

Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Edgardo Garcia**
Chief of Police

SUBJECT: RECORDING INTERVIEWS
SEE BELOW

DATE: August 3, 2020

Memo# 2020-034

SUBJECT

DUTY MANUAL REVISION - L 4513 RECORDING OF STATEMENTS IN CRIMINAL MATTERS

DUTY MANUAL ADDITION - L 4514 RECORDING OF STATEMENTS IN NON-CRIMINAL MATTERS

DUTY MANUAL ADDITION - L 4515 SURREPTITIOUS RECORDING OF STATEMENTS

BACKGROUND

The Duty Manual provisions regarding the recording of statements is dated and not consistent with modern best practices. Previously Duty Manual Section L 4513 was the only section addressing the topic and it included criminal, non-criminal, and surreptitious recording topics. With the introduction of Body Worn Cameras and the recent issuance of city owned smart phones to every sworn officer, the Department's ability to record all statements has been greatly enhanced.

Policy is being revised to require digital recording and uploading of all statements taken in the course of a criminal investigation. The requirement applies to statements made by all suspects, victims, and witnesses regardless of age. These revisions apply both when the officer is working on-duty or in a uniformed secondary employment capacity.

Duty Manual Section L 4513 is being revised to address recording of statements taken in a criminal investigation. Duty Manual Section L 4514 is being added to address recordings taken in non-criminal matters and Duty Manual Section L 4515 is being added to address surreptitious recordings.

ANALYSIS

The Duty Manual has been revised to reflect changes made to the following sections. Additions are shown in *italics and underlined*. Deletions are shown in “strike through” form.

L 4513 RECORDING OF STATEMENTS IN CRIMINAL MATTERS:
Revised 08-03-20

~~Officers may make surreptitious recordings of conversations when the conversation is part of a criminal investigation or part of a non-criminal public contact in which there is no expectation of a “confidential communication” as defined in Penal Code 632(c).~~

Sworn personnel will digitally record all statements taken in the course of a criminal investigation from suspects, victims and witnesses (regardless of age). This requirement applies during regular on-duty assignments and during uniformed secondary employment alike. Recordings will be made using a Department issued device. When a recording has been made in a criminal investigation (those investigations requiring a crime report, supplemental report or equivalent), the recording(s) will be retained as part of the case and uploaded as booked into evidence regardless of its evidentiary value.

If the department member is preparing a crime report, supplemental report or equivalent report in connection with the investigation, the following details of the recording will be included in that report:

- An indication that a recording was made.
- The date and time of the recording.
- The person(s) recorded.
- The reason for the recording.

~~When a contact is of a non-criminal nature and circumstances indicate that a “confidential communication” is or is about to take place, the officer intending on recording it will notify the person(s) being contacted of his/her intentions to record the conversation. If the person(s) being contacted objects to being recorded, the officers will not record or will immediately stop recording the contact.~~

In order to assist investigators in the preparation of cases, officers should include a preamble to their audio-only recorded statements. The use of a brief introductory statement aids in the identification of recorded statements and allows for the efficient assembly of a criminal case. If the recording is made with a Body-Worn Camera, the preamble is recommended if context is needed for clarification, but not required, or notes may be attached to the evidence file. The statement will include the case number, date, time and location and the names of the officers and subjects that are present during the interview. For example:

“Case number 15-001-0123, the date is January 1, 2015 and the time is 1315 hours. This is Officer Smith, and I am interviewing witness Jones in front of 123 Main St. in the City of San Jose.”

~~Additionally, members will not make surreptitious recordings of other department members except when necessary in a criminal investigation.~~

~~This section does not prohibit the recording of an interrogation as provided in Government Code Section 3303(f), The Peace Officer Bill of Rights.~~

L 4514

RECORDING OF STATEMENTS IN NON-CRIMINAL MATTERS:

Added 08-03-20

Recordings made in non-criminal matters will be made using a Department issued device. When a contact is of a non-criminal nature and circumstances indicate that a "confidential communication" is or is about to take place, the officer intending on recording it will notify the person(s) being contacted of his/her intention to record the conversation. If the person(s) being contacted objects to being recorded, the officers will not record or will immediately stop recording the contact.

This section does not prohibit the recording of an administrative interrogation of a peace officer as provided in The Peace Officer's Bill of Rights, Government Code Section 3303(g).

L 4515

SURREPTITIOUS RECORDING OF STATEMENTS:

Added 08-03-20

Surreptitious recordings will be made using Department issued devices. Officers may make surreptitious recordings of conversations when the conversation is part of a criminal investigation or part of a non-criminal public contact in which there is no expectation of a "confidential communication" as defined in Penal Code 632(c).

Department members will not make surreptitious recordings of other department members except when necessary in a criminal investigation.

ORDER

The above stated changes to the Duty Manual are effective immediately.



EDGARDO GARCIA
Chief of Police