



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 1.2.10

TITLE: PUBLIC RECORDING OF POLICE OFFICERS

EFFECTIVE: 03/19/2017

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PURPOSE

The purpose of this Chapter is to provide guidance for officers in dealing with situations in which they are being recorded, to include photographing, videotaping, audiotaping, or both, by members of the public or the press.

POLICY STATEMENT

1. In accordance with the rights secured or protected by the Constitution and laws of the United States and the Constitution and laws of the State of Louisiana, onlookers or bystanders may witness, observe, record and / or comment on officer conduct, including stops, detentions, searches, arrests, or uses of force. Officers shall respect the right of persons to observe, record, and / or verbally comment on or complain about the performance of police duties occurring in public. Officers shall be cognizant that the exercise of these rights serves an important public purpose.
2. Members of the public, including media representatives, have an unambiguous First Amendment right to observe, record, and / or verbally comment on or complain about the performance of police duties occurring in public. The right is not limited to public streets and sidewalks; it includes areas where individuals have a legal right to be present, including an individual's home or business, or other private property where the person has a right to be or is legally present. The seizure and/or destruction of recordings without a warrant or due process may also violate the individual's Fourth and Fourteenth Amendment rights.
3. Members of the press and members of the general public enjoy the same rights in any area accessible to the general public. No individual is required to have or to display "press credentials" in order to exercise the right to observe, record, and / or verbally comment on or complain about the performance of police duties taking place in an area accessible to, or within view of, the general public.
4. Officers should assume that they are being observed or recorded at all times when on duty in a public place.
5. Any allegations that a recording may contain evidence of wrongdoing by an officer shall be immediately communicated to a supervisor who shall secure the recording and notify PIB who will make the scene and assume custody and control of the recording and

follow the guidelines of **Chapter 84.1 – Evidence and Property, Chapter 83.1 – Collection and Preservation of Evidence, and Chapter 83.2 – Computers and Digital Evidence.**

DEFINITIONS:

Definitions relevant to this Chapter include:

Recording—Capturing of images, audio, or both by means of a camera, cell phone, audio recorder, or other device.

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

OFFICER'S RESPONSIBILITIES

6. Officers are prohibited from threatening, intimidating, or otherwise discouraging any individual from observing stops, detentions, arrests, and other incidents or remaining in the proximity of the incident or recording police officer enforcement activities unless one of the restrictions below applies.
7. Officers must not intentionally block or obstruct persons, cameras or recording devices in any manner unless it is to protect the privacy or identity of victims, witnesses, or undercover officers.
8. Officers are prohibited from deleting recordings or photographs and from damaging or destroying recording devices/cameras under any circumstances.
9. Officers shall not detain, prolong the detention of, or arrest an individual for remaining in the proximity of, recording, or verbally commenting on officer conduct directed at the individual or a third party, unless one of the restrictions below applies.

RESTRICTIONS

10. A person may observe, record, and / or verbally comment on or complain about the performance of police duties occurring in public unless the person engages in actions that:
 - (a) Jeopardize the safety of the officer(s), victims, witnesses, third parties, the suspect(s), or others in the vicinity;
 - (b) Jeopardize the integrity of the crime scene;
 - (c) Violate the law; or
 - (d) Incite others to violate the law.
11. Examples of such restrictions include but are not limited to:
 - (a) Persistently engaging or attempting to engage an officer in conversation while the officer is executing his/her duties;
 - (b) Interfering through direct physical intervention with a lawful arrest;
 - (c) Tampering with a witness;
 - (d) Inciting bystanders to interfere with, hinder, or obstruct an officer in the performance of his/her duties;
 - (e) Unreasonably impeding the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic;
 - (f) Trespassing on private property;
 - (g) Entering a private dwelling or similar private space without the owner's permission;
 - (h) Entering a marked crime scene; and

- (i) Entering any area not accessible to the general public.
- 12. An individual's observation, recording, and / or verbal comment on or complaint about the performance of police duties occurring in public from a safe distance without any attendant action intended to obstruct the activity or threaten the safety of others does **not** amount to interference.
- 13. A person's expression of criticism of the police (or the police activity being observed) does **not**, by itself, constitute interference.
- 14. The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.
- 15. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying does **not**, of itself, justify an officer taking corrective or enforcement action or ordering that recording be stopped, as this is an infringement on an individual's constitutional right to protected speech. Even foul expressions of disapproval towards police officers are protected under the First Amendment.

** The U.S. Supreme Court has held that "a properly trained officer may reasonably be expected to exercise a higher degree of restraint" than the average citizen when it comes to reacting to insults or "fighting words."*

** Courts have given First Amendment protection to persons who made obscene gestures and yelled profanities at police officers, and they have prohibited the police from interfering with such speech.*

SEIZURE OF EQUIPMENT

- 16. Where an officer has a reasonable belief that a bystander or witness has captured a recording of critical evidence related to a serious crime, the officer shall:
 - (a) Consult, if possible, with a supervisor;
 - (b) Ask the recording person if he/she will consent to lend the recording medium to the officer temporarily so that it can be viewed; and
 - (c) Request the recording person to e-mail the recording to the officer at his/her government e-mail address.
- 17. If the recording person does not agree to share the recording, he/she may not be pressured, threatened, or intimidated to gain compliance. Officers shall not seize or otherwise coerce production of recorded sounds or images without obtaining a warrant, or order an individual to destroy such recordings.
- 18. If the recording person does not agree to share the recording and the officer has reasonable cause 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 seized under a temporary restraint. The warrantless seizure of material protected by the First Amendment and Fourth Amendment (photos, videos, etc.) will be strictly scrutinized by a court. In ordinary circumstances, the seizure of cameras or recording devices without a warrant will not be reasonable. Cameras or recording devices will not be seized without a warrant unless:
 - (a) Officers have probable cause to believe that critical evidence of a felony is contained on/in the camera or recording device;
 - (b) Officers first have explained the circumstances and have unsuccessfully attempted to get the consent of the person in possession of the recording device;

- (c) The seizure of the camera/recording device is for no longer than reasonably necessary for the officer, acting with due diligence, to obtain a warrant to seize the evidence; and
 - (d) Supervisory approval has been granted for the seizure.
19. Unless and until a warrant to search the device has been obtained, an officer will not search the device or attempt to view the recording without the recording person's consent.

RESPONSES BY OFFICERS BEING RECORDED

20. Some appropriate police responses to being recorded are:
- (a) Informing the recording party that he/she has a right to record but there are some restrictions.
 - (b) Advising the recording party if he/she is doing something that is not permitted.
 - (c) Directing the recording party to a location at a reasonable distance where he/she can record.
 - (d) Designating a reasonable police perimeter. This perimeter **MUST** be applied to all individuals equally, and the recording party should not be singled out.

ARREST

21. Persons who violate the foregoing restrictions should be informed that they are engaged in prohibited activity and given information on acceptable alternatives, when appropriate, prior to making an arrest.
22. Arrest of a person who is observing, recording, and / or verbally commenting on or complaining about the performance of police duties occurring in public shall be related to an objective, articulable violation of the law unrelated to the act of observing, recording, and / or verbally commenting on or complaining about the performance of police duties occurring in public. The action does not, in itself, provide grounds for detention or arrest.
23. 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 altered or erased under any circumstances.

SUPERVISORY RESPONSIBILITIES

24. A supervisor shall be summoned to the scene of any incident in which an individual observing, recording, and / or verbally commenting on or complaining about the performance of police duties occurring in public is going to be, or will most likely be, arrested or when recording equipment is or may be seized without a warrant or lawful consent.