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| RECORDING POLICE ACTIVITY | | | | |
| <table border="1"> <tr> <td rowspan="2"> ✓ new: rescinds: amends: </td> <td> cross-reference: Senate Bill S3253A </td> </tr> <tr> <td> accreditation standards: NYSLEAP Standard(s): 50.2 </td> </tr> </table> | | ✓ new: rescinds: amends: | cross-reference: Senate Bill S3253A | accreditation standards: NYSLEAP Standard(s): 50.2 |
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| effective date: October, 2022 | amend date: | | | |

I. PURPOSE

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

II. POLICY

Members of the public, including media representatives, have an unambiguous 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.

III. DEFINITIONS

Law Enforcement Activity: Means any activity by an officer acting under the color of law.

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

Recording: To capture or attempt to capture any moving or still image, sound, or impression through the use of any recording device, camera, or any other device capable of capturing audio, moving or still images, or by way of written notes or observations.

IV. PROCEDURES

- 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. Police may not threaten, intimidate, or otherwise discourage or prevent/ interfere with the recording of law enforcement 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. Persons may not physically position themselves in a manner that obstructs officers from performing their duties or increases the risk of harm to the recorder or officers.
2. Recording parties may not intentionally or unintentionally take actions that unduly delay police attempts to conduct enforcement or emergency activities. Standing in the way of victims, suspects, witnesses, emergency responders; impeding traffic; or similar actions are forms of obstruction that are not acceptable. If reasonable to do so, officers may direct recording parties to move to permissible recording locations, or provide them with other options for recording that will not prevent law enforcement officials from conducting their official duties. Failure to heed such police directives may subsequently provide the basis for physical removal, citation, or arrest.
3. Public safety may not be jeopardized by allowing the public access to all areas in an effort to record police actions. Individuals can be restricted from certain areas or directed to move if necessary to ensure the safety of officers, victims, witnesses, and third parties. For example, police may restrict individuals from standing in close proximity to an investigative stop if that person's presence creates a potential hazard to the officer or others. Officers can also restrict the public's access to or recording of crime scenes and tactical operations by establishing a marked perimeter. Recording of tactical operations such as serving arrest or search warrants from too close a distance could jeopardize officer safety and increase the risk of harm to the recorder.
4. Verbal criticisms or derisive comments made by recording parties or others from a position or location that has no direct impact on police actions does not constitute interference, even if the comments are unseemly or offensive. Officers should, in these and related circumstances, be attentive to the performance of their duties and avoid being baited by hecklers or others. Rather than risking a debate or verbal exchange, it is better not to engage with agitators. Officers should develop a routine response that will deflect provocative comments and questions, such as asking whether the criticizing individual would like to speak to a supervisor or a public information officer.

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, downloading, viewing, or**

otherwise accessing files requires a search warrant. Files and media shall not be erased under any circumstances.

C. Confiscation of Recording Devices and Media

1. Absent arrest of the recording party, recording equipment may not be confiscated. Additionally, officers may not order an individual to show recordings that have been made of enforcement actions or other police operations.
2. If there is probable cause to believe that evidence of a crime has been recorded, an officer should:
 - a. Advise and receive instructions from a supervisor;
 - b. Ask the person in possession of the recording if he or she will consent to voluntarily and temporarily relinquish the recording device or media so that it may be viewed and/or copied as evidence; and
 - c. In exigent circumstances, in which 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, the recording device or media may be confiscated under a temporary restraint. A warrant must be obtained in order to examine and copy the recording and the chain of custody must be clearly documented per office policy.
3. In exigent situations where it is objectively reasonable to believe that immediate viewing of recordings is necessary to prevent death or serious bodily harm of another before a warrant may be authorized, the recording device or media may be confiscated and viewed.
4. Whenever a recording device or media is seized without a warrant or obtained by consent, the seized item shall be held in police custody no longer than reasonably necessary for the police, acting with due diligence, to obtain a warrant. The device must be returned at the earliest possible time and its owner/operator given instruction on how it can be retrieved. In all cases property receipts shall be provided to the owner.
5. A person in custody or under arrest does not, by that status alone, forfeit the right to have any such recordings, property and equipment maintained and returned to them.

D. Supervisory Responsibilities

1. A supervisor should be summoned to any incident in which an individual recording police activity is going to be, or will most likely be, arrested or when recording equipment may be seized without a warrant or lawful consent.

E. Media Representatives

1. The media, like any other members of the community, do not need to display identification in an area of unrestricted access. Law enforcement action involving media representatives shall be administered in accordance with the provisions of *G.O. 500 Media Relations*.
2. If a situation arises where a crowd needs to be disbursed, officers should attempt to identify media representatives and provide necessary time, place manner restrictions. It is ideal that media representatives are identified and necessary information provided to them prior to an unlawful assembly order being announced.

By Order Of

A handwritten signature in black ink, appearing to read "Derek Osborne".

Derek Osborne
Sheriff