

DEPARTMENT OF PUBLIC SAFETY OPERATING PROCEDURES MANUAL		
CHAPTER 133	RECORDING POLICE ACTIVITY	
	Effective: 01/04/2024	Commissioner Approval: 
	Authorities: <a href="#">Click here to enter text.</a>	
	Applicability: COMMISSIONED AND PARTIALLY COMMISSIONED	
	Special Instructions: <a href="#">Click here to enter text.</a>	

### 133.100 INTRODUCTION

This policy provides officers with guidance for dealing with situations in which they are being recorded, to include photographing, videotaping, audiotaping, or both, by members of the media and public.

Members of the media and public have the same First Amendment right to record officers in public places, as long as their actions do not interfere with the officer's duties or the safety of officers or others. Officers should assume that they are being recorded at all times when on duty in a public space.

### 133.300 OFFICER RESPONSIBILITIES

- A. Persons who are lawfully in public spaces or locations where they have a legal right to be present—such as their home, place of business, or the common areas of public and private facilities and buildings—have a First Amendment right to record things in plain sight or hearing, to include police activity. Members of the media do not have rights to record police activity beyond those afforded members of the general public. Members of the media and public are to be treated in the same manner. Police may not threaten, intimidate, or otherwise discourage or interfere with the recording of police activities. However, the right to record is not absolute and is subject to legitimate and reasonable legal restrictions, as follows:
  1. A reasonable distance must be maintained from the officer(s) engaged in enforcement or related police duties.
  2. Persons engaged in recording activities may not obstruct police actions. For example, individuals may not interfere through direct physical intervention, tampering with a witness, or by persistently engaging an officer with questions or interruptions. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not of itself justify an officer taking corrective or enforcement action or ordering that recording be stopped, as this is an infringement on an individual's constitutional right to protected speech.
  3. Recording must be conducted in a manner that does not unreasonably impede the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic.
  4. The safety of officers, victims, witnesses, and third parties cannot be jeopardized by the recording party.

B. Arrest

1. Persons who violate the foregoing restrictions should be informed that they are engaged in prohibited activity and given information on acceptable alternatives, where appropriate, prior to making an arrest.
2. Arrest of a person who is recording officers in public shall be related to an objective, articulable violation of the law unrelated to the act of recording. The act of recording does not, in itself, provide grounds for detention or arrest.
3. Arrest of an individual does not provide an exception to the warrant requirement justifying search of the individual's recording equipment or media. While equipment may be seized incident to an arrest, viewing or copying recordings requires a search warrant. Recordings shall not be altered or erased under any circumstances.

C. Seizure of Recording Devices and Media

1. Absent arrest of the recording party, recording equipment may not be seized unless the officer has articulable probable cause to believe that the equipment was used to record evidence of a crime.
2. If there is probable cause to believe that evidence of a crime has been recorded, an officer should:
  - a. ask the person in possession of the recording for consent to voluntarily and temporarily relinquish the recording device or media so that the recording containing the evidence may be viewed and/or copied as evidence;
  - b. absent consent to voluntarily and temporarily relinquish the recording device or media, the person in possession of the recording is to be asked about their willingness to preserve the recording and make it available for viewing and copying if a search warrant is obtained;
  - c. officers then need to evaluate whether immediate seizure of the recording device or media is necessary to prevent the recording from being destroyed, lost, tampered with, or otherwise rendered useless as evidence;
  - d. unconsented seizure of the recording device or media without first obtaining a search warrant is permissible only if the totality of the circumstances establish a reasonable belief that immediate seizure is necessary to prevent the recording from being destroyed, lost, tampered with, or otherwise rendered useless as evidence;
  - e. unconsented copying of the recording is permissible only after obtaining a search warrant authorizing that action;
  - f. unconsented viewing of the recording is permissible only after obtaining a search warrant authorizing that action or if the totality of the

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circumstances establish a reasonable belief that immediate viewing is necessary to prevent imminent death or serious bodily injury;

3. Whenever a recording device or media is seized pursuant to consent, the item is to be held in law enforcement custody no longer than reasonably necessary for the officer, acting with due diligence, to review and copy the recording. Following viewing and copying of the recording, the item is to be returned to the consenting person or their designee along with a property return receipt.
4. Whenever a recording device or media is seized absent consent and to prevent the recording from being destroyed, lost, tampered with, or otherwise rendered useless as evidence, the item is to be held in law enforcement custody no longer than reasonably necessary for the officer, acting with due diligence, to apply for a search warrant. If a search warrant is granted, the terms of the warrant are to be followed. If a search warrant is not granted, the seized item is to be returned to the consenting person or their designee along with a property return receipt as soon as reasonably possible.

### 133.310 SUPERVISORY RESPONSIBILITIES

When reasonably possible, officers are to contact and brief a supervisor before arresting an individual who was recording police activity.

When reasonably possible, officers are to contact and brief a supervisor before seizing a recording device or media unless the seizure is pursuant to consent or a search warrant.

### 133.900 DEFINITIONS

**Recording:** Capturing of images, audio, or both, by means of a camera, cell phone, audio recorder, live-streaming, or other device.

**Media:** The storage source for visual or audio recordings, whether by film, analog, or digital means.