

705.00 - Community Member Observation of Public Safety

Refer:

- ORS §165.540(5)(b)(A)-(D) Obtaining contents of communications
- ORS §161.015 General Definitions
- Uniform Trial Court Rules/UTCR 3.180, Media or other public access coverage of court events

Definitions: *Corrected alphabetical order*

- Faraday bag: A bag that ensures portable digital devices are secure from any external interceptions, and prevents remote wiping of information, tracking, and bugging.
- Media: Storage source for visual or audio recordings, whether by film, analog, or digital means.
- Recording: Capturing of visual images, or sounds, including spoken words that are normally audible, or both, by means of a video camera, cell phone, audio recorder, or other device.
- Seizure: Significant interference with a person's possessory or ownership interests in property.

Policy:

1. Members should assume they are being observed, photographed, video or audio recorded at all times when on duty in a public place.
2. All persons have rights under state and federal law to observe and record members performing official duties, so long as that person's actions do not interfere with the member's duties or the safety of members or others, are consistent with reasonable restrictions, do not amount to criminal trespass, or otherwise violate the law.
3. Persons may observe or record from any public place or any private property where the person has the legal right to be present. However, this Policy does not give any person permission to impede the flow of vehicular or pedestrian traffic or to disregard reasonable restrictions. Members shall not prohibit or intentionally interfere with lawful observations or recordings except as provided in this Policy. Any recordings that are deemed to be evidence of a crime or relevant to an investigation shall only be collected, seized or viewed in accordance with state and federal law and this Policy.

Procedure:

1. Observing or Recording Public Safety Activity:
 - 1.1. The right of persons to observe or record public safety activity is not absolute and is subject to legitimate and reasonable restrictions. Examples of such restrictions include, but are not limited to:
 - 1.1.1. Establishing a perimeter beyond which persons may not go;
 - 1.1.2. Requiring a person to keep a reasonable and specified amount of distance between themselves and the persons or objects they seek to observe or record;
 - 1.1.3. Requiring a person to observe or record from a location that does not interfere with public safety operations; or
 - 1.1.4. Requiring a person to obtain permission from the Office of the Presiding Judge, before recording in a Multnomah County court.

- 1.2. Beyond the act of observing or recording, persons may not interfere with public safety activity. Examples of interference may include, but are not limited to:
 - 1.2.1. Intentional and persistent attempts to communicate with a witness or suspect with whom a member is speaking or engaging;
 - 1.2.2. Direct physical intervention or breaching the specified amount of distance established by a member;
 - 1.2.3. Repeated attempts to engage a member with questions or interruptions, thereby dividing the attention of the member from the matter at hand;
 - 1.2.4. Intentionally impeding the movement of emergency equipment or personnel;
 - 1.2.5. Inciting others to violate any law or any lawful command; or
 - 1.2.6. Any action by the person that jeopardizes the safety or security of a member, victim, witness, suspect or third party.

2. Member Response:

- 2.1. Members may require a person recording public safety activities to maintain a reasonable distance from that public safety activity. Members shall consider the totality of the circumstances regarding the particular public safety activity in establishing a reasonable distance. Members shall not establish any distance for the sole purpose of discouraging or interfering with the lawful recording or observation of public safety activities. Members are allowed to establish a distance that reasonably protects the privacy of any communication between or among members, victims, witnesses, suspects or third parties.
 - 2.1.1. Example: Reasonable distance if a member initiates arrest curbside could be 3 feet.
 - 2.1.2. Example: Reasonable distance if a member initiates arrest on a stairway could be 15 feet.
- 2.2. Whenever practicable, members should give clear and concise warnings to persons recording public safety activities when the person's behavior is unlawful. Accompanying the warnings, whenever practicable, a member should give clear directions on what a person can do to be compliant and should be specific enough to allow compliance. For example, rather than simply directing a person to "clear the area," a member should advise the person from where or at what distance the person may continue lawfully recording or observing the public safety activity.
- 2.3. In the event a person's observation or recording continues to interfere with public safety activities or a member believes that the recording(s) may contain evidence of or information concerning the commission of a Measure 11 offense, or other serious person offenses, when practicable, the on-scene member should request that a supervisor respond to the scene. Realizing that often times these are dynamic situations and actions must be taken immediately, when reasonable, members should wait for the supervisor to arrive before taking enforcement action or seizing any recording device or media.

3. Seizing and Viewing Recordings:

- 3.1. Members may not order or coerce a person to show them recordings that have been made of public safety activities. But members may ask persons to consent to seizure and viewing of recordings.
- 3.2. Seizing recordings and media:
 - 3.2.1. Members may seize recording devices and media if:
 - 3.2.1.1. The person recording consents to the seizure;
 - 3.2.1.2. The person recording possesses the recording device when the person is arrested and charged with a crime; or

3.2.1.3. Exigent circumstances exist to seize the recording device or media. Exigent circumstances requires probable cause to believe the recording device or media contains evidence of or information concerning the commission of a Measure 11 offense, or other serious person offenses, and the member must objectively believe that immediate seizure is necessary to prevent the destruction or tampering of such evidence contained on the recording device or media. The fact a recording device or media is capable of being deleted does not by itself create an exigency justifying a seizure.

3.2.1.4. Should the circumstances above not be present, members must notify their supervisor and take initial steps to obtain a search warrant regarding the recording device(s).

3.2.2. Members should protect seized recording devices and media from remote access, such as through the use of a Faraday bag, to ensure legal viewing at a later time.

3.3. Viewing recordings or information contained on recording devices and media:

3.3.1. Members may view recordings or information contained on seized devices and media if:

3.3.1.1. The person recording consents to the viewing;

3.3.1.2. The person recording possesses the recording device when arrested and charged with a crime and the member obtains a search warrant based on probable cause to view and duplicate the recording device's media; or

3.3.1.3. Exigent circumstances exist requiring the immediate viewing, for example to prevent death or serious physical injury to a person.

3.4. The owner of any surrendered or seized device or media must be given a property receipt.

3.5. All instances of viewing and/or seizing recordings should be documented in an appropriate report. Members are encouraged to further document any instances wherein restrictions were given on scene, to persons recording public safety activity, even if it did not result in a search or seizure.

4. Return of Recording Device:

4.1. The recording device and its media should be held in public safety custody no longer than reasonably necessary for public safety to obtain and execute a search warrant. The recording device and its media, including the content of the recording, should then be returned promptly to the device's owner.

History:

- Originating Directive: 10/18/17
- Next Review Date: 10/18/19
- Review by: Law Enforcement
- Reviewed 2/15/2020
 - Grammatical edits made to originating policy and procedure.
- Next Review Date: 02/15/2022
- Review By: Law Enforcement