



**ORDER NUMBER 13-48**

TYPE DEPARTMENT GENERAL ORDER		AUTHORITY EDWARD WEBBER POLICE COMMISSIONER		SIGNATURE	
SUBJECT/TOPIC/TITLE RECORDED MEDIA IN POSSESSION OF BYSTANDERS AT POLICE INCIDENTS					
DISTRIBUTION ALL MEMBERS OF THE DEPARTMENT			SECTION CREATED 09/08/11	DATE EFFECTIVE 06/25/13	DATE AMENDED 06/25/13

**RULES AND PROCEDURES**

**CHAPTER 9: TITLE: PATROL OPERATIONS**

**SECTION 27: TITLE: RECORDED MEDIA IN POSSESSION OF BYSTANDERS AT POLICE INCIDENTS**

**I. PURPOSE**

To establish procedures for a member of the Service to follow at the scene of an incident regarding the investigation, seizure and searching of a bystander's portable recording device which may contain recorded media of evidentiary value.

**II. POLICY**

The Department respects the civil rights of all members of the public. These rights extend to bystanders at police incidents. Along with these rights a bystander must adhere to certain guidelines in order for police activity to proceed unhindered and also for the safety of the public. Members of the Service should assume their activities, at all times, are being observed and recorded. Should a member of the Service determine that recorded media in the possession of a bystander may contain evidentiary value, any seizure and searching of the recorded media and/or the portable recording device shall be governed by Constitutional and statutory laws as well as Departmental policies.

**III. DEFINITIONS**

A. Bystander - One present but not taking part in a situation or event: a chance spectator.

B. Recorded Media - Still photographs, video and/or audio recordings in any format.

C. Portable Recording Device - Any device capable of capturing still photographs, video and/or audio recordings.

D. Probable/Reasonable Cause - According to NYS CPL 70.10(2) "Reasonable Cause to Believe a person committed an offense exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it." Or - Specific facts and circumstances within the member of the Service's knowledge and of which they had reasonable trustworthy information sufficient in themselves to warrant a person of reasonable caution in the belief that seizable property would be found in a particular place or on a particular person.

#### IV. REFERENCES

N/A

#### V. RULES AND REGULATIONS

N/A

#### VI. PROCEDURES

A. Recorded Media in Possession of a Bystander - The Department recognizes the taking of photographs and/or videos by private citizens and media personnel is permitted within areas open to general public access and occupancy.

1. A bystander may video record or photograph a member of the Service's activities as long as they:

- a. Do not enter any restricted areas (may remain at locations open to the public).
- b. Do not interfere with police operations.
- c. Do not violate any laws.
- d. Do not compromise the safety of an officer, detainee or any other member of the public.

Note: Recording undercover/plainclothes officers/operations conducted in locations open to public view is not unlawful.

Department members shall refer to Chapter 26, Section 2(VI)(E) for direction should a member of the media record plainclothes/undercover operations.

e. Do not threaten by words or actions.

f. Do not attempt to incite others to violate the law.

B. Members of the Service shall not demand to view photographs taken by a bystander absent consent or exigent circumstances. When there is probable cause to believe the recorded media contains evidence, the item may be seized. However, a search warrant must be obtained in order to view its contents. In addition, a person who has taken recorded media should be directed not to delete or destroy images stored within the device.

C. Initial Stop of an Individual (Non-Media Photographer/Videographer) -

1. When a member of the Service stops an individual who is reasonably believed to have captured recorded media of evidentiary value, the member shall:

a. Announce his or her authority and identity.

(1) Plainclothes members of the Service shall identify themselves by prominently displaying Departmental credentials.

b. Advise the individual of the purpose of the stop.

c. Ask the individual whether he or she captured recorded media relevant to the incident.

d. Request the individual provide their identification and contact information.

2. The stop shall last no longer than necessary to effect its purpose. Brevity is important in determining whether or not a stop is reasonable.

D. Consent to Search and/or Seize Portable Video and Photo Recording Devices of an Individual (Non-Media Photographer/Videographer) -

1. Members may ask an individual for consent to a search and/or seizure of a portable photo and/or video recording device to determine if recorded media of evidentiary value is present.

a. If a consensual seizure occurs, the property shall be inventoried and documented in accordance with Chapter 20, Section 3 of these Rules and Procedures.

b. Authorization to search the device shall be documented in accordance with Chapter 24, Section 16 of these Rules and Procedures, utilizing Department Form PDCS-1067, Permission To Search. Form PDCS-1067 shall be completed whenever a member of the Service conducts a search based on consent, regardless of whether the consent is provided verbally or in writing.

(1) All details relating to obtaining a valid consent to search, and the findings of the search, shall be accurately and completely documented.

E. Non-Consensual Seizure of Portable Video and Photo Recording Devices of an Individual (Non-Media Photographer/Videographer) -

1. When there is probable cause to believe that the portable video and/or photo recording device depicts visual and/or audio items pertaining to evidence, the device may be seized without consent if exigent circumstances exist.

a. The most common type of exigent circumstance is the imminent destruction of evidence. Two requirements must be met for this exigency to occur:

(1) Members must have probable cause to believe destructible evidence exists.

(2) Members must have reason to believe the evidence might be destroyed if they delay taking action until a search warrant is issued.

b. The member's supervisor shall be notified immediately after any seizure, and the supervisor shall respond to the scene.

c. No search of the device shall be conducted until a search warrant is issued unless there is reason to believe that the immediate search of such materials is necessary to prevent the death of, or serious injury to, a human being.

d. Absent exigent circumstances as described in subparagraph c. above, the member's supervisor shall ensure preparation and submission of an application for a search warrant.

e. The basis for the seizure shall be accurately and completely documented.

f. If a seizure occurs, the property shall be inventoried and documented in accordance with Chapter 20, Section 3 of the Rules and Procedures.

F. Initial Stop of Media Personnel -

1. When a member of the Service stops a media photographer/videographer who is believed to have captured recorded media of evidentiary value, the member shall:

a. Announce his or her authority and identity.

(1) Plainclothes members shall identify themselves by prominently displaying Departmental credentials.

b. Advise the media person of the purpose of the stop.

c. Ask the media person whether he or she captured recorded media relevant to the incident.

(1) If the media person acknowledges capturing relevant recorded media and agrees to allow review and/or to supply a copy to the Department, the member shall:

(a) Immediately notify his or supervisor and the Crime Stoppers and Public Information Bureau.

(b) Collect and document receipt of the recorded media pursuant to Chapter 24, Section 16 of these Rules and Procedures, utilizing Department Form PDCS-1067, Permission To Search. Form PDCS-1067 shall be completed whenever a member of the Service conducts a search based on consent, regardless of whether the consent is provided verbally or in writing.

(c) Appropriately document the request and response.

(2) If the media person acknowledges capturing relevant recorded media and refuses to allow review and/or provide a copy of the captured relevant recorded media, or refuses to state whether they captured relevant recorded media, the member shall:

(a) Immediately notify his or her supervisor and the Crime Stoppers and Public Information Bureau.

(b) Instruct the media person not to destroy, alter or delete the captured relevant recorded media.

(c) Appropriately document the request and response.

(d) Assist his or her supervisor in preparing warrant documents for production of the requested recorded media.

d. Request the media person provide their personal identification, media credentials, and contact information.

2. The stop shall last no longer than necessary to effect its purpose. Brevity is important in determining whether or not a stop is reasonable.

3. Members shall not seize portable recording devices from media personnel unless they are under arrest or otherwise directly involved in the criminal act, or if there is reason to believe that the immediate search of such materials is necessary to prevent the death of, or serious bodily injury to, a person.

a. A warrantless search of portable recording devices seized incident to the direct involvement or arrest of media personnel is prohibited unless there is reason to believe that the immediate search of such materials is necessary to prevent the death of, or serious bodily injury to, a person.

#### G. Supervisory Notification

1. The member's supervisor shall be notified immediately after the seizure of a portable recording device, whether consensual or non-consensual, and advised of:

a. The totality of the circumstances surrounding the stop and seizure

b. The type of device seized.

c. The status of the person from whom the device was seized (e.g. detained, arrested, etc.).

#### H. Supervisor's Responsibilities

1. The supervisor shall:

a. Immediately respond to the scene.

b. Ensure the totality of circumstances surrounding the stop and seizure as conveyed by the member are warranted, appropriate, and in compliance with this Department General Order and the Department's Rules and Procedures.

(1) If the supervisor determines the stop and seizure is appropriate, the supervisor shall

determine whether an immediate search of the portable video and/or photo recording device by the member is warranted.

(2) If the supervisor determines that the seizure is not appropriate, the supervisor will ensure that:

(a) The portable video and/or photo recording device is immediately returned and the person detained is made whole. The supervisor shall document these findings on the Supplementary Report (PDCS-1084).

(3) The circumstances and actions taken shall be appropriately documented on the Incident Report (PDCS-1099).

c. Ensure that all required documentation is completed.

d. Ensure that all proper evidence handling protocols are followed.

e. Ensure that the Crime Stoppers and Public Information Bureau has been notified.

f. Ensure that any questions or concerns regarding the appropriateness of the stop and/or seizure shall be immediately directed to the next supervisory level in the chain of command.

#### I. Impounding of Property

1. Whenever a member seizes any portable recording device, the member shall provide that person a General Receipt (PDCS-0094), and the device shall be invoiced per Chapter 20, Section 3 of these Rules and Procedures.

#### J. Prohibited Actions

1. Members of the Department shall not order or participate in the destruction of portable recording devices.



2. Members of the Department shall not participate in the erasure, deletion, or destruction of digital, analog, or film evidence.

3. Members of the Department shall not impede a person's right to photograph or video record an event unless that person's actions:

- a. Enter any restricted areas (may remain at locations open to the public).
- b. Interfere with police operations.
- c. Violate any laws.
- d. Compromise the safety of an officer, detainee or any other member of the public.

Note: Recording undercover/plainclothes officers/operations conducted in locations open to public view is not unlawful. Department members shall refer to Chapter 26, Section 2(VI)(E) for direction should a member of the media record plainclothes/undercover operations.

- e. Threaten by words or actions.
- f. Attempt to incite others to violate the law.

**VII. ACCREDITATION STANDARD REFERENCES**

N/A

**VIII. INDEX**

Recorded Media in Possession of Bystanders 9/27

**END**