



Lunenburg Police Department

Policy Number: 1.33	Subject: Audio, Visual Recording CCTV
Issue Date: 07/14/2016 Revision Date: 10/18/2021; 2/3/2022; 7/11/2022 Effective Date: 07/14/2016	Massachusetts Police Accreditation Standards Referenced: 1.2.3; 81.2.8
Issuing Authority: <i>Chief Thomas L. Gammel</i>	

A. General Considerations

Police departments benefit by installing and maintaining closed circuit television (CCTV). CCTV often exposes false claims of officer misconduct and may verify legitimate ones, especially in relation to the care and custody of pre-trial detainees.

CCTV is an important component of stationhouse security, and it is essential for documenting the interrogation process.

These guidelines do not apply to the use of video cameras, overtly or covertly, for law enforcement purposes beyond the station or its surrounding property.

B. Policy

It is the policy of the Lunenburg Police Department to maintain CCTV throughout the exterior of the building, and specific locations within the building. The CCTV recordings will be maintained by the Department in accordance with Massachusetts Public Records Law.

A. General Station Security

CCTV exterior and interior monitoring is permitted for stationhouse security. For this purpose, it is recommended that CCTV only record.

Video images, not audio sounds;

In locations approved in writing by the Chief or designee;
Where individuals do not have an expectation of privacy. [1.2.3]

B. Station Booking and Lockup Areas

1. CCTV monitoring should be employed in any area where individuals will be booked¹, processed², or held in police custody.
2. This includes individuals of both genders and all ages who have been:
 - a. Arrested for a crime;
 - b. Placed in “protective Custody” under G.L. Chapter 111B;
 - c. Held as a “status offender” under G.L. Chapter 119;
 - d. Held as an emotionally disturbed person (EDP) under G.L. Chapter 123;
 - e. Held on the basis of any other civil or criminal process; or
 - f. Held on the basis of any other legal, good faith justification.
3. It is recommended that CCTV record:
 - a. Video Images and Audio sounds;
 - b. In all locations where individuals in custody will be booked, processed or held.³

C. Notification

1. A conspicuous sign should notify individuals that they are being audio and video recorded. However, verbal notification is not necessary.⁴
2. Recorded admissions or confessions are admissible in court because individuals in high security areas have no expectation of *privacy*⁵ [1.2.3].

D. Suicide Prevention

Audio monitoring of lockup areas is required for suicide prevention. Moreover, prisoners must be physically observed at reasonable intervals, which should not exceed

¹ "Booking" is a process where police officials record the reason for taking a citizen into custody and his/her biographical data, so he may be considered for bail or release, or transferred for appropriate services.

² Processing includes any related activities, such as inspecting for medical injuries, administering a Breathalyzer test, allowing a phone call, and engaging in a strip search.

³ Interestingly, many officers argue that videotaped booking of operating under the influence (OUI) arrestees is a disadvantage at trial, as juries often conclude that the defendant did not appear particularly inebriated on the video. That said, the value of videotaped booking in reducing police liability outweighs any diminished opportunity to convict for OUI. Finally, the impact of video may be enhanced when it depicts the entire body of the defendant during booking. By depicting the whole body, the video will often show how the defendant was swaying during the booking process.

⁴ In fact, police departments do not even have to display a sign or tell prisoners that they are being recorded. Since the booking process is an administrative procedure, it is not covered by the prohibition against secret recording that is found in the wiretap statute, G.L. c. 272, § 99. *Comm. v. Gordon*, 422 Mass. 816 (1996).

⁵ In *Comm. v. Pierce*, 66 Mass. App. Ct. 283 (2006), Joseph Pierce and two other men were held in separate cells because a firearm was found in their vehicle. Through an audio-visual intercom system that monitored the cells, Officer Fisher overheard Pierce admit that he owned the gun. The use of the intercom system was legal. The intercom is there so that officers may insure that prisoners do not harm themselves or plan to harm an officer. Maintaining safety is a legitimate business practice in a police station, so it is outside the coverage of the wiretap law. Also see *Comm. v. Dixon*, 79 Mass. App. Ct. 701 (2011) (no requirement that an arrestee be afforded a private setting in order to make his phone call under G.L. c. 276, § 33A; here, officers overheard this murder suspect say to his girlfriend, "I fucked up. I fucked up").

20 minutes⁶ apart without written justification in a report submitted to the officer in Charge (OIC).⁷

E. Strip Searches

1. Massachusetts Law has not specifically authorized videotaping strip searches of pre-trial detainees.⁸ Consequently, when a strip search or visual body cavity search becomes necessary⁹, officers should:
 - a. Inform the detainee on videotape that he will be strip searched;
 - b. Ask the detainee whether he has any contraband that he would like to surrender prior to the process;
 - c. Perform the procedure:¹⁰
 - i. Only if there is probable cause to believe the detainee is concealing contraband or weapons on his/her body;
 - ii. With approval of the officer in charge (OIC);
 - iii. Off videotape in accordance with Departmental Policy & Procedure 3.03;
 - iv. In a professional and non-humiliating manner;
 - v. With an officer/employee of the same sex as the detainee and out of the view of the public;¹¹
 - vi. With one witness present in addition to the officer performing the search unless it appears that the detainee may become violent.

NOTE: Document the procedure in the arrest report or a supplemental report.

Attorney Contact

⁶ Refer to the Lunenburg Police Policy and Procedure, "Prisoner Watch Job Description Policy," 3.10, and Lunenburg Police Policy and Procedure, "Detaining Prisoners," 3.04.

⁷ Under G.L. c. 40, § 36B, at least one cell must have an electronic audio system "whereby a police officer at the duty desk is brought within the audible range of such cell." No electronic audio system is required if at least one cell is within audible range of the duty desk without electronic assistance. Reference Lunenburg Policy and Procedure, "Holding Facility," 3.02.

⁸ Refer to the Lunenburg Police Policy and Procedure, "Detainee Processing," 3.03.

⁹ Although these searches are demeaning and invasive, they are necessary because "controlled substances [and weapons] may be packaged and concealed on the body so as to be virtually undetectable during the manual probing of the outerwear of a fully clothed person." *United States v. Cofield*, 391 F. 3d 334 (1st Cir. 2004). Massachusetts requires probable cause to perform strip and visual body cavity searches. A manual body cavity search requires a warrant issued by a judge and executed by competent medical authorities. *Comm. v. Thomas*, 429 Mass 403 (1999).

¹⁰ Refer to Lunenburg Police Department Policy & Procedure, "Detainee Processing," 3.03.

¹¹ While no case law indicates that videotaping a strip search violates a suspect's privacy rights, many court decisions recognize that strip searches are invasive and potentially demeaning. *Rodrigues v. Furtado*, 410 Mass. 878 (1991). By knowing that a video record of the procedure exists, the prisoner's perceived humiliation may intensify. Equally important, the existence of a recording increases the possibility of officers exploiting the incident by showing the video to other officers and even other people unaffiliated with the department. On the other hand, a video record may deter official abuses. *Barnes v. District of Columbia*, 793 F.Supp.2d 260 (2011) [inmates at the Department of Corrections (DOC) challenged the DOC's policy of videotaping strip searches; the policy was reasonable because: (1) the videos were created for the legitimate purpose of monitoring the behavior of correctional officers and prisoners during the searches, and (2) only 72 hours of video was retained at any given time, limiting the availability of the videos for purposes other than investigating inmate or staff complaints within that time period].

2. Police should not listen to attorney/client communication in the station. Any contact must occur in an area where there is no audio monitoring.¹² Video monitoring is recommended to protect the attorney and to ensure that no contraband is passed to or received from the prisoner.

F. Care, Custody & Retention of Recordings

1. Maintenance and Malfunction

- a. CCTV equipment will be maintained in accordance with the standards promulgated by the installer and manufacturer of the system.
- b. Any malfunction of CCTV equipment will be immediately reported at the time it is discovered to the OIC, who shall file a written report (email will suffice) and contact the appropriate department official to arrange for repair. The OIC is responsible for expediting the repair process and ensuring its completion.

2. Release and review

- a. Recordings and/or video images will only be reviewed and observed for official purposes. They will not be released to any individual, agency or organization outside the police department unless authorized by:
 - i. Subpoena
 - ii. Court Order
 - iii. Written Directive/authorization from the Chief or Designee.

NOTE: Unauthorized use, reconfiguration, or review of any recording or video images may result in discipline up to and including discharge. The internal process is separate and distinct from any criminal charges that might be brought.

3. Retention

- a. Electronic and video records must be maintained, disseminated, and destroyed in compliance with the public records law.¹³ The following retention schedule shall be followed:¹⁴
 - i. Security and surveillance videotapes—retain 1 month
 - ii. Equipment maintenance and repair records—retain 1 year after disposal of equipment.
 - iii. Booking, Interview and interrogation videotapes related to active investigations—retain until completion of prosecution and exhaustion of appeals.

¹² *Comm. v. Fontaine*, 402 Mass. 491(1988) (charges pending against the defendant were dismissed because the police electronically intercepted privileged communications between him and his lawyer).

¹³ See G.L. c. 66, § 1 and *Electronic Records Management Guidelines, Secretary of the Commonwealth* (www.sec.state.ma.us), at page 1.

¹⁴ Public records retention schedules are found at www.sec.state.ma.us/arc/arcmu/murds/0707.doc.

G. Radio Recordings & Playback [81.2.8]

Nashoba Valley Regional Dispatch has the capability of immediate playback of recorded telephone and radio conversations, while maintaining a continuous recording of radio transmissions and emergency telephone conversations within the communications center.

1. *Retention of Recordings*

- a. NVRDD stores all E-911 calls and E-911 call detail records.
- b. All records will be retained indefinitely.

2. *Storage of Recordings*

- a. NVRDD stores all recordings on a secure server.
- b. The server will be locked and in a locked server room.
- c. Only the Executive Director and Supervisors have access to the server room.

3. *Review of Recordings*

a. Telecommunicators:

- i. NVRDD allows all its telecommunicators immediate playback up to four hours.
- ii. Anything over four hours, must be requested through a supervisor or the Executive Director.

b. Officers:

- i. Requests of radio recordings may be made for training, investigations, court, internal affairs, ect.
- ii. All requests shall be made through the Lieutenant, unless exigent circumstances exist.