

# Mobile Video System (MVS) & Digital Audio Recorder (DAR) Operations

## 437.1 PURPOSE AND SCOPE

The Irvine Police Department recognizes audio and audio-visual recording of contacts between department personnel and the public can provide an unbiased record of these events. The use of a recording system complements field personnel in the performance of their duties and provides a record of enforcement-related as well as non-criminal incidents that can enhance criminal prosecutions and mitigate civil liability. Audio and audio-visual recordings afford the employee and the department the opportunity to review interpersonal skills and officer safety matters. The digital recordings are to be regarded as a valuable training tool providing the opportunity for review and constructive instruction by department supervision. Digital recordings may be used as evidence to prove or disprove allegations of official misconduct as allowed by law.

This policy outlines the requirements of the Mobile Video System (MVS) and Digital Audio Recorders (DAR) including data processing and storage. It also articulates department mandates, guidelines and restrictions of personnel assigned to use this equipment.

## 437.2 POLICY

It is the policy of this department that either an audio-visual recording or digital audio recording shall be made by every employee who has been issued a DAR, or who operates a vehicle equipped with a MVS during all designated contacts with members of the community.

- (a) When the MVS is in use and operating properly, there is no requirement to activate the DAR.
- (b) Should the MVS fail to operate during a designated contact (e.g., defective equipment, officer's distance from the police vehicle, etc.) personnel shall use the DAR to record the event.

## 437.3 DESIGNATED CONTACTS DEFINED

Personnel shall activate the MVS or DAR in accordance with the criteria below:

- (a) Personnel shall use the MVS or DAR to record all dispatched calls for service, unless it is clear there will not be any contact with members of the public.
- (b) Personnel shall use the MVS or DAR to record investigative interviews of involved persons in criminal investigations.
- (c) Personnel shall activate the MVS (including the wireless microphone) or DAR during all field contacts initiated from a police vehicle. Examples would include vehicle stops, arrests, DUI observations, including field sobriety testing, traffic enforcement and pedestrian stops.
- (d) Personnel shall activate the MVS or DAR (or continue recording an event) when transporting subjects, whether in-custody arrestees or community members, in the rear seat of the vehicle.

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- (e) Personnel shall activate the MVS or DAR on all detentions (e.g., pedestrian stops) and arrests.
- (f) Supervisors shall use their MVS or DAR when interviewing members of the public who are lodging a citizen complaint against any member of the Department.
- (g) Personnel are strongly encouraged to activate the MVS or DAR on all other official contacts. Official contacts include all service related calls for service and officer initiated contacts.
- (h) Sections (a) through (g) above apply to not only the officer assigned to or handling the designated contact, but all other officers or supervisors present who are assisting on the designated contact.
- (i) Personnel shall not record conversations between a person in the custody of department personnel, or on the property of a law enforcement agency or other public agency, and the person's attorney, religious advisor, or licensed physician without the consent of all parties.
- (j) There is no such requirement for officers to activate their MVS or DAR for casual or social contacts. Such contacts may include conversations with the public:
  - 1. During a meal break.
  - 2. During public relations contacts (e.g., during a presentation to a community group).
  - 3. During brief encounters for greetings or directions.
- (k) A video recording shall be made in all instances of a blood sample being drawn from an arrestee against his or her will. It is the responsibility of the arresting officer and supervisor to assure any involuntary blood sample is collected in a medically acceptable, lawful manner.
- (l) A DAR is not required to record a telephone conversation when speaking to any party on a recorded line.
- (m) The department recognizes there may be legitimate instances in which activating the MVS or DAR is unreasonable, based upon the totality of circumstances surrounding the official contact. In instances where the MVS or DAR was not activated during an official contact, supervisors and managers shall consider the following mitigating factors in determining reasonableness:
  - 1. Whether or not activating the MVS or DAR would have placed the officer's safety at risk, or the safety of a fellow officer, or member of the public.
  - 2. How rapidly an official contact evolved requiring immediate action to preserve life or property, prevent injury, apprehend a suspect, or stabilize or maintain a safe scene.
- (n) In those instances where a MVS or DAR is not activated, due to reasonable mitigating factors as described above, the officer shall activate the MVS or DAR during the official contact as soon as the event stabilizes and it is practical to do so.

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#### **437.4 USE OF THE MVS OR DAR EQUIPMENT - GENERAL PROVISIONS**

Penal Code §632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief that the conversation was private or confidential. However, Penal Code §633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation.

- (a) Authorized department personnel may surreptitiously record any conversation during the course of a criminal investigation.
  - 1. For the purpose of this policy, authorized personnel contacting an individual suspected of violating any law or during the course of any official law enforcement related activity shall be presumed to be engaged in a criminal investigation.
  - 2. For the purpose of this policy, it shall further be presumed that any individual contacted by uniformed police personnel has no expectation of privacy in such a contact.
  - 3. This presumption shall not apply to contacts with other employees conducted solely for administrative purposes.
- (b) No member of this department may surreptitiously record a conversation of any other member of this department without the expressed knowledge and consent of all parties. Nothing in this section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code §3303(g).
- (c) Department personnel shall not in any manner attempt to modify, alter, erase, or tamper with any portion of an audio/video recording, digital audio recording, or any other department-sanctioned recording medium. The records supervisor or designee may split a recording into multiple segments if necessary. (Refer to Release of Records and Information policy).
- (d) Officers are prohibited from utilizing department recorders and recording media for personal use.

#### **437.5 TRAINING AND ORIENTATION PRIOR TO USE OF THE MVS**

Department personnel will not use the MVS until they have completed training in the proper use of the system. Training will consist of:

- (a) A review of this department policy on the use of the MVS equipment and Release of Records and Information Policy.
- (b) A review of the MVS functions.
- (c) An orientation and practical demonstration of the system and its associated components.

#### **437.6 COMPONENTS OF THE MOBILE VIDEO SYSTEM**

The MVS authorized by the Irvine Police Department consists of:

- (a) Camera(s)

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- (b) Monitor
- (c) Digital Video Recorder
- (d) Wireless Microphone(s)

#### **437.7 DEPARTMENT PERSONNEL RESPONSIBILITIES RELATED TO MVS**

All department personnel subject to mandatory use of the MVS equipment shall adhere to the provisions below:

- (a) Personnel shall use the MVS when operating a department vehicle equipped with the system. Department personnel must obtain permission from a supervisor to use a patrol vehicle that is not equipped with an MVS, or to use a vehicle in which the MVS is not functioning.
- (b) It is the responsibility of the officer to ensure the MVS system (including the wireless microphone) is functioning properly before starting a shift.
- (c) If the MVS system is found to be malfunctioning before or during the officer's shift, he/she shall place the vehicle out of service as soon as practicable.
- (d) Personnel shall log into the MVS using their issued Universal Serial Bus (USB) key before starting their duties/assignment.
- (e) After completing their shift, personnel shall log off of the MVS so as to render it available for the next operator.
- (f) Personnel shall ensure a wireless microphone is available in the vehicle at the time of log on and determine it is synced with the MVS. At no time shall an MVS system be operated without an operable wireless microphone.
- (g) If two officers are in a vehicle equipped with a MVS, then both officers shall use a wireless microphone when using the MVS.
- (h) The wireless microphone shall be worn as intended by the manufacturer on an operator's person at all times when using the MVS.
- (i) The wireless microphone transmitter will be left in its cradle/charger, located in the department vehicle, at the end of the shift as each transmitter is assigned to a specific vehicle.

#### **437.8 ACTIVATION OF THE MOBILE VIDEO SYSTEM**

The MVS is designed to activate either automatically or manually by the operator.

- (a) The system is automatically activated when the emergency lights are turned on (position two and three), or when the crash sensor is activated. The system may also be activated by touching a record button or by activating the wireless microphone.
- (b) The system is also activated when a vehicle's speed meets or exceeds 90 miles per hour. If the MVS system activates due to speed, the officer must not turn off the system until the vehicle is traveling slower than 90 miles per hour, can be done so safely, and no designated contact exists.

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- (c) Recording is mandatory when driving with emergency lighting equipment activated (Code-3).
- (d) Personnel shall activate the audio recording capability (wireless remote microphone) when incidents occur outside the view of the camera. Such applications may include recording conversations during domestic disputes occurring inside a residence or recording statements made by any involved party.
- (e) Because there are limitations on the effective range of the wireless remote microphone, affected personnel shall use the DAR in place of the MVS wireless remote microphone when away from the police vehicle. The effective range of the wireless remote microphone will vary according to existing conditions; however the department recognizes that the remote microphone is unreliable when officers are inside buildings or other places where distance or obstacles can affect signal transmission. Personnel shall, therefore, use the DAR when recording is necessary inside structures or when not in the immediate presence of the police vehicle. Personnel shall also use the DAR when the MVS wireless remote microphone's "out-of-range" audible warning tone is heard.
- (f) If an officer turns off his/her remote transmitter during a shift, he/she must resynchronize the remote transmitter by momentarily placing it into the cradle/charger before returning to service.
- (g) Whenever an incident is recorded by the MVS and a Department Record (DR) number is issued for that incident, the fact that the incident was recorded shall be noted in the narrative section of the report.

#### **437.9 DIGITAL AUDIO AND AUDIO/VIDEO SYSTEM INTEGRITY**

All data and recordings created using these systems shall be processed, stored and disseminated in accordance with the Release of Records and Information policy and the provisions below:

- (a) All recordings shall be kept in accordance with the City records retention schedule unless a specific request is made to store them for a longer period. If any member of the department determines that an audio/video recording should be kept beyond the city records retention schedule period, it shall be flagged accordingly by filling out the appropriate form. The reason for the hold shall be listed on the form. Only the officer requesting the hold, or in the case of evidence, the investigator handling the case, or the Chief of Police (or his/her designee), may release the hold and clear the memory for recycling. The person placing the original hold shall be notified prior to the destruction of the record.
- (b) All recordings shall be maintained in a secure file on the department network with limited and restricted access only to authorized personnel.
- (c) If a member of the department requests a copy of a recorded incident for court purposes, the request shall be made via email to the Custodian of Recorded Events. If needed for court, the request should be made at least seven court days in advance. The Custodian of Recorded Events shall determine if the request to obtain a copy of the digital recording is permitted by policy.

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- (d) The Custodian of Recorded Events shall maintain a file of all requests for copies of audio/video recordings.
- (e) Under no circumstance shall a recorded event be provided to, in any manner, any person outside the department, or members of the judicial system, without an order from the court, or the expressed consent of the Chief of Police or his/her designee.
- (f) Under no circumstances shall department personnel make unauthorized copies of any digital recording medium.
- (g) Once a recording has been captured on the MVS or DAR, that segment shall not be manually erased. All events captured on the MVS or DAR shall be downloaded onto the designated server in accordance with this policy.
- (h) Department personnel are reminded that a log is created for each recorded digital video and an entry is made every time a video is viewed or copied. This log serves as a chain of evidence for the given video file.

Anytime an officer acquires a recording of a contact which the officer reasonably believes constitutes evidence in a criminal case, the officer shall record the related case number and book the recording media into evidence. The officer shall further note in any related report that the recording has been placed into evidence. Recording media placed into evidence shall be retained through the final disposition of the related criminal case.

#### **437.10 PERSONNEL RESPONSIBILITIES SPECIFIC TO THE DAR**

Each person assigned a department owned DAR is responsible for its care and maintenance. The DAR will be carried upon the person in a manner that will allow for easy operation without impairing the capabilities of the other equipment worn by the employee. Prior to going into service, each DAR user will check the equipment to ensure it is working properly.

If for any reason the DAR fails to operate correctly and/or an error is displayed, it is the assigned employee's responsibility to notify his/her field supervisor and to submit the DAR to User Support for repair. The employee will be issued a replacement during the repair period.

Each assigned employee shall download the contents of the recorder to the department server at the end of each shift. This download process may be accomplished at a police facility computer terminal or any police vehicle equipped with a laptop computer. The employee shall enter any DR number issued that is associated with a particular DAR recording into the appropriate dialog box during this downloading process.

If the recording was inadvertently left running and contains information unrelated to the incident, the employee shall add the start/stop times of all segments relating to the incident in the notes section of the DAR software program, and to the police report if a DR was issued.

Whenever an incident is recorded by a DAR and DR number is issued for that incident, the fact that the incident was recorded shall be noted by checking the box marked MVS/DAR on the face page of the report.

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#### **437.11 REVIEW OF RECORDED MEDIA FILES**

As a general rule, department personnel are able to review their own recorded events. Management may, on a case by case basis, restrict the ability to review recorded media to preserve the integrity of an investigation.

Events recorded in accordance with this policy shall not be used or shown for the purpose of employee ridicule or embarrassment.