


POLICE

	GENERAL ORDER	GO #11-03
	SEIZURE & SEARCH OF PORTABLE VIDEO AND PHOTO RECORDING DEVICES	
	CALEA Standard(s):	

PURPOSE: To establish guidelines and procedures for investigation, seizure and searching of portable video and photo recording devices which contain data of evidentiary value pertaining to a criminal act.

SCOPE: This General Order (GO) applies to all employees of the Department.

POLICY: It is the policy of the Department that the seizure and searching of portable video and photo recording devices shall be governed by Constitutional and statutory laws as well as Departmental Investigatory Policies.

PROCEDURE:

I. General

- A.** 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.
- B.** A civilian may video record or photograph a police employee’s activities as long as they:
 - 1. Remain at a reasonable distance;
 - 2. Do not interfere with the employee’s duties and responsibilities;
 - 3. Do not create a safety concern for the employee, person detained, or other persons.

II. Non-Sworn Employees

- A.** Non-sworn employees are prohibited from seizing a person’s portable video and photo recording devices.

III. Initial Stop of an Individual (Non-Media Photographer/Videographer)

- A.** When a sworn employee stops an individual who is reasonably believed to have recorded/captured data of evidentiary value pertaining to a criminal act the employee shall:
 - 1. Announce his authority and identity;
 - a.** Non-uniform sworn employees shall identify themselves by prominently displaying Departmental credentials;
 - 2. Advise the individual of the purpose of the stop;
 - 3. Ask the individual whether he recorded/captured data relevant to the incident;
 - 4. Request the individual provide their personal identification and contact information;
- B.** The stop shall last no longer than necessary to effect its purpose. 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 he possesses data that may have evidentiary value, and to confirm the person’s identity.

IV. Consent to Search and/or Seize Portable Video and Photo Recording Devices of an Individual (Non-Media Photographer/Videographer)

- A.** 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.
 - 1. The employee's supervisor shall be notified immediately after any seizure and prior to any search of the device.
 - a.** The supervisor shall determine whether an immediate search is warranted or a CIU detective should respond.
 - 2. If a consensual seizure occurs, the property shall be inventoried and documented by the seizing sworn employee pursuant to "**SOP #006 – Property and Evidence.**"
 - 3. Authorization to search the device shall be documented by the seizing sworn employee on a "**Consent to Search Electronic Media Form.**"
 - a.** 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.**"

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

- A.** 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.
 - 1. 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 destructible evidence 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.
 - 2. The sworn employee's supervisor shall be notified immediately after any seizure, and the supervisor shall respond to the scene.
 - 3. 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.
 - 4. An on-duty or on-call Robbery Squad Detective shall be notified of the seizure, and shall be responsible for preparation of an application for subpoena/search warrant.
 - 5. 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.**"
 - 6. The seizing sworn employee shall accurately and completely document the basis for the seizure in a "**Case Report/Offense Incident Report.**"
 - 7. 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.**"

VI. Initial Stop of Media Personnel

- A.** When a sworn employee stops a media photographer/videographer who is believed to have recorded/captured data of evidentiary value pertaining to a criminal act the sworn employee shall:
 - 1. Announce his authority and identity;
 - a.** Non-uniform sworn employees shall identify themselves by prominently displaying Departmental credentials;

2. Advise the media person of the purpose of the stop;
 3. Ask the media person whether he recorded/captured data relevant to the incident;
 - a. 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:
 - 1) Immediately notify his supervisor and CIU;
 - 2) Collect and document receipt of the data pursuant to “**SOP #006 – Property and Evidence.**”
 - 3) Document the request and response on a “**Case Report/Offense Incident Report.**”
 - b. 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 they recorded/captured relevant data, the sworn employee shall:
 - 1) Immediately notify his supervisor and CIU;
 - 2) Instruct the media person not to destroy, alter or delete the recorded/captured relevant data;
 - 3) Document the request and refusal on a “**Case Report/Offense Incident Report**”;
 - 4) Assist CIU to prepare appropriate subpoena and/or warrant documents for production of the requested data.
 4. Request the media person provide their personal identification, media credentials, and contact information.
- B.** The stop shall last no longer than necessary to effect its purpose. 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 he possesses data that may have evidentiary value, and to confirm the person’s identity.
- C.** Sworn employees shall not seize portable video and photo recording devices from media personnel unless they are under arrest or otherwise directly involved in the criminal act.
1. 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.

VII. Supervisory Notification

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

VIII. Supervisor’s Responsibilities

- A.** The Supervisor shall:
1. Immediately respond to the scene;
 2. Ensure the totality of the circumstances surrounding the stop and seizure as conveyed by the sworn employee are warranted, appropriate, and in compliance with this General Order and the Department’s SOP.

- a. If the supervisor determines the stop and seizure is appropriate, he shall determine whether an immediate search of the portable video and/or photo recording device by the sworn employee is warranted.
 - b. If the supervisor determines that the seizure is not appropriate, he will ensure that:
 - 1) The portable video and/or photo recording device is immediately returned and the person detained is made whole;
 - a) The supervisor shall document these findings in a **“Case Supplemental Report/Supplemental Report;”**
 - c. Ensure that the seizing sworn employee documents the circumstances and actions taken on a **“Case Report/Offense Incident Report;”**
3. Ensure that all required documentation is completed;
 4. Ensure that proper evidence handling protocols are followed;
 5. Ensure that the Criminal Investigations Unit (CIU) has been notified;
 6. Ensure that a **“Control of Person’s Report”** is completed if necessary;
 7. 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;
 8. Ensure that the Public Information Office is notified if necessary.

IX. Impounding of Property

- A. Whenever a sworn employee impounds any portable video or photo recording device, the employee shall complete a **“Property Receipt Form”** and mark the evidence type as “Investigatory Evidence.”

X. Prohibited Actions

- A. Employees shall not order or participate in the destruction of portable video and photo recording devices.
- B. Employees shall not order or participate in the erasure, deletion or destruction of digital, analog or film evidence.
- C. Employees shall not impede a person’s right to photograph or video record an event unless that person’s actions:
 1. Endanger the safety of the public, employees, or property;
 2. Interfere with an active crime scene; or
 3. Create a reasonable safety concern.

XI. Statutory Limitations and Liability

- A. 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/videographer, unless:
 1. 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; or
 2. 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.
 - a. A search or seizure of the work product is prohibited when the offense is merely the withholding of such material.
- B. 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.

Definitions:

PROBABLE CAUSE – Knowledge of facts and circumstances as would warrant an officer of reasonable caution to believe that a person has committed a crime or that evidence of a crime will be found at a certain place.

SEARCH WARRANT – An order, in writing, issued by a judge, directing a law enforcement officer to search a particular area, device, person, conveyance, or structure for contraband, fruits of a crime, or other evidence.

MEMORY – The electronic holding place for instructions and/or data; may also be referred to as a “SIM card.”

PERSONAL DIGITAL ASSISTANT (PDA) – Devices usually containing phone, address lists, photographs and other data; and may also be referred to as “smart phones” and “tablet computers.”

PORTABLE VIDEO AND/OR PHOTO RECORDING DEVICE – Any device capable of capturing still photographs and/or video/audio recordings (e.g. cell phones, smart phones, tablet computers, digital and analog cameras, digital and analog video recorders, etc.)

REMOVABLE MEDIA – Disks, CDs, DVDs, cartridges and tapes that store data and can be easily removed.

REMOVABLE MEDIA CARD – Small data storage media which are more commonly found in other digital devices such as smart phones, tablet computers, cameras, and PDAs.

USB STORAGE DEVICE – Small storage devices accessed using a device’s USB ports. They may store large volumes of data files. They are easily removed, transported and concealed.

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APPROVED BY:



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