

# WAYZATA POLICE DEPARTMENT

**Policy: 127**

**EFFECTIVE DATE: October 28<sup>th</sup>, 2020**

**SUBJECT: Portable Recording Systems**

## **Section 1**     **Purpose and Scope**

This policy provides guidelines for the use, management, storage, retrieval, and duplication of video and audio media recorded by the portable recording system ([Minn. Stat § 626.8473](#)). The Wayzata Police Department provides members with access to a portable recording system (PRS) for use during the performance of their duties. The use of the PRS is intended to enhance the mission of the department by accurately capturing contacts between members of the department and the public.

This policy governs the use of portable recording systems in the course of official duties. It does not apply to the use of surreptitious recording devices in undercover operations or the use of squad-based (dash-cam) video recorders. The Chief or designee may supersede this policy by providing specific instructions for the use of the PRS to individual officers or for the use pertaining to certain events or classes of events, including, but not limited to protests and demonstrations.

## **Section 2**     **Policy**

It is the policy of the Wayzata Police Department to authorize the use of department-issued portable recording systems as set forth below and as required by [Minn. Stat. § 626.8473, subd. 3](#). It is the goal of the Wayzata Police Department to use portable recording systems to enhance the mission of the department by documenting contacts between members of the department and the public. Digital evidence captured by the PRS is not all inclusive. The system captures a less broad and less detailed image than the totality of the human senses.

## **Section 3**     **Portable Recording System Objectives**

The Wayzata Police Department has adopted the use of portable recording systems to accomplish the following objectives:

- To enhance accountability and public trust by preserving documentation of officer's interactions with citizens.
- Capture digital audio-video evidence for criminal, civil and traffic-related court cases.

- Assist officers with recalling factors or other details captured by the equipment that will help them accurately articulate a chain of events when writing reports.
- Be used as a training tool for officer safety and best practices in the Wayzata Police Department.
- To enhance officer and public safety.

#### Section 4 Definitions

Definitions related to this policy include:

- **Portable recording system:** A device worn by a peace officer that is capable of both video and audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation ([Minn. Stat. § 13.825, Subd. 1](#)).
- **Portable recording system data:** Audio or video data collected by a portable recording system ([Minn. Stat. § 13.825, Subd. 1](#)).
- **Substantial bodily harm:** Defined by [Minn. Stat. § 609.02, Subd. 7a](#), as bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.
- **Redact:** Blur video or distort audio so that the identity of the subject in a recording is obscured sufficiently to render the subject unidentifiable ([Minn. Stat. § 13.825, Subd. 1](#)).
- **General citizen contact:** An informal encounter with a citizen that is not and does not become law enforcement-related or adversarial and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, community outreach events, summoning a tow truck, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.
- **Evidentiary value:** Information that may be useful as proof in a criminal prosecution, civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer.
- **Adversarial:** An encounter with a person that becomes confrontational and during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

#### Section 5 Use and Documentation

Officers who are issued a PRS will wear and activate the PRS consistent with this policy.

- 127.5.1** Officers may only use department-issued PRS in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department ([Minn. Stat. § 13.82, Subd. 6](#)).
- 127.5.2** All officers who are issued a PRS must receive training in the use of the PRS by an authorized representative. Only those officers that have been issued a PRS and have received the department authorized training may operate a PRS. All employees who use the PRS systems shall receive training on these systems and this policy.
- 127.5.3** All officers issued a PRS are required to wear and use their PRS while working in any uniformed assignment. This applies to overtime assignments and uniformed off-duty employment or Contractual Over Time (COT) in the City of Wayzata.
- 127.5.4** Officers assigned to a plain clothes assignment, investigative assignment, or undercover assignment, shall not be required to wear a PRS during their day-to-day work unless working in a uniformed call response capacity or as otherwise directed by a supervisor. Plain clothes or undercover officers must use a PRS when wearing the uniform, raid gear, or temporary tactical gear.
- 127.5.5** The Chief may designate certain functions as exempt from PRS deployment (e.g. funeral or ceremony).
- 127.5.6** Officers should wear their PRS at the location on their body and in the manner specified in training.
- 127.5.7** Officers shall conduct a function test of their issued PRS at the beginning of their shift to make sure the devices are operating properly. Officers noting a malfunction during testing or any other time shall promptly report the malfunction to the on-duty supervisor and shall complete an Equipment Service Request. A replacement PRS should be used, if available. Officers shall not attempt maintenance or repair of any component of the PRS.
- 127.5.8** Officers must document their use and non-use of the PRS as follows:
- Whenever an officer makes a recording, the existence of the recording shall be documented in the incident report. If no incident report exists, then the existence of the recording will be documented through the classification process.
  - If there is a failure to record an activity that is required to be recorded under this policy or only captures a part of the activity, the officer must document

the circumstances and reasons for not recording in an incident report or CAD record.

- 127.5.9** The PRS recording is not a replacement for an officer's written report.
- 127.5.10** Officers failing to adhere to this policy or applicable laws regarding the use of a PRS and any associated data, including but not limited to restrictions regarding accessing such data, are subject to discipline, up to and including termination.
- 127.5.11** The department will maintain the following records and documents relating to PRS use, which are classified as public data ([Minn. Stat. § 13.825, Subd. 5](#)):
- The total number of PRSs owned or maintained by the agency.
  - A daily record of the total number of PRS actually deployed and used by officers.
  - The total amount of recorded PRS data collected and maintained.
  - This policy and the records retention schedule.
- 127.5.12** No department employee will take any actions intended to damage or render any part of the PRS inoperable, overwrite recorded data, or defeat the intended use of the PRS.
- 127.5.13** Officers are prohibited from using personal video recording equipment in lieu of their department issued PRS while on-duty. However, the department recognizes that, in rare or unforeseen situations, it may be necessary for officers to use their personal video recording equipment to record or collect evidence. In such events, the video must be uploaded and placed into evidence in accordance with department policy and procedure. All evidence on personal recording devices shall be deleted after it is uploaded and placed into evidence.

## **Section 6**      **General Guidelines for Recording**

- 127.6.1** This policy is not intended to describe every possible situation in which the PRS should be used. Officers should activate the recorder any time they believe it would be appropriate or valuable to record an incident.
- At no time is an officer expected to jeopardize his or her safety in order to activate the PRS. Officer safety and public safety take precedence over recording events. Officer safety and the safety of the public shall be the primary considerations when contacting citizens or conducting vehicle stops, not the ability to record an event. Officers need not activate their cameras when it would be unsafe, impossible, or impractical to do so. However, the PRS should be activated as soon

as practical. In such instances of not recording when otherwise required, it must be documented as specified in the Use and Documentation guidelines (Section 5).

- 127.6.2** Officers shall activate their PRS when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, Terry stops of motorists and pedestrians, traffic stops, arrests, searches, suspect interviews and interrogations, and during any police/citizen contacts that become adversarial.
- 127.6.3** Officers should activate their PRS prior to any use of force. If a PRS is not activated prior to a use of force, it should be activated as soon as safe to do so.
- 127.6.4** Officers shall activate their PRS when directed to do so by a supervisor.
- 127.6.5** Officers should use their PRS to record the transportation and the physical transfer of persons in their custody to hospitals, detox, mental health care facilities, juvenile detention centers, court of laws and jails, but should not otherwise record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use of force incident.
- 127.6.6** All searches of persons involving the removal of clothing shall be recorded by at least one person present during the entirety of the search, including all pre-search instructions provided to the person being searched. Officers should consider the subject's privacy. When searches require the removal of clothing, the camera shall be positioned to assure that audio data is collected, but the person being searched is not captured on video.
- 127.6.7** Except as otherwise directed, officers have discretion to record or not record incidental general citizen contacts that do not become law enforcement-related or adversarial, and when a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a tow truck, or receiving general concerns from a citizen about crime trends in their neighborhood.
- 127.6.8** Officers need not record persons being provided medical care unless there is reason to believe that the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, PRSs should be activated as necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms of behaviors believed to be attributable to the mental health issues.

- 127.6.9** Officers have no affirmative duty to inform people that a PRS is being operated or that the individuals are being recorded. Officers may elect to notify people they encounter that a PRS is being operated if they feel that doing so may de-escalate an encounter. If asked, officers are required to provide a factual response about recording.
- 127.6.10** When taking a formal statement from a victim or witness, an officer should attempt to notify a victim or witness on the use of the PRS, unless they believe that it would distract from the investigation.
- 127.6.11** Officers shall not intentionally block the PRS audio or visual recording functionality to defeat the purposes of this policy.
- 127.6.12** Notwithstanding any other provision in this policy, officers shall not use their PRS to record other agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, or during other private conversations. The Chief may authorize the use of PRS's as part of an administrative or internal criminal investigation.
- 127.6.13** There shall be no recordings made in any court of law, unless authorized by a judge ([Minn. Court Rule 4](#)). This does not preclude an officer responding to an incident at the courthouse from recording as required by policy.

## **Section 7** **Cessation of Recording**

- 127.7.1** Once activated, the PRS should continue recording until the conclusion of the incident or until it becomes readily apparent that additional recording is unlikely to capture information having any evidentiary value. A sergeant, supervisor, or detective in charge of a scene can likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. Officers shall state the reasons for ceasing the recording on camera before deactivating their PRS. If circumstances change, officers shall reactivate their cameras as required by this policy. Officers may cease recording under the following situations:
- To protect the identity of an officer in an undercover capacity.
  - To protect the identity of an informant.
  - If a request is made for a PRS to be turned off by a party being contacted. The officer should consider the overall circumstances and what is most beneficial to all involved, before deciding to honor the request. For example, an officer may choose to turn off the PRS if its operation is inhibiting a victim or witness from giving a statement. Factors to consider may include the type of call and the vulnerability of the victim, such as the victim of a sexual assault.

- Audio on a recording may be temporarily ceased to exchange information with other officers. The reason to cease audio recording will be noted by the officer verbally on the PRS or in a written report (tactical mute).
- When a supervisor has determined in advance the video or audio data could result in the disclosure of operational or tactical information which would compromise the effectiveness of future actions or jeopardize officer safety if released.
- When it reasonably appears to the officer that an individual's privacy outweighs any legitimate law enforcement interest in recording. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.
- When recording is prohibited by a detention facility, detox, or medical facility.
- At search warrant scenes, the PRS may be deactivated once the entry is complete and the scene is safe. This deactivation would only occur after suspects are arrested and removed from the warrant location. If removing all other occupants is not possible or reasonable, at a minimum the cover officer(s) will have their PRS activated.

## **Section 8**      **Downloading and Labeling Data**

**127.8.1**      Each officer using a PRS is responsible for transferring or ensuring the proper transfer of the data from his or her camera to the designated data storage location by the end of that officer's shift. If there is an unforeseen issue in transferring, a supervisor should be notified.

**127.8.2**      If an officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor or detective shall take custody of the officer's PRS and assume responsibility for transferring the data from it. If an investigating agency requests to take control of the PRS, the data must first be transferred to the department's servers and the Chief or designee must authorize the transfer of the PRS to the outside agency.

**127.8.3**      Officers should classify the PRS data files at the time of video capture or after the video has been uploaded to the server.

## **Section 9**      **Access to PRS Data**

**127.9.1**      It is not the intent of the Wayzata Police Department to review digital evidence for the purpose of general performance review, for routine preparations of performance reports, or to discover policy violations.

**127.9.2**      Access to PRS data shall be limited to the employee who captures the video, supervisory personnel, and those detectives, officers, or support staff who are participating in an official department investigation.

- 127.9.3** Officers may access and view stored PRS data of incidents in which they have been directly involved. Officers can view saved data to:
- Refresh memories of events and statements prior to completing reports or making statements
  - Ensure the system is operating properly and/or
  - Self-Critique.
- 127.9.4** Officers may display portions of the PRS footage to witnesses for purposes of investigation as allowed by [Minn. Stat. § 13.82, Subd. 15.](#) Officers should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public.
- 127.9.5** PRS data may be shared with other law enforcement agencies only for legitimate law enforcement purposes. It shall be made available to prosecutors, courts, and other criminal justice entities as provided by law ([Minn. Stat. § 13.825, Subd 8](#)).
- 127.9.6** No employee may access the department's PRS data except for legitimate law enforcement or data administration purposes.
- 127.9.7** The department shall restrict PRS data in compliance with state law and this policy by the following:
- Access will be restricted according to an authorized employee's access credentials.
  - All audio and video data access' are password protected.
  - The Wayzata Police Department will maintain an electronic notation of the date, time, classification, and person with regard to each access to data ([Minn. Stat. § 13.825, Subd. 9](#)). All employees who access PRS data outside of policy requirements and standard operating procedures will be required to document the reason for their access according to system capabilities.
- 127.9.8** Agency personnel are prohibited from accessing PRS data for non-business reasons and from sharing the data for non-law enforcement related purposes, including uploading PRS data recorded or maintained by this agency to public and social media websites.
- 127.9.9** Employees seeking access to PRS data for non-business reasons may make a request for it in the same manner as any member of the public.
- 127.9.10** Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view agency PRS data.
- 127.9.11** Officers shall not intentionally edit, alter or erase any PRS recording unless otherwise expressly authorized by the Chief or designee.



**Section 10**     **Agency Use of Data**

- 127.10.1**     At least once per month, supervisors will randomly review PRS usage by each officer to ensure compliance with this policy ([Minn. Stat. § 626.8473, Subd 3](#)).
- 127.10.2**     Supervisors and other assigned personnel may access PRS data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about officer misconduct or performance.
- 127.10.3**     Officers should contact their supervisors to discuss retaining and using PRS footage for training purposes. Officer objections need to be submitted to the Chief to determine if the value of training outweighs the officer's objection to releasing the video.
- 127.10.4**     Field Training Officers may utilize PRS data with trainees for the purpose of providing coaching and feedback on the trainee's performance.
- 127.10.5**     PRS data may be viewed for administrative purposes including, but not limited to:
- Any incident where a member of the department is injured or killed during the performance of their duties.
  - Any incident involving the use of force by a member of the department so the supervisor can validate the force used was within policy.
  - Any in-custody death.
  - Any police pursuit.
  - When any member of the department intentionally or unintentionally discharges a firearm at a person regardless of whether an individual is struck.
  - Officer involved traffic collision.
  - Prior to release of a recording in response to proper legal request (e.g., subpoena or other court order).
  - In preparation for a civil deposition or responding to an interrogatory where the incident arises from the employee's official duties.
  - When preparing to testify in a criminal, civil or administrative proceeding arising from the employee's official duties.
  - For investigations undertaken by the department, for the purpose of proving or disproving specific allegations of misconduct. For administrative proceedings, when digital evidence is used by the department for the purpose of proving or disproving allegations of misconduct, only digital evidence relevant to the investigative scope shall be viewed and retained by investigators. Information relevant to the recordings viewed and seized as evidence by investigators shall be documented as part of the chronological summary of any investigation undertaken by the department.

**127.10.6** Supervisors reviewing event recording should remain focused on the incident or incidents in question and review only those recordings relevant to their investigative scope. If improper conduct is discovered during any review of digital evidence, the Supervisor may take the necessary steps to counsel or initiate an internal affairs investigation in adherence with department policy.

**Section 11** **Administering Access to PRS Data**

**127.11.1** Data subjects: Under Minnesota law ([Minn. Stat. § 13.825, Subd 4](#)), the following are considered data subjects for purposes of administering access to PRS data:

- Any person or entity whose image or voice is documented in the data.
- The officer who collected the data.
- Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording.

**127.11.2** PRS data is presumptively private. PRS recordings are classified as private data about the data subjects unless there is a specific law that provides differently ([Minn. Stat. § 13.825, Subd 2](#)). As a result:

- PRS data pertaining to people is presumed private, as is PRS data pertaining to businesses or other entities.
- Some PRS data is classified as confidential (see 127.11.3 below).
- Some PRS data is classified as public (see 127.11.4 below).

**127.11.3** Confidential data: PRS data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the “private” classification listed above and the “public” classification listed below ([Minn. Stat. § 13.82, Subd 7](#)).

**127.11.4** Public Data: The following PRS data is public ([Minn. Stat. § 13.825, Subd 2](#)):

- Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous.
- Data that documents the use of force by a peace officer that results in substantial bodily harm.
- Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted if practicable. In addition, any data on undercover officers must be redacted.
- Data that documents the final disposition of a disciplinary action against a public employee.

**127.11.5** Access to PRS data by non-employees: Officers shall refer members of the media or public seeking access to PRS data to the Chief or Deputy Chief or person(s)

designated by the Chief of Police, who shall process the request in accordance with the [MGDPA](#) and other governing laws. In particular:

- An individual shall be allowed to review recorded PRS data about him or herself and other data subjects in the recording, but access shall not be granted:
  - If the data was collected or created as part of an active investigation.
  - To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal identities protected by [Minn. Stat. § 13.82, Subd. 17](#).
- Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction ([Minn. Stat. § 13.825, Subd. 4](#)):
  - Data on other individuals in the recording who do not consent to the release must be redacted.
  - Data that would identify undercover officers must be redacted.
  - Data on other officers who are not undercover, and who are on-duty and engaged in the performance of official duties, may not be redacted.
- With the approval of the Chief of Police, the department may make any data classified as confidential or protected nonpublic pursuant to [Minn. Stat. § 13.82 Subd. 7](#) accessible to any person, agency or the public if the department determines that the access will aid the law enforcement process, promote public safety, or dispel widespread rumor or unrest, consistent with [Minn. Stat. § 13.82 Subd. 15](#).

**Section 12**  
**127.12.1**

**Copying of Recorded Data**

Much of the data saved on the server will not be needed for long term retention and will be automatically purged after a minimal time period or when a determination is made that the data no longer needs to be retained. See Section 13 for retention schedules.

**127.12.2**

Other recorded data will require long term retention and/or transfer to another type of media. Copies of recorded data may be made for the following reasons:

- For use as evidence in court.
- For review by prosecuting or defense attorneys.
- For use in investigating complaints against officers.
- To assist officers and investigators in an investigation.
- For officer review prior to a court appearance.
- For long term records archiving.
- For use as authorized training material.
- As part of a data request.

- Other uses as approved the Chief of Police.

- 127.12.3** The duplication of recorded data from the server to other media is the responsibility of a person(s) designated by the Chief of Police and trained in the operation of the server and duplicating equipment. Requests for duplicate recorded data should be made in writing and submitted to the person(s) designated by the Chief of Police to duplicate data. The data request should include:
- Case number.
  - Data and time of incident.
  - Name and badge number of the officer making the original recording.
  - Reason for the copy.
- 127.12.4** After use, all duplicates shall be returned to the Property Room Manager. The copying of all data will be for official business only and subject to Minnesota Data Practices laws. Exceptions shall be approved by the Chief of Police. Data recorded by the PRS and stored on any media is classified as official government data and subject to Minnesota Data Practices.
- 127.12.5** All PRS data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data ([Minn. Stat. § 13.825, Subd. 3](#)).
- 127.12.6** Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick or injured must be maintained for a minimum period of one year.
- 127.12.7** Certain kinds of PRS data must be retained for six years:
- Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review.
  - Data documenting circumstances that have given rise to a formal complaint against an officer.
- 127.12.8** PRS data that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.
- 127.12.9** Upon written request by a PRS data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The agency will notify the requester at the time of the request that the data will then be destroyed unless a new written request is received ([Minn. Stat. § 13.825, Subd. 3](#)).

- 127.12.10** The Wayzata Police Department will post this policy and the records retention schedule on its website ([Minn. Stat. § 626.8473, Subd. 3](#)).
- 127.12.11** The copying, viewing and distribution of any recorded data for any use not approved by the Chief of Police is prohibited.
- 127.12.12** An independent, biennial audit will be conducted of the PRS data to determine if the data is appropriately classified, how the data is used, and whether the data is destroyed per [Minn. Stat. § 13.82](#). The results of the audit are public information and will be reported to the Wayzata City Council and the Legislative Commission on Data Practices and Personal Data Privacy no later than 60 days following the completion of the audit ([Minn. Stat. § 13.825 Subd. 9](#)).

### **Section 13**     **Data Retention**

The PRS data retention periods ensure that data is retained according to the guidelines set forth in Minnesota Statutes and General Records Retention Schedule for Minnesota Cities. Below is a list of PRS classifications, including definitions and retention periods.

1. Administrative: Incidents that involve an adversarial encounter or resulted in a complaint against an officer. (Until manually deleted see Gen. Records Ret'n sched for Minn Cities, Code POL 05880.)
2. Arrest: Custodial arrest with no documented use of force (7 years).
3. Data subject request: Data requested to be held by subject of data (180 days).
4. Discharge Firearm: Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.
5. Evidence: Recordings of anything of evidentiary nature including but not limited to scene evidence, interviews and whatever else may support charges now or in the future. *The Records Retention Schedule for Minnesota Cities provides that retention periods for cases that have been charged are based on the status of court proceedings. (Code POL 05840.) Audio and video recordings of interviews must be preserved until the statute of limitations for the uncharged offense expires. (POL 05900.) Other recordings relating to uncharged offenses must be retained for seven years, or permanently in the case of death investigations. (POL 03300 for adult offenses; POL 03400 for juvenile offenses; POL 05870 for death investigations.)*
6. Incident Response: Response to CFS that does not result in any other classification (90 days).
7. Test/Accidental: System check at beginning of duty tour/accidental activation (90 days).

8. Traffic/Accidents: All traffic stops (cite or warn) or traffic accidents, unless it is a custodial arrest or force is used. (3 years).
9. Training: Event that could assist in department training (manual retention and subject to approval by Chief of Police).
10. Use of Force: Any documented use of force (Until manually deleted but not before 7 years. *See Gen. Records Ret'n sched for Minn Cities, Code POL 05930*).