

## **3-01/080.16 - Photography, Audio, and Videotaping by the Public and the Press**

Members of the public, including the press, have a First Amendment right to observe, take photographs, and record video or audio in any public place where they are lawfully present.

Photography and the recording of video or audio are common activities and are neither crimes nor indications of criminal activity in and of themselves. Neither photography nor the recording of video or audio, standing alone, can form the basis for a detention, arrest, or warrantless search.

Members of the public have the same right to take photographs and record video and audio as members of the press (except for narrow circumstances authorizing press access to areas closed to the public pursuant to Penal Code section 409.5 due to the existence of a menace to public health or safety created by a calamity including a flood, storm, fire, earthquake, explosion, accident, or other disaster).

Members of the public have the right to take photographs and record video and audio of peace officers engaged in the public discharge of their duties, including in such activities as detentions, searches, and arrests as long as the members of the public are in a place in which they have a legal right to be present.

The types of places in which an individual has a right to be present include public streets and sidewalks, an individual's home or business, and any other public or private facility at which the individual is lawfully present.

Department personnel should assume they are being recorded at all times while on duty.

### Interference with Recording Police Activities

Department members are prohibited from interfering with, threatening, intimidating, blocking, or otherwise discouraging a member of the public, who is not violating any other law, from taking photographs or recording video or audio (including photographs, video, or audio of police activities) in any place in which the members of the public is lawfully present. Such prohibited interference includes:

- Ordering a person to cease taking photographs or recording video or audio; however, in sensitive situations involving injured persons or victims, deputies may ask a person to stop recording voluntarily, provided the deputy explains that the person has the right to record;
- Demanding that person's identification;
- Demanding that the person state a reason why he or she is taking photographs or recording video or audio;
- Detaining that person;
- Intentionally blocking or obstructing cameras or recording devices (not including physical barricades or screens used as part of a tactical operation or crime scene);
- Seizing and/or searching a cell phone, camera or recording device without a warrant;
- Using force upon that person; or
- Detaining or arresting the individual for violating any other law wherein the purpose of the detention or arrest is to prevent or retaliate for recording police activity.

Nothing in this policy bars officers from taking appropriate action if a person taking photographs or recording video or audio is violating any provision of law. For example:

- Engaging in other actions that jeopardize the safety of the person, the officer, or others;
- Violating the law or inciting others to violate the law;
- Interfering with or obstructing police actions through direct physical intervention.

If an individual's actions are approaching the level of criminal offense, Department personnel shall recommend a less-intrusive location to the individual from which he/she may continue to observe or record. If these efforts are unsuccessful, a supervisor shall be consulted.

Verbal disagreements, criticism, insults, name calling, or obscene gestures directed at officers or others do not in themselves justify a deputy taking enforcement action toward a member of the public, including one engaged in photography or recording of video or audio. Whenever possible, de-escalation techniques should be employed. During hostile situations, deputies should evaluate the wisdom of initiating contact with a person who is taking photographs or recording video or audio, and deputies should consider whether contact may incite the person or others prior to making contact.

Nothing in this policy bars deputies from initiating consensual encounters. However, a person's refusal to answer questions or speak with a deputy during a consensual encounter does not provide a basis for a detention or search.

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 section 148, subdivision (a) or 69, personnel shall adhere to all Department policy and procedures.

Department personnel are prohibited from tampering with, altering, deleting, or destroying any photographic, video or audio records, or equipment under any circumstances. Unless a deputy has obtained a warrant, a deputy shall not require an individual to show the photographs, video or audio records. Procedures for involuntary and voluntary seizing of video, audio, and/or pictures are located in MPP section 5-04/020.30.

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