

**Recommendation xx: MPD should develop an SOP that provides direction to officers instructing them to manually engage dashcams and audio microphones whenever they can reasonably anticipate an encounter with an individual or group they may temporarily detain or take into custody. [CRT 20]**

**Discussion:** This recommendation was originally proposed by the CRT as: “Dashcam video and audio mics must be manually engaged in circumstances where automatic initiation of recording is disabled i.e. lights and sirens have been turned off due to the officer’s desire to be stealthy for tactical reasons.” The rationale was given as: “In Nov of 2012, MPD Officer Heimsness shot an unarmed man engaged in disorderly conduct in an incident that was one of MPD’s most controversial both inside and outside of the department. There was no recording of the incident since Officer Heimsness failed to engage his audio recording device. An audio and/or video recording of the incident would have provided important answers to those who did not see the incident and were dissatisfied with the outcomes of the criminal and internal investigations as well as those bothered by the public response.” As noted in the In-Car Video System SOP:

Video recordings ... are initiated when:

- a. The squad’s emergency lights are activated.
- b. The wireless microphone’s record (REC) button or auxiliary (AUX) button is depressed.
- c. The record button is depressed on the back of the front camera.
- d. The record button is selected in the in-car video software on the MDC.
- e. The vehicle crash sensor is triggered.
- f. The vehicle speed trigger threshold has been exceeded.

In its response to this proposed recommendation as well as the related proposed recommendations CRT 21 and CRT 22 (addressed in Ad Hoc Committee Recommendations XX and YY below), MPD stated: “While these specific recommendations are not feasible as proposed, MPD is not opposed to reviewing the In-Car Video SOP for possible modifications to address these concepts.” After discussion with MPD Assistant Chief Vic Wahl, the Ad Hoc Committee formulated and adopted an amended version of the proposed recommendation that captures the fundamental intent of the original CRT proposal and that MPD would be amenable to. This would ensure video and audio recording under a broad set of circumstances where it is currently not required – whenever an officer can reasonably anticipate an encounter that may result in detention or arrest. It would thus ensure recording under those circumstances where use of force is most likely and that might require subsequent investigation.

**Recommendation xx: During events that by policy require or recommend the use of recording devices, officers should be required to make a complete uninterrupted audio recording unless a victim or witness refuses to speak while the encounter is being recorded. Records must not be edited and must be real time and continuous. Officers may mute their microphones in situations involving personal conversations or training or mentoring discussions that have no relationship to the events that triggered the activation of the dashcam system. [CRT 21]**

**Discussion:** This recommendation was originally proposed by the CRT as: “During events that by policy require or recommend the use of recording devices, officers should be required to make complete, uninterrupted audio recordings as sometimes evidence does not reveal itself as such until after the fact. Records must not be edited in real time and be continuous. Redactions that pass the ‘balance test’ may

be applied at the time of a records request and the reason for redaction must be reasonably articulated.”

The rationale for this proposed recommendation noted: “Current MPD SOPs governing the operation of in-car video allows officers to, at their discretion, mute their microphone during an audio recording. This amounts to editing records in real time which is unwise and potentially harmful to investigations as evidence sometimes does not present itself as such until after the fact.”

Per the current In-Car Video System SOP, “Officers may temporarily mute audio recording of conversations between police personnel when such discussions involve strategy, tactics, or supervisor’s directives.” However, discussions involving strategy, tactics, or supervisor’s directives may actually constitute some of the material of greatest importance to a subsequent investigation. Thus, the Committee believes that this information should always be recorded and preserved.

MPD representative Assistant Chief Vic Wahl expressed concern that some victims or witnesses might not be willing to speak to an officer if they were being recorded. The Ad Hoc Committee recognized this as a valid point and amended the recommendation accordingly. Assistant Chief Wahl also noted that some incidents could be very protracted and that not allowing officers to mute their mics would be problematic when they wished to engage in personal conversation that they wouldn’t want recorded, or in training or mentoring discussions that were irrelevant to the situation that precipitated the recording. Though policy allowing muting on these grounds might be subject to abuse (i.e., to avoid recording material that actually concerns the incident), this matter does present a legitimate privacy issue (e.g., a policy that did not allow muting of personal conversations, which officers might wish to be private, could be burdensome in a protracted assignment, and likewise it could inhibit free and open mentoring/training discussion of unrelated matters). The Ad Hoc Committee thus amended the recommendation to allow officers to “mute their microphones in situations involving personal conversations or training or mentoring discussions that have no relationship to the events that triggered the activation of the dashcam system.” The final sentence of the original CRT proposed recommendation merely restated Wisconsin open records law and was thus discarded. The Committee thus adopted the crux of the proposed CRT recommendation but provided for appropriate exceptions in a manner amenable to MPD.

**In any circumstance in which an officer is otherwise required to write a report of the incident, that report must include a statement explaining any decision to mute any portion of the recording or to terminate the recording prior to the conclusion of the incident pursuant to the in-car video SOP. [CRT 22]**

**Discussion:** This recommendation was originally proposed by the CRT as: “Add to part 6 of IN CAR VIDEO SYSTEM SOPS, OPERATION OF THE IN-CAR VIDEO SYSTEM the following language: ‘Officers must articulate why they or their supervisor stopped recording the event in their report of the event.’” The rationale was given as: “Current MPD SOPs governing the operation of in-car video allows officers to stop or delete a video recording at their own or their supervisor’s discretion. Officers should have to, in their report of said incident, articulate why they or their supervisor stopped recording it.”

Part 6 of MPD’s In-Car Video System SOP currently states:

Once initiated, video and audio recordings should not be terminated until the event is complete Except: 1. When a supervisor authorizes the cessation of the recording. 2. When, in the officer's assessment, there is no evidentiary value in collecting further video.

The Ad Hoc Committee agrees that MPD should require that the reasons for terminating an in-car video system recording prior to conclusion of an incident be explained in the report of the incident and that, in addition, the reasons for muting any portion of the recording be explained in the report. This would reduce the likelihood of officers muting or terminating a recording without legitimate reason (helping to ensure a more complete audio and video record) and in any potential subsequent investigation would be needed to understand the circumstances of interruptions or termination. The Committee therefore adopted this CRT recommendation, modifying it only slightly to clarify that the recommendation was only intended to apply when circumstances otherwise required the writing of a report and to add a requirement that reasons for any decision to mute the recording (and not just a decision to terminate it) be explained.