

Public Recording of Law Enforcement Activity

423.1 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 that involve members of this agency. In addition, this policy provides guidelines for situations where the recordings may be evidence.

423.2 POLICY

The Milwaukee County Sheriff's Office recognizes the right of persons to lawfully record members of this agency who are performing their official duties. Members of this agency will not prohibit or intentionally interfere with such lawful recordings. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully.

Deputies and correctional officers should exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

423.3 RECORDING OF LAW ENFORCEMENT ACTIVITY

Members of the public who wish to record law enforcement activities are limited only in certain aspects.

- (a) Recordings may be made from any public place or any private property where the individual has the legal right to be present.
- (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) Being so close to the activity as to present a clear safety hazard to the deputies or correctional officers.
 - (c) Being so close to the activity as to interfere with a deputy's or correctional officer's effective communication with a suspect or witness.
- (c) The individual may not present an undue safety risk to the deputies, correctional officers, him/herself or others.

423.4 DEPUTIES AND CORRECTIONAL OFFICERS RESPONSE

Deputies and correctional officers should promptly notify a supervisor whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence.

Whenever practicable, deputies or correctional officers should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or

Public Recording of Law Enforcement Activity

behavior to be 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, a deputy or correctional officer could advise the person that 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, deputies or correctional officers shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

423.5 SEIZING RECORDINGS AS EVIDENCE

Deputies or correctional 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 that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
- (c) The person consents.
 - 1. To ensure that the consent is voluntary, the request should not be made in a threatening or coercive manner.
 - 2. 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 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 an agency-owned device.

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

423.6 RULES GOVERNING ELECTRONIC MEDIA AND STILL PHOTOGRAPHY COVERAGE OF JUDICIAL PROCESSING

Chapter 61 of the Wisconsin Supreme Court Rules gives trial court judges the power, authority, and responsibility to control the conduct of the proceedings before them which includes decisions over the inclusion or exclusion of the press or public at particular proceedings or during the testimony of particular witnesses. As such, the above sections of this policy do not apply inside a Milwaukee County Courtroom (Wis. SCR § 61).