



CLACKAMAS COUNTY SHERIFF'S OFFICE	
Policy # 20	Printed copies are for reference only. Please refer to the electronic copy for the latest version.
Reference: ORS 165.540	

PUBLIC RECORDING LAW ENFORCEMENT ACTIVITY

General

1. The written directive provides guidelines for responding to and interacting with persons who are using an audio/video recording device to take sound and/or pictures of CCSO employees and/or law enforcement activity.

Right to Record Law Enforcement Activity

2. First Amendment. Persons who are in public spaces or locations where they have a legal right to be—such as their home, place of business, or the common areas of public and private facilities—have a First Amendment right to observe and record police officers engaged in law enforcement activity providing the person does not interfere with the officer's duties, or the safety of the officer or others.

3. Oregon Law. [ORS 165.540](#) *Obtaining contents of communications*. Generally, it is unlawful for a person to obtain any part of a conversation by means of any device when all the participants in the conversation are not specifically informed their conversation is being recorded. ORS 165.540 [\(5\) \(b\)](#) provides an exception to this prohibition when a person records a conversation, in which a law enforcement officer is a participant, if:

- a. the recording is made while the deputy is performing official duties;
- b. the recording is made openly and in plain view of the participants in the conversation;
- c. the conversation being recorded is audible to the person by normal unaided hearing; and
- d. the person is in a place where the person lawfully may be.



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Prohibited Responses to Persons Observing and/or Recording Law Enforcement Activity

4. Deputies may not threaten, intimidate, or otherwise discourage or interfere with the recording of law enforcement activities. Deputies may not order a person to show or turn over recordings that have been made of law enforcement activity. However, an individual's actions can amount to unlawful interference.

When an Individual's Actions Amount to Interference

5. A person recording law enforcement activity from a safe distance without action that obstructs police activity or threatens the safety of others does not amount to interference. However, the right to record is not absolute and is subject to legitimate and reasonable legal restrictions, as follows:

- a. **a reasonable distance must be maintained** from the deputy engaged in enforcement or related police duties. A person may not interfere with a peace officer in violation of [ORS 162.247](#). When appropriate, a person should be informed that he/she must maintain a reasonable distance and given information on acceptable alternatives to achieve a reasonable distance;
- b. **a deputy's actions may not be obstructed** by a person engaged in recording activities. For example, individuals may not interfere through direct physical intervention, tampering with a witness, or by persistently engaging a deputy with questions or interruptions. However, any recording and/or overt verbal criticism, insults, or name-calling will not of itself justify a deputy taking corrective or enforcement action or ordering that recording be stopped;
- c. **a recording must be conducted in a manner that does not unreasonably impede movement** of emergency equipment and personnel, or the flow of vehicular or pedestrian traffic; and
- d. **the safety of deputies, victims, witnesses, and third parties cannot be jeopardized** by the recording party.



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When it is Permissible to Seize Recordings and Recording Devices

Arrest

6. Absent arrest of the recording party, recording equipment may not be seized. A deputy may not order an individual to show recordings that have been made of law enforcement actions or operations.
7. Arrest of a person who is recording law enforcement activity 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.
8. Arrest of a person does not provide an exception to the warrant requirement justifying search of the person's recording equipment or media. While equipment may be seized incident to an arrest, downloading, viewing, or otherwise accessing files requires a search warrant.

Seizure of Recording Devices

9. Warrantless seizures require a deputy to articulate probable cause to believe that the recording device holds evidence of a crime and the exigencies of the circumstances demand seizure or some other recognized exception to the warrant requirement is present. In such situations, a deputy should:
 - a. ask the person in possession of the recording if he or she will consent to voluntarily relinquish the recording device or media until it may be viewed and/or copied as evidence; and
 - b. in exigent circumstances, in which it is reasonable to believe that the recording will be destroyed, lost, tampered with or otherwise rendered useless as evidence before a warrant can be obtained, the recording device or media should be seized. However, a warrant must first be obtained in order to examine and copy the recording and the chain of custody must be clearly documented.