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SUBJECT: PICTURES, VIDEO, AND AUDIO RECORDINGS OF POLICE OFFICERS WHILE PERFORMING OFFICIAL FUNCTIONS IN PUBLIC SPACES

1. BACKGROUND

- A. The United States Department of Justice has recently opined that private individuals have a First Amendment right to record police officers in the public discharge of their duties. This is a form of free speech guaranteed by the Constitution. Additionally, police officers violate individuals' Fourth and Fourteenth Amendment rights when they seize and destroy such recordings without a warrant or due process. As such, police departments must have constitutionally adequate policies designed to effectively guide officer conduct, accurately reflect the contours of individuals' rights under the First, Fourth and Fourteenth Amendments, and diminish the likelihood of constitutional violations.
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2. PURPOSE

- A. To protect the constitutional rights of individuals to record police officers engaged in the public discharge of their duties by providing clear guidelines and expectations for all sworn members while conducting official business or while acting in an official capacity in any public space.
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3. POLICY

- A. Private individuals have a First Amendment right to observe and record police officers engaged in the public discharge of their duties. It has been determined that observing, gathering and disseminating information of a public concern, such as the recordings of police officers engaged in public duties, is a form of free speech guaranteed by the First Amendment to the United States Constitution.
- B. While recording police action is a form of free speech, not all speech is protected by the First Amendment. Individuals do not have the right to record police officers if, by doing so, they jeopardize the safety of the officers, any suspects, or other individuals in the immediate vicinity, violate the law, incite others to violate the law or actually obstruct or interferes with a police officer from conducting any official duties or functions. For example, tampering with a witness, or persistently engaging an officer who is the midst of his or her duties is not protected speech under the First Amendment.

- C. All police personnel, while conducting official business or while acting in an official capacity in any traditionally public space including, but not limited to, sidewalks, streets, parks and locations of public protests or demonstrations should reasonably anticipate and expect to be photographed, videotaped and/or be audibly recorded by members of the general public.
 - D. Police personnel are prohibited from blocking, obstructing, or otherwise hindering the recording of Departmental personnel while in the public discharge of their duties, unless the person making such recording engages in actions that jeopardize the safety of the officer, any suspects or other individuals in the immediate vicinity, violate the law, incite others to violate the law, or actually obstructs an officer from performing any official duty.
 - E. Police personnel are prohibited from discouraging the recording of Departmental personnel in the public discharge of their duties via threats, intimidation or other forms of coercion.
 - F. Private individuals also have a First Amendment right to record police officers engaged in the public discharge of their duties from private property where such individuals are lawfully present. This includes recording officers from a person's home or other private property where the individual has a right to be present.
 - G. A private individual's right to record Departmental personnel while in the public discharge of their duties is equivalent or coextensive with that of the press. A private individual does not need "press credentials" to record police officers in the public discharge of their duties.
 - H. The seizure of any recording or recording device used to capture images or audio of Departmental personnel while in the public discharge of their duties shall comply with the standard search and seizure principals of the Pennsylvania and United States Constitutions.
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4. DEFINITIONS

- A. Media – anything on or in which information or images may be stored such as, photographs, photographic negatives, audio tapes, video tapes, computer hard drives, sim cards, and digital memory cards or sticks.
- B. Recording Device – any instrument capable of recording information or images such as cameras, video cameras, smart phones, tablets, computers, and tape recorders.

5. PATROL PROCEDURE

- A. Police personnel shall not deliberately interfere with or obstruct any member or members of the general public from photographing, videotaping, or audibly recording police personnel while conducting official business.

NOTE: Under extraordinary circumstances, police personnel may impede or block an individual from recording police personnel engaged in the public discharge of their duties, but only when the recording individual engages in actions that jeopardize the safety of the officers, any suspects or other individuals in the immediate vicinity, violate the law, incite others to violate the law or actually obstructs or interferes with an officer's official duties or functions. The mere recording of a police officer's actions does not alone constitute an officer safety or obstruction issue. Officers must be prepared to clearly articulate how the action of the individual recording the incident created an unsafe environment and/or actually obstructed or interfered with the officer's official duties. Officers shall request a supervisor to respond to the scene if they impede or block an individual from recording their actions.

- B. Police personnel shall not threaten, intimidate, or otherwise discourage an individual from photographing, videotaping, or audibly recording police personnel while conducting official business in any public space.

- C. Under no circumstances shall any *recording device* being used to record police personnel be intentionally damaged or destroyed or may any *media*, such as memory cards or sticks, within such recording devices be damaged, destroyed, or deleted. If accidental damage occurs to such property by police personnel during the course of official duties, the procedures in Directive 3.3, Appendix A, "Accidental or Intentional Damage to Private Property during the Course of Official Police Actions" shall be followed.

NOTE: Officers should be aware that the seizure or destruction of such recording devices or media without a search warrant or due process is a constitutional violation and officers may be sued and subjected to both compensatory and punitive damages.

- D. If while conducting official business or while acting in an official capacity in a public space, and an individual or individuals recording the police become confrontational, provoking, or otherwise antagonistic towards the officers, police personnel shall, if safe to do so, call for a supervisor to the location BEFORE any restrictive police actions are taken.
- E. If while conducting official business or while acting in an official capacity in a public space, the conduct of an individual recording the police violates the law, incites others to violate the law, and/or jeopardizes the safety of the officer, suspects or other persons in the immediate vicinity, police personnel shall :

1. Order the individual to move to an area that does not jeopardize the safety of the officer, the suspect or others in the immediate vicinity, or interferes with police activities.
2. If the individual refuses to move, take necessary actions to ensure officer safety, the safety of the suspect(s) and other individuals in the immediate vicinity.
3. If the interference/obstruction being created continues to “obstruct, impair, or prevent the administration of law or other governmental function by force, violence, physical interference or obstacle or any other unlawful act”, at a minimum, reasonable suspicion exists to detain the individual for 18 Pa.C.S.§5101, Obstructing the Administration of Law or Other Governmental Function.

NOTE: The mere fact that an individual has been detained or even arrested for this offense does not automatically establish probable cause to seize and search any recording devices the individual possesses. This property shall be secured with all other property during the investigation, but not viewed or searched by the officer. See Section 5-F through G with respect to the proper search and seizure procedures from any recording devices that contain evidence of a crime.

4. Contact Police Radio to have a Supervisor dispatched to the scene.
5. If after consulting with the Supervisor and probable cause exists to arrest the individual for 18 Pa.C.S.§5101, the individual may be arrested. However, if the officer reasonably believes the individual will cease any further interference or obstructions, the officer shall have the discretion to release the individual after a full and complete pedestrian investigation report is completed.
6. If an arrest is made AND the officer has probable cause to believe the recording device contains evidence of a crime, including the crime for which the individual was arrested, the officer shall secure the property and prepare a property receipt as outlined in Directive 12.15, “Property Taken into Custody.”

NOTE: If there is no exigency to immediately view the media, it shall not be viewed until a search warrant has been obtained.

- F. If police personnel **reasonably believe** that a member of the general public has recorded any evidence of a crime in progress or other evidence of a crime:
1. The person who has recorded the evidence **shall be requested** to transfer the recording device or media to police custody or permit a copy of the media/evidence be made by the Police Department. The procedures outlined in Directive 12.15, “Property Taken into Custody” shall apply relating to property taken into police custody.

2. Any recording devices or media taken into custody shall be returned as soon as practical.
 3. **Police Department personnel shall not copy and/or disseminate any information or images from such devices or media that is not evidence of a crime or otherwise required for an official departmental purpose.**
 4. A Complaint or Incident Report (75-48) shall be completed documenting the facts and circumstances, including the consent to transfer the recording device or media from the owner to the police. If possible, the owners should also confirm this fact by signing the 75-48.
 5. The Detective Division of occurrence shall be notified and advised that evidence may exist on a recording device and/or media and that the evidence was voluntarily provided to police.
- G. If police personnel have **probable cause** to believe that a member of the general public has recorded any evidence of a crime in progress or other evidence of a crime and the individual refuses to voluntarily transfer the recording device or media to police custody or permit a copy of the media/evidence to be made **AND police reasonably believe such evidence will be permanently lost without immediate action:**
1. Police personnel should temporarily seize the recording device and/or media to immediately preserve the evidence and call for a supervisor to the location.
 2. All facts and circumstances relating to the probable cause and exigency to seize the evidence shall be documented on a 75-48.
 3. If the seizure is approved by the responding supervisor, the recording device and/or media will be placed on a Property Receipt in accordance with Directive 12.15.
 4. If there is no exigency or immediate law enforcement need to view the recording device and/or media, it shall not be viewed until a search warrant or court order has been obtained.
 5. **Police Department personnel shall not copy and/or disseminate any information or images from such devices or media that is not evidence of a crime or otherwise required for any official departmental purpose.**

6. SUPERVISOR PROCEDURE

- A. A Supervisor shall respond to the scene where any individual recording police officers engaged in the public discharge of their duties:
1. Has become confrontational, provoking, or otherwise antagonistic towards the officers,

2. May possess evidentiary material,
3. Where a recording or recording device was seized by officers based upon probable cause, or
4. Where the recording individual has jeopardized the safety of the officer, the suspect or others in the immediate vicinity, violated the law, incited others to violate the law, or actually obstructed an officers official duties and restrictive actions were taken.

B. Once on scene, the Supervisor shall:

1. Consult with the on-scene officers and gather all available facts.
2. Attempt to de-escalate or otherwise intercede to prevent the incident from escalating (CIT Officers, who are trained in de-escalation techniques, can be used to support any de-escalation efforts).
3. If restrictive action was necessary by the officer prior to the supervisor's arrival, review the facts and circumstances to determine if the restrictive actions taken were the least intrusive possible under the circumstances and whether they should continue.
4. Review the probable cause of any arrests made by officers. If probable cause to arrest does not exist, have the individual released and ensure the officer completed an accurate 75-48A.
5. If responding to the scene because police have probable cause to believe that a member of the general public has recorded evidence of a crime in progress or other evidence of a crime and the individual refuses to voluntarily transfer the recording device or media to police custody or permit a copy of the media/evidence to be made AND police reasonably believe such evidence will be permanently lost without immediate action, the Supervisor shall:
 - a. Consult with the seizing officer and review the facts and circumstances surrounding the probable cause and exigency to seize the recording device and/or media without a warrant. If the seizure was proper, the Patrol Supervisor shall advise the seizing officer to handle the recording device and/or media consistent with Directive 12.15 and notify a Supervisor in the Detective Division of occurrence who shall ensure an affidavit for a search warrant is submitted to the District Attorney's Office in a timely manner.
 - b. If there is no immediate law enforcement need to view the recording device and/or media, ensure the recording device and/or media is not viewed by patrol officers until a search warrant has been obtained.

- c. If the immediate seizure was not based upon probable cause and there is no legitimate fear the evidence would be lost, the recording device and/or media shall be immediately returned to the owner. The supervisor shall contact the Detective Division of occurrence Supervisor with all pertinent information for the assigned investigator to begin an application for a search warrant.
 6. If responding to a scene where any media or recording device was voluntarily provided to the police, the Supervisor shall review the circumstances of any consent provided confirming that the consent to search was made voluntarily and that the proper documentation of such consent was completed by the officer in accordance with Directive 5.7, "Search Warrants."
 7. Ensure officers do not copy and/or disseminate any information or images from seized or provided devices or media that are not evidence of a crime or otherwise required for any official departmental purpose.
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7. DETECTIVE SUPERVISORY RESPONSIBILITIES

- A. Upon being notified that possible evidence of a crime was captured on a recording device and/or media which was voluntarily provided to police, the Detective Supervisor shall assign a detective to take the necessary actions to copy/preserve the evidence and return the recording device and/or media to the owner as soon as possible. While the evidence was voluntarily provided, it shall be the discretion of the Detective Supervisor, based on the facts and circumstances, whether a search warrant will also be obtained.
 - B. Upon being notified by a Patrol Supervisor that probable cause exists that evidence of a crime was captured on a recording device and/or media and the evidence was properly seized by Police, the Detective Supervisor, shall, nonetheless, assign a Detective to apply for a search warrant.
 - C. **Ensure Detectives do not copy and/or disseminate any information or images from such devices or media seized or provided that is not evidence of a crime or otherwise required for any official departmental purpose.**
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BY COMMAND OF THE POLICE COMMISSIONER
