



Medway Police
Department

Policy & Procedure No. 42M

DEPARTMENTAL MANUAL

Chapter: 42M

DATE OF ISSUE
December 14, 2018

EFFECTIVE DATE
December 14, 2018

SUBJECT

Recording Police

ISSUING AUTHORITY

Chief Allen Tingley

REFERENCE(S)

Page 1 of 3

- New Policy
- Amended Policy

I. PURPOSE

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

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

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.

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,¹ to include police activity. Police may not threaten, intimidate, or otherwise discourage or interfere with the recording of police 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.
 - 2. Persons engaged in recording activities may not obstruct police actions. For example, individuals may not interfere through direct physical intervention, tampering with a witness, or by persistently engaging an officer with questions or interruptions. 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.

¹ In nearly all cases, audio recording of police is legally permissible and subject to the same guidelines as video recording. This is so even in states where eavesdropping statutes require two-party consent.

3. Recording must be conducted in a manner that does not unreasonably impede the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic.
4. The safety of officers, victims, witnesses, and third parties cannot be jeopardized by the recording party.
5. ***Project Veritas Action Fund v. Conley*** (decided December 10, 2018) declared MGL Ch 272 § 99 (the Massachusetts Wire Tap law) unconstitutional. As a result persons in Massachusetts may secretly video and audiotape police officers engaged in their duties subject to “reasonable time, manner, and place restrictions. Such restrictions are not yet defined. Future case law will dictate.

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 altered or erased under any circumstances.

C. Seizure of Recording Devices and Media

1. Absent arrest of the recording party, recording equipment may not be seized. 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 serious 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 seized 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 department 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 can be authorized, the recording device or media may be seized and viewed.
4. Whenever a recording device or media is seized without a warrant or obtained by voluntary 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.

D. Supervisory Responsibilities

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.

Approved Allen M. Tingley
Chief of Police Allen M. Tingley

Review: Annual

Note: This policy amends and replaces the policy originally issued on December 1, 2018.