

DEPARTMENT OF PUBLIC SAFETY
MERCER ISLAND POLICE

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EVIDENCE RETENTION BY IN-CAR AUDIO/VIDEO RECORDING

POLICY

The Mercer Island Department of Public Safety has made available to its employees in-car audio/video equipment for officer safety, evidence collection, training and assistance in investigations. This equipment will also enhance the Department's ability to respond to citizen inquiries regarding officer contacts.

It is the policy of Mercer Island Police to encourage the use of audio/video recording equipment by all its uniformed personnel. In order to standardize procedures and obtain evidence within bounds of State law, officers should become thoroughly familiar with the procedures for recording and preserving audio/video evidence.

TYPES OF VIDEO RECORDINGS

It is mandatory to use audio/video equipment during the following situations: (An exception to this rule is if the officer's vehicle has an inoperable audio/video system.)

1. All traffic stops, including DUI investigations;
2. All pursuits;
3. Aid, Fire, and Medic responses where emergency lights and/or siren is utilized;
4. Any other response where emergency lights and/or siren is utilized.

At the officer's discretion, the camera will be activated to record:

1. Arrests, interviews, field interrogations, and social contacts;
2. Recording accident scenes, crime scenes, potential domestic violence contacts and narcotics cases;
3. Conducting training or surveillance;
4. Assist other agencies (Police, Fire, Aid, etc.);
5. Any other citizen or suspect contact.

Officers may supplement the video recording with an audio description of the event and describe any external factors that may not have been recorded, e.g., prior observations, road conditions, contributing circumstances, etc.

EQUIPMENT

Each vehicle in the Patrol Section shall be equipped with an in-car video/audio recording device.

Problems in the use of any of this equipment shall be immediately reported to a supervisor to allow repairs to be made as soon as possible. The intent is not to "deadline" a vehicle if the audio/video equipment is not working.

LEGAL REQUIREMENTS

- ◆ RCW 9.73.090 (1)(c) provides that the statutory two party consent requirements (RCW 9.73.030 - 9.73.080) shall not apply to police when sound recordings that correspond to video images are recorded by video cameras **mounted** in law enforcement vehicles, provided that all law enforcement officers wearing a sound recording device that makes recordings corresponding to videos recorded by video cameras mounted in law enforcement vehicles are in uniform.

A sound recording device which makes a recording pursuant to this subsection (1)(c) may only be operated simultaneously with the video camera. No sound recording device may be intentionally turned off during the operation of the video camera.

A law enforcement officer shall inform any person being recorded by sound under this subsection (1)(c) that a sound recording is being made and the statement so informing the person shall be included in the sound recording. However, the law enforcement officer is not required to inform the person being recorded if the person is being recorded under exigent circumstances.

- ◆ Prior to recording a law enforcement related contact, the video equipment, including microphone, will be activated. Once activated, the video and audio recording will continue until the contact in question has been completed. During initial contact, the officer will advise the person that a sound recording is being made. The announcement will include the following statement: **"Under state law, this contact is being recorded by sound recording."** That notification must be included on the recording. The audio recording will be simultaneous with the video camera, and the recording shall not be turned off during operation of the camera.

NOTE: The RCW authorizes the video/audio recording of citizens during law enforcement officer contacts. Officer(s) will not deactivate the audio or video recording until the contact has been completed, even if the citizen being contacted objects.

- ◆ When a custodial arrest is made, the arrest report will indicate the contact was video taped.
- ◆ No sound or video recording made under RCW 9.73.090 (1)(c) may be duplicated and made available to the public by a law enforcement agency

subject to this section until final disposition of any criminal or civil litigation which arises from the incident or incidents which were recorded. Such sound recordings shall not be divulged or used by any law enforcement agency for any commercial purpose.

GENERAL PROCEDURES

- ◆ Officers shall be responsible for ensuring that their recorder has a tape that is working properly.
- ◆ At the beginning of each shift, officers will use the microphone to make an introduction on the tape by recording the date, time, their name, serial number, and assigned car unit.
- ◆ At the end of each shift, the officer will use the microphone to log off on the tape, including the date and time in the log-off announcement.
- ◆ When using video equipment:
 1. Attempt to visually record the violation and the ensuing physical contact with the driver/occupants. Turn on audio transmitter as early as possible. This will allow you to narrate your location, type of offense you observed prior to activating the video camera or other things such as your speed, road conditions or other items not necessarily apparent to a person watching the finished recording. Record physical sobriety test of your stop or tests administered by another officer on one of his DUI suspects.
 2. Immediately upon beginning the recording of a contact between officer and citizen, the officer will inform the citizen that "**UNDER STATE LAW, THIS CONTACT IS BEING RECORDED BY SOUND RECORDING**" (or other words with the same content). This warning will be recorded at the beginning of each contact and repeated with additional contacts/recordings with the same subject. Miranda rights advisement will also be recorded when suspects are arrested "on camera".
 3. If a custodial arrest is made during the recorded incident, and evidence leading to that arrest is recorded by either video or audio, place the tape in evidence and also note the used tape in the video tape log, which is maintained by the Watch Commander.
 4. All tapes not placed into evidence by the officer will be retained for a minimum of 120 days before erasure. If the officer or his supervisor feels that any recorded contact not involving a crime by any party may likely result in a complaint against the officer or those assisting, the recording will be taken by the on-duty supervisor. The Police Commander will be notified at

the earliest possible opportunity, with appropriate internal memorandum. The tape will be retained until released by the Police Commander.

5. Recording of any serious incident (i.e., pursuits, police vehicle accidents, injury to officers or citizens, shootings) which may or may not contain evidence of a crime should be placed in evidence following standard evidence procedures. If evidence is obtained on tape which has value to another law enforcement agency with primary jurisdiction over the situation, notify that agency of the tape's existence. Turn the tape in to your duty supervisor for retention for the other agency. The Police Commander will be notified of this situation as soon as possible to decide the disbursement of the tape.
6. Recordings may be reviewed by officers prior to and after being placed in evidence to assist in preparation of cases and testimony. Tapes should be reviewed prior to being submitted to evidence to identify any deficiencies in the recording. Any deficiencies and their causes, if known, should be noted in the Police Incident Report. Other non-evidentiary tapes may also be reviewed by officers if they deem it necessary.
7. Incident Reports should contain a sentence declaring that "A portion of this incident was recorded on audio (and/or) video tape" if the violation or criminal act itself was recorded.
8. No officer shall intentionally erase, copy, or tamper with any recorded video tape. Intentionally failing to record mandatory activity, erasing, altering, or any other type of tampering with a recording on a video tape shall be a violation of this General Order, and will result in disciplinary action.

OWNERSHIP - CUSTODY - CONTROL

Recordings generated on Departmental equipment are deemed property of Mercer Island Police and will remain in the care and safekeeping of the Department. It is understood that such evidence requires joint control with the affected prosecutorial authority while subject to judicial review.

Recorded tapes which are subject to continuing judicial review (appeals process, etc.) shall remain in custody of the Department.

EVIDENCE PROCEDURES

1. Video tapes will be placed in evidence and stored in an area safe from magnetic or electrical interference. Video tapes retained for evidential purposes will have the recording tab removed prior to being placed in evidence.

2. Display of any recording contents, until adjudication of the case, shall be limited to Departmental personnel, other agencies affected in the case, and persons specifically authorized by the prosecutor.
3. Video tapes may be erased and returned to general use no sooner than 30 calendar days after adjudication of the affected case. If notice of appeal is given to our Department prior to tape erasure, the tape will remain in evidence until adjudication of such appeal.

DUPLICATION OF TAPES

Anytime another police agency requires a copy of an incident, it shall be provided at no charge if that agency provides a blank tape. If a tape is not provided, a replacement fee shall be charged.

Anytime a defense attorney, private attorney, insurance company, or other private entity requests a copy of a recorded incident, it shall be provided after approval for release has been obtained from the appropriate prosecutor or Department's attorney. A fee shall be assessed for such copies in advance, with payment by certified check or money order made payable to Mercer Island Department of Public Safety. Video tapes may be viewed at the Police Station, without cost, by appointment. All fees shall be set by the Director of Public Safety.

Anytime a video tape is duplicated, the identity of the requesting party shall be recorded and maintained with the case file. Duplications will be made of only the portion of the recording requested.

Jan P. Deveny
Director of Public Safety