# 2-04/070.90 - Photography, Audio, and Videotaping by the Public and the Press

Photographing/Recording Law Enforcement Activities

Both the press and members of the public 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), or Penal Code section 409.7 (the immediate area surrounding any command post, police line, or rolling closure at a demonstration, march, protest or rally where individuals are engaged in protected First Amendment activity)).

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 such activities as detentions, searches, and arrests, as long as the members of the public are photographing or recording 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, that individual's home or business, and any other public or private facility or area at which the individual is lawfully present.

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

Prohibition on Interfering with or Prohibiting Photography/Recording

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 of police activities in any place in which the member 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, Department members may ask a person to voluntarily stop recording, provided the Department member explains that the person does have the right to record;
- Demanding that person's identification;
- Demanding that the person state a reason why they are taking photographs or recording video or audio;
- Detaining that person;

- Intentionally blocking or obstructing a person's 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 person's cell phone, camera, or recording device without a warrant; or
- Using force upon that person.

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

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

However, Department members shall not detain or arrest a person taking photographs or recording video or audio for violating any law if the actual purpose of the detention or arrest is to prevent or retaliate for recording police activity.

If an individual's photography or recording are actually or on the verge of interfering with or obstructing law enforcement activities, Department personnel shall recommend a less-intrusive location to the individual from which they 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 Department members or others do not in themselves justify a Department member taking enforcement action toward a member of the public engaged in photography or recording of video or audio. Whenever possible, de-escalation techniques should be employed. During hostile situations, Department members should evaluate the relative value of initiating contact with a person who is taking photographs or recording video or audio, and Department members should consider whether contact may incite the person or others prior to making contact.

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

If an individual'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(a) or 69, personnel shall adhere to all Department policy and procedures. Prior to the arrest, if safe to do so, the Department member shall contact a supervisor. If an arrest is made prior to contacting a supervisor due to safety concerns, the Department member shall immediately contact a supervisor as soon as it is safe to do so and shall describe the circumstances warranting the arrest and obtain concurrence in that action prior to transporting the individual.

Department personnel are prohibited from tampering with, damaging, altering, deleting, or destroying any

photographic, video or audio records, or equipment (to include any media storage, such as memory cards or sticks) 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 photos are located in MPP section 5-04/020.30.