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| TITLE: | BODY WORN CAMERAS |
| CODIFIED: | 98.3 |
| EFFECTIVE: | 8/27/20 |
| RESCINDS/AMENDS: | New Policy |
| PAGES: | 5 |

§ 14-2-1 *et. seq.* NMSA 1978 (Inspection of Public Records Act)

NMAC § 1.19.8.807 (retention of police video recordings)

State of New Mexico- 1st Special Session- SB 8, 2020- Law Enforcement Body Cameras

PROCEDURES

PURPOSE

The purpose of this directive is to provide officers with instructions on when and how to use body worn cameras (BWC's) so that officers may reliably record their contacts with the public in accordance with the law. All recordings captured by Department issued BWCs are the exclusive property of SFPD.

98.3.01 Wearing of BWC

- A. All uniformed department personnel will wear department-issued BWCs while on duty or performing law enforcement functions.
- B. Police personnel shall only use the BWC provided by this department while in the scope of their duties.
- C. BWCs shall be positioned forward facing, in a position and manner consistent with the manufacturer's recommendations (e.g. chest, lapel, etc.).

DISCUSSION

Recording equipment has proven to be a valuable law enforcement tool. The Department has adopted the use of Body Worn Camera's (BWC) to assist in the prosecution of criminal cases, to enhance the accuracy of officers' reports and testimony in court, to reduce violent confrontations and to maintain public trust.

98.3.02 Use of BWC

- A. Officers shall activate BWCs only in conjunction with official law enforcement duties.
- B. Officers shall activate their BWC as soon as practical when responding to a call for service or at the initiation of any law enforcement or investigative encounter between an officer and a member of the public such as:
 - Traffic stops
 - Investigative detentions
 - Arrests
 - Searches
 - Pursuits
 - Interrogations
- C. If the immediate activation of the BWC is not feasible due to immediate risk to the safety of officer or others, the officer will activate the BWC at the first available opportunity when

POLICY

It is the policy of the Department that officers activate the BWC when such use is appropriate to the proper performance of his or her duties, where the recordings are consistent with this policy and law. This policy does not govern the use of surreptitious recording devices used in undercover operations.

REFERENCES

Katz v. United States, 389 U.S. 347 (1967) (reasonable expectation of privacy)

§ 30-12-1 NMSA 1978 (single party consent/interference with communications)

the immediate threat has dissipated and it is safe to do so.

- D. An officer has discretion to record **consensual encounters** and any other circumstances where the officer, through training and experience, believes that a recording of an incident would be appropriate.
- E. Department personnel that are not involved in direct interactions with witnesses, victims, or 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.
- F. In accordance with § 30-12-1 NMSA, officers 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. When practical, department personnel shall inform arrestees when they are recording, unless doing so would be unsafe, impractical, or impossible.
- G. In locations where an individual has a reasonable expectation of privacy, such as a residence, he or she may decline to be recorded unless the recording is made pursuant to a lawful arrest or a search of the residence or individuals. Note: As a general rule, if the officer must legally ask permission to enter a premise, he or she should also ask if the resident will allow recording.
- H. The BWC shall remain activated until the event is concluded in order to ensure the integrity of the recording unless the contact moves into an area restricted by this policy (see Restrictions). 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. **The officer shall announce that the recording is being terminated prior to deactivation.**

- I. Officers will respect the dignity of all and use sound judgement during recording and will try to avoid recording persons who are nude or when sensitive human areas are exposed.
- J. In the event civilians need to view video to further an investigation, arrangements will be made to view video at police headquarters.

RESTRICTIONS

98.3.03 Non-recording incidents

- A. Department personnel shall not use recording devices to document:
 1. Encounters with undercover department personnel or confidential informants.
 2. Personal activities or private conversations of department personnel that do not involve calls for service or contact with the public.
 3. Conversations between department personnel without all parties being aware of the fact that it will be recorded, except as authorized by directive 98.2.02.
 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 lawful commands.
 6. 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 **98.3.02(B)** above, including **98.3.02(C)** if the totality of the

circumstances leads the officer to believe that recording is appropriate.

7. The BWC shall not be used during the Lethality Assessment Protocol (LAP). The LAP will take place at the conclusion of a domestic violence investigation and is considered non-evidentiary in nature. The BWC will not be used to record the interaction of a victim and an advocate.
- B.** If department personnel inadvertently record any of the encounters listed above, they may follow, after contacting their immediate supervisor, the redaction procedures listed below.
 - C.** Department personnel shall not stop recording in response to an individual's request if the recording is required by this directive or the officer deems that continued recording is necessary. If the recording is not mandatory, the officer may evaluate the situation and, when appropriate, honor the individual's request.
 - D.** The individual's request to stop recording should be documented with the BWC. In the event that it is not reasonably possible to record the individual's request not to record with the BWC, department personnel shall document the request via CAD system or report.
 - E.** During tactical activations, tactical units may turn off their BWCs during planning and decision-making.
 - F.** Due to the duration of tactical activations, in order to conserve battery life, tactical units may turn off their BWCs when not conducting directed action. BWCs shall be activated during directed action, which may cause a response from the subject.
 - G.** Tactical Emergency Medical Services personnel shall notify patients. TEMS personnel will inform patients, personnel will make a conscious effort to turn off their BWC while providing medical care to any person.

TRAINING

98.3.04

- A.** All officers who are authorized to use BWCs must complete mandatory training to familiarize themselves with the devices and departmental procedures prior to their use.
- B.** Recordings may be used for training purposes. If an involved officer objects to the showing of a recording, his or her objection will be submitted to the Chief to determine whether the training value outweighs the involved officer's objection.

Viewing & Accessing Recordings

98.3.05

- A.** Department personnel will be assigned access to the digital storage application appropriate to their rank and/or duties.
- B.** Department personnel may review their own BWC recordings to use them for quality and accuracy in their reports and investigatory interviews.
- C.** Department personnel may view and share BWC recordings only for legitimate law enforcement purposes and for authorized administrative review purposes.
- D.** Accessing, copying, or releasing of BWC recordings for non-law enforcement purposes is strictly prohibited, unless authorized by law and approved by the City Attorney's Office.

Management of BWC Recordings

98.3.06

- A.** All recordings shall be downloaded by the officers within twenty-four (24) hours unless it is the officers' last day before regular days off (RDO's). Prior to leaving on RDO's or

vacation the officer will ensure their BWC footage is downloaded. Officers will download BWC footage by placing their respective device in the smart docking station to be downloaded onto a dedicated secure server solely used for data storage.

- B.** Evidence Custodians shall ensure recordings are properly identified by BWC identifier and assigned officer. Evidence Custodians shall verify, within the server, the officer is properly identified and issued a correct number. In the event footage is requested the Evidence Custodian is the only person who can retrieve data from the server and provide copies to outside sources. Please refer to 98.1.40 on release of video procedures.
- C.** Recordings will be stored on a dedicated server for a period of no less than 365 days. After 365 days, data will be transferred to a separate dedicated archive server for an additional five (5) years. After five (5) years, data will be automatically purged.
- D.** All BWC data shall be uploaded and stored on a digital media platform. All media will be restricted to the user/creator of such data for the protection and integrity of the data. All users shall only be allowed to review footage and/ or copy footage as outlined by 98.3.5. No user shall have the ability to manipulate, alter, redact, resize, replace, delete or move media from its evidentiary state from the digital media platform.

DUTIES OF PERSONNEL

98.3.07

- A.** Department personnel shall:
 - 1. Ensure, at the beginning of their shift that BWCs are docked, video data is downloaded, and the BWC is properly charged and synced to the server. Function tests shall be conducted before and after an Officers shift according to the instructions

of their system’s manufacturer and shall report immediately any improperly functioning equipment to a supervisor. Officers shall not be responsible for verified equipment failure during an incident if the BWC had no signs of functioning improperly prior to the incident.

- 2. Ensure that their BWCs are working properly and notify their supervisors when they learn that their device is not functioning correctly.
- 3. Articulate on a BWC recording or in writing their reasoning if they fail to activate their BWC, fail to record the entire contact, or interrupt the recording for incidents required to be recorded by this directive.
- B.** Supervisors - In addition to the above responsibilities, supervisors shall:
 - 1. Test BWCs bi-monthly to ensure they are in proper working order, the date and time are correct and document on the bi-monthly vehicle, gear and equipment inspection form.
 - 2. At least on a bi-monthly basis ensure personnel are using the systems appropriately, in accordance with policy, and identify areas in which additional training or guidance is needed.
 - 3. Review at least two recordings per month from each assigned individual and incorporate any knowledge gained from this review into ongoing evaluation and supervision. Supervisors shall make a note on the bi-monthly inspection form, if positive feedback and/or training opportunities arise during the reviews.
 - 4. Review recordings of assigned personnel listed in any misconduct complaints made directly to the supervisor.
 - 5. Review recordings of assigned personnel involving injuries, uses of force, shows of force, or foot pursuits.

- 6. 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 BWCs. A “loaner” file will be created on the server for each shift to ensure data is captured and stored in the appropriate shifts folder.
- 7. Supervisors shall notify their commander of any personnel who intentionally or repeatedly fail to activate his or her BWC during incidents as required under this policy to be recorded. Intentional or otherwise unjustified failure to activate a BWC, when required by this directive, shall subject the officer to discipline.
- C. Peace officers who fail to comply with the policies and procedures required to be adopted pursuant to State of New Mexico Senate Bill 8, 2020, Subsection A, shall be presumed to have acted in bad faith and shall be deemed liable for the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence.

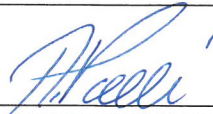
- C. In the event department personnel inadvertently record a non-recording incident identified above, the following redaction procedures may be followed:
 - 1. Notify immediate supervisor of unintentional recording.
 - 2. Review recording with the immediate supervisor to determine if it meets criteria detailed in 98.3.3 above.
 - 3. Recordings in question shall be electronically shared by the immediate supervisor to the Chief or designee for review and approval.
 - 4. If recording contains evidentiary content, only the portion that meets 98.3.3 shall be redacted of audio, video, or both by the Chief or designee. A detailed description, stating the reason for edit, shall be noted in the system for each segment of the recording that is redacted. This will automatically be reflected in the audit trail.
 - 5. If it is determined by the Chief or designee that the recording does not contain evidentiary content, it may be deleted. A detailed description, stating the reason for category change, shall be noted for each recording that is changed. This will automatically be reflected in the audit trail.

Redaction, Retention, and Release

98.3.8

- A. The Department will comply with all existing laws and regulations, including those governing retention and public disclosure of information.
- B. 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. Personnel assigned to handle IPRA requests will consult with the City Attorney’s Office prior to redacting or exempting recordings from public inspection.

Amended (djw) 8/20

APPROVED: 
 ANDREW PADILLA
 Chief of Police

DATE: 8/27/20