
Public Recording of Law Enforcement Activity

428.1 PURPOSE AND SCOPE

This policy provides guidelines for handling situations in which members of the public photograph or audio/video record law enforcement actions and other public activities involving members of this department. In addition, this policy provides guidelines for situations where such recordings may be deemed to be evidence.

428.2 POLICY

The Santa Ana Police Department recognizes the right of persons to lawfully record members of this department who are performing their official duties. Members of this department will not prohibit or intentionally interfere with such lawful recordings. Any recordings deemed to be evidence of a crime or relevant to an investigation will only be lawfully collected or seized.

Officers should exercise restraint and should not resort to discretionary arrests for offenses such as interference with an investigation, failure to comply with a lawfull order or disorderly conduct to prevent a member of the public from exercising the right to record members performing their official duties.

428.3 RECORDING LAW ENFORCEMENT ACTIVITY

Members of the public who wish to record law enforcement activities are limited as follows:

- (a) Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).
- (b) Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:
 - (a) Tampering with a witness or suspect.
 - (b) Inciting others to violate the law.
 - (c) Being in close proximity to the law enforcement activity as to present a clear safety hazard to officers.
 - (d) Being so close to the law enforcement activity as to interfere with an officer's effective communication with a suspect, victimor witness.
- (c) The individual may not present an undue safety risk to officers, self or others.

428.4 OFFICER RESPONSE

Officers should promptly request a supervisor respond to the scene when it appears an individual recording activities may be interfering with an investigation or it is believed the recording may be deemed to be evidence. If practicable, officers should wait for the supervisor to arrive prior to taking enforcement action or seizing cameras or recording devices.

When practicable, officers or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or conduct to be

Santa Ana Police Department

Santa Ana PD Policy Manual

Public Recording of Law Enforcement Activity

unlawful. Accompanying the warnings should be clear directions on what an individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing an individual to clear the area, an officer could advise the person he/she may continue observing and recording from the sidewalk across the street.

If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, officers shall document the nature and extent of the interference or other unlawful conduct and the specific warnings that were issued in a corresponding report.

428.5 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to the scene when requested or any time the circumstances indicate there is a likelihood of interference or other unlawful behavior by a member of the public.

The supervisor should review the situation with the investigating officer and:

- (a) Request additional assistance as needed to ensure a safe environment.
- (b) Take a lead role in communicating with individuals who are observing or recording regarding appropriate limitations on their location or behavior. When practical, the encounter with the member of the public should be recorded.
- (c) When practicable, allow adequate time for individuals to respond to requests for a change of location or conduct.
- (d) Ensure that any enforcement, seizure or other actions are consistent with this policy, as well as, constitutional and state law.
- (e) Explain alternatives for individuals who wish to express concern about the conduct of Department members, such as how and where to file a complaint.

428.6 SEIZING RECORDINGS AS EVIDENCE

Officers should not seize recording devices or media unless (42 USC § 2000aa):

- (a) There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably necessary for prosecution of the person.
 - 1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.
- (b) There is reason to believe the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
- (c) The person consents.
 - (a) To ensure the consent is voluntary, the request should not be made in a threatening or coercive manner.
 - (b) If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to

Santa Ana Police Department

Santa Ana PD Policy Manual

Public Recording of Law Enforcement Activity

be present while the copy is being made, if feasible. Another way to obtain the evidence is to transmit a copy of the recording from a device to a department-owned device.

Recording devices and media seized will be submitted within the guidelines of the Property and Evidence Policy.