# 151 RECORDING DEVICES

**PURPOSE**

The purpose of this General Order is to establish procedures for the proper use of recording devices as well as the storage and management of digital recordings.

**POLICY**

It is the policy of the Las Cruces Police Department (LCPD) to use recording devices for the purposes of, but not limited to documenting citizen contacts, capturing evidence for use in criminal prosecution, training and evaluating work performance, and protection against false allegations of misconduct.

**APPLICABILITY**

This General Order applies to all employees. This General Order supersedes all previous versions.

**REFERENCES**

* 29-1-16 NMSA 1978
* 32A-2-14 NMSA 1978
* Inspection of Public Records Act (IPRA) Section 14 Article 2 NMSA 1978
* 1.19.8 NMAC (New Mexico Administrative Code)
* General Order 203 Domestic Family Disturbance
* Current contractual agreement between the City of Las Cruces and the Las Cruces’ Police Officers’ Association (Contract)
* UPTURN Police Body Camera Scorecard (2017)

**DEFINITIONS**

**AUDIT TRAIL –** A digital record and printout of the changes that have been made to a database or file.

**BWC** – Body Worn Camera. The Taser Axon Cameras or other similar devices that are issued by the department.

**ETM** – Evidence Transfer Manager. The ETM is the docking station used to upload data and recharge BWC’s.

**Digital Information Management System (DIMS) –** A data entry system that collects and manages digital audio and photo evidence to simplify the acquisition and archiving of field and lab gathered digital evidence.

**Recording Device –** Any device capable of creating and storing audio and/or video recordings.

**Terry Stop -** A brief detention of a person by police on reasonable suspicion of involvement in criminal activity but short of probable cause to arrest. Terry v. Ohio, 392 U.S. 1 (1968), in which the Supreme Court of the United States held that police may briefly detain a person; the Court also held that police may do a limited search of the suspect's outer garments for weapons if they have a reasonable and articulable suspicion that the person detained may be "armed and dangerous."

**LGRRDS –** Local Government Records Retention and Disposition Schedule for New Mexico Municipalities. 1.19.8 NMAC

**151.01** **PROCEDURES**

Nothing in this section precludes an officer from recording any type of encounter not mentioned below in which a recording would prove useful in later judicial and/or administrative proceedings such as a citizen alleging dissatisfaction with police response.

1. Uniformed commissioned employees, Animal Control Officers, Codes Officers, and Transport Officers shall always carry a properly functioning department issued recording device on their person while on duty. If issued a BWC, the BWC shall be used as the primary recording device. Commissioned employees in a plain clothes or undercover assignment do not have to carry a recording device but shall have a recording device available to them.
2. Recording devices capable of capturing video shall be worn in a location that allows the device to capture images of what is in front of the officer.
3. Employees shall notify their supervisor of any malfunction of the recording device or the need for replacement parts.
4. Officers shall ensure that their cameras are operational prior to the beginning of shift. Officers are encouraged to create a test video to verify all the camera functions are operational. Once it is determined to be operational and functioning BWC’s shall remain on and in buffer/standby mode until the end of shift.
5. Recording devices shall be activated as soon as practical. To ensure proper recording, officers **shall activate their BWC upon dispatch to a call for service,** consistent with officer safety.
6. Once activated, recording devices shall be used to document the entire call for service and/or citizen contact. This shall include and is not limited to interviews and the transportation of juveniles, suspects, and all citizens. If an officer deactivates a BWC prior to the conclusion of an event, the officer shall document the reason(s) for terminating the recording in an incident report.
7. Deactivating a recording on a crime scene shall only be authorized if the crime scene is no longer active and at the discretion of the assigned lead investigator or a CIS/patrol supervisor.
8. Officers shall record **all** the incidents listed below:
   1. Domestic disturbance calls for service and standbys.
   2. Traffic Stops
   3. Vehicle Pursuits
   4. When activating police vehicles emergency equipment during an emergency response to a call for service and/or vehicle pursuit.
   5. Calls involving a mentally ill or emotionally disturbed person.
   6. During search and arrest warrants.
   7. During searches of:
9. Persons
10. Vehicles – including inventory searches
11. Buildings
    1. K-9 Deployments, to include secondary officers supporting the handler.
    2. Suspicious circumstances or persons.
    3. Any Field Interview, temporary detention of the public, and Terry Stops.
    4. Anytime the potential for a use of force exists. This includes but is not limited to **all** calls for service regarding:
12. Affrays
13. Disorderly subjects
14. Uncooperative subjects
15. Weapons calls
16. Unknown disturbance calls
    1. **All** instances involving a Show of force, lethal and non-lethal.
    2. **All** custodial interrogations of adults and/or juveniles in accordance with 29-1-16 and 32A-2-14 NMSA 1978 unless another method of electronic recording of the interrogation is available, such as an interview room equipped with audio and/or visual recording equipment.
    3. During **all** arrests, until the prisoner/suspect is secured in a detention facility and or holding cell. This shall include and is not limited to interviews and the transportation of juveniles and suspects. If the recording is stopped during an arrest or transport, the officer will note on the recording, and document in the report the reason the recording was deactivated.
    4. Anytime a supervisor directs an employee to use a recording device.
17. Employees are encouraged to disclose to the public the fact that recording equipment is in use.
18. Employees may use their recording devices to document evidence at crime and accident scenes, or other on-duty events as the employee deems appropriate.
19. Employees **shall not** use recording devices in the following situations:
    1. At any closed court proceedings or hearings.
    2. Medical facilities, Ambulances in accordance with theHIPAA (Health Insurance Portability and Accountability Act) Privacy Rule which regulates the use and disclosure of protected health information.
20. Officers shall record ambulance transports when they are present for law enforcement purposes.
21. Officers are reminded that they shall only activate their cameras in hospitals and other medical facilities for the events listed in Section (H) in above.
22. Officers shall not record in the common areas of medical facilities except when recording an event listed in Section (H) above.
23. When recording in hospitals or other medical or psychiatric facilities, officers shall be careful to avoid, when possible, recording persons other than the suspect, complainant, and witnesses.
24. When officers are in hospitals or medical facilities pursuant to Section (H) above, they shall continue to record and make every effort to provide patients with privacy. Officers will make reasonable efforts to not record patients during medical or psychological treatments or evaluations by clinicians or similar medical professionals. Officers should place themselves in such a way as to afford the patients as much privacy as possible.
25. Employees are prohibited from recording by any means their conversations with other employees without the other employee’s knowledge. Exceptions include authorized criminal or administrative investigations, and/or where the labor Contract provides for such tape recording.
26. The officer may request permission to record on a BWC and advise the subjects being recorded that we can obscure the image upon request.
27. Officers may disengage their BWC and resume recording with an audio recording device under the following circumstances and conditions:
28. When requested by a victim of a sexual assault.
29. Officers shall not activate the BWC when encountering a child or a minor who is a victim of a sexual assault or child abuse during a preliminary investigation.
30. When requested by a witness of a crime or community member who wishes to report a crime;
31. When interacting with a confidential informant;
32. Officers will ensure a request to turn off the camera, unless impractical or impossible, is made on the recording;
33. Officers may continue to record or resume recording a victim or witness if exigent circumstances exist or if the officer has reasonable articulable suspicion that a victim or witness or confidential informant has committed or is in the process of committing a crime;
34. Officers will indicate on the recording the reason for continuing to record, despite the request of the victim or witness, unless impractical or impossible;
35. Officers may take into consideration an unclothed or partially clothed subject or victim and may obscure the view or stop recording until such time that the subject or victim is clothed. The officer shall note on the recording the reason for temporarily obscuring the view or for pausing the recording; If the camera is turned off, the officer must activate their digital audio recorder.
36. Officers may disengage the BWC recording when performing community caretaking functions, which include, but is not limited to; community outreach; helping a child find his or her parents; providing death notifications; performing in-home or hospital well-being checks on the sick, elderly, or persons presumed missing. However, the BWC must be turned on when the officer has reason to believe that the person on whose behalf the officer is performing the community caretaking function has committed or is in the process of committing a crime;
37. Officers assigned to the Department front desk, performing routine tasks within the LCPD building, or assigned to duty determined by the Chief of Police to be within an exception to the BWC requirement, will not be required to activate their BWC unless the officer determines that activation is appropriate and will lead to the collection of evidence or will document events consistent with this policy.

**151.02** **DISPOSITION OF RECORDINGS**

A. Audio, image, and video recordings shall either be entered into DIMS or downloaded to the ETM prior to going off-duty unless a supervisor authorizes an extension to this deadline.

1. All evidence entered into DIMS shall be noted in an offense/incident report.
2. Officers with BWC’s shall label all video recordings downloaded into the ETM with the proper category, case number (when applicable), and location of incident. Officers shall label the video recordings on or before their next duty day. Categories include:
3. Uncategorized
4. Affray / Loud Party
5. Arrests
6. CIS Interviews (East Mesa)
7. Confidential Sources
8. Domestics
9. Investigations / Interviews / Interrogations
10. Medical / Narcan
11. Metro Informants / UC Ops
12. Miscellaneous / Citizen Contacts / FI's
13. Missing Persons / Runaway
14. OIS
15. Pending Review
16. PSU Investigations
17. Pursuit
18. Safe House
19. Search / Arrest Warrants
20. Suicidal / Mentally Ill / EDP's
21. Tactical Ops
22. Traffic Stop / Crashes / DWI Investigations
23. Training / FTO
24. Unattended Death
25. Use of Force
26. Officers with BWC’s may review and label their videos using an application for a smartphone but this is not required. Personnel choosing to use the application on a personally owned device will not receive any additional compensation beyond currently approved stipends.
27. Officers may review their own BWC files, including those of other officers, as long as they are the assigned investigator and / or involved in the call for service.
28. Officers may review their own Axon video prior to and / or during any criminal and / or administrative interview at the discretion of the investigating detective, CIS supervisor and / or internal affairs supervisor.
29. For the purpose of completing criminal investigations and preparing official reports except for:
30. Officer Involved Shootings (OIS)
31. In custody Death
32. Criminal matter (officer suspect) where a statement is required before a review of any recording is done.
33. Employees shall not:
34. Substitute any recording for a detailed and thorough report. Officers shall follow all policy and procedures in GO 141 Police Reports.
35. Remove, dismantle, or tamper with any hardware or software component or part associated with the BWC’s or related applications.
36. Destroy or alter any type of recording unless authorized by statute, policy, and with written permission from the Chief of Police or designee. Officers found destroying or altering recordings may be subject to criminal investigation and prosecution and /or discipline, including but not limited to termination.
37. Record personal activity
38. Record gratuitous or obscene images, such as the effects of extreme violence or injury, unless necessary for evidentiary documentation.
39. Use any other electronic device or other means to intentionally interfere with the capability of the BWC.
40. Post recordings to any social media site or otherwise publish or transmit recordings to the public.
41. Recordings shall not be released to another criminal justice agency without approval of the appropriate deputy chief. The Las Cruces Police Department authorizes the release of recordings to the City Attorney’s Office and the District Attorney’s Office upon request. When recordings are released or shared with the City Attorney, and District Attorney, the department shall maintain the original recording and provide the requesting agency with a duplicate and Audit Trail, unless there are specific reasons for releasing the original recording. If an original recording is released, the department shall retain possession of a duplicate copy.
42. All BWC recordings are considered evidence unless otherwise tagged or destroyed. Officer responsibilities for proper labeling of recordings is noted in this order section 151.02(C). The ETM and phone app is used to record the description of the recording taken on scene, the address or location of recording, date and time, case number, employees BWC serial number, chain of custody and other information. Each time a recording or file is accessed it is documented on an Audit Trail.
43. Recordings are property of LCPD and shall not be reviewed by unauthorized persons to include members of the media, family, friends, and other employees not directly involved in case, or in a supervisory or investigatory capacity.
44. Recordings are not to be viewed for entertainment purposes and employees are not authorized to copy or release recordings without supervisory approval.
45. Release of videos for discovery purposes and court proceedings are an exception.
46. Recordings are subject to release under the Inspection of Public Records Act (IPRA). Any IPRA request must go through the official release of records procedure through the City of Las Cruces Clerk’s office and made available for inspection.
47. Citizens filing a complaint with Internal Affairs may have access to recordings involving the complaint or incident through an IPRA request submitted to the City Clerk’s Office.
    * + 1. Depending on the nature of the Internal Affairs investigation, videos will be provided to the requester on a case by case basis with a private viewing at the discretion of Internal Affairs, the Chief of Police or designee.
48. The Las Cruces Police Department will not use technological enhancements or biometrics in any department recordings, including facial recognition or night vision capabilities; to create a database or pool of mugshots; or be used as fillers in photo arrays; or be searched for such purposes. Unless an identified suspect remains at large and such identification is necessary to aid in prosecution.
49. This does not include the use of such enhancements and technologies to analyze the recording where any member of the Police Department has reason to believe that a specific suspect, witness, or person is in need of assistance was recorded

**151.03 RETENTION OF RECORDINGS**

1. All non-evidentiary recordings shall be retained for one hundred and eighty (180) days from the date the recording was submitted, in accordance with GO 160.01(B)1 at which time the recording will be destroyed upon the Chief or designee’s approval. This retention and destruction meet all Local Government Records Retention and Disposition Schedules for New Mexico Municipalities (LGRRDS) and is pursuant to City Council Resolution No.15-212.
2. All evidentiary recordings shall be retained as part of the case file and will be kept and destroyed according to the LGRRDS for New Mexico.
3. Following the 180-day retention period, any recording in the miscellaneous or non-evidentiary category will be destroyed.
4. Any recording deemed to be of value for training purposes may be forwarded to the Professional Development Unit. The recording must no longer be needed for any judicial or administrative proceedings. It is recommended that officers involved in the recording be contacted to inquire about any objection they may have to its use.
   1. **SUPERVISORY RESPONSIBILITIES**
5. Supervisors shall collect BWC’s of Officers that have been involved in a qualifying incident listed in section GO 151.02(E) (Officer Involved Shooting, in custody deaths, and criminal matters involving officers) and hold for investigators to ensure report procedures are followed.
6. Routinely inspect recording devices to ensure they are functioning properly.
7. If a device is not functioning properly arrange for replacement or repair with the BWC administrator and ensure officers have a secondary device until issue is resolved.
8. Keep an adequate supply of secondary recording devices (audio) and batteries on hand.
9. Supervisors will inspect all recording devices and files while investigating citizen complaints, employee performance or evaluations, work performance issues, and employee conduct with the public.
10. Supervisors shall review at least two recordings, other than those labeled “Use of Force” monthly, to assess employee’s interactions with the public and the recording devices performance.
11. Supervisors will determine whether the recording device is being properly used, downloaded properly, BWC videos are labeled appropriately, and if any material on a recording may benefit personnel in training.
12. Supervisors should meet with officers concerning questions about video reviewed.
13. It is within a supervisor’s discretion to review recordings more frequently.
14. Supervisors will report through their chain of command any issues which merit concern.