

	LANE COUNTY SHERIFF'S OFFICE POLICY	Number: G.O. 1.20
		Issue Date: September 8, 2022
		Revision Date:
CHAPTER: Department Role, Authority and Responsibility		
SUBJECT: Community Member Recording Deputies		Related Laws: ORS 165.540

POLICY: The Lane County Sheriff's Office preserves and protects the rights guaranteed to its community members by the Federal and State Constitutions. Lane County's community members have a First Amendment right to video and audio record members of the Lane County Sheriff's Office while they are conducting their official duties, so long as the recording does not create a legitimate and articulable concern for Deputy safety, or a hindrance to successful and timely resolution of the law enforcement matter being handled. This policy provides guidance to Deputies on how to preserve the rights of community members who are recording law enforcement, and in instances where the recording member of the community violates any of the reasonable restrictions placed upon their ability to record law enforcement activities, the policy informs Deputies and supervisors how to successfully deal with an arrest and/or seizure of a recording device.

The purpose of this policy is to provide for the unfettered exercise of rights guaranteed to Lane County's community, while ensuring the safety of the recording party, victims, witnesses, suspects and law enforcement.

RULE: Members of the public, including media representatives, have a First Amendment right to record law enforcement in public places, as long as their actions do not interfere with the Deputies duties or the safety of Deputies or others. Deputies should assume that they are being recorded at all times when on duty.

DEFINITIONS:

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

Media: The storage source for visual or audio recordings, whether by film, analog, or digital means.

PROCEDURE:

- I. 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, city streets and sidewalks—have the ability to record things in plain sight or hearing, to include police activity. Lane County Sheriff's Office

personnel may not threaten, intimidate, or otherwise discourage or interfere with the recording of law enforcement activities. However, the ability to record is subject to legitimate and reasonable legal restrictions, as follows:

- A. Deputies may offer a reasonable distance that must be maintained from the scene(s) where enforcement or related police duties are being recorded. This distance is assigned by the Deputy on scene and will consider the totality of the circumstances regarding the particular police activity.
- B. Persons engaged in recording activities may not obstruct police actions. The fact that recording and or overt verbal criticism, insults, or name-calling may be annoying, it does not of itself justify a Deputy taking corrective or enforcement action or ordering that recording be stopped. Examples of actions that obstruct police activities include, but are not limited to:
 - 1. Interference through direct physical intervention or breaching the reasonable distance established by the Deputy, thereby dividing his or her attention to the matter at hand.
 - 2. Persistent uses of recording equipment which interfere with officer interviews with witnesses.
 - 3. Repeated attempts to engage a Deputy with questions or interruptions which divide the attention of the Deputy.
 - 4. Impeding the movement of emergency equipment, personnel or flow of civilian traffic or pedestrians.
 - 5. Any action by the recording party that jeopardizes the safety of a Deputy, victim, witness, suspect, or third party.
- C. Should a Deputy discover that a person has recorded, or been recording them surreptitiously, the Deputy should advise the person of the law ORS 165.540. Enforcement action should not be taken based solely on the fact that the person recorded the Deputy without the Deputies knowledge.
- D. Recording parties are not entitled to enter certain locations they are prohibited from entering simply to record police activities. Examples of locations recording parties are prohibited from entering or remaining upon include, but are not limited to:
 - 1. Any private property upon which the recording party would be trespassing;
 - 2. Entry into an established crime scene;

3. Entry into an area or building not accessible to the general public.

II. Arrest

Arrest of any person who is engaged in recording police activity for violating the reasonable restrictions placed upon their Constitutional rights will be based upon an objective, reasonable and articulable violation of the law (Interfering with Police, Trespassing, etc.) If it is reasonable and appropriate, any person who is violating the foregoing restrictions should be informed they are engaging in a prohibited activity and given an opportunity to locate an acceptable and legal alternative prior to being arrested. Nothing in this policy suggests a Deputy must warn a person participating in a prohibited activity

III. Seizure of Recording Device

A deputy may not order or coerce a recording party to show them recordings that have been made of official department action. Deputies should consider that unless there is probable cause to believe evidence of a serious crime is contained in a recording, seizure may not be necessary. A deputy may seize recording devices and media;

- A. If the person recording possesses the recording device when the person is arrested and charged with a crime. Deputies should protect evidence from remote access to ensure legal viewing at a later time.
- B. The person recording consents to the seizure.
- C. Exigent circumstances exist to seize the recording device or media. Exigent circumstances requires probable cause for the Deputy to objectively believe that immediate seizure is necessary to prevent the destruction or tampering of evidence contained on the recording device or media. If there is probable cause to believe there is evidence of a serious crime contained in a recording device or media, the Deputy should do the following:
 - D. Immediately request a supervisor to the scene.
 - E. Ask the recording party in possession of the recording device if he or she will consent to voluntarily and temporarily relinquish the recording device or media so that it may be viewed and copied.
 - F. If the recording party refuses, and it is objectively likely that the recording device contains evidence of a crime and that the recording could be destroyed, tampered with, or altered before a search warrant affidavit can be obtained the Deputy may seize the recording device so that a warrant may be obtained authorizing the Deputy to view and duplicate the suspected recording.

- G. There is no exception to the warrant requirement following an arrest where a recording device is seized except 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. Only then can the recording device or media be confiscated and viewed without a warrant.

- H. Whenever a recording device or media is seized without a warrant or obtained by consent, the seized item shall be held in police custody no longer than reasonably necessary for the Sheriff's Office, 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.