2-04/070.120 - Detention, Investigation, or Arrest of Members of the Media

Neither Department policy nor California Penal Code section 409.7 prevents Department members from enforcing applicable laws if a Duly Authorized Member of the Media is engaging in activity that is unlawful.

If the Duly Authorized Representative of the Media is detained by a Department member or other law enforcement officer, that representative shall be permitted to contact a supervisory officer immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so. (California Penal Code section 409.7(a)(3)).

Should an investigation be opened that involves a media organization or a Duly Authorized Representative of the Media, the investigating Department member must:

- Document an articulable factual basis for suspecting criminal activity that is not within the scope of First Amendment activities; and

- Notify and obtain written approval by the Undersheriff, who will consider whether there is an articulable factual basis for suspecting criminal activity outside the scope of protected First Amendment activities.

No investigation may be opened primarily on the basis of activity protected by the First Amendment, including the lawful conduct of a Duly Authorized Member of the Media acting within the scope of newsgathering.

Compulsory legal process, including but not limited to subpoenas, search warrants, interception orders pursuant to the Wiretap Act, or civil investigative demands, to obtain information or records from a member of the news media must be authorized by the Undersheriff and the factual basis for the use of such process must be documented in the investigative file.

Except in exigent circumstances in which prior authorization is not possible, Department members must obtain authorization for the arrest of a Duly Authorized Member of the Media from the Undersheriff or the Undersheriff's designee. A warrant for arrest or a referral for prosecution of a Duly Authorized Member of the Media cannot take place without the prior approval of the Undersheriff or the Undersheriff's designee.

References:

Penal Code section 148

Penal Code section 409.5

Penal Code section 409.7

Penal Code section 632.01

Penal Code section 667.5

MPP: 5-04/020.30 - Seizure of Photographic, Video, or Audio Evidence From a Private Citizen or Member of the Press