



# VIDEO RECORDING, PHOTOGRAPHING & AUDIO RECORDING BY THE PUBLIC

**INDEX CODE: 307**  
**EFFECTIVE DATE: 02-26-13**

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## **I. PURPOSE**

The purpose of this policy is to set forth Anne Arundel County Police Department's (AACPD) policy concerning the audio taping, videotaping and photography of police or other law enforcement personnel's activity in public. Furthermore, it is the policy of the Anne Arundel County Police Department to ensure the protection and preservation of every person's Constitutional rights.

## **II. POLICY**

The AACPD recognizes that members of the general public have a First Amendment right to video record, photograph, and/or audio record AACPD officers while they are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.

## **III. REGULATIONS**

A. Officers are reminded that photography, including videotaping and audio recording of places, buildings, structures or events are lawful activities, which occur on a regular basis in Anne Arundel County.

1. If a person is taking photographs, or recording from a place where he or she has a right to be, officers are reminded that this activity by itself does not constitute suspicious conduct.

2. Officers shall refer to their training, supervisors, and the Index Codes for guidance concerning identification and reporting of suspicious activities.

B. In areas open to the public, officers shall allow bystanders the same access for photography as is given to members of the news media. Officers shall be aware that:

1. A bystander has the same right to take photographs or make recordings as a member of the media, as long as the bystander has a legal right to be present where he or she is located.

2. A bystander has the right under the First Amendment to observe and record officers in the public discharge of their duties.

3. Public settings include parks, sidewalks, streets, and locations of public protests; but the right of a member of the public to take photographs or make recordings extends also to that person's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.

4. The fact that a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

5. Use of a camera or other recording device does not entitle a bystander or other person to engage in activities which in and of themselves are otherwise criminal violations, for example, “upskirting,” filming/recording while trespassing onto private or secure areas, etc.

C. As long as an individual is photographing or recording in a setting at which that individual has a legal right to be present and is not interfering with officers’ safety, officers **shall not**:

1. Inform or instruct that person that photographing or recording of police officers, police activity or individuals who are the subject of police action (such as a Terry stop or an arrest) is not allowed;
2. Inform or instruct that person that such activity requires a permit;
3. Inform or instruct that person that such activity requires consent of the persons being photographed or recorded;
4. Order that person to cease such activity;
5. Demand that person’s identification;
6. Demand that the person state a reason why he or she is taking photographs or recording;
7. Detain that person;
8. Intentionally block or obstruct camera and/or recording device lens (this does not include the covering of a body for purposes of preventing the public’s view of sensitive/disturbing scenes); or
9. In any way threaten, intimidate or otherwise discourage an individual from recording officers’ enforcement activities.

**NOTE:** Officers may approach and/or attempt to question an individual engaged in this activity, but officers are reminded that the individual is not required to answer questions, and that there is no justification for ordering the individual to stop or remain unless the officer reasonably suspects that he/she has committed, is committing, or is about to commit any crime.

D. Officers are reminded that the public does not have a right to interfere with police activity. Interference consists of conduct, threats, actions or activities that prevent or hinder, or purport to prevent or hinder, officers from doing their job.

1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of officers or their ability to perform their duties, an officer may direct the person to move to a position that will not interfere. However, an officer shall not order the person to stop photographing or recording.

2. If a person is photographing or recording police activity from a position that impedes or threatens the safety of officers or of the public, an officer shall direct the person to move to a position that will not interfere. However, officers shall not order the person to stop photographing or recording.

3. A person’s recording of officers’ activity from a safe distance, and absent any attendant action that obstructs the activity or threatens the safety of the officer(s), does not constitute interference.

4. A person has the right to express criticism of the police activity being observed. So long as that expression does not jeopardize the safety of any officer, suspect or bystander; and so long as that expression does not violate the law or incite others to violate the law, the expression does not constitute interference.

#### **IV. SPECIAL CIRCUMSTANCES**

A. Nothing in this policy should be construed by members of the Anne Arundel County Police Department as an elimination of their ability to seek out, collect, or otherwise gather evidence in the course of a criminal investigation. If an officer has **probable cause** to believe, or exigent circumstances indicate, that a bystander is in possession of any still photos/images, video recordings, and/or audio/sound recordings that are, or could reasonably be considered, evidence related to a crime and/or the identification of a person involved in a crime, members may take all lawful actions to collect that evidence.

Officers seeking to obtain material contained on a camera or video recording device that is the private property of a bystander must remember that the camera or video recording device, and the bystander who possesses it, enjoy the same Constitutional protections from unreasonable search and/or seizure as they would in any other law enforcement activity or investigation. Thus, unless the bystander voluntarily consents to: surrendering his/her camera or video recording device; an examination of its contents; and a seizure by a police officer of any images or videos contained within it, members **MUST** adhere to requirements of this policy **AND** to the requirements of Index Code 1621, Search and Seizure Warrants.

#### **B. SEIZING A BYSTANDER'S VIDEO RECORDING DEVICE FOR EVIDENTIARY PURPOSES/CONSENTUAL – OFFICERS' RESPONSIBILITIES**

1. If a bystander is believed to possess any material that is, or could reasonably be considered, evidence related to a crime and/or the identification of a person involved in a crime, officers may make a request of the bystander that he/she voluntarily surrender his/her camera, video recording device, etc., into police custody.

2. An officer shall not, implicitly or explicitly, coerce consent to take possession of any recording device or any information thereon, and shall document any voluntary consent given.

3. If the individual **CONSENTS** to the officer's request, exercise due care and caution with any of the individual's property or electronic device(s). The officer when possible may voluntarily transmit the images or sound via text message or electronic mail to the officer's official government electronic mail account. **The evidence shall not be transferred to an officer's personal electronic mail account under any circumstances.** Upon confirmation that the evidence was transferred successfully, the electronic device may be returned to the citizen. The officer will download the information on CD and submit into evidence.

4. Officers should be mindful that their personal cameras/phones/video devices also serve as evidence and are subject to discovery.

#### **C. SEIZING A BYSTANDER'S VIDEO RECORDING DEVICE FOR EVIDENTIARY PURPOSES/NONCONSENTUAL – OFFICER'S RESPONSIBILITIES**

1. If the individual **REFUSES** a request to voluntarily surrender his/her camera or recording device: In the absence of exigent circumstances, officers must have the necessary probable cause to support an application for a Search and Seizure Warrant. See Index Code 1621, "Search and Seizure Warrants."

2. If consent is refused, an officer will notify a supervisor and request that the supervisor respond to the incident. The supervisor may authorize the seizing of the device for Search and Seizure purposes.

3. If there is **PROBABLE CAUSE** to believe that evidence exists on an individual's device, **AND** there is **PROBABLE CAUSE** to believe that the evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, officers may **TEMPORARILY** seize the device for safekeeping/preservation of the evidence while the appropriate application(s) for Search and Seizure Warrant(s) are made.

4. For all devices which have come into police custody pursuant to Part IV of this Index Code, officers shall document all applicable information about the device in the property section of the automated report system (ARS). The name, address and phone number of the individual in possession of the device shall be included in the persons section of the report. The officer must also complete the narrative and include the request for consent and the individual's response to the request.

A "Recovered Property Form," shall be completed, and a copy provided to the individual in possession of the device. The individual shall be provided with the name and contact information of the officer who took custody of the device.

5. For devices which have been temporarily seized under Part IV, Paragraph C of this Index Code, officers SHALL NOT make any attempt to view, download, or otherwise access any material contained on the device, unless exigent circumstances are present. If exigent circumstances exist, a supervisor may authorize review of the evidence without or pending a Search and Seizure warrant application. **Protection of any potential evidence is paramount.** Only members of the Criminal Investigations Division Forensics Unit may make efforts to access material contained on the device. **NOTE: Upon taking custody of the device, officers are strongly encouraged to either remove the device's battery or switch it to a "Power Off" condition. This will aid in preventing any remote access to or deletion of the data or other material stored within it.**

6. Officers shall submit the recovered camera, video recording device, etc., in accordance with Index Code 1201, "Evidence and Recovered Property – Reports and Packaging."

7. Officers shall not, under any circumstances, erase or delete, or instruct or require any other person to erase or delete, any recorded images or sounds from any camera or other recording device that is in the possession of a citizen or that has been voluntarily turned over or seized under the terms of this Index Code.

**V. PROPONENT UNIT:** Office of Professional Standards.

**VI. CANCELLATION:** None.