



**DEPARTMENT OF PUBLIC SAFETY  
POLICIES AND PROCEDURES**



<b>POLICY NUMBER</b>	
<b>OPR: 19</b>	
<b>EFFECTIVE DATE:</b> 01/04/2021	<b>ORIGINAL ISSUED ON:</b> 12/19/2002
<b>REVISION NO:</b> 7	

**SUBJECT: USE OF RECORDING EQUIPMENT**

**1.0 PURPOSE**

The purpose of this policy is to establish a procedure for the proper use of all recording equipment utilized by DPS personnel as well as the storage and management of the recordings.

**2.0 POLICY**

It is the policy of the DPS to use mobile audio-visual recording equipment for purposes of, including but not limited to capturing evidence for use in criminal prosecutions, training, evaluation of work performance, etc.

**3.0 APPLICABILITY**

This policy applies to all personnel issued mobile audio-visual recording equipment and portable audio recorders.

**4.0 REFERENCES**

- A. 29-1-16 NMSA 1978**
- B. SB-8 Law Enforcement Body Cameras**

**5.0 DEFINITIONS**

- A. BWC-Body Worn Camera** - an electronic device worn on a person's body that records both audio and video data.
- B. Community Caretaking** – A task undertaken by a law enforcement officer in which the officer is performing an articulable act unrelated to the investigation of a crime. The "community caretaking" function includes, but is not limited to, participating in town halls or other community outreach, helping a child find his or her parents, providing death notifications, and performing in-home or hospital well-being checks on the sick, elderly, or persons presumed missing.
- C. DPS** – The Department of Public Safety.
- D. DVMS** – Digital Video Management System -Technologically advanced in-car digital video system which provides a higher quality of video and audio recordings.
- E. MAVR** – Mobile audio-visual recording.
- F. Portable Recorder** – Department issued audio recording device that is small enough to be carried on an officer's person.
- G. Law Enforcement / Investigative Encounter** – dispatched call for service, traffic stop, violent crime scene when civilian subjects are present, investigative interviews, motor vehicle accident investigation when participants of the crash are present, encounters with suspicious persons or emotionally disturbed persons, public drunkenness or disorderly conduct, interaction with field contacts, arrests, execution of a warrant, situations in which weapons are

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actually or alleged to be present, use of force and any non-investigative encounter that becomes adversarial after the initial contact.

- H. Non-Law Enforcement / Investigative Encounter** – The following situations are not considered investigative encounters and shall not require initiation of BWC – normal, everyday interactions with the public that are not part of a call for service or otherwise involve a law enforcement function. Examples include community caretaking or general conversations with the public. However, if any non-investigative encounter becomes adversarial after the initial contact the officer shall engage their BWC as soon as it is safe to do so.
- I. Uniform Officer-** Commissioned personnel who are outwardly displaying clothing that clearly identifies themselves to the public as law enforcement. These publicly identifiable officers are the members of the agency who routinely interact with the public.
- J. Non-Uniform Officer** – on-duty commissioned personnel who are not identifying themselves to the public as law enforcement and whose primary duty is not to routinely interact with the public and often carry out their duties in plain clothes or in a covert manner.
- K. Transportation Inspector- (TI)** non-commissioned personnel who inspect commercial vehicles, drivers, and cargo for safety and to ensure compliance with state/federal laws, statutes, and regulations. Ensures compliance road use taxes by weighing vehicles and issuing a variety of permits.
- L. A confidential informant (CI) and or confidential sources** - is defined as an individual requiring anonymity who provides useful information, directed assistance, or both, that enhances criminal investigations and furthers the mission of the agency.

### 6.0 PROCEDURE

NMSP uniform officers are required to record investigative encounters whether or not they are being recorded some other way.

For example: if a DWI officer is recording using the in-car camera, he still needs to record his entire encounter on his body camera. This would also be true if an officer is questioning someone in a room that has a camera that is recording. The officer would still be required to record the interview on his body camera.

MAVR, DVMS, BWC, and portable recording equipment is to be utilized by DPS commissioned personnel and Transportation Inspectors to collect evidence for the prosecution of criminal violations, training, evaluating work performance, protection against false allegations, and other uses as approved by supervisors.

The MAVR, BWC, and DVMS equipment will be utilized to document traffic stops and citizen encounters. The portable recording equipment will be utilized to document citizen encounters that take place if the BWC is not working. BWC will be used to document driver/citizen encounters while at the Port of entry by Transportation Inspectors.

There are certain circumstances where Officers in a proactive (non-dispatched) capacity may become involved in a situation requiring immediate action to prevent injury, make an arrest and/or prevent the destruction of evidence or escape. When these situations occur, officers should activate their BWC. If the immediate activation of the BWC is not feasible due to immediate risk to the safety of the officer or others, the officer will activate the BWC at the first available opportunity after the immediate threat has abated.

The safety of DPS personnel and the public shall always take precedence over the ability to record an incident. However, officers/TI's should always make every effort to safely

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record all applicable incidents. In the event an incident arises where an officer was unable to activate their BWC, this incident shall (May) immediately be reported to a supervisor and notify dispatch. (note in CAD) It will be the responsibility of that supervisor to immediately investigate and document the incident in order to ensure the accuracy of events.

- A. General Guidelines** – The Department has adopted the use of MAVR, BWC, DVMS, and portable audio recording systems to accomplish several objectives, including but not limited to:
1. Collect evidence by assisting with accurate documentation of events, actions, conditions, and statements made during arrests and critical incidents, thereby enhancing officer's reports, evidence collection, and court testimony.
  2. Enhance the Department's ability to review procedures and probable cause for arrest, officer-suspect interaction, and use for officer evaluation and training.
  3. Protect officers from false claims of improper conduct and other frivolous claims.
- B. Operational Procedures for BWC, MAVR, DVMS, and Portable Recording Equipment**

Personnel shall adhere to the following procedures when utilizing BWC, MAVR, DVMS, and portable recording equipment

1. BWC USE
  - a. BWCs shall be worn by all NMSP uniformed officers whose primary function is to interact with the public
  - b. BWCs shall be worn by all TI's whose primary function is to inspect commercial motor vehicles while at the port of entry or roadside inspection, and while interacting with the public.
  - c. The BWC shall be positioned on the officer's/TI's body to maximize the camera's ability to capture an interaction.
  - d. The BWC will be worn throughout the duration of an officer's/TI's working hours. Once the BWC is activated, the device will remain activated until the conclusion of the law enforcement activity.
  - e. Officers are required to activate the BWC when arriving at a call for service or initiating any other law enforcement or investigative encounter between an officer and a member of the public. (see definition)
  - f. Officers who assist other officers in a backup capacity shall also activate their BWC to record the incidents when red lights and/or sirens are activated or when the officer arrives on the scene, whichever is sooner. The recording shall continue until there is no longer contact with the violator(s)/individual(s) involved.
  - g. Officers/TI's will be permitted to power off the BWC during certain encounters including:
    - i. engaging in a lunch break at the officer's private residence
    - ii. entering a public locker room/restroom;
    - iii. entering a doctor's office/hospital;
    - iv. attending court proceedings

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- v. Children's Code
  - vi. HIPPA Health Law
2. BWC, MAVR, and DVMS equipment installed in vehicles is the responsibility of the officer assigned to that vehicle and will be maintained according to the manufacturer's recommendations and Department procedures.
  3. All officers/TI's are **required** to carry their issued portable recorder while on duty in the event the BWC becomes inoperable or fails to capture the event.
  4. At the beginning of each shift, officers/TI's shall determine whether their BWC, MAVR, or DVMS equipment and portable recorders are working properly and shall notify their immediate supervisor of any problems as soon as possible. If an officer/TI discovers an equipment problem they will immediately notify a supervisor and make a helpdesk ticket with the Information Technology Bureau (ITB).
  5. In addition, officers/TI's with BWC, MAVR, or DVMS equipment shall ensure that the camera is properly positioned and adjusted to record events.
  6. The officer/TI's will not disconnect the BWC cable for the purpose of rendering the camera inoperable while not in service.
  7. Officers/TI's will not obstruct the camera's view on the BWC.
  8. Officers/TIs utilizing digital recorders, with optional recording quality settings, shall use a setting that provides adequate audio clarity.
  9. MAVR equipment automatically activates when the vehicle's emergency equipment is in operation.
  10. DVMS equipment automatically activates when the vehicle reaches a predetermined speed, during a crash involving the vehicle, when the vehicle's emergency equipment is in operation, when the gun rack is released, or when the BWC is activated.
  11. The BWC, MAVR, or DVMS equipment may be manually deactivated during non-enforcement activities such as protecting accident scenes, crime scenes, roadblocks, etc.
    - a. BWC, MAVR or DVMS equipment shall **NOT** be deactivated while responding to an incident with emergency equipment activated.
    - b. BWC or DVMS equipment shall **NOT** be manually overridden by shutting the system or power supply off.
  12. The BWC, MAVR, DVMS, and/or portable recording equipment shall **NOT** be deactivated until enforcement action is completed. If the equipment is deactivated before enforcement action is completed, the officer shall state the reasons on their daily recap. Officers are not required to cease recording an event, situation, or circumstances at the demand of any person.
  13. Once a situation has progressed beyond the preliminary encounter and has stabilized, if it becomes necessary to discuss the specifics of the event, investigation, or case with another officer or supervisor in furtherance of the investigation, the agent will note this on the video recording and may end the recording. The intention to stop the recording will be noted by the uniformed officer on the BWC.

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14. Officers/TI's shall use the BWC, MAVR, DVMS, and portable recorder in the following manner:
  - a. The BWC, MAVR, and DVMS will be used while conducting traffic enforcement. And while conducting Inspections on CMV's. The portable recorder shall be used to capture all audio interactions between an officer/TI and person(s) should the BWC become inoperable. Deviations from this will be documented by the officer in a notification to their supervisor and on an Offense/Incident Report, if appropriate.
  - b. During traffic enforcement, the BWC, MAVR, or DVMS shall be used until the enforcement action is concluded, and the officer completes his/her contact with the occupants. In the event a traffic stop leads to the arrest of one or more occupants, the recording shall continue until the prisoner(s) is properly restrained in a transport vehicle. If the prisoner is cooperative and non-combative, the recording may be stopped. Recording equipment shall be reactivated if the prisoner becomes uncooperative and/or combative. This shall be documented in an Offense/Incident Report. Nothing in this section precludes an officer from recording throughout the transport and processing of cooperative prisoners at his/her discretion (e.g. male officer transporting female).
  - c. Officers shall record all interaction with the public when done so telephonically.
  - d. The portable recorder shall be used to document custodial interrogations in their entirety, including Miranda Warnings, when the BWC is inoperable.
  - e. The portable recorder shall be used to document search warrant operations from the time of entry until the area is secured if the BWC is inoperable.
  - f. The portable recorder shall be used to document the arrest of persons from the time initial contact is made until the prisoner is secured in a transport vehicle. The recording equipment shall be reactivated if the prisoner becomes uncooperative and/or combative while being transported or while at a temporary holding facility. The recording equipment shall remain activated until the prisoner is no longer in the officer's custody. This shall be documented in an Offense/Incident Report. If the BWC is inoperable.
  - g. The portable recorder shall be used optionally for documentation purposes at crime and accident scenes, or other events, such as the seizure of evidence or contraband during the execution of search warrants, when the BWC is inoperable.
  - h. Any type of encounter not mentioned above in which a recording would prove useful in later judicial/administrative proceedings when the BWC is inoperable.
  - i. Officers are not required to disclose to the public the fact that recording equipment is in use.
15. Officers who are assigned units equipped with DVMS and are involved in a pursuit shall, as soon as practical, categorize the recording as a pursuit. The recording of the pursuit will be retained indefinitely by the Information Technology Bureau (ITB).
16. Officers/TI's shall not erase, reuse, or in any manner alter recordings or recording media, except as authorized by this policy. When the recording is

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- no longer needed for court proceedings or Departmental purposes, it may be erased and re-issued. The recording is required to be retained for a minimum of 120 days.
17. Officers/TI's shall ensure they have an adequate amount of video storage capacity on their BWC, to utilize for the duration of their shift.
  18. All media containing recordings shall be properly categorized and identified with the officer's name, date(s) of the recording(s), and any other pertinent information prior to being submitted with related documentation.
  19. Officers/TI's are encouraged to inform their supervisor of any recordings that may be of value for training purposes.
  20. Officers shall note in Offense/Incident Reports when video, digital, and/or audio recordings are made of the incident in question.
  21. Officers shall categorize videos in one of the following categories:
    - a. Traffic
    - b. Crashes
    - c. DWI
    - d. Emergency Response
    - e. Pursuit
    - f. Use Of Force
    - g. TAC MISSION
    - h. Bomb Mission
    - i. IB
    - j. Patrol Investigation
    - k. CVE Inspection
    - l. Liquor Investigations
  22. Commissioned personnel who operate in plain clothes or "undercover" capacity (e.g. Crime Suppression and Special Investigations) may be required to use MAVR's on those occasions during which DPS determines that a digital recording may be beneficial for evidentiary value. If practical the recording will include video; however, it may not always be operationally possible to capture the video with a BWC. In these instances, another type of MAVR may be utilized to record the incident surreptitiously and should include audio recordings at a minimum.
  23. Commissioned personnel who normally work in a plain clothes capacity will wear BWC when working in clothing that clearly identifies them as law enforcement. These situations may include security details, search warrants, vehicle blocking maneuvers, Fugitive apprehensions, knock and talks, controlled deliveries/road cases, and task force operations. During these times officers should follow the recording parameters defined in law enforcement / investigative encounter.

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24. Internal Affairs - Interrogations of employees will be recorded only by the Internal Affairs Interviewer. (Refer to ADM: 04 Internal Investigations)
25. Promotional Process - Employees participating in the promotional process are strictly prohibited from recording any portion of the promotional process. (Refer to PRS: 03 Promotional Standards)
26. Under no circumstances will a conversation between DPS employees be recorded without all parties to the conversation knowing the conversation is being recorded. The only exception to this rule will be instances involving the criminal investigation of Department personnel.
27. Operational Security
  - a. During tactical operations, commissioned personnel will utilize BWC's to capture the execution of the operation. Officers are not required to activate the BWC during pre-execution activities or if the officer is acting in a role where activating the BWC would compromise officer safety, operational security including, but not limited to, surveillance, perimeter security or negotiations.
  - b. During security operations for various types of events as well as dignitary protection, BWC's are only required for Uniform personnel who regularly interact with the public. The only incidents required to be recorded by Uniform personnel are those defined earlier in this policy as law enforcement / investigative encounters.
  - c. During surveillance or intelligence gathering operations, agents have discretion not to utilize BWC's if to do so would compromise any of the following:
    - i. Compromise the security, safety, or integrity of an operation.
    - ii. disclose current techniques or procedures for law enforcement investigations.
    - iii. Disclose the identity of a confidential informant.
    - iv. Personnel should avoid recording other officers that are working in an undercover capacity unless it is required for evidentiary purposes in an ongoing investigation.

### **C. Procedure for Control and Management**

1. Recordings with evidentiary value for court proceedings shall be safeguarded in accordance with Department policy OPR:17 Evidence/Property Handling.
2. Officers/TI's may store all other recordings in a secure storage facility, such as a locked desk drawer or filing cabinet, accessible only by the officers and their supervisor.
3. Recordings shall not be released to another criminal justice agency without approval of the District/Bureau Commander or his/her designee. When recordings are released, the Department shall maintain the original and provide the other agency with a duplicate unless there are specific reasons for releasing the original recording. Once the duplicate copy is made, the original should be returned to safe storage.
4. Recordings not scheduled for court proceedings or departmental use shall be maintained for at least one hundred twenty (120) days from the date the

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recording was made, after which they may be re-issued upon being completely erased.

5. Recordings are the property of the DPS and shall not be viewed by unauthorized persons. Unauthorized persons include the media, family, friends, and other employees not involved in a supervisory or investigatory capacity. Employees are not authorized to copy or release recordings without supervisory approval. Members of the media requesting to view recordings must go through the normal release of records procedure. See OPR:37 Release of Public Information for further details.
6. All recordings deemed to be of value for training purposes should be forwarded to the Training and Recruiting Bureau once they are no longer needed for court proceedings.

### D. Digital Audio Recorder Storage and Management

1. Upon receipt/issuance of a digital recorder, the officer shall make a recording and initial upload onto the server to ensure functionality. The following procedure shall be followed when uploading files from the recorder to the network:
  - a. Depending on the type of digital recorder being used, the officer will either separate the recorder and plug it into an available USB port, or place it in the cradle it came with, which should be plugged into a USB port.
  - b. Once the recorder is successfully connected, an option window should appear, and the officer will choose the "Open Folder to View Files" option.
  - c. Once the folder has opened, the officer will select the "Upload Audio Files" option.
  - d. The officer will then be prompted for his/her username and password to log in. The username and password are the same as those used to initially log onto a network computer.
  - e. Once the officer is successfully logged on, the computer will begin to download the audio files to the network. The recorder should not be disconnected until a message appears indicating that the process is complete.
2. These files will be stored on the network in the "X" drive and placed in designated folders assigned to individual officers. The files will be labeled under the format of Year Month Day-Hour Minute Second. A failure to connect to the server will be reported to the Information Technology Bureau.
3. All officers will upload their digital audio recorders onto the server daily or as soon as practical, but in all cases no later than weekly. This will not preclude officers from uploading their files more often, if necessary, to maintain adequate available memory.
4. Once the audio files are uploaded to the "X" drive, they are stored for 180 days, after which they are automatically purged.
5. Any files, which may **possibly** hold any evidentiary value in any court proceeding or are needed for departmental use should be copied onto the "Y"
6. drive for long-term storage in the officer's folder.
7. Once it has been determined that a file holds evidentiary value, it shall be transferred to permanent storage media as outlined in OPR:17



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*Evidence/Property Handling* under the section titled “Photographs, Videos, and Audio Recordings.”

- Supervisors will be responsible for auditing the “Y” drive folders of the officers under their command. Any files no longer needed or that have been transferred to permanent storage media should be deleted in order to preserve storage space.

**NOTE:** PERSONNEL FROM THE INVESTIGATIONS AND STANDARDS BUREAU ARE EXCLUDED FROM SECTION D **ONLY**. THESE PERSONNEL WILL FOLLOW THE PROCEDURES DEVELOPED BY THEIR RESPECTIVE BUREAUS AS TO THE MAINTENANCE OF THEIR DIGITAL AUDIO FILES.

### **E. Supervisory Responsibilities**

Supervisory personnel who manage employees with BWC, MAVR, DVMS, or portable recording equipment shall ensure the following:

- All employees follow established procedures for the use and maintenance of the equipment, handling of the recordings, and accurate completion of required documentation.
- Supervisors shall randomly review recordings on a bi-weekly basis to assist in the periodic assessment of an employee’s performance, to determine whether the recording equipment is being fully and properly utilized, and to identify material that may benefit others in training. It is within the supervisor’s discretion to view the recorded events more frequently. All reviews shall be documented on the standardized “Recording Device Review Log.”
- MAVR, DVMS, and portable recording equipment are inspected during line inspections to ensure proper functioning.
- Non-functional or damaged equipment is repaired or replaced.
- An adequate supply of recording media is available for officer use.
- All media containing recordings of evidentiary value are properly stored.

## **7.0 ATTACHMENTS**

### **A. Recording Device Review Log**

### **B. NMSP WatchGuard Manual and Basic Guide**

## **8.0 APPROVAL**

APPROVED BY: \_\_\_\_\_ s/ Tim Johnson \_\_\_\_\_ DATE: \_\_\_01/04/2021\_\_\_\_\_/

DPS Cabinet Secretary