

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The South Bend Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

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- (g) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Prior contacts with the individual or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the officer.
- (c) Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.4 DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or

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- (h) An individual alleges any of the above has occurred.

300.6 MEDICAL CONSIDERATIONS

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should not be left alone, but should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away (see the Medical Aid and Response Policy).

300.7 SUPERVISOR RESPONSIBILITIES

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Ensure all appropriate reports and forms are completed.
- (d) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

Handcuffing and Restraints

301.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

301.2 POLICY

The South Bend Police Department authorizes the use of restraint devices in accordance with this policy, the Use of Force Policy and department training. Restraint devices shall not be used to punish, to display authority or as a show of force.

301.3 USE OF RESTRAINTS

Only members who have successfully completed South Bend Police Department-approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, officers should carefully balance officer safety concerns with factors that include, but are not limited to:

- The circumstances or crime leading to the arrest.
- The demeanor and behavior of the arrested person.
- The age and health of the person.
- Whether the person is known to be pregnant.
- Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes.
- Whether the person has any other apparent disability.

301.3.1 RESTRAINT OF DETAINEES

Situations may arise where it may be reasonable to restrain a person who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to ensure the safety of officers and others. When deciding whether to remove restraints from a detainee, officers should continuously weigh the safety interests at hand against the continuing restraint of the detainee.

301.3.2 RESTRAINT OF PREGNANT PERSONS

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety.

No person who is in labor, delivery or recovery after delivery shall be handcuffed or restrained except in extraordinary circumstances and only when such restraints are necessary for the safety of the arrestee, officers or others.

Handcuffing and Restraints

- (b) Whether it is reasonably necessary to protect the person from his/her own actions (e.g., hitting his/her head against the interior of the patrol vehicle, running away from the arresting officer while handcuffed, kicking at objects or officers).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol vehicle).

301.6.1 GUIDELINES FOR USE OF LEG RESTRAINTS

When applying leg restraints the following guidelines should be followed:

- (a) In all cases, a supervisor shall be notified via report after the application of the leg restraint device.
- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Once secured, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.
- (d) The restrained person should be continually monitored by an officer while in the leg restraint. The officer should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The officer should look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) When transported by emergency medical services, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the person (e.g., prolonged struggle, extreme agitation, impaired respiration).

301.7 REQUIRED DOCUMENTATION

If a person is restrained and released without an arrest, the officer shall document, in a Code 1, Code 2 or additional/supplemental report, the details of the detention and the need for handcuffs or other restraints.

If a person is arrested, the use of restraints other than handcuffs shall be documented in the related report. The officer should include, as appropriate:

- (a) How the person was transported and the position of the person during transport.
- (b) Observations of the person's behavior and any signs of physiological problems.
- (c) Any known or suspected drug use or other medical problems.

Standards of Conduct

320.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the South Bend Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

320.2 POLICY

The continued employment or appointment of every member of this department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

320.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

320.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict will not be held accountable for disobedience of the lawful order or directive that was initially issued.

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The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

320.3.2 SUPERVISOR RESPONSIBILITIES

Supervisors are required to follow all policies and procedures and may be subject to discipline for:

- (a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- (b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- (c) Directing a subordinate to violate a policy or directive, acquiescing to such a violation, or exhibiting indifference to such a violation.
- (d) Exercising unequal or disparate authority toward any member for malicious or other improper purpose.

320.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and Indiana Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

320.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service.

320.5.1 LAWS, RULES AND ORDERS

- (a) Violation of, or ordering or instructing a subordinate to violate, any policy, procedure, rule, order, directive or requirement, or failure to follow instructions, contained in department or City manuals.
- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.
- (c) Violation of federal, state, local or administrative laws, rules or regulations.

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320.5.2 ETHICS

- (a) Using or disclosing one's status as a member of the South Bend Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department, the policies of the city and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.
- (g) Any other failure to abide by the standards of ethical conduct.

320.5.3 DISCRIMINATION, OPPRESSION OR FAVORITISM

Discriminating against, oppressing or providing favoritism to any person because of age, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, knowing the conduct is unlawful.

• 320.5.4 RELATIONSHIPS

- (a) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- (b) Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- (c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (d) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (e) Associating on a personal, rather than official, basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of, such criminal activities, except as specifically directed and authorized by this department.

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320.5.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.
 - 1. An officer will be considered late for duty if he/she is not present when roll call begins. Any officers arriving after the start of roll call will be required to submit a late report to his/her commander bearing his/her signature, reason for being late and the amount of time late. The report shall be submitted promptly to the Commander.
 - 2. In any calendar year, January 1 through December 31, officers are to be warned in writing, by their Commander, upon receiving the fifth late report. The sixth late shall result in a suspension of one day; the seventh late shall result in a suspension of up to two days; the eighth late may render the officer liable to be relieved of duty pending formal charges by the Board of Public Safety. All late reports will be forwarded to the office of the Chief of Police. The Commander will keep a copy of the report for his/her records. Only documented instances in which an officer becomes involved in a duty-related matter (i.e., assisting at a dispatch, court) will be accepted as justification for reporting late for duty.
- (e) Shall not feign illness or injury, falsely report themselves sick or injured or otherwise deceive or attempt to deceive any official of the Department or the City as to the condition of their health. They shall be required to provide medical documentation to the Chief of Police upon request.

320.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away or appropriating any South Bend Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.
- (e) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

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• 320.5.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.
- (e) Failure to notify the Department within 24 hours of any change in residence address, home contact telephone numbers or marital status.
- (f) Shall report the loss or suspension of their driver's license to their Commander immediately upon such instance occurring.

320.5.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive, or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document, or any other property owned or issued by the Department.
- (c) Failure to participate in investigations, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
 1. While on department premises.
 2. At any work site, while on-duty or while in uniform, or while using any department equipment or system.
 3. Gambling activity undertaken as part of an officer's official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.

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- (g) Improper political activity including:
 - 1. Unauthorized attendance while on-duty at official legislative or political sessions.
 - 2. Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty, on department property or while in any way representing him/herself as a member of this department, except as expressly authorized by City policy, the collective bargaining agreement or the Chief of Police.
 - 3. Any other activity prohibited by the city handbook or ethics code.
- (h) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the collective bargaining agreement, or the Chief of Police.
- (i) Any act on- or off-duty that brings discredit to this department.
- (j) Shall operate departmental vehicles in a careful and prudent manner and shall obey state laws or departmental orders pertaining to such operation.

320.5.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy.
- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
- (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- (h) Criminal, dishonest or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- (i) Unauthorized possession of, loss of or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
- (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any collective bargaining agreement including fraud in securing the appointment or hire.

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- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.
- (m) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.
- (n) Shall not knowingly interfere with the investigation, assigned task or duty assignment of another. They shall not interfere with cases assigned to other officers for investigation without consent, except by order of a superior officer, nor shall they interfere with the operation of any division, bureau or unit.
- (o) Shall truthfully answer all questions relating to the scope of their employment and operations of the Department which may be asked of them. Officers shall cooperate fully with any internal investigation.
- (p) Shall in the interest of clarifying any departmental matter to which they are a party, concerning an investigation about which it is believed they have information of value, submit to a polygraph test if ordered to do so by the Chief of Police or his/her designee.
- (q) Shall submit to a test if suspected of operating a vehicle under the influence of alcohol or narcotics, if ordered to do so by the Chief of Police or his/her designee.

320.5.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver's license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling, including loading or unloading firearms in an unsafe manner, either on- or off-duty.
- (e) Carrying, while on the premises of the work site, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- (f) Unsafe or improper driving habits or actions in the course of employment or appointment, and at any time while using a city vehicle.
- (g) Any personal action contributing to a preventable traffic accident.
- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

320.5.11 INTOXICANTS

- (a) Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.
- (b) Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume

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alcohol is not permitted to do so to such a degree that it may impair on-duty performance.

- (c) Unauthorized possession, use of or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.
- (d) Shall not consume alcoholic beverages while wearing any part of the uniform that identifies the officer as South Bend Police Department.

Mobile and Portable Audio/Video Recorders (includes Body Worn Devices)

424.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of audio/video recording devices by members of this department while in the performance of their duties. Audio/video recording devices include all recording systems whether body-worn, hand-held or integrated into portable equipment, such as the MVR system. This policy does not apply to audio/video recordings, interviews or interrogations conducted at any South Bend Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

424.2 POLICY

The South Bend Police Department may provide members with access to mobile/portable recorders, either audio, video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department and provide mutual accountability by accurately capturing contacts between members of the Department and the public.

424.3 MEMBER PRIVACY EXPECTATION

All recordings made by members on any department-issued device at any time, and all recordings made while acting in an official capacity of this department, regardless of ownership of the device it was made on, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

424.4 COORDINATOR

The Chief of Police or the authorized designee should designate a coordinator responsible for:

- (a) Establishing procedures for the security, storage and maintenance of data and recordings.
- (b) Establishing procedures for accessing data and recordings.
- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging or marking events.
- (e) Coordinating with the Director of Records to obscure information captured in recordings consistent with I.C. § 5-14-3-5.2.

424.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a mobile/portable recorder, issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as

Mobile and Portable Audio/Video Recorders (includes Body Worn Devices)

soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

Any member assigned to a non-uniformed position may carry an approved mobile/portable recorder at any time the member believes that such a device may be useful.

When using a recorder, the assigned member shall ensure the proper functioning of the device, recording his/her name, SBPD 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.

Members shall document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member de-activated the recording. Members shall include the reason for de-activation.

424.6 ACTIVATION OF THE RECORDER

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

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

- (a) All enforcement and investigative contacts including stops and field interview situations (including assisting/back-up officers)
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops (including assisting/back-up officers)
- (c) Self-initiated activity in which an officer would or should normally notify Communication Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should remain sensitive and respectful to the dignity of all individuals being recorded and exercise sound discretion to respecting privacy by discontinuing recording whenever it reasonably appears that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

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Mobile and Portable Audio/Video Recorders (includes Body Worn Devices)

424.6.1 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER

Indiana law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (I.C. § 35-31.5-2-176; I.C. § 35-33.5-2-1 et seq.).

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order or when lawfully authorized by the Chief of Police or the authorized designee.

424.6.2 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member 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.

424.6.3 EXPLOSIVE DEVICE

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

424.7 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using department-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 an official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Shift Supervisor. Any member who uses a personally owned recorder for department-related activities shall comply with all provisions of this policy, including retention and release requirements, and shall notify the on-duty supervisor of such use as soon as reasonably practicable.

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

424.8 IDENTIFICATION AND PRESERVATION OF RECORDINGS

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

Mobile and Portable Audio/Video Recorders (includes Body Worn Devices)

A member shall transfer, tag or mark recordings when the member reasonably believes:

- (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 information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.
- (g) The recording or portions of may be protected under the Public Records Act (I.C. § 5-14-3-4).
- (h) As directed by the Chief of Police and/or designee (e.g., mandated use in all public interactions).
- (i) Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., hostile contact), the member should promptly notify a supervisor of the existence of the recording.

424.8.1 RETENTION REQUIREMENTS FOR RECORDINGS PURSUANT TO A WARRANT

All recordings made pursuant to a warrant, shall immediately be sealed upon the expiration of the warrant. The recordings shall be retained for a period of not less than 10 years. Recordings made pursuant to a warrant may only be destroyed pursuant to an order of court (I.C. § 35-33.5-5-2).

424.9 REVIEW OF RECORDED MEDIA FILES

When preparing reports or statements, members should review their recordings as a resource. However, members shall not retain personal copies of recordings. Members should 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 a member's performance.

Recorded files may also be reviewed:

- (a) Upon Chief's approval, by any member of the Department 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) Upon Chief's approval to ensure policy compliance or randomly to ensure policy compliance and performance.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

Mobile and Portable Audio/Video Recorders (includes Body Worn Devices)

All video recordings should be reviewed by the Custodian of Records and the City Legal Department prior to public release (see the Records Maintenance and Release Policy). Video that unreasonably violates a person's privacy or sense of dignity or is otherwise prohibited by I.C. § 5-14-3-5.2(a) or I.C. § 5-14-3-5.2(e) should not be publicly released unless disclosure is required by law or order of the court.

424.10 RETENTION OF RECORDINGS

Members should transfer the recording, in accordance with current procedure for storing recordings, at the end of their shift and any time the storage capacity is nearing its limit.

All recordings shall be retained in an unaltered and unobscured condition for at least 190 days. Recordings shall be retained for longer periods as follows (I.C. § 5-14-3-5.3):

- (a) As provided in I.C. § 5-14-3-5.1 for at least two years upon written request:
 - 1. Of a person who is depicted or whose property is depicted in the recording.
 - 2. Of a victim.
- (b) For at least two years if a formal or informal complaint is filed regarding a law enforcement activity as provided in I.C. § 5-14-3-2(j).
- (c) Until the final disposition of all appeals and an order from the court if a recording is used in a criminal, civil or administrative proceeding.

The South Bend Police Department may retain a recording for training purposes for any length of time (I.C. § 5-14-3-5.3).

424.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS

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