

I. **PURPOSE:**

The purpose of this Standard Operating Procedure (SOP) is to provide guidance for deputies when they are being recorded by members of the public and the media while conducting their law enforcement duties. The guidance provided in this SOP ensures the rights of individuals recording deputy sheriff activity are protected and not encroached upon.

II. **POLICY:**

It is the policy of the Fairfax County Sheriff's Office to respect and protect all activities protected under the First, Fourth, and Fourteenth Amendments. Therefore, while recognizing and preserving these protected activities, deputy sheriffs shall not prevent, prohibit, or interfere with any individual's ability to observe or record them while performing their official law enforcement duties in the public domain, except as provided in this SOP.

III. **DEFINITIONS:**

- A. **Probable Cause:** Exists when the known facts and circumstances are such that a reasonable person in the same situation would believe evidence of a crime would be found.
- B. **Public Domain:** Places where an individual has a legal right to be present. This includes streets, sidewalks, public parks, homes, or businesses in which an individual is lawfully present, and common areas of public and private facilities and buildings.
- C. **Recording:** The actual images, audio, and/or video of events that have been captured on a recording device.
- D. **Recording Device:** A device that captures images, audio, and/or video of events in real time. This includes smart phones, tablets, computers, video cameras, cameras, digital cameras, tape recorders, and other similar items.
- E. **Recording Medium:** A data storage device where the images, audio, and/or video of events that have been captured by a recording device are stored. The most common form of data storage device is a memory chip but may include any storage device where the recordings have been stored or downloaded to, including, but not limited to, a computer, a smart phone, cloud services, and a tablet.

IV. **INDIVIDUALS RECORDING DEPUTY SHERIFF ACTIVITIES:**

- A. Except as otherwise provided in this SOP, deputy sheriffs shall not prevent, prohibit, and /or interfere with any individuals' ability to observe or record their (the deputies) law enforcement activity that is being conducted in the public domain.
  - 1. Individuals have a First Amendment right to record deputy sheriffs who are discharging their duties in the public domain.
  - 2. Members of the press and members of the general public have the same rights in the public domain.

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3. Deputy Sheriffs shall not, under any circumstances, delete any recordings from any individual's recording device or recording medium, nor inflict damage to any recording device.
- B. As long as the recording of deputy sheriffs who are engaged in the public discharge of their duties occurs in a location where the individual has a legal right to be present (in the public domain) and does not interfere with law enforcement activity, jeopardize safety, violate the law, or incite others to violate the law, deputy sheriffs shall not instruct individuals that the recording of deputy sheriffs or deputy sheriff activity is not allowed. Specifically, deputy sheriffs shall not do the following:
1. Threaten, intimidate, or discourage individuals from recording deputy sheriff activity.
  2. Detain an individual solely because the individual is recording deputy sheriff activity.
  3. Intentionally block or obstruct any recording device being used to record deputy sheriff activity. For example, deputy sheriffs shall not place their hand over the recording device to block an individual from recording deputy sheriff activity. This does not preclude deputy sheriffs from protecting a crime scene. Such as, deputy sheriffs using partitions to protect crime scenes.
- C. Although the recording of deputy sheriff activity does not constitute a crime, individuals do not have the right to interfere with deputy sheriff activity. Interference consists of actions that obstruct deputies from performing their duties or pose a safety hazard of which the deputy is responsible. Examples of such actions include, but are not limited to, the following:
1. While in close proximity to a deputy sheriff, intentionally distracting or attempting to distract a deputy sheriff engaged in the public discharge of his/her duties, resulting in a deputy sheriff's concern for his/her safety, or the safety of others.
  2. Intentionally placing themselves between a deputy sheriff and a subject that is being questioned and /or arrested, for the purpose of hindering the deputy involved in the public discharge of his/her duties.
  3. Inciting bystanders, involved parties, or witnesses to hinder or obstruct a deputy in the public discharge of his/her duties
  4. Persistently engaging the deputy in the midst of his/her efforts to perform his/her duties that hinders or obstructs the deputy in the public discharge of his/her duties.
  5. Crossing crime scene tape or jeopardizing the integrity of a crime scene.
  6. Deputy Sheriffs assigned to the Court Services Division must comply with and enforce the most recent Fairfax County Circuit Court Chief Judge's Order governing the recording of court proceedings.

V. **AUTHORIZED ACTIONS OF DEPUTY SHERIFFS WHEN CONFRONTED WITH INDIVIDUALS WHO INTERFERE WITH DEPUTY SHERIFFS IN DISCHARGING THEIR DUTIES:**

- A. If an individual recording deputy sheriff activity is interfering with a deputy sheriff's public discharge of his/her duties, deputies should direct the individual to a safe location where the individual is no longer interfering or creating a safety hazard. However, deputies shall not order the individual to stop recording the law enforcement activity.
  
- B. When a deputy makes a custodial arrest, or releases an individual on a criminal summons or issues a traffic summons to an individual and it was known or learned that the individual was recording a deputy, recording the arresting deputy, or recording deputy sheriff activity, the arresting deputy shall immediately notify his/her supervisor via radio. The supervisor shall respond to either the scene or a safe and convenient location to review the following:
  - 1. The circumstances under which the individual was taken into custody.
  - 2. The circumstances under which the individual was issued a criminal infraction summons.
  - 3. Supervisors are not required to respond to the scene concerning traffic summons.
  
- C. When a deputy makes an arrest of an individual who is recording deputy sheriff activity, the deputy may, at his/her discretion, turn off the recording device and secure it incident to arrest. Deputies should be mindful that they cannot search a cell phone incident to arrest without a search warrant, consent, or exigent circumstances.
  - 1. Individuals who violate the foregoing restrictions should be informed that they are engaged in prohibited activity and given information on acceptable alternatives where appropriate (e.g., moving persons to less intrusive location) prior to making an arrest. Whatever the resolution, protecting the constitutional rights of citizens will remain paramount to citing or arresting for minor infractions.
  - 2. An arrest of an individual who is recording deputy sheriffs' activities in public must relate to an objective, articulate violation of the law unrelated to the act of recording. The act of recording, in and of itself, does not provide grounds for detention or arrest.
  - 3. An arrest of an individual does not provide an exception to the warrant requirement justifying search of the individual's recording equipment or media. While equipment may be seized incident to an arrest, downloading, viewing, or otherwise accessing files may require a search warrant.
  - 4. Any files, recording medium and/or media coming to the attention of a deputy shall not be deleted, erased or tampered with under any circumstances. Violation of this directive may constitute a violation of First, Fourth and Fourteenth Amendments.
  
- D. Deputy Sheriffs shall document on an incident report (SIRS) all of the pertinent facts surrounding the arrest of an individual recording deputy sheriff activity. Supervisors shall

document on an incident supplement, their review and forward the incident report to their commanders.

**VI. CONFISCATION OF RECORDING DEVICES OF DEPUTY SHERIFF ACTIVITY THAT CAPTURES EVIDENCE OF A CRIME:**

- A. There are instances when an individual who is recording deputy sheriff activity also captures a recording that may document the commission of a crime.
- B. If a deputy sheriff has probable cause to believe that a recording device or recording medium involving the recording of deputy sheriff activity contains recordings that are evidence of a crime, the following steps shall be taken:
  - 1. The deputy sheriff shall request the individual to voluntarily provide the original recording device or original recording medium. If the individual agrees to voluntarily surrender the recording device or recording medium, the deputy sheriff should take custody of the recording device or recording medium.
  - 2. The deputy sheriff can also request to have the individual to voluntarily provide a copy of the recording. Deputies should be mindful of possible computer viruses and shall take all necessary precautions not to infect County computers or County phones. Where applicable, deputy sheriffs shall request the following:
    - a. Where possible and practicable, and in the presence of another deputy sheriff, have the images or sound voluntarily sent via text message or email to the deputy's official government email account, or
    - b. Request the device be handed over voluntarily for safe handling and processing by the Fairfax County Sheriff's Office.
  - 3. Deputy Sheriffs shall not, by threat or intimidation, coerce an individual to provide consent to take possession of or provide any recording device, recording medium, or recordings. Voluntary consent must be voluntary, taking into consideration all of the facts and circumstances surrounding the encounter.
  - 4. Deputy Sheriffs shall document on an incident report (SIRS) all the facts surrounding the individual's voluntary release of their recording devices and/or recordings. Supervisors shall ensure the recording device, recording medium, and/or recording was voluntarily released.
  - 5. Supervisors shall forward the incident report (SIRS) to the Commonwealth Attorney, to the supervisor's commander and to internal affairs for tracking purposes.
- C. The following are the procedures for seizing a recording device without consent.
  - 1. A recording device or recording medium may be seized and a search warrant obtained if a deputy sheriff believes by articulable facts that:
    - a. Probable cause exists that a recording device or recording medium directly involved in recording deputy sheriff activity also contains evidence (recording) of a crime; and

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- b. There is probable cause to believe that the evidence (recording) is in immediate jeopardy of being tampered with, altered, deleted, or destroyed; and
    - c. The individual refuses to grant consent for the deputy sheriff to obtain the evidence (recording).
  2. The Deputy Sheriff should consult with a supervisor, if feasible, prior to seizing the recording device and/or recording medium that contains the evidence (recording).
  3. Prior to seizing the recording device and/or recording medium without consent, deputy sheriffs should consider the totality of the circumstances, including the severity of the crime captured, and whether seizing the recording device or recording medium is the most prudent way of obtaining the evidence (recording). In any case, only the least amount of force necessary shall be used in seizing the recording device or recording medium. A supervisor shall, without delay, respond and review the circumstances surrounding the seizure.
  4. The seizure of a recording device or recording medium is a temporary restraint intended only to preserve evidence (recording) until a search warrant can be obtained.
  5. Procedures after seizure of a recording device without consent:
    - a. Upon seizing the recording device, Deputy Sheriffs shall issue a receipt (SOP 521, Evidence/Property Control, Att.3) to the property owner and exercise due care when handling the device or medium.
    - b. Deputy Sheriffs shall immediately transport the seized recording device with the search warrant, to the Virginia State Police, Criminal Intelligence Division (CID), Division Seven Headquarters located at 4977 Alliance Drive, Fairfax, Virginia 22030. Please note, deputies must ensure that the recording device is handled in accordance with SOP 521, Evidence/Property Control, IV. Procedures, A, 6a. Deputy Sheriffs shall not view, examine, or in any way manipulate the recording device or recording medium.
    - c. Absent exigent circumstances, deputy sheriffs must first obtain a search warrant in accordance with SOP 33a, before viewing any recording on a recording device or recording medium that has been seized as evidence.
    - d. Even if exigent circumstances exist or if a search warrant was issued, deputy sheriffs shall undertake reasonable efforts to ensure only the recording(s) that constitute potential evidence are accessed. Deputy Sheriffs will refrain from examining any materials not relevant to their investigation.

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- e. Deputy Sheriffs shall not deprive the owner of their recording device or recording medium for longer than reasonably necessary for the deputy, acting with diligence, to obtain a search warrant and seize the evidence contained therein.
- f. Deputy Sheriffs shall ensure that the individual's recording device or recording medium is maintained in the same condition, as when it was seized, with all recordings intact, while it is in the custody of the Sheriff's Office.
- g. Deputy Sheriffs shall document on an incident report (SIRS) the facts surrounding the seizure of a recording device or recording medium. Supervisors shall document on an incident supplement their review of the seizure.
- h. Supervisors shall forward the incident report (SIRS) to the Commonwealth's Attorney, to the supervisor's commander, and to internal affairs for tracking purposes.



**STACEY A. KINCAID  
SHERIFF**

**12/15/16  
DATE APPROVED**

**12/28/16  
EFFECTIVE DATE**