

SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: November 10, 2015

NUMBER: 3.26 - INVESTIGATIONS

SUBJECT: MEDIA EVIDENCE RECOVERY AND
IMPOUNDING/PRESERVING PROCEDURES

RELATED POLICY: N/A

ORIGINATING DIVISION: OPERATIONAL SUPPORT

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 3.26 – 11/27/2012

I. PURPOSE

This Department procedure establishes guidelines and limitations regarding video recording, audio recording, or photographing conducted by Department members; and, procedures for seizing, preserving, and impounding film, videotapes, or digital media, taken by Department members or third parties.

II. SCOPE

This procedure applies to all members of the Department.

III. DEFINITIONS

Media - includes photographs, audio recordings, and video footage. This media may be stored in analog or digital formats.

IV. PROCEDURE

A. Video Recording, Audio Recording, and Photographing by Department Personnel

1. General Guidelines

- a. Department personnel shall make use of video recording, audio recording, and photography for work-related purposes only.
- b. While working, Department personnel shall not take video, audio, or photographs for personal use.
- c. Department personnel shall not convert to their own use video, audio, or photographic evidence recovered or produced in connection with an investigation or other police activity. This includes any video, audio, or photography taken with Department equipment, personal equipment, or equipment seized from a crime scene or third party.
- d. Public release of video, audio, or photographs is prohibited unless approved by the Chief of Police.

2. Peaceful Demonstrations

As a general policy, Department personnel should refrain from video recording or photographing peaceful demonstrations. When there is reason to believe that a planned event has the potential for unlawful activity, commanding officers should make the determination whether video recording or photographing is appropriate. If, during the course of an event, information exists that unlawful activity may occur, the incident commander may use his/her discretion concerning the use of a video or still camera.

3. Video and Audio Taping Traffic Stops and Citizen Contacts

When an officer uses any form of media recording of any citizen contact (i.e., traffic stop, field interview, etc.), those recordings shall be treated as evidence, regardless of whether used as evidence or for any other purpose.

The following regulations shall apply:

- a. Documentation of the recording
 - (1) The recording officer shall discern each contact separately by indicating date, time, location, and citation/warning number, if issued, on the recording;
 - (2) When a citation will be issued, the issuing officer will write "Recording" in the "Case No." box near the top of the citation;

- (3) When documenting the contact on a Field Interview, Traffic Warning, or other report, indicate a recording was made and include the incident or barcode number; and,
- (4) The person who captured the media recording is responsible for personally transferring the files from the device to the disc and for impounding the original disc.

b. Impound of the recording

- (1) The media recording shall be copied onto a CD or DVD and impounded as evidence by the end of the Department member's shift.
- (2) Citizen contacts - multiple recordings may be impounded on the same disc if they are not part of a criminal investigation. Only one disc needs to be copied, labeled "original," and impounded.
- (3) Criminal investigations - only recordings from the same criminal investigation shall be placed on any one disc. The media files shall be copied onto two non-rewriteable blank CD-R or DVD-R discs. One disc will be labeled "original," to be impounded, and the other disc will be marked "working copy," to be provided to investigators.
- (4) All media files shall be in a format that allows them to be played natively from within the Microsoft Windows operating system (i.e., .wav or .wma) formats.
- (5) The copied media files will immediately be checked to confirm that all files were completely and accurately transferred to the CD/DVDs.
- (6) While the original CD/DVD is to be impounded in the Property Room at an area station or Headquarters, the working copy is intended for use by investigators and City or District Attorneys, and may be subject to discovery by the defendant's counsel.
- (7) No media files of an evidentiary nature will be permanently stored on the Department's network directory. Any files saved to the system must be deleted after copies are made. Media devices will be re-formatted or the file(s) deleted from the device after the above steps have been completed to ensure they are no longer accessible.

- (8) A working/investigative copy of the disc may be sent to the City and/or District Attorney when cases are submitted for prosecution.
- (9) The incident or barcode number for the impounded CD/DVD shall be recorded in the appropriate report. In the case of a citizen contact, the incident or barcode number should be documented in the notes section of citations, the remarks section of a Field Interview, or on an ARJIS-9.

4. Personal Video, Audio, or Photography Equipment

- a. The use of personal video or photography equipment is generally prohibited due to problems associated with securing and maintaining the chain of custody of such media. Exceptions would be:
 - (1) The personal equipment meets or exceeds the standards of the equipment provided by the Department.
 - (2) The media on the personal equipment can be preserved according to established Department standards.
- b. The use of personal audio equipment is allowed as long it can be preserved according to established Department standards.
- c. If personal equipment is used, it is strictly prohibited to convert the video, audio, or photographs for personal use or to disseminate the information to the public.

5. Surveillance Cameras

- a. Absent a court order or permission of the property owner, surveillance cameras may only be used to monitor public places or places visible to the public.
- b. Where feasible, video surveillance cameras will provide 360-degree surveillance capability without audio recordings.
- c. Without exigent circumstances or first obtaining a warrant:
 - (1) Surveillance cameras shall not be positioned or manipulated to zoom into areas that cannot be seen by the unaided eye.

- (2) Surveillance cameras shall not be positioned or manipulated to zoom into private residences from a vantage point inaccessible to the public or an uninvited guest.
- (3) Surveillance cameras shall not use image-enhancing technology that allows viewing into areas that are otherwise out of the public view.
- d. Only trained Department personnel shall have access to the cameras and the video recordings.
- e. If video surveillance equipment captures and records a crime that becomes part of a criminal investigation, the recording shall be preserved and impounded as outlined in this procedure.

6. Crime Scene Documentation

- a. The use of Department-approved video or photography equipment is encouraged in the documentation of crime scenes. It is important that proper procedures be adhered to in the preservation of media for evidentiary reasons as outlined in this procedure.
- b. Contact Operational Support for currently supported camera systems for member use.

B. Video Recording, Audio Recording, and Photographing by Third Parties

1. Recording and Photographing of Police Activity

- a. The general public has a First Amendment right to video record, and/or photograph Department members while they are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.
- b. A bystander has the same right to take photographs or make recordings as a member of the media as long as the bystander has a legal right to be present where he or she is located—public or private property; including an individual’s home or business, and common areas of public and private facilities and buildings.
- c. Members shall not threaten, intimidate, or otherwise discourage an individual from recording police enforcement activities or intentionally block or obstruct cameras or recording devices.

- d. The fact a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any designated crime scene.
- e. A person may record public police activity unless the person engages in actions that jeopardize the safety of the officer, the suspect, or others in the vicinity, violate the law, incite others to violate the law, or interfere with police activity. Interference consists of conduct, threats, actions or activities that prevent or hinder, or purport to prevent or hinder, members from doing their job.
- f. A person's recording of members' activity from a safe distance, and absent any action that obstructs the activity or threatens the safety of the member(s), does not constitute interference. Criticism of the police or the police activity being observed also does not amount to interference.
- g. Members are encouraged to provide ways in which individuals can continue to exercise their First Amendment rights, as officers perform their duties.

2. Officers Making an Arrest

If the video recording, audio recording, or photographing merely depicts an officer making an arrest, the person recording the video, audio, or taking photographs should be contacted and requested to preserve the media. The name, address, and telephone number of the person recording the video, audio, or taking the photographs should be obtained since that person is a potential percipient witness. The actual media should not be seized.

3. Crimes in Progress

- a. If the video recording, audio recording, or photographing was performed by a **reporter or newsperson**, the name and organization of the person recording the video, audio, or taking the photographs should be obtained and provided to the area station captain. The actual media should not be seized. The Privacy Protection Act of 1980, codified at 42 U.S.C. § 2000aa et seq., protects journalists from seizure and disclosure of unpublished and non-broadcasted material. It specifically prohibits government officials from searching or seizing any work product or documentary materials possessed by journalists. In addition, California's "shield law" protects journalists from punishment for

contempt for refusing to disclose their sources, or any unpublished information obtained in the course of gathering, receiving, or processing information for communication to the public. (California Evidence Code Section 1070).

- b. If the video recording, audio recording, or photographing was performed by a **member of the public** and shows any element of a crime in progress, the person video recording, audio recording, or taking the photographs should be contacted and requested to transfer the media to police custody or permit a copy of the media to be made by the Department. If the person refuses to surrender custody of the media and the investigating officer concludes that the media contains evidence of a crime in progress and should be seized, the officer should request permission from the on-duty field lieutenant or, if unavailable, from the duty captain, to authorize immediate seizure of the media.

If there is no exigency to view the media, it shall not be viewed until a search warrant or court order has been obtained. Exigent circumstances exist if the officer believes that there is a possibility that evidence might be lost if not timely retrieved from the device. (*People v. Bullock*, 226 Cal. App. 3d 380 (1990)).

4. Basic Recovery of Video Evidence from a Crime Scene

If a crime, or any element of a crime, was recorded by any camera surveillance equipment, either commercial or private, steps should be taken to recover the video evidence.

- a. Taped Video Evidence (VHS tape, 8mm, etc.)
 - (1) The owner of the camera surveillance equipment should be contacted and asked to provide the ORIGINAL tape for evidence. Officers are NOT to accept copies of the original. If the owner refuses to provide the tape, and the requesting officer believes the tape contains material evidence of a crime, the officers shall contact his or her supervisor to initiate steps to obtain a search warrant. The investigating officer should include the make and model of the equipment, as well as the number of cameras in his/her report. It is important that the officer determines the current date and time settings of the recorder as compared to the actual date and time. This verification and any discrepancy should be noted in the officer's report.

- (2) The investigating officer is required to determine if the tape was recorded on a system with "Multiplexer" equipment. The owner will most likely know this and it is often listed on the front of the equipment itself. "Multiplex video" refers to multiple cameras combining over the same recorded signal. Multiplexed video will appear like flashing camera views when viewed on a standard VCR, and will need to be converted later.
- (3) On VHS Multiplexed recordings, the investigating officer is required to view the recording, on the original equipment, and to cue it to approximately one minute before the offense. The investigating officer should note in his/her report if this procedure was completed, thus saving time when the investigator has the video converted. Some multiplex tapes will not display the date/time stamp on the video image. In some cases, the date/time stamp can only be obtained when played back through the same make and model machine. The officer should document if the date/time stamp was displayed during their review of the tape.
- (4) If the owner of the camera surveillance equipment is unwilling to release the video, steps shall be taken to obtain the evidence. If the evidence is located in a place that is accessible to the public, or is at risk of being destroyed, then the evidence may be seized by the officer, but a warrant is necessary to view it. If the evidence is located in an area not accessible to the public (i.e., locked in a closet or office), the premises shall be secured in order to preserve the evidence and a warrant shall be obtained to seize and view the evidence.
- (5) If the business owner indicates he/she cannot release the tape due to the lack of a back-up tape for the surveillance system, the officer should provide a tape to the owner in exchange for the evidence. Area stations and other investigative units should, therefore, keep a supply of blank tapes on hand.

b. Digital Video Evidence (DVR Systems – Digital Video Recorder)

The current absence of standards in the digital security industry makes it impractical to specify the best acquisition method for all situations. Below are only the basic steps for investigating officers. In certain circumstances, the evidence may be collected by trained crime scene investigators or specialists.

- (1) The owner of the camera surveillance DVR equipment should be contacted and requested to provide the video evidence. The investigating officer should include the manufacturer, make and model of the equipment, as well as the number of cameras in his/her report.
- (2) The owner of the camera surveillance DVR equipment may provide the officer with a CD, DVD, or USB flash drive export of the evidence from the DVR system. If the owner does not provide a CD, DVD, or USB flash drive, the officer will provide the owner with a blank CD, DVD, or USB flash drive to replace the one used.
- (3) In some instances, the owner of the camera surveillance DVR equipment will not know how to operate the equipment or they may have a service that maintains the equipment for them. If the investigating officer is unable to obtain the video evidence, steps should be taken to allow the evidence to be retrieved at a later date.
- (4) **It is important for the investigating officer to ascertain if and/or when the needed evidence will be recorded over. This information shall be noted in the report. This time period is usually between ten days and one month, but can be as short as one day.** This information is needed so the investigator may arrange for evidence acquisition at a later date.
- (5) In most cases, it is impractical to impound the DVR system. If the owner of the camera surveillance DVR equipment is unwilling to release the video, steps shall be taken to obtain the evidence. If the evidence is located in a place that is accessible to the public, or is at risk of being destroyed, then the evidence may be seized by the officer, but a warrant is necessary to view it. If the evidence is located in an area not accessible to the public (i.e., locked in a closet or office), the premises shall be secured in order

to preserve the evidence and a warrant shall be obtained to seize and view the evidence.

C. Impounding Procedures

1. Whenever media containing evidence is seized, the seizing officer has an absolute duty to preserve the evidence and maintain a chain of custody. Failure to do so may result in loss of evidence and/or discipline to the seizing officer. Refer to Department Procedure 3.02, Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks for additional details.
2. A receipt shall be completed whenever media is seized. The item description will be listed as, "Videotape, CD, DVD, USB flash drive, film, audio tape, or photograph." The receipt may be handwritten by the officer using the officer's notebook (PD-145) or a Receipt and Inventory form (Municipal Court Form 197) may be used. Under no circumstances will original media be sent via Department interoffice mail to Records Division or any Property Room. All media shall be impounded according to Department Procedure 3.02, Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks.
3. When marking CDs and DVDs for permanent record, the following steps should be followed:
 - a. Use a black felt-tipped marker, preferably an acid-free Sharpie pen.
 - b. **Make sure the data side of the disc is face down.** Write the identifying information on the label side of the disc.
 - c. Minimally, the name and identification number of the photographer, the date the image(s) were made, and the case number and/or incident number will be printed on both the original and working copy of the CD/DVD in permanent ink.
 - d. The original CD/DVD and working CD/DVD shall be placed in disc envelopes. A photo label sticker, PD-1135-A, shall be placed on the back of the envelope to seal it. **DO NOT** place the original CD/DVD into an additional sealed envelope. The sealed photo envelope is all that is required. The information on the photo label sticker shall be filled out as completely as possible. The original USB flash drive will be placed in impound envelopes and sealed with a photo label sticker, PD-1135A. The photo label sticker will be filled out with information from the case/arrest.

- e. The CD/DVD shall be impounded in the property room at an area station or at Headquarters. Due to the costs involved, officers should refrain from impounding reusable media such as SD Cards and USB Media (e.g., flash drives). In the case where the reusable media itself is of evidentiary value, it shall be impounded. In all cases seized media will be impounded on its original media.
 - f. All media shall be impounded according to the guidelines listed above. This impound protocol will not impact the method being utilized by the Crime Laboratory.
4. Special routing requirements for working copies of photo CD/DVDs related to Domestic Violence and Elder Abuse in-custody cases:
 - a. Once the digital photographs have been taken, the media will be transferred to a disc using one of the approved methods. One original and one working copy of CD/DVDs will be made.
 - b. The working copy will be placed in the locked box affixed to the wall of the officer's computer room at the Headquarters sally port marked "DV/Elder Abuse CD copies".
 - c. The original CD/DVD shall be impounded in the disc envelope only at the Headquarters Property Room.

D. Preserving Video Digital Media

1. All video evidence related to homicides, sex crimes, and high profile cases, such as officer involved shootings, may be taken to the Regional Computer Forensic Laboratory (RCFL) for conversion, duplication, and/or enhancement.
2. All video evidence related to all other crimes can be handled by the responsible investigative unit (Narcotics, Auto Theft, area station, etc.) if they have the ability for conversion, duplication, and/or enhancement. If the investigative unit does not have the ability for conversion, duplication, and /or enhancement, the video evidence can be taken to the Robbery Unit for processing.
3. Many USB flash drives or CD/DVDs created from digital video recorders require proprietary video players and/or codec's to properly view the video. The Robbery Unit can assist investigators with many video forensic needs. The cases noted above in section I., D., 1. should be handled by the staff at RCFL.

4. All original evidence must be returned to the Property Room once it has been examined by the Robbery Unit or RCFL.
5. As technology advances, many of the newer monitor/recording systems can only transfer recordings to USB flash drives. If the investigating officer or detective observes the video recording and then transfers that recording to a USB flash drive, the investigating officer or detective can transfer the recording to a CD/DVD. They shall not delete the recording from the drive but may only format the drive after transferring the recording and verifying that the recording are on the original and working CD/DVD Refer to the below section F. 1. for preserving the original CD/DVD
6. All video records including VHS, S-VHS, DVC (mini digital video cassettes), 8mm, Hi8mm and digital 8mm, must be on VHS or S-VHS videotape or in a usable digital format (video for Windows w/Microsoft codec-640 or 720x480-.avi) that can be converted for editing and duplicating purposes to create prosecution work product and defense discovery. The Robbery Unit or the Regional Computer Forensic Laboratory may be able to assist with conversions. After converting the media to a usable format, it must be impounded in its original form.

E. Preserving Photographic Media

This procedure will not impact the method currently utilized by the Crime Laboratory.

Digital cameras use several different forms of memory to preserve audio, video and photographic media. All cameras currently issued for use by Department personnel write the images to an SD card contained in the camera. Officers may use the supplied USB cord to connect the camera to a Department computer for copying the images to a CD or DVD. Alternately, they may remove the SD card from the camera and use an adaptor or stand-alone media copying station to copy the files. They may only delete the original images or format the media card after verifying that the images were correctly copied to the original and working CD or DVD. It is recommended to re-format the media rather than just delete the files. Regardless of the type of camera used, the following steps must be adhered to when preserving media for evidentiary purposes:

1. The person who captured the media is responsible for personally transferring the files from the camera to the disc and for impounding the original disc.
2. Images from only one crime scene shall be placed on the memory device at any one time.

3. The images shall be copied onto two non-rewriteable blank CD/DVD discs. One CD/DVD will be labeled “original”, to be impounded, and the other CD/DVD will be marked “working copy”, to be provided to investigators.
4. The copied images will immediately be checked to confirm that all files were completely and accurately copied, by comparing the file name, date and size for each digital image on both CD/DVDs.
5. While the original CD/DVD is to be impounded in the property room at an area station or Headquarters, the working copy is intended for use by investigators and City or District Attorneys and may be subject to discovery by the defendant’s counsel.
6. No digital image files of an evidentiary nature will be permanently stored on a Departmental network directory. Any images saved to the system must be deleted after copies are made. Memory cards will be re-formatted after the above steps have been completed.
7. All prints of an evidentiary nature shall be made from the original CD. Therefore, precautions must be taken to protect the original from damage and to maintain it as an unaltered original for court. It shall be the responsibility of the investigating officer to make any additional copies and/or photos from the working copy.
8. A working/investigative copy of the disc may be sent to the City and/or District Attorney when cases are submitted for prosecution.
9. Officers and Detectives are reminded to ensure that the date and time is properly set on their cameras as this data is encoded on every photograph taken (whether displayed in the image or not). Having incorrect dates or times encoded on photographs could lead to problems in subsequent prosecutions.
10. Officers and detectives are reminded NOT to delete files for photographs that did not turn out to their satisfaction. Deleting files, even of unusable photographs will create a discrepancy in file numbers which may create problems in subsequent prosecutions.

F. Transfer Media from Camera to Computer or External Burner

For specific guidelines on how to transfer digital media to a disc, refer to the manuals or other instructions supplied with the equipment.

G. Video and Photography Equipment for Non-Investigatory Reasons

Video and photography equipment, and accessories (such as USB cords) provided by the Department may be used outside of criminal investigations, as long as the use is related to Department business, such as an Operations Plan or site survey.

H. Preserving Audio Media

Regardless of the type of audio recording device used, the following steps must be adhered to when preserving media for evidentiary purposes:

1. The person who captured the audio recording is responsible for personally transferring the files from the device to the disc and for impounding the original disc.
2. Audio files from only one criminal investigation shall be placed on the device at any one time.
3. The audio files shall be copied onto two non-rewriteable blank CD-R or DVD-R discs. One disc will be labeled “original”, to be impounded, and the other disc will be marked “working copy”, to be provided to investigators.
4. All audio files shall be in a format that allows them to be played natively from within the Microsoft Windows operating system (i.e. .wav or .wma) formats.
5. The copied audio files will immediately be checked to confirm that all files were completely and accurately on both CD/DVDs.
6. While the original CD/DVD is to be impounded in the property room at an area station or Headquarters, the working copy is intended for use by investigators and City or District Attorneys and may be subject to discovery by the defendant’s counsel.
7. No audio files of an evidentiary nature will be permanently stored on a Departmental network directory. After files have been transferred to CD/DVDs and verified, the original media will be re-formatted or deleted. Any files saved to the system must be deleted after copies are made and verified.
8. A working/investigative copy of the disc may be sent to the City and/or District Attorney when cases are submitted for prosecution.