



# HARFORD COUNTY SHERIFF'S OFFICE ADMINISTRATIVE POLICY

## Public Recording of Law Enforcement Activity

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### 1. Purpose

To provide guidance for members pertaining to the rights of citizens or the media to photograph, videotape, and / or audiotape members of the Harford County Sheriff's Office during the discharge of his law enforcement duties.

### 2. Policy

Individuals have a First Amendment right to record a member in the public discharge of his law enforcement duties as long as the individual's actions do not interfere with the duties of the deputy, or jeopardizes the safety of the deputy or others. The right to record items in plain view / hearing includes such places as public buildings, streets and sidewalks and any area where the individual has a legal right to be present such as the individual's home or business or other private property.

No member of the Harford County Sheriff's Office may prevent or prohibit any person's ability to observe, photograph, and / or make a video recording (with or without a simultaneous audio recording) of law enforcement activity that occurs in the public domain, so long as the person's location, actions, and / or behavior do not create a legitimate, articulable threat to officer safety or the safety of others, or an unlawful hindrance to successful resolution of the law enforcement activity.

### 3. Definitions

**HINDERING:** the common law criminal misdemeanor of obstructing and hindering a law enforcement officer in the performance of his police duties. The elements of this offense are:

- The law enforcement officer is engaged in the performance of an official police action or duty;
- The accused bystander commits an act, or an omission, which obstructs or hinders the law enforcement officer in the performance or completion of that official police action or duty;
- The accused bystander knew, or should have known, of the officer's identity as a sworn law enforcement officer (i.e., the officer was in uniform);
- The accused bystander knew, or should have known, that the officer was engaged in an official police action or duty; and
- The accused bystander intended to obstruct or hinder the law enforcement officer by the act of omission described above.

**PHOTOGRAPHING:** the act of capturing and storing a still image, whether in an electronic / digital format, or on any type of light-sensitive film (e.g., traditional 35mm film).

**VIDEO RECORDING:** the act of capturing a series of images that, when replayed in succession, reproduce a sequence of activities in motion. Video recordings may be stored on a length of light-sensitive film, a videotape cassette, or in a digital format (e.g., a removable memory card), and may or may not contain a simultaneous audio recording.

**VIDEO RECORDING DEVICE:** for the purposes of this policy, a video recording device includes, but is not limited to, any device capable of capturing a still or moving image(s), regardless of whether or not a simultaneous audio recording is included. Examples may include any of the following devices:

- A cellular telephone of any make, model, or manufacturer, including those devices referred to as "smart phones."
- A personal digital assistant, also known as a personal data assistant or PDA.
- A tablet-style mobile computer commonly referred to simply as a "tablet," such as an Apple iPad or a BlackBerry PlayBook.
- Any camera, whether still-photo and / or video, of any make, model, or manufacturer, regardless of whether or not the device is capable of capturing a simultaneous audio recording, and regardless of how the device stores the images it captures.

#### **4. Procedures**

- A. It is increasingly common for uninvolved bystanders at the scene of law enforcement activity to photograph and / or record the actions of law enforcement officers and their conduct.
- B. A member of the Harford County Sheriff's Office should assume that, at any time, a member of the general public is likely to be observing, and perhaps even photographing or recording, his activities.
- C. A person may record public law enforcement activity unless the person engages in an action that jeopardizes the safety of the officer, the suspect, or others in the vicinity, violates the law, or incites others to violate the law. Examples of prohibited behavior include, but are not limited to:
  - 1. Repeatedly instructing a witness being questioned by law enforcement not to respond to the deputy's questions;
  - 2. Persistently engaging or attempting to engage a deputy in conversation while the deputy is in the midst of performing his duties;
  - 3. Hindering a lawful arrest;
  - 4. Inciting bystanders to hinder or obstruct the deputy in the performance of his duties;
  - 5. Placing the safety of the bystander, or of any law enforcement officer(s), witness(es), victim(s), or suspect(s), in jeopardy;
  - 6. Interfering with or violating any section of law, ordinance, code, or criminal or traffic article;

7. Intruding into any crime scene, private property, or other location under lawful police control and / or not normally accessible to the general public; and
  8. Threatening, by words or actions, other persons.
- D. In and of themselves, the acts of merely observing, photographing, and / or making a video recording of any police activity that occurs in a public setting are not criminal offenses.
1. On their own, these acts alone do not constitute probable cause for the arrest of the observer / bystander, and they do not provide any justification for any member of the Harford County Sheriff's Office, without a search and seizure warrant or other appropriate court order, to review, seize, damage, erase, or otherwise inspect the contents of a person's camera or video recording device.
- E. A person's criticism of law enforcement, or the law enforcement activity being observed, does not amount to interfering with the lawful performance of duties, as the First Amendment protects verbal criticism directed at deputies, even if that criticism is offensive in nature.
- F. Nothing in this policy should be construed by a member of the Harford County Sheriff's Office to eliminate his ability to seek out, collect, or otherwise gather evidence in the course of a criminal investigation.
1. If a deputy has probable cause to believe, or exigent circumstances indicate, that a bystander is in possession of any still photographs / 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.
  2. However, members seeking to obtain material contained on a camera or recording device that is the private property of a bystander must recall that the camera or video recording device, and the bystander who possesses it, have the same constitutional protections from unreasonable search and / or seizure as they would in any other law enforcement activity or investigation.
  3. Unless the bystander voluntarily consents to surrendering his / her camera or video recording device, an examination of its contents, and a seizure by a law enforcement officer of any images or videos contained within it, members must adhere to the requirements of this policy and relevant policies regarding the collection of evidence.
- G. Prohibited Actions
1. Upon discovery that a bystander is observing, photographing, or video recording the conduct of law enforcement activity:
    - a. Do not impede or prevent the bystander's ability to continue to do so based solely on your discovery of his / her presence;
    - b. Do not seize or otherwise demand to take possession of any camera or video recording device the bystander may possess based solely on your discovery of his / her presence;
    - c. Do not demand to review, manipulate, or erase any images or video recording captured by the bystander based solely on your discovery of his / her presence; and

NOTE: For investigative purposes, be mindful of the potential that the bystander may witness, or capture images / video of events considered at some later time to be material evidence.

2. If it becomes necessary to effect the arrest of a bystander who is, or has been, observing, photographing, or video recording police activity:
  - a. ensure the arrest is for an unlawful activity or criminal offense (e.g., disorderly conduct, hindering, assault in any degree, etc.);
  - b. immediately notify a supervisor that an arrest of this nature has been made;
  - c. clearly articulate the facts and circumstances that led to the arrest in all subsequent reporting and charging documents; and
  - d. clearly establish that the arrest was based on probable cause to believe that the bystander had committed, was committing, or was about to commit a criminal offense.

NOTE: The fact that the bystander had been observing, photographing, and / or video recording police activity does not constitute probable cause and should never be the reason for any arrest.

#### H. Exemptions

1. Do not compromise the integrity of any established crime scene or other secured / restricted area so that a bystander may observe, photograph, or video record police activity.
2. A bystander's desire or intent to observe, photograph, or video record police activity does not entitle him / her to:
  - a. trespass on private property.
  - b. place himself in physical danger
  - c. enter another person's private dwelling, storehouse, etc.
  - d. enter into or upon any established, marked crime scene.
  - e. enter into or upon any area not accessible to the general public.
3. In public areas, any form of identification referred to as "press credentials" does not extend any special privileges or access to any individual as members of the press and members of the general public enjoy the same rights in any area accessible to the general public.
4. No individual is required to display "press credentials" in order to exercise his / her right to observe, photograph, or video record police activity taking place in an area accessible to, or within view of, the general public.

#### I. Preserving a bystanders video recording device for evidentiary purposes

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, make a request of the bystander that he / she voluntarily surrender his / her camera, video recording device, etc., into Harford County Sheriff's Office custody.
2. If the individual consents to the request:

- a. exercise due care and caution with any of the individual's property or electronic device(s).
- b. complete a Property Evidence Record form (SO-258) and provide a copy to the individual.
- c. provide the individual with the name and contact information of the deputy who took custody of the individual's property.
- d. document the request, and the individual's response, in the narrative of applicable reports and / or charging documents.
- e. do not make any attempt to view, download, or otherwise access any material contained on the device, unless the subject grants written consent to view or a search warrant has been obtained.
- f. submit the recovered camera, video recording device, etc., per normal evidence photographic / video submission procedures.

3. If the individual refuses the request:

- a. in the absence of exigent circumstances, determine whether the necessary probable cause has been developed to support an application for a search and seizure warrant;
- b. 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 or being tampered with, altered, deleted, or destroyed, temporarily secure the device for safekeeping / preservation of the evidence while the appropriate application(s) for search and seizure warrant(s) are made;
- c. upon taking temporary custody of the device for the purpose of safekeeping / preservation, either remove the device's battery or switch it to the "power off" condition to aid in preventing any remote access to or deletion of the data, photographs, etc., stored within it;
- d. **do not** make any attempt to view, download, or otherwise access any material contained on the device;
- e. apply for, execute, and return search and seizure warrant(s)
- g. submit the recovered camera, video recording device, etc., per normal evidence photographic / video submission procedures.
- f. complete all appropriate reporting requirements.

J. Supervisor Responsibilities

1. If possible, respond to any scene where an Agency member believes a bystander is observing, photographing, and / or video recording his conduct and is unlawfully hindering or interfering with the successful execution of his official duties.
2. Respond to any scene where the actions of a bystander who is observing, photographing, and / or video recording law enforcement activity are approaching the level of a criminal offense.
3. Ensure adequate attention remains focused on whatever situation originally required a law enforcement response.

4. Be cognizant that on some occasions, a person or group of persons will deliberately create hazardous conditions with the intent of provoking an inappropriate police response.
  - a. Do not allow subordinates to become distracted from their professional duties if it is suspected that this type of deliberate provocation is occurring.
5. If tactically feasible, inform the bystander that his / her actions may, if continued, rise to the level of a criminal offense and could subject him / her to arrest.
6. If possible, recommend a less-intrusive location to the bystander from which he / she may continue to observe, photograph, or video record the police activity.
7. Coordinate with the appropriate deputies when establishing the limits of any crime scene.
8. Ensure that any camera or video recording device that has been used to photograph and / or video record police activity, and which has evidentiary value, comes into the custody of the Harford County Sheriff's Office:
  - a. through the voluntary consent of the individual in possession of the item.
  - b. through execution of a Search and Seizure Warrant.
  - c. through a valid exception to the warrant requirement.
9. Ensure that applications for a search and seizure warrant applications are reviewed prior to submission to the court.