

## 5-04/110.12 PHOTOGRAPHY, AUDIO AND VIDEOTAPING BY THE PUBLIC AND THE PRESS

Members of the public and the press have a First Amendment right to observe and record peace officers engaged in the public discharge of their duties so long as they are in a place they have a legal right to be present. Officers should assume they are being recorded at all times when on duty.

The types of police activities which can be lawfully recorded include detentions, searches, arrests and uses of force. The types of places members of the public and the press can record from include public streets and sidewalks, an individual's home or business, and common areas of public and private facilities and buildings where the individual has a legal right to be present.

Recordings are defined as the capturing of images, audio, or both, by means of a video camera, cell phone, audio recorder or other device which is capable of capturing images and/or audio.

### Interference with Recording of Police Activities

Department members are prohibited from interfering, threatening, intimidating, blocking or otherwise discouraging an individual from recording police activities. Additionally, Department members shall not demand identification, demand that the person state a reason why he or she is taking photographs or recording, detain or inform the individual that recording is not allowed, requires a permit, or requires consent except in the following circumstances:

- The person is engaging in actions that jeopardize the safety of the officer, the suspect, or others in the vicinity
- The person is violating the law or inciting others to violate the law
- The person is tampering with a witness or persistently engaging an officer who is in the midst of his or her duties by persistently engaging an officer with questions or interruptions
- The person is repeatedly instructing a witness being questioned by personnel not to respond to questions
- The person is uttering threats or fighting words which by their very utterance inflict injury or tend to incite an immediate breach of the peace. (An expression of criticism of law enforcement, making obscene gestures, and/or yelling profanities are activities which fall squarely within the First Amendment and do not amount to interference)
- The person is interfering or obstructing police actions through direct physical intervention

Verbal criticism, insults, or name calling do not in themselves justify an officer taking corrective or enforcement action toward a member of the public recording his or her activities. Department members may ask questions during the course of a consensual encounter, but absent reasonable cause to believe that the individual has committed, is

committing, or is about to commit a crime, the individual should not be ordered to stop recording or be required to answer any questions.

If a citizen's conduct related to the use of cameras or other recording devices rises to the level of necessitating an arrest for interfering or obstructing a peace officer's duties in violation of Penal Code sections 148, subdivision (a) or 69, a supervisor should be called to the scene to approve the arrest.

Department members are prohibited from deleting or destroying any photographic, audio or video recordings or images under any circumstances.

#### **5-04/110. SEIZURE OF PHOTOGRAPHIC OR VIDEO EVIDENCE FROM A PRIVATE CITIZEN OR MEMBER OF THE PRESS**

Except under limited circumstances, Department members are prohibited from searching or seizing photographs, audio or video recordings, cameras or recording equipment, or telephones containing photographs, audio or video recordings without a warrant. The following guidelines shall be used when any film, tape or storage source for audio or visual recordings is believed to contain evidence relevant to a criminal proceeding, deputy-involved shooting, in-custody death, or use of force incident.

- Immediately notify a field supervisor who may seek to view or obtain the film, tape or storage source voluntarily from the photographer or citizen in possession of the film or tape,
- Prior to or after receiving consent, the citizen will be afforded the opportunity to view the film or tape with supervisory personnel in order to ascertain evidentiary value. In instances where consent to view the tape is given and the film or tape does not contain relevant evidence, it shall be immediately returned to the owner,
- Any consent to either view or relinquish any film, tape or storage source shall be in writing or otherwise memorialized on audio or videotape,
- The scope of the consent shall be dictated by the owner or person in possession of the film or tape and shall be limited to looking for information relevant to the particular incident in question.
- In instances where the film, tape or storage source is found to contain evidence relative to a specific incident, the owner shall be afforded the opportunity to accompany supervisory personnel to a location where the film or tape can be copied,
- The original film, tape or storage source will be retained by the Department as an item of evidence, and a copy will be given to the citizen.

If consent to view or relinquish the film or tape is not given, the following guidelines shall be used:

- Film, tape or storage sources shall not be seized unless they are believed to contain evidence relevant to a homicide and exigent circumstances exist insofar as the evidence will be lost absent a seizure of the evidence or a person at the rank of commander or higher approves the seizure
- A person at the rank of commander or higher may approve the seizure of film, tape or storage source if it is believed to hold contraband or evidence of a felony crime, deputy-involved shooting, in-custody death, or force incident and the exigencies of the situation demand it, and There is no other means to guarantee that the contents of the film or tape will be preserved as evidence because it is reasonable to believe that the recording will be destroyed, lost, tampered with or otherwise rendered useless as evidence before a warrant can be obtained,
- To accomplish an involuntary seizure,, personnel may temporarily seize the film or tape no longer than reasonably necessary to diligently seek a search warrant authorizing the seizure, viewing and copying of the film, tape, or storage source. Such temporary warrantless seizure may be accomplished only in a situation where an immediate seizure of the film, tape or storage source is the only way to preserve the evidence and personnel may not search the contents of the property unless it is objectively reasonable to believe that immediate viewing of the film, tape or storage source is necessary to prevent death or serious bodily injury to another before a warrant can be obtained
- In all instances, a Receipt for Seized Property (SH-CR-624) shall be issued to the photographer or person in possession of the film, tape or storage. Again, where the film, tape or storage source does not contain relevant evidence, it shall be immediately returned to the owner.

#### Tape Recorded by Media

In addition to the above requirements, when it is deemed appropriate to seize film, audio or video tape, and/or photography, audio or videotaping equipment or storage sources from members of the public with press credentials or members of the public who have identified themselves as media, he/she shall immediately notify the Sheriff's Headquarters Bureau and note that fact in the first report. Seizure of the film, tape, or equipment in question can then be obtained in accordance with the above procedures.