

County of Santa Clara

Office of the District Attorney Surveillance Use Policy

Digital Recorders

1. Purpose

The purpose of digital recorders, such as audio digital recorders, video digital recorders, and camera digital recorders, shall be to enable the user to capture and create a record of activity and conversations. Digital recorders issued to Santa Clara County District Attorney's Office (SCCDA) personnel shall be used only to record statements of victims, witnesses, suspects, and others in criminal and administrative investigations, as well as to record incidents or events being monitored or investigated by SCCDA personnel as part of their law enforcement duties. The SCCDA personnel use various makes and models of digital recorders, including but not limited to: 1) cell phones with digital recording capacity manufactured by Apple, Samsung and Google; 2) digital audio recorders manufactured by Sony; and 3) digital audio/video recorders manufactured by Recall Technology.¹

2. Authorized and Prohibited Uses

Use of digital recorders shall be limited to only SCCDA personnel authorized by SCCDA Administration to use the devices in the course and scope of their employment to support the administrative, investigatory, and prosecutorial functions of the SCCDA. Digital recorders shall be limited to the audio and/or video recording of statements of victims, witnesses, suspects and others in criminal and administrative investigations, and recording of incidents or events being monitored or investigated by SCCDA personnel as part of their law enforcement duties. Digital recorders shall be used surreptitiously only when authorized by law, including but not limited to Penal Code section 633. When the use of a digital recorder requires a search warrant, absent extraordinary circumstances prescribed by law, the assigned investigator and/or prosecutor shall make an application to the court and obtain court approval before using the recorder. In cases where the use of a digital recorder is not governed by a search warrant or other court order, the user shall abide by this Surveillance Use Policy.

County-owned digital recorders and associated data shall not be used for personal, non-SCCDA purposes. The digital recorders shall not be used for illegal purposes, and shall not be used to harass, intimidate, or discriminate against any individual or group.

3. Data Collection

It shall be permissible for the recorders to collect the following types of data: statements of victims, witnesses, suspects, and defendants; communications between such subjects in public and private places; and records of suspected criminal activity.

¹ To promote officer safety and maximize the benefits to be derived from the use of certain digital recorders, the specific make and model of all devices owned by the SCCDA have been omitted from this Surveillance Use Policy.

4. Data Access

The data collected by digital recorders shall be stored in the physical case file and/or stored within an SCCDA-approved electronic case/content management system. Approved case/content management systems shall log user name, date/timestamp, files or data accessed, and attempts at altering or deleting files. Access to digital recorders data shall be limited to SCCDA personnel authorized by SCCDA Administration to utilize the data in the course and scope of their employment to support the administrative, investigatory, and prosecutorial functions of the SCCDA, as well as other county personnel designated in writing by the District Attorney or the District Attorney's written designee to the extent that access is necessary for a specific criminal, civil, or administrative investigation or action.

5. Data Protection

See Section 4 of this Policy. The County of Santa Clara and the SCCDA shall utilize physical access controls, application permission controls, and other technological, administrative, procedural, operational, and personnel security measures to protect data collected by digital recorders from unauthorized access, destruction, use, modification, or disclosure.

6. Data Retention

Data recovered through the use of digital recorders, whether downloaded, copied or printed, shall be maintained in accordance with this Surveillance Use Policy, applicable state and federal evidentiary laws, and the SCCDA Record Retention and Destruction Policy approved by the Board of Supervisors on June 21, 2016, as follows:

| Case Type | Official Retention Period |
|--|--|
| Homicide Case Files | Permanent |
| All Non-Homicide Case Files, Unless Otherwise Stated in this Schedule | Seventy-five years. Case files will be scanned and electronically archived and retained for 75 years. Originals will be retained for a period of at least 90 days to allow scanning for authentication by the department, after which they will be destroyed. Backed up by DA IT provider. |
| Juvenile Ward Files | When a minor turns 18 and petitions the court for records to be sealed, the record will be destroyed at age 20 or as otherwise ordered by a court of competent jurisdiction. Otherwise as covered by this schedule. |
| Developmentally Disabled (DD) Case Files | Life of the defendant. |

| Case Type | Official Retention Period |
|--|--|
| Plea of Insanity (PC 1026) Case Files | Life of the defendant. |
| Juvenile Case Files | Two years after final disposition or until minor attains age of 21, whichever is later. Caveat 1): If case is appealed, the file must be retained until the final appellate decision is received. Caveat 2): Cases that may be charged as “strikes” should be retained for 75 years. |
| Certificates of Rehabilitation Case Files | Two years. |
| Advise and Assist Case Files | Two years. |
| Expungement Case Files | Two years. |
| Post-Conviction Proceedings and Special Project Files | Two years. |

Data that is relevant to administrative/personnel-related matters shall be retained through the adjudication of any administrative, civil or criminal case in a recognized court of law, as well as allotment of time for an appeals process and statute of limitations. To the extent that data is not covered in the chart above, the data shall be destroyed no later than two years after the later of (1) the time for an appeals process expires; (2) the statute of limitations expires; and (3) for data regarding a County employee’s administrative investigation, the date the employee’s employment for the County terminates. All data not downloaded onto an electronic storage device shall be purged from the digital recorder no later than 90 days from the original recording.

7. Public Access

Absent a court order the public shall not have direct access to data collected by digital recorders. If a California Public Records Act request, subpoena, or court order is issued for this data, it shall be made public or deemed exempt from public disclosure pursuant to state or federal law, after consultation with the Office of the County Counsel as needed.

8. Third-Party Data-Sharing

The sharing of data recovered through the use of digital recorders shall be limited to the following third parties:

- Law enforcement agencies when relevant to an ongoing specific investigation or prosecution;

- Defense and appellate counsel and pro se litigants pursuant to Penal Code section 1054 et seq. and *Brady v. Maryland*;
- Individuals who have obtained a valid Court Order, subpoena, or otherwise approved in writing by the District Attorney or written designee.

9. Training

SCCDA shall provide staff a copy of this Surveillance Use Policy when training on the secure handling of confidential and personal information, including data collected by digital recorders. The training shall address appropriate handling and transmission procedures, as well as consequences of misuse of the data and a security breach.

10. Oversight

District Attorney's Office Administration shall ensure compliance with this Surveillance Use Policy and all applicable laws. Sanctions for violation of this Surveillance Use Policy may range from counselling to termination, and in more serious breaches, may result in criminal prosecution.

Approved as to Form and Legality

 10/29/18

Rob Coelho

Office of the County Counsel