

	VOLUSIA SHERIFF'S OFFICE GENERAL ORDER 1.18	Distribution All Personnel	Reissue/Effective Date 01/01/2020
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Title PUBLIC RECORDING OF POLICE ACTIVITIES			
Section		AUTHORITY OF MICHAEL J. CHITWOOD, SHERIFF  	

To protect and serve with courage, honor and integrity by fighting crime, maintaining trust, and building community partnerships.

I. PURPOSE

The purpose of this general order is to establish the guidelines and procedures for the Volusia Sheriff's Office regarding agency policy governing the photographing, video and/or audio recording of law enforcement and general policing activity by the public.

II. DISCUSSION

The Volusia Sheriff's Office recognizes that members of the public who are lawfully in public places or locations where they have a legal right to be present, such as their home, place of business or the common areas of public or private facilities, have a First Amendment right to record things in plain view or hearing, including police activities.

To ensure the safety of the deputy(s) and to protect the safety and rights of both the subject(s) of police activity as well as members of the public who are recording, this right to responsibly record is subject to reasonable time, place and manner restrictions.

III. POLICY

The Volusia Sheriff's Office recognizes that members of the public have a First Amendment right to audio/video record or photograph Volusia Sheriff's Office deputies while they are engaged in official business in a public place unless such recording or photography unduly interferes with the conduct of official business and/or the safety of any of the participants involved.

It is the policy of the Volusia Sheriff's Office that persons who are lawfully and responsibly recording will not be interfered with, threatened or otherwise discouraged in regards to the recording of police activities.

IV. DEFINITIONS

Media – The type of storage source for visual or audio recordings.

Public Settings – Public place includes all walks, alleys, streets, roads, highways or other ways of thoroughfares dedicated to public use or owned or maintained by public authority; and all grounds and buildings owned, leased by, operated or maintained by public authority excluding common areas designated as secure. EXCLUDES any part of an active crime scene that has been roped off or taped off or segregated in some manner, to preserve the integrity of an investigation and the evidence-gathering process as well as designated perimeters involved in active threats/operations under the verbal authority and direction/command of a deputy sheriff.

Recording – Capturing of images, audio, or both, by means of a video camera, cell phone, audio recorder or other device.

Video Recording Device – Any device capable of capturing a still or moving image(s), regardless of whether or not a simultaneous audio recording is included.

V. PROCEDURE

A. GENERAL GUIDELINES

1. Video recording of an agency member who is engaged in official duties is not a crime or a violation of any county/municipal ordinance.
2. Persons who are lawfully in public places 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 view or hearing, including law enforcement/policing activity.
3. Deputies shall not threaten, intimidate, or otherwise discourage or interfere with the recording of law enforcement/policing activities; however, the right to record is and is subject to reasonable time, place and manner restrictions. Examples include, but are not limited to:
 - a. The recording of the deputy's activity from a reasonable distance, without any action that obstructs or threatens the deputy(s) or otherwise creates a legitimate safety concern, is not considered interference.
 - b. Persons engaged in recording activities may not obstruct law enforcement/policing activities by means of:
 - Physically intervening or interfering with the subject and/or a witness;
 - Persistently engaging a deputy with questions or interruptions;
 - c. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not in and of itself justify a deputy taking corrective or enforcement action or ordering that recording be stopped, as this is an infringement on an individual's right to protected speech.
 - d. The safety of deputies, subjects, victims, witnesses and/or third parties cannot be jeopardized by the recording party.
 - e. The recording must be conducted in a manner that does not unreasonably impede or interfere with the movement of emergency equipment and personnel or the flow of vehicular and/or pedestrian traffic. If a person is photographing or recording police activity from a position that impedes or threatens the safety of deputies or the public, the deputy shall direct the individual to move to a position that will not interfere. However, deputies shall not order the person to stop photographing or recording.
4. As long as photographing or recording takes place in a setting at which the individual has a legal right to be present and does not interfere with a deputy's safety, deputies shall not inform or instruct people that photographing or recording of deputies, the law enforcement/policing activity or individuals who are the subject of the action is not allowed, requires a permit, or requires the deputy's consent. Additionally, deputies shall not:
 - a. Order that person to cease such activity;
 - b. Demand that person's identification;
 - c. Demand that the person state a reason why he or she is taking photographs or recording;
 - d. Detain that person;
 - e. Intentionally block or obstruct cameras or recording devices;
 - f. In any way threaten, intimidate or otherwise discourage an individual from recording law enforcement/policing activity;
 - g. Confiscate a device;
5. Deputies may ask questions during the course of a contact, but are reminded that there is no justification for ordering a person to stop or requiring that they answer unless the officer reasonably suspects that a person has committed, is committing or is about to commit any crime.
6. Members of the press and members of the general public enjoy the same rights in any area accessible to the general public.

7. No individual is required to display “press credentials” in order to exercise his/her right to observe, photograph, or video record law enforcement/policing activity taking place in an area accessible to, or within view of the general public.

B. ARRESTS

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 deputies 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. If a person video recording law enforcement/police activity is arrested, the deputy must articulate clearly the factual basis for the arrest (e.g. disorderly conduct, assault, battery, etc.).
3. Arrest of an individual does not provide an exception to the warrant requirement justifying search of the individual’s recording equipment or media. Any recording equipment or media seized incident to a lawful arrest should not be downloaded, viewed, or otherwise accessed without a search warrant or consent. Files and media shall not be erased under any circumstances.

C. CONSENT TO SEARCH RECORDING DEVICE/MEDIA

1. Deputies may not order an individual to show recordings that have been made of enforcement actions or other police activities/operations.
2. If there is probable cause to believe that a camera or other recording device contains images or sounds that are evidence that a serious crime has been recorded, the deputy shall:
 - a. Summon a supervisor to the scene;
 - b. Ask the person(s) in possession of the recording if they will consent to voluntarily and temporarily relinquish the recording device or media so that it may be viewed and/or copies made as evidence.
3. If the individual consents to the request, deputies must exercise due care and caution with any of the individual’s property or electronic device(s).
4. Prior to accepting the device, the deputy shall complete a Volusia Sheriff’s Office Consent to Search Computer form indicating the temporarily relinquished property. The form must be signed by the individual and the deputy and a copy given to the individual.
5. After receiving the device/media, the deputy shall:
 - a. Submit a report indicating the circumstances surrounding the relinquished device/property;
 - b. Submit the report and immediately turn over the device/media for forensic examination;
 - c. At no time make an attempt to view, download, or otherwise access any material contained on the device.
6. Whenever a recording device or media is obtained by consent, the item shall be held in Volusia Sheriff’s Office custody no longer than reasonably necessary for law enforcement, acting with due diligence, to view and/or copy the recording.
7. The device must be returned at the earliest possible time and its owner/operator given instruction on how and where it can be retrieved.

D. WARRANTLESS SEIZURE OF RECORDING DEVICE/MEDIA

1. If the individual declines to voluntarily provide the device or recording medium, or to electronically transmit the sound and/or images where possible and practicable and there is probable cause to believe that evidence exists on the device, and there is probable cause to believe that the evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, the device may be seized and secured as evidence while the appropriate application(s) for a search warrant is made.
2. Prior to seizing the device, a supervisor must confirm there is probable cause to believe that the device holds contraband or evidence of a crime, and that the exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.

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 confiscated and viewed.
4. In the case of an arrest of the recording party, the deputy shall document the seizure on a Property Report.

E. SUPERVISORY RESPONSIBILITIES

1. A supervisor shall respond to any incident in which an individual recording law enforcement/policing activity is going to be, or will most likely be arrested or when recording equipment may be seized without a warrant or lawful consent.

VI. FORMS

- [Consent to Search Computer, VSO Form # 042607.001](#)