

	<b>EVERMAN POLICE DEPARTMENT</b>	
	<b>Policy 7.9 Citizen or Media Recording of Police Activity</b>	
	<b>Effective Date:</b> 01/01/2017	<b>Replaces:</b>
	<b>Approved:</b> C. W. Spencer; Chief of Police	
	<b>Reference:</b>	

**I. POLICY**

It is the policy of this department that the seizure and searching of portable video, audio, and photo recording devices shall be governed by federal constitutional and statutory laws as well as departmental investigatory policies.

**II. PURPOSE**

The purpose of this policy is to establish guidelines and procedures for investigation, seizure, and searching of portable video, audio, and photo recording devices that contain data of an evidentiary value pertaining to a criminal act.

**III. PROCEDURES**

A. General

1. The department recognizes that the taking of photographs and/or videos by private citizens and media personnel is permitted within areas open to general public access and occupancy.
2. Any civilian or media personnel may video record or photograph a police employee's activities as long as he/she abides by the following guidelines:
  - a. Remains at a reasonable distance
  - b. Does not interfere with the duties and responsibilities of law-enforcement personnel
  - c. Does not create a safety concern for the law-enforcement employee, any person involved in a law-enforcement incident, or any other persons.
3. Non-sworn employees are prohibited from seizing a person's portable video, audio, and/or photo-recording devices.

B. Initial Stop of an Individual Non-Media Photographer or Videographer: A sworn employee who stops an individual who is reasonably believed to have recorded/captured data of evidentiary value pertaining to a criminal shall do the following:

1. Announce his/her authority and identity.
2. Non-uniform sworn employees shall identify themselves by prominently displaying departmental credentials.
3. Advise the individual of the purpose of the stop.
4. Ask the individual whether he/she recorded/captured data relevant to the incident.
5. Request that the individual provide their personal identification and contact information.
6. Detain the individual no longer than necessary to affect its purpose.

Note: Brevity is important in determining whether or not a stop is reasonable. A prolonged stop may be warranted if the employee reasonably and diligently pursues investigative means to determine whether the detained individual possesses data that may have evidentiary value, and to confirm the person's identity.

C. Consent to Search and/or Seize Portable Video, Audio, and/or Photo Recording Devices belonging to an Individual (Non-Media Photographer/Videographer)

1. Sworn employees may ask an individual for consent to a search and/or seizure of a portable photo and/or video recording device to determine if data of evidentiary value pertaining to a criminal act is present.
2. The employee's supervisor shall be notified immediately after any seizure and prior to any search of the device.  
The supervisor shall determine whether an immediate search is warranted or a CIU detective should respond.
3. If a consensual seizure occurs, the property shall be inventoried and documented by the seizing sworn employee pursuant to SOP #006 – Property and Evidence.
4. Authorization to search the device shall be documented by the seizing sworn employee on a consent-to-search form.
5. The seizing sworn employee shall accurately and completely document the basis for the seizure and findings of the search in a case report/offense incident report.

D. Non-consensual Seizure of Portable Video, Audio, and Photo Recording Devices of an Individual (Non-Media Photographer/Videographer)

1. When there is probable cause to believe that the portable video and/or photo recording device depicts visual and/or audio items pertaining to a criminal act, the device may be seized without consent if exigent circumstances exist.
2. The most common type of exigent circumstance is the imminent destruction of evidence. Two requirements must be met for this exigency to exist:

- a. Sworn employees must have probable cause to believe that evidence that can be destroyed exists;
- b. Sworn employees must have reason to believe the evidence might be destroyed if they delay taking action until a subpoena/search warrant is issued.
3. The sworn employee's supervisor shall be notified immediately after any seizure, and the supervisor shall respond to the scene.
4. No search of the device shall be conducted until a subpoena/search warrant is issued unless there is reason to believe that the immediate search of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.
5. An on-duty or on-call detective shall be notified of the seizure, and shall be responsible for preparation of an application for subpoena/search warrant.
6. A sworn employee's response to an individual's resistance to a non-consensual seizure shall be in compliance with "SOP #017 – Use of Force."
7. The seizing sworn employee shall accurately and completely document the basis for the seizure in a case report/offense incident report.
8. If a non-consensual seizure occurs, the property shall be inventoried and documented by the seizing sworn employee pursuant to "SOP #006 – Property and Evidence."

#### E. Initial Stop of Media Personnel

1. A sworn employee who stops a media photographer/videographer believed to have recorded/captured data of evidentiary value pertaining to a criminal act shall do the following:
  - a. Announce his/her authority and identity
  - b. Non-uniform sworn employees shall identify themselves by prominently displaying departmental credentials
  - c. Advise the media person of the purpose of the stop
  - d. Ask the media person whether he/she recorded/captured data relevant to the incident
  - e. If the media person acknowledges recording/capturing relevant data and agrees to allow review and/or supply a copy to the department, the sworn employee shall do the following:
    - i. Immediately notify his/her supervisor and CIU
    - ii. Collect and document receipt of the data pursuant to "SOP #006 – Property and Evidence"
    - iii. Document the request and response on a case report/offense incident report.
  - f. If the media person acknowledges recording/capturing relevant data and refuses to allow review and/or provide a copy of the recorded/captured relevant data, or refuses to state whether

he/she recorded/captured relevant data, the sworn employee shall do the following:

- i. Immediately notify his supervisor and CIU
  - ii. Instruct the media person not to destroy, alter, or delete the recorded/captured relevant data
  - iii. Document the request and refusal on a case report/offense incident report
  - iv. Assist CIU to prepare appropriate subpoena and/or warrant documents for production of the requested data
  - v. Request that the media person provide their personal identification, media credentials, and contact information.
- g. The stop shall last no longer than necessary to effect its purpose. NOTE: Brevity is important in determining whether or not a stop is reasonable. A prolonged stop may be warranted if the employee reasonably and diligently pursues investigative means to determine whether the media person possesses data that may have evidentiary value, and to confirm the person's identity.
2. Sworn employees shall not seize portable video, audio, and/or photo recording devices from media personnel unless they are under arrest or otherwise directly involved in the criminal act.
  3. A warrantless search of portable video and/or photo recording devices seized incident to the direct involvement or arrest of media personnel is prohibited unless there is reason to believe that the immediate search of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

#### F. Supervisory Notification

1. The employee's supervisor shall be notified immediately after the seizure of a portable video, audio and/or recording device, whether consensual or non-consensual, and advised of the following:
  - a. The totality of the circumstances surrounding the stop and seizure
  - b. The type of device seized
  - c. The status of the person from whom the device was seized (e.g. detained, arrested, etc.).

#### G. Supervisor's Responsibilities

1. The supervisor shall do the following:
  - a. Immediately respond to the scene
  - b. Ensure that the circumstances surrounding the stop and seizure as conveyed by the sworn employee are serious enough to warrant the stop and seizure, that the stop and seizure were appropriate in the given circumstances, and that the actions of the officer were in compliance with this general order and the department's SOP.

- c. If the supervisor determines that the stop and seizure is appropriate, he/she shall determine whether an immediate search of the portable video, audio, and/or photo-recording device by the sworn employee is warranted.
- d. If the supervisor determines that the seizure is not appropriate, he/she will ensure that the portable video and/or photo recording device is immediately returned and the person detained is made whole.
- e. The supervisor shall document these findings in a case supplemental report/supplemental report.
- f. Ensure that the seizing sworn employee documents the circumstances and actions taken in a case report/offense incident report.
- g. Ensure that all required documentation is completed.
- h. Ensure that proper evidence handling protocols are followed.
- i. Ensure that the criminal investigations unit (CIU) has been notified.
- j. Ensure that a use of force report is completed if necessary.
- k. Ensure that any questions or concerns regarding the appropriateness of the stop and/or seizure shall be immediately directed to the next supervisory level in the chain-of-command.
- l. Ensure that the public information office is notified, if the supervisor believes that is necessary.

#### H. Impounding of Property

A sworn employee who impounds any portable video, audio, or photo recording device shall complete a property receipt form and mark the evidence type as “investigatory evidence.”

#### I. Prohibited Actions

- 1. Employees shall not order or participate in the destruction of any portable video, audio, or photo recording devices.
- 2. Employees shall not order or participate in the erasure, deletion, or destruction of digital, analog, or film evidence.
- 3. Employees shall not impede a person’s right to photograph or video record an event unless that person’s actions will have any of the following effects:
  - a. Endangering the safety of the public, employees, or property
  - b. Interfering with an active crime scene
  - c. Creating a reasonable safety concern.

#### J. Statutory Limitations and Liability

- 1. Pursuant to federal statute, 42 USC Section 2000aa-6, it is unlawful for a sworn officer or employee, in connection with an investigation or

prosecution of a criminal offense, to search for or seize the work product of a media photographer or videographer except in the following circumstances:

- a. There is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being;
  - b. There is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate.
2. A search or seizure of the work product is prohibited when the offense is merely the withholding of such material.
  3. Sworn officers and employees may be held personally liable in an action for civil damages for violation of federal statute, 42 USC Section 2000aa-6.