

BERNALILLO POLICE DEPARTMENT	OPERATIONAL
SUBJECT: Body Worn Recording Devices	NUMBER: <i>OPR.02.28</i>
EFFECTIVE DATE: <i>June 15, 2016</i>	REVIEW DATE: <i>May 5, 2016 by Chris Perez, Town Attorney</i>
AMENDS/SUPERSEDES: All previous policies, procedures, general orders and directives prior to the effective date of this policy unless this policy is sooner enacted.	APPROVED:
	Tom Romero , Chief of Police
STANDARDS:	NMSA:

I. PURPOSE

This policy is intended to provide commissioned personnel with direction on when and how to use body-worn recording devices (BWRD) so that officers may reliably record their contacts with the public in accordance with departmental policies and applicable laws. This commitment is designed to promote officer safety, strengthen community trust, and document events to assist with investigations and training.

II. POLICY

It is the policy of this department that commissioned personnel, except as may be specified herein, shall activate the BWRD when such use is appropriate to the proper performance of his or her lawful official duties, where the recordings are consistent with this policy and law. This policy does not apply to the department authorized use of recording devices used in authorized undercover operations. All images and sounds recorded by BWRD and audio equipment are the exclusive property of this department. Accessing, copying, or releasing files for non-law enforcement purposes is strictly prohibited unless authorized by the Chief of Police or his designee. This policy may be amended as applicable due to changes in policies or law and additional direction may be provided by the Chief of Police in a directive.

III. Definitions

- A. Body Worn Recording Device (BWRD) – An audio or video recording device issued or authorized by the department that is affixed to the body.

- B. Command Staff – Department personnel, whether in uniform or plainclothes, and a rank of Lieutenant or above.
- C. Commissioned Personnel – All ranks of department law enforcement officers certified within the State of New Mexico, hired, sworn, and commissioned by the Town of Bernalillo.
- D. Directed Action - Any overt action focused on the subject or structure that may elicit a response.
- E. Evidence - Recordings that contain content known at the time of the recording to be associated with criminal activity and are assigned a case number.
- F. Uniformed Department Personnel - Department personnel who wear a department-authorized uniform, (excluding command staff), which displays a department patch.

IV. Wearing of BWRD

- A. All uniformed department personnel (except command staff) will wear department-issued BWRDs while on duty or performing law enforcement functions. Investigations sworn personnel, command staff, and non-uniformed department personnel are not required to wear BWRDs during routine duties. However, while working in a law enforcement capacity, non-uniformed and investigative personnel shall wear their BWRD and comply with this policy.
- B. Department personnel shall use only department-issued or authorized BWRD while in the scope of their duties.
- C. Uniformed department personnel shall position their recording device forward facing, affixed at the belt level or above in a position and manner consistent with the manufacturer's recommendations (e.g. on the belt, chest, lapel, etc.).
- D. Non-uniformed personnel shall position their recording device forward facing, affixed at the belt level or above, in a position and manner consistent with the manufacturer's recommendations, unless the personnel are participating in an undercover operation, in which case recording devices shall be placed in an effective manner which allows for the performance of their duties.
- E. Department personnel wearing BWRDs shall keep the BWRD in the buffer/pre-record mode, if equipped with this function, unless performing routine administrative duties within a government facility.

V. Use of BWRD

- A. Department personnel shall activate BWRDs only in conjunction with official law enforcement duties.
- B. In accordance with New Mexico State law (30-12-1), department personnel are not required to inform every individual being contacted that the recording device is enabled; however, it is recommended they do so as part of their initial contact

with members of the public. Department personnel may inform arrestees when they are recording, unless doing so would be unsafe, impractical, or impossible.

- C. Department personnel that are not involved in direct interactions with witnesses/victims/suspects and are performing duties, including but not limited to scene security, supervision, guard duty, holding a perimeter, administrative duties, etc., shall not be required to record these activities.
- D. For all mandatory recording incidents identified below, department personnel will activate his/her BWRD at the beginning of the incident. Department personnel may cease recording when he/she reasonably determines that the incident has concluded, based on information available to the personnel at the time or upon authorization of a ranking officer. Conclusion will depend on the type of incident and individual circumstances, but typically, the incident has concluded when department personnel terminates contact with the individual or has cleared the scene. When authorized by a supervisor department personnel may cease recording. If the immediate activation of the BWRD is not feasible due to immediate risk to the safety of the department personnel or others, the department personnel will activate the BWRD at the first available opportunity when the immediate threat has dissipated and it is safe to do so.
- E. This policy identifies those situations in which activation of the BWRD is mandatory, department personnel have discretion to manually activate the device any time the officer believes it would be appropriate or valuable to document an incident. In exercising this discretion, personnel should be aware of, and sensitive to, individuals' reasonable privacy expectations. The BWRD may only be activated for legitimate law enforcement purposes.
- F. **Mandatory Recording Incidents**
Subject to the limitations as may be specified herein, department personnel shall use Department-issued or authorized BWRDs to document the incidents listed below:
 - 1. All use of force encounters, including contacts leading up to the use of force when department personnel can reasonably foresee a use of force may occur.
 - 2. All encounters with individuals who are the subject of a stop based on reasonable and articulable suspicion or probable cause.
 - 3. Traffic stops.
 - 4. Arrests; including the contact leading up to the arrest when department personnel can reasonably foresee an arrest occurring.
 - 5. Vehicle searches unless conducted at tow yards, BPD facilities, or other law enforcement facilities.
 - 6. Search warrants of structures from the time of entry until the location has been secured.
 - 7. Contacts with subjects known to have a mental illness.

8. Any other legitimate law enforcement contact where the department personnel believes that a recording of an incident would be appropriate or valuable. In these contacts, the department personnel shall balance the law enforcement objectives and need to record against the individual's privacy, particularly with respect to sensitive victims.

G. Non-recording incidents

Department personnel shall not use recording devices to document:

1. Encounters with undercover department personnel or confidential informants.
 2. Personal activities or conversations of department or town personnel that do not involve calls for service or authorized by the Lieutenant or Chief of Police.
 3. Conversations between department personnel without all parties being aware of the fact that it will be recorded, except undercover investigations of department personnel involved in criminal conduct.
 4. Conversations between department personnel that involve case strategy or tactics.
 5. DWI Checkpoints unless the driver is confrontational with department personnel, refuses to stop, refuses to roll down the window, and/or produces any type of information visually or verbally that indicates they will not willingly comply with department personnel lawful commands.
 6. Locations prohibited by law, unless permission is obtained to record (e.g. FBI building, restricted areas in Department of Energy research facilities, etc.)
 7. Locations where individuals may have a reasonable expectation of privacy, such as: restrooms, locker rooms, the presence of medical personnel, or in hospitals. (Katz v US.) However, department personnel will record in these locations if the contact is subject to mandatory recording set forth in Section F Mandatory Recording Incidents above, if the totality of the circumstances leads the department personnel to believe that recording is appropriate.
- H. If department personnel inadvertently record any of the encounters listed above, they may follow, after contacting their immediate supervisor, the redaction procedures specified hereafter.
- I. Department personnel shall not stop recording in response to an individual's request if the recording is required by this policy or the department personnel deems that continued recording is necessary. If the recording is not mandatory, the department personnel may evaluate the situation and, when appropriate, honor the individual's request.
- J. The individual's request to stop recording should be documented with the BWRD. In the event that it is not reasonably possible to record the individual's request not to record with the BWRD, department personnel shall document the request in their report.

- K. During tactical activations, tactical units may turn off their BWRDs during planning and decision-making. Due to the duration of tactical activations, in order to conserve battery life, tactical units may turn off their BWRDs when not conducting directed action. BWRDs shall be activated during directed action, which may cause a response from the subject.

VI. Training Requirements

All members who are authorized to use BWRDs must complete mandatory training to familiarize themselves with the devices and departmental procedures prior to their use.

- A. Viewing, Accessing, and Sharing of BWRD Recordings
- B. Department personnel will be assigned access to the digital storage application appropriate to their rank and duties.
- C. Department personnel may review their own BWRD recordings to use them for quality and accuracy in their reports and any investigatory interviews.
- D. Department personnel may view, download, redact, and share BWRD recordings only for legitimate law enforcement purposes and for authorized administrative review purposes.
- E. Department personnel will not delete BWRD recordings unless deletion is consistent with this policy and other department applicable policies.
- F. All recordings shall be shared digitally via the Department's digital storage application unless otherwise approved by the Department.

VII. Management of BWRD Recordings

- A. All department personnel shall upload recordings to the Department's digital storage application prior to the end of department personnel's subsequent shift.
- B. In the event the uploading of recordings extends beyond the subsequent scheduled shift, immediate supervisors may authorize overtime/compensatory time and shall notify the Lieutenant via email.
- C. Department personnel shall ensure that recordings are properly categorized and accessible. Recordings shall be classified according to the type of incident or event captured in the footage, date, time, and department personnel.
- D. Department personnel, including both primary and back-up officers, shall submit all digital media recorded in accordance with this policy, and defined as evidence, in the following manner:
 - 1. Enter the case number
 - 2. Choose a category from the presented list if applicable
 - 3. Department personnel shall add the "120 Day Delete" category to non-evidentiary recordings that are uploaded or imported into the Department's digital storage application.

4. If the initial category chosen was a mistake, or if additional information justifies re-categorizing a recording, department personnel will re-categorize recordings as appropriate.
5. Evidentiary recording will be maintained by BPD based on the statute of limitations or until the case is resolved.

E. Duties of Personnel

Department personnel shall:

1. Ensure that BWRDs assigned to them are functioning properly at the beginning and end of each shift according to the instructions of their system's manufacturer and shall report immediately any improperly functioning equipment to a supervisor. Department personnel shall not be responsible for verified equipment failure during an incident if the BWRD had no signs of functioning improperly prior to the incident.
2. Ensure that their BWRDs are working properly and notify their supervisors when they learn that their device is not functioning correctly.
3. Articulate on a BWRD recording or in writing their reasoning if they fail to activate their BWRD before incidents required to be recorded by this policy.
4. Supervisors - In addition to the above responsibilities, supervisors shall:
 - a. Test BWRDs monthly to ensure they are in proper working order and document on the monthly inspection report.
 - b. At least on a monthly basis, ensure personnel are using the systems appropriately, in accordance with policy, and identify areas in which additional training or guidance is needed.
 - c. Review at least one recording per week from each assigned individual and incorporate any knowledge gained from this review into ongoing evaluation and supervision. Supervisors shall make a note on the weekly BWRD inspection form, if positive feedback, violations, and/or training opportunities arise during the reviews.
 - d. Review recordings of assigned personnel listed in any misconduct complaints made directly to the supervisor.
 - e. Review recordings of assigned personnel involving injuries, uses of force, shows of force, or foot pursuits.
 - f. Report equipment problems and seek to have equipment immediately repaired or replaced as needed. Supervisors shall be issued additional equipment in order to temporarily replace defective BWRDs.
 - g. Supervisors shall refer assigned personnel, for investigation, who intentionally or repeatedly fail to activate his or her BWRD during incidents required under this policy to be recorded. Intentional or otherwise unjustified failure to activate a BWRD, when required by policy, shall subject the department personnel to discipline.

F. Redaction, Retention, and Release of Recordings

1. Policies shall comply with all existing laws and regulations, including those governing evidence collection and retention, public disclosure of information, and consent.
2. Some or all of a recording may be redacted pursuant to applicable laws. Redaction should be narrowly tailored to the appropriate legal exemption from disclosure. Only the redacted recording shall be produced to the requesting party. There may be instances where the un-redacted recording shall be provided in criminal or civil proceedings.
3. In the event department personnel inadvertently record a non-recording incident identified above, the following redaction procedures may be followed:
 - a. Notify immediate supervisor of unintentional recording.
 - b. Review recording with the immediate supervisor to determine if it meets criteria detailed in Section V.G. Non-Recording Incidents above.
 - c. Recordings in question shall be shared by the immediate supervisor to the lieutenant or designee for review and approval.
 - d. If recording contains evidentiary content, only the portion that meets Section V.G. Non-Recording Incidents shall be redacted of audio, video, or both by the lieutenant or designee. A detailed description, stating the reason for edit, shall be noted in the system or case file for each segment of the recording that is redacted.
 - e. If it is determined by the lieutenant or designee that the recording does not contain evidentiary content, it may be placed in the "120 Day Delete" category. A detailed description, stating the reason for category change, shall be noted for each recording that is changed.
 - f. The Department shall retain and preserve non-evidentiary recordings for 120 calendar days. Deleting non-evidentiary videos after 120 calendar days by the Department does not imply that the department personnel did not record the incident.

VIII. References

- A. Katz v. US, US Supreme Court, 1967 Reasonable expectation of privacy.
- B. NM Statute 30-12-1 Single party consent/interference with communications.
- C. NM Statute 14-2-1, Inspection of Public Records Act (IPRA).
- D. NMAC Section 1.19.8.807, Retention of Evidence
- E. International Association of Chiefs of Police
- F. Albuquerque Police Department
- G. University of New Mexico
- H. Town of Bernalillo Police Department Policies and Procedures
- I. Town of Bernalillo Police Department Directives and General Orders
- J. Town of Bernalillo Policies and Procedures
- K. Town of Bernalillo Personnel Rules and Regulations