

3-2-40 BODY WORN CAMERA and PHOTO EVIDENCE PROCEDURES

3-2-40.01 PURPOSE

This policy provides guidelines for the use of portable video recording devices by members of this Division while in the performance of their duties. Portable recording devices include all video recording systems and audio recorders. The Division may provide members with access to portable digital recorders, for use during the performance of their duties. The use of the recorders is intended to enhance the mission of the Insurance Fraud Division by accurately capturing contacts between members of the Division and the public.

(1) This policy does **not** apply to lawful obtained surreptitious video or audio recordings, or the interception of communications for authorized investigative purposes by a court of competent jurisdiction.

3-2-40.02 DEFINITIONS

Activate– Any process that causes the Portable Digital Recorder to transmit or store video data in an active mode

Digital Recorded Media– Any audio/video recordings stored on a storage device, portable media, or saved over a wireless uploading process.

Portable Digital Recorder– (PDR) Refers to any system that captures audio and digital video signals, that is capable of being worn on the outermost garment, glasses or helmet of an officer, and that includes at minimum, a camera, microphone, recorder.

3-2-40.03 PRIVACY EXPECTATION

All recordings made by Investigators acting in their official capacity shall remain the property of the Division and are for official use only.

(1) This policy applies to any recordings whether they were made with department-issued or personally owned device. Investigators shall have no expectation of privacy or ownership interest in the content of any recordings made while investigating insurance fraud or related crimes.

(2) When an officer with a body-worn camera enters a private residence the officer shall give notice, when reasonable under the circumstances, to the occupants of the residence that a body-worn camera is in use either by:

- (a) wearing a body-worn camera in a clearly visible manner; or
- (b) giving an audible notice that the investigator is using a body-worn camera.

3-2-40.04 INVESTIGATOR'S RESPONSIBILITIES

This section applies to those investigators who have been issued a PDR device by the Division. Prior to going into service, each officer will be responsible for making sure they are equipped with a portable digital recorder (PDR) issued by the Department, and that the recorder is in good working order.

3-2-40.05 ACTIVATION OF THE PORTABLE RECORDER

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate.

- 1) Officers should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.
- 2) The portable recorder should be activated in any of the following situations:
 - a) All enforcement and investigative contacts including issuance of summons, field interview situations, and incidents when and Investigator is speaking with members of the opposite gender.
 - b) Traffic stops including.
 - c) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.
- 3) When using a portable recorder, the assigned member shall record his/her name, and the current date and time and case investigation at the beginning the period of use.
- 4) Investigators should document the existence of the recording in the Xfire system in an event documenting the contact, including any instance where the recorder malfunctioned or the investigator deactivated the recording.

3-2-40.06 MEDICAL CARE CONSIDERATIONS

An image or recording of a patient may be considered protected in a healthcare setting under HIPAA patient privacy. Every effort should be made not to record in the following circumstances:

- 1) Patient care in a healthcare facility.
- 2) Medical personnel directly treating a patient unless the patient becomes adversarial with officers and/or medical staff in relation to the active law enforcement incident.

3-2-40.07 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Utah law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Utah Code 77-23a-4)

- 1) Investigators of the Division may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.
- 2) Investigators shall not surreptitiously record another Division members without a court order unless lawfully authorized by the Commissioner of Insurance or his authorized designee.

3-2-40.08 PROHIBITED USE OF PORTABLE RECORDERS

Officers are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

- 1) Investigators shall not duplicate or distribute any recordings, except for authorized legitimate Division business. All such recordings shall be retained at the Division.
- 2) Investigators are prohibited from using personally owned recording devices while on-duty without the express consent of the Director. Any member of the Division who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.
 - a. Recordings shall not be used by any member of the Division for the purpose of embarrassment or ridicule.

3-2-40.09 RETENTION OF RECORDINGS

Any time an Investigator records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files in the Xfire System and document the existence of the recording in the related case report

- 1) Transfers should occur at the end of the body camera's use, or any time the storage capacity is nearing its limit.
 - a) Any time an Investigator reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), they should promptly notify their supervisor of the existence of the recording.

- 2) Recordings will only be released in a manner that is consistent with the Department's records release policy and only after all GRAMA requirements are completed.

3-2-40.10 RETENTION REQUIREMENTS

All recordings shall be retained for a period consistent with the requirements of the Department of Insurance records retention schedule.

3-2-40.20 REVIEW OF RECORDINGS

When preparing written reports, Investigators should review their recordings as they should not use the fact that a recording was made as a reason to write a less detailed report. Supervisors are required to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the officer's performance.

- (1) Recorded files may also be reviewed:
 - (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
 - (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
 - (c) By department media personnel with permission of the commissioner or the authorized designee.
 - (d) In compliance with a public records request, if permitted, and in accordance with the Records Release and Security Policy.
 - (e) Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.
 - (f) Editing any video or audio recording, with the intent to remove any part of an incident is strictly forbidden.

3-2-40.30 PERSONAL PRIVACY CONSIDERATION

When the Portable Digital Video Recorder is of the type that continuously captures video or has the ability to capture "pre-event" video footage upon activation, the recorder should be turned off when the trooper is using a restroom, changing clothes, or in any non-law enforcement personal situation which is private in nature.

3-2-40.40 OTHER ISSUES

(1) If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable and log the equipment failure in an email to the supervisor.

- (a) Investigators should include the reason for the deactivation of the video camera may include the following:
 - (i) to consult with a supervisor or another investigator;
 - (ii) during a significant period of inactivity; and

- (iii) during a conversation with a sensitive victim of crime, a witness of a crime, or an individual who wishes to report or discuss criminal activity if:
 - (A) the individual who is the subject of the recording requests that the investigator deactivate the officer's body-worn camera; and
 - (B) the officer believes that the value of the information outweighs the value of the potential recording and records the request by the individual to deactivate the body-worn camera.

(4) Audio/Video Recorder will be positioned and adjusted to record events in consideration of:

- (a) Positioning for optimum light.
- (b) Positioning of camera for optimum video capture of police related activities.
- (c) Any exterior activities that would be deemed important to the Investigator's safety is always the first consideration and should, in no way, be compromised in order to meet the above stated requirements

3-2-40.50 MISUSE OF AN INTIMATE IMAGE OBTAINED DURING AN INVESTIGATION

It is the policy of the Insurance Fraud Division that all aspects of an investigation are to be conducted professionally. On occasion Investigators may find photos or other evidence that is of an intimate nature while conducting searches of phones tablets electronic devices or physical searches of homes or offices.

- (1) Any photos of an intimate nature are to be treated with the utmost care and decorum. These images should not be included in the X-Fire system unless they have evidentiary value and bearing upon the case being investigated.
- (2) Any display, copying, duplication, or sharing of an intimate image should be for the purpose of adjudicating, defending, prosecuting or investigation of a criminal matter.
- (3) Any display, copying, duplication, or sharing of an intimate image outside of the parameters of subsection (2) is prohibited and is a criminal offense under UCA 76-5b-203.5