
- (b) Prior to an interview room camera system being used, the employee must verify the camera system is recording properly before beginning the task which is to be recorded.
- (c) An employee must notify a supervisor as soon as reasonably practical if any recording device is malfunctioning.

706.4.6 PASSIVE RECORDING

- (a) BWC and in-car camera systems passively record video with no audio recording without the recording system being activated. The video recordings are stored on the camera and are not transferred to Evidence.com™.
- (b) BWCs passively record a rolling 18 hours of video data, without audio recording, and in-car camera systems passively record 24 hours of video data without audio recording.
- (c) Reviewing Passive Recording data at officer request
 1. Officers who want to review their passive recordings for a legitimate business purpose may request such review through their immediate supervisor. This review does not require the Chief's approval.
 2. Passive recording must be downloaded using the View XL™ desktop application and cannot be viewed or downloaded remotely.
- (d) Reviewing Passive Recording data for a department interest

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1. Passive Recording data will only be accessed and reviewed for a department interest with the authorization of the Chief of Police or the Chief's designee.
2. Passive Recording will only be accessed and reviewed for a legitimate business purpose including but not limited to a public safety threat, a criminal or administrative investigation or a training need.
3. The employees subject to activity captured in the passive recording will be notified of the department interest in a recording and the employee may be present when the passive recording is accessed and reviewed. If there is a public safety emergency which requires immediate review of the recording, and the employee is not immediately available, the department may download, review and use the information from the review for a departmental purpose.
4. Passive recording must be downloaded using the View XL™ desktop application and cannot be viewed or downloaded remotely.

706.4.7 PRE-RECORD

- a. Pre-recording occurs on BWC and in-car camera systems. This recording captures 30 seconds of video recording only (without audio recording).
- b. When a BWC or in-car camera system are activated in any manner, the 30 second pre-record is captured to that file.

706.4.8 AXON RESPOND

- (a) Axon Respond™ may be accessed by a supervisor for a legitimate business purpose. The BWC and in-car camera systems are connected to LTE, similar to a cell phone, which provides the following capabilities:
 1. GPS data on the BWC is activated within the program abilities which is essentially real-time location when recorded, and intermittent GPS when the BWC is on but not recording. The intermittent GPS location is approximately several seconds to a half a minute interval.
 2. When a BWC camera system is recording, the assigned officer can enable Watch ME™ to request a supervisor remote access the camera and live-stream audio and video.
 3. When a BWC or an in-car camera system is recording, a supervisor can remote access the camera and live-stream audio and video from the camera.

706.4.9 WHEN NOT TO RECORD

- (a) When officer or citizen safety would be jeopardized by activating a recording device.
- (b) When engaged in tactical, command, or strategic planning.
- (c) When not engaged in the above-described police activity requiring recording.
- (d) When the recording may capture any confidential privileged discussions, including attorney/client privilege for any person, including MPD employees.

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- (e) When there is an articulable officer or public safety concern and the gathering of equipment would unnecessarily delay response to a priority incident.
- (f) When officers are actively working an undercover operation or working with confidential informants.
- (g) When attending community events, public meetings or gatherings or general assemblies, unless the officer believes a crime has been or is about to be committed or there is some other circumstance an officer reasonably believes should be recorded.

706.4.10 SPECIAL CONSIDERATIONS FOR RESTRICTIONS ON RECORDINGS

- (a) During an incident that requires officers to remain on the scene, but take no more action related to the investigation, a supervisor may direct officers to stop recording.
- (b) Officers assigned to any joint operation, within or outside of MPD jurisdiction must abide by this policy unless exempted by the Chief of Police or the Chief's designee.
- (c) During a special teams deployment or other significantly extended events where officers are not actively involved in interactions with the public, officers may deactivate their personal BWC recording. Officers must reactivate the camera if they become actively involved with the response and when engaging in interactions with citizens. Examples of when a personal BWC recording device may be deactivated include when officers are conducting extended surveillance, maintaining the outer perimeter of a tactical/emergency situation or traffic crash for extended periods, or conducting a search of an already secured residence or vehicle.
- (d) Unless an officer is actively engaged in investigating the commission of a criminal offense, has someone in custody, or is responding to an emergency or reasonably believes they will be required to use constructive authority or force, an officer has the discretion to record in a school or youth facility, in a patient care area of a healthcare facility, or in a place of worship.

706.4.11 PRESERVATION OF RECORDINGS

- (a) After any recording is made, it is the employee's responsibility to accurately categorize the recording and label it to the correct incident.
- (b) At the conclusion of an officer's shift, the BWC will be placed in a designated docking station to allow all captured audio and/or video files to be uploaded to the server.
- (c) All recordings shall be appropriately identified and maintained in the applicable designated location in accordance with the retention and preservation practices established by the department.
- (d) Recordings obtained via a BWC, in-car video system, or interview room video system will automatically be uploaded and may not be deleted or modified. Recordings obtained via other recording devices shall be preserved under the following retention schedule:
 - 1. Traffic Stop/Non-Injury Crash / DUI: 5 years
 - 2. Miscellaneous: 6 months
 - 3. Criminal Interview/Transport: 5 years

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4. Injury or Fatal Crash or LE Crash: 10 years
5. Admin/Civil: 10 years
6. Sex offense/Homicide: Indefinitely
7. ZL3 Migration: Indefinitely

706.4.12 REVIEW OR USE OF RECORDINGS

- (a) Officers may review recordings which capture the officers' own perspective (i.e. location) prior to preparing written reports, testifying in any court proceeding or being interviewed during an administrative or criminal investigation.
- (b) Officers may not review other officer's recordings without supervisor approval.
- (c) Officers will not rely on the existence of a recording to write reports which do not appropriately document the circumstances.
- (d) Supervisors shall routinely review recordings to ensure that the recording devices are operating properly, that officers are using the recording devices appropriately, and to assess officer performance.
- (e) Recordings may be used for training purposes. Recordings will never be use for any purpose outside of a legitimate business function.
- (f) The personal use, possession, or distribution of a recording obtained during an officer's duties is prohibited, regardless of ownership of the recording device.

706.4.13 RELEASE OF RECORDINGS

- (a) Requests for release of video will be evaluated on a case-by-case basis and will be approved or denied in compliance with the Freedom of Information Act (FOIA), the Montana Public Records Act and any other relevant state or federal law, case law or court order. All requests will be responded to in consultation with the Missoula City Attorney's Office.
- (b) Routine requests for the release of evidentiary recordings that may contain Confidential Criminal Justice Information pursuant to Title 44, Chapter 5 of MCA, shall be processed in accordance with standard discovery processes.
- (c) Recordings of critical or sensitive incidents with considerable community interest or ramifications may be promptly or proactively disseminated at the discretion of the Chief of Police or the Chief's designee, and upon approval of the release of Confidential Criminal Justice Information by a District Court Judge. Prior to the release of CCJI, the following should be considered:
 1. The privacy rights of all involved individuals
 2. The public's right to know
 3. The impact on any court proceedings related to the incident
 4. The community benefit of releasing the recording

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706.4.14 DELETING, EDITING, AND REDACTING RECORDINGS

- (a) No Missoula Police Department employee shall have the system permissions to delete any recording. Recordings will only be deleted per the established retention schedule.
- (b) Only the Digital Evidence Technician, the Crime Scene Technician or other employees trained and authorized to edit or redact recordings may do so.
 - 1. Editing, clipping, and/or redacting will only be performed on a "child file" and never to the "parent file" or a recording.
 - 2. Editing, clipping, and/or redacting will only be performed in coordination of the relevant prosecuting attorney, if a criminal case is involved, or with coordination of the City Attorney's Office otherwise.