

Standards on Prosecutorial Investigations

Prosecutorial Investigations is the subject of a new set of ABA Criminal Justice Standards approved by the ABA House of Delegates in February 2008. The “black letter” Standards and accompanying commentary have been published in “ABA Standards for Criminal Justice: Prosecutorial Investigations,” Third Edition © 2014, American Bar Association.

STANDARD 2.11 CONSENSUAL INTERCEPTION, TRANSMISSION AND RECORDING OF COMMUNICATIONS

(a) As used in these Standards “consensual interception” is an electronic, digital, audio or video interception and recording of communications to which one or more but not all participants in the communications has consented.

(b) In deciding whether to use consensual interception, the prosecutor should consider the potential benefits, including obtaining direct, incriminating, and credible evidence that can be used alone or to corroborate other information.

(c) In deciding whether to use consensual interception, the prosecutor should consider the potential risks, including:

(i) problems of audibility and admissibility;

(ii) the danger of detection, including physical risk to those participating, and the risk of disclosure of the investigation;

(iii) selective recording of communications by the cooperating party;

(iv) the danger of obtaining false, misleading or self-serving statements by a party to the conversation who is aware or suspects that the conversation is being recorded;

(v) the risk that the consenting individual will conspire with the subject of the investigation to create false or misleading statements; and

(vi) the risk that the import of a conversation will be distorted by the cooperating party.

(d) To maximize the benefits and to minimize the risks of using consensual interception, the prosecutor should:

(i) obtain written or recorded consent from the consenting individual; and minimize to the extent practicable recording outside the presence of law enforcement agents and, if such a recording occurs or will occur:

(A) have law enforcement agents test and activate the recording equipment before the cooperating party meets with the subject; and

(B) minimize the necessity for the cooperating party to operate the recording equipment and, if it is necessary for the cooperating party to operate the equipment, provide that individual specific directions on how to operate the equipment and strict instruction to be present with it during such operation.

(e) The prosecutor, in consultation with the law enforcement agents, should regularly review all or selected recordings obtained during consensual interceptions.

(f) The prosecutor should take steps to ensure law enforcement agents comply with procedures relating to the acquisition of, custody of, and access to electronic equipment and recording media and to the secure preservation of any recordings produced whether they are obtained by consenting individuals or by law enforcement agents.

HB0300S01 (2016) & Body Worn Camera policies for Utah public safety agencies

- Any agency using BWC must have a policy that:
 - Addresses security, storage
 - Most agency policies already comply through Lexipol
- User's duties:
 - Check function, report malfunction, note start and stop of shift, wear visibly
 - Activate per policy on encounters
 - Keep recording until encounter concludes
- Activation of the camera is required:
 - On an enforcement stop; a dispatched call; a field interrogation or interview; use of force; execution of a warrant; a traffic stop, including:
 - During a traffic violation; stranded motorist assistance; and any crime interdiction stop; or
 - During any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
- De-activation of the camera is permitted:
 - To consult with supervisor or other officer
 - During any significant period of inactivity
 - During a conversation with sensitive victim of crime, witness or person who:
 - Requests deactivation
 - Officers weighs value of information against de-activation
 - Document de-activation in report
- An officer is prohibited from:
 - Using a body-worn camera for personal use
 - Making a personal copy of a recording created on duty or acting in official capacity as LE officer

- Retaining a recording obtained on duty or acting in official capacity as a LE officer
- Duplicating or distributing a recording except as authorized by the employing LE agency
- Altering or deleting a recording in violation of law

HB 300S01 & GRAMA

- The following records are private if properly classified by a governmental entity:
 - Audio and video recordings created by a body-worn camera, as defined in § 77-7a-103, that record sound or images inside a home or residence except for recordings that:
 - Depict the commission of an alleged crime;
 - Record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
 - Record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
 - Contain an officer involved critical incident; or
 - Have been requested for reclassification as public by a subject or authorized agent of a subject featured in the recording

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 106. Remainder of or Related Writings or Recorded Statements

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time.