**USE OF ON-BODY RECORDING DEVICES / MANAGEMENT OF RECORDINGS**

I. Policy Statement

LPD is committed to promoting Constitutional Policing and making the best use of its resources to capture evidence by taking full advantage of the evolving technology and use of On-Body Recording Devices (OBRD) in all appropriate circumstances. This commitment is designed to promote officer safety, strengthen community trust, and document events to assist with investigations and training. All recordings captured by Department issued OBRDs are the exclusive property of LPD.

II. 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. Department SOP

1. Policies & Procedures - Evidence

III. Definitions

A. On-Body Recording Device (OBRD): A recording device issued by the department that is affixed to the body.

B. Directed Action: Any overt action focused on the subject or structure that may elicit a response.

C. Evidence: Recordings that contain content known at the time of the recording, to be associated with criminal activity, are assigned a case number, and are annotated as evidence by the submitting department personnel in the property section of the report.

D. Uniformed Department Personnel: Department personnel who wear a department-authorized uniform, which displays a department patch.

IV. Rules and Responsibilities

A. Wearing of OBRD

1. All uniformed department personnel will wear department-issued OBRDs while on duty or performing law enforcement functions. Investigations sworn personnel, Area Command Investigations Unit sworn personnel and other non-uniformed department personnel are not required to wear OBRDs during routine administrative duties (e.g. working at a desk, attending meetings, and providing testimony). However, while working in a law enforcement capacity, those non-uniformed personnel shall wear their OBRD and comply with this policy.

2. Department personnel shall use only department issued and not personal OBRD while in the scope of their duties.

3. 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.).

4. Non-uniformed personnel shall position their recording device forward facing, affixed at the belt level or above, in a positioned 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.

5. Department personnel wearing OBRDs shall keep the OBRD in the buffer/pre-record mode, if equipped with this function, unless performing routine administrative duties within a government facility.

B. Use of OBRD

1. Department personnel shall activate OBRDs only in conjunction with official law enforcement duties.

2. 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 shall inform arrestees when they are recording, unless doing so would be unsafe, impractical, or impossible.

3. 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, etc., shall not be required to record these activities.

4. For all mandatory recording incidents identified below, department personnel will activate his/her OBRD 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. Conclusion concluded, based on information available to the personnel at the time. 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. If the immediate activation of the OBRD is not feasible due to immediate risk to the safety of the department personnel or others, the department personnel will activate the OBRD at the first available opportunity when the immediate threat has dissipated and it is safe to do so.

5. This policy is intended to achieve an appropriate balance between the benefits of OBRD devices and individuals’ reasonable expectations of privacy. Although this policy identifies those situations in which activation of the OBRD 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 OBRD may only be activated for legitimate law enforcement purposes.

6. Mandatory Recording Incidents

Subject to the limitations included in paragraph IV-B-4 of this section, department personnel shall use Department-issued OBRDs to document the incidents listed below:

a. All use of force encounters, including contacts leading up to the use of force when department personnel can reasonably foresee that a use of force may occur.

b. All encounters with individuals who are the subject of a stop based on reasonable and articulable suspicion or probably cause.

c. Traffic stops.

d. Arrests including the contact leading up to the arrest when department personnel can reasonably foresee an arrest occurring.

e. Vehicle searches unless conducted at tow yards, LPD facilities, or other law enforcement facilities.

f. Search warrants of structures from the time of entry until the location has been secured.

g. Contacts with subjects known to have a mental illness, if the department personnel has prior knowledge or has been notified from an LPD resource or emergency evaluation (pickup order).

h. 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.

7. Non-recording incidents.

Department personnel shall not use recording devices to document:

a. Encounters with undercover department personnel or confidential informants.

b. Personal activities or private conversations of department personnel that do not involve calls for service or contact with individuals.

c. 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.

d. Conversations between department personnel that involve case strategy or tactics.

e. 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.

f. Locations prohibited by law, unless permission is obtained to record (e.g. FBI building, restricted areas in Department of Energy research facilities, etc.)

g. 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 Paragraph 6 above, including 6(H) if the totality of the circumstances leads the department personnel to believe the recording is appropriate.

8. If department personnel inadvertently record any of the encounters listed above, they may follow, after contacting their immediate supervisor, the redaction procedures listed below.

9. 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.

10. The individual’s request to stop recording should be documented with the OBRD. In the event that it is not reasonably possible to record the individual’s request not to record with the OBRD, department personnel shall document the request via CAD system or report.

11. During tactical activations, tactical units may turn off their OBRDs during planning and decision making.

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