



POLICE DEPARTMENT

**OBSERVATION &
RECORDING OF POLICE
SERVICES**

**CONDUCT &
RESPONSIBILITY #110**

Responsible Executive:
Chief of Police
Responsible Office:
Vice President for Public Safety
Approved by:
Dr. Branville G. Bard Jr.
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Policy Statement

The right to observe and record law enforcement officers in the public discharge of their duties and the right to retain the recorded material free from government intrusion are protected by the First, Fourth, and 14th Amendments to the U.S. Constitution; Articles 10, 24, and 26 of the Maryland Declaration of Rights; and 42 U.S.C. 2000aa-(b).

Who Is Governed by This Policy

All personnel, including sworn, nonsworn, and contractual or voluntary persons in service with the Johns Hopkins Police Department (JHPD), are governed by this Directive.

Purpose

The purpose of this Directive is to ensure members of the JHPD are aware of the rights of the public to observe and record police officers in their public activities and to ensure that they are

aware of the appropriate time, place, and manner in which to enforce restrictions related to those rights and how to legally obtain evidence captured by the public when engaged in such activity.

Definitions

First Amendment Auditor:	Individuals who record public safety personnel and facilities to test their compliance with the First Amendment right to observe and record police activity.
Media:	The storage source for visual or audio recordings, whether by film, analog, or digital means.
Member:	All members of the JHPD, including employees, officers, and volunteers, unless the term is otherwise qualified (e.g., member of the public, member of the Baltimore Police Department, etc.).
Officer:	All sworn police officers, at any rank, as defined by MD Code, Public Safety, § 3-201, in service with the JHPD.
Recording:	Capturing of images, audio, or both by means of a camera, smartphone, audio recorder, or other device.

Policy

Members of the JHPD shall respect and shall not infringe upon the right of all persons to observe and record the actions of law enforcement officers in the public discharge of their duties. This directive applies in all public spaces (including sidewalks, parks, and other locations for lawful public protest) on the Johns Hopkins campus, as well as in all other areas in which persons have a legal right to be present (including a person’s home or business and common areas of public and private facilities and buildings). However, the observation or recording should not invade the privacy of members of the community, should not threaten the safety of any JHPD member or any other person, and should not physically interfere with the performance of any member’s duties.

Core Principles

The right to observe and record the actions of law enforcement officers in the public discharge of their duties in all public spaces (including sidewalks, parks, and other locations for lawful public protest), as well as all other areas in which persons have a legal right to be present (including a person’s home or business and common areas of public and private facilities and buildings), and the right to retain those recordings, without being subject to retaliation, are protected by the First, Fourth, and 14th Amendments to the U.S. Constitution; Articles 10, 24, and 26 of the Maryland Declaration of Rights; and 42 U.S.C. 2000aa-(b).

Procedures

I. General

- A. Members are prohibited from interfering with a person’s right to observe or record police activity in all public campus settings, such as open

outdoor spaces, sidewalks, streets, locations of public protest, and common areas of facilities and buildings.

- B.** Members are prohibited from interfering with a person's right to observe or record their own interaction with police. However, an officer may instruct a person to cease recording and put away the recording device when that person is being placed under lawful arrest.
- C.** Members shall restrict persons, regardless of their intent to video- and/or audio-record any police activity, from entering any marked and protected crime scene or a restricted area that would normally be unavailable to the general public. Responding members and follow-up investigators will determine who enters or leaves a secure scene in conformance with JHPD Directive #460, Criminal Investigations.
- D.** If a person is photographing or recording police activity from a position that threatens the safety of a member or others or physically interferes with a member's ability to perform their duties, a member shall first inform the person that they are permitted to observe and/or record but must move to a position that will not threaten anyone's safety or physically interfere with the member's ability to perform their official duties. The member shall give the person a reasonable opportunity to comply prior to taking further enforcement action.
- E.** A member shall not order the person to stop photographing or recording, except as described in Section II, Prohibited Actions, below.
 - Interference consists of conduct, threats, actions, or activities that prevent or hinder members from doing their job. Examples of interference may include but are not limited to:
 - Direct physical intervention with a lawful arrest,
 - Tampering with a witness,
 - Persistently engaging or attempting to engage a member in conversation while the member is executing their duties,
 - Inciting bystanders to hinder or obstruct a member in the performance of their duties,
 - Unreasonably obstructing the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic, or
 - Entering a marked crime scene or an area not accessible to the general public.
 - Observing or recording police activity alone does not constitute interference.

- A person's expression of criticism of any police activity, even when observing it or recording it, is not interference so long as that expression does not jeopardize the safety of any member, suspect, or bystander and so long as that expression does not violate the law or incite others to engage in likely imminent lawless action. See JHPD Directive #486, Assemblies, Demonstrations & Disruption of Campus Activities.
- F.** Verbal disagreements, criticism, insults, name-calling, or obscene gestures directed at members or others do not in themselves justify a member taking law enforcement action against that person. Whenever possible, de-escalation techniques should be employed. During hostile situations, members should consider, prior to making contact with a person who is photographing or recording, whether initiating contact may incite the person or others.
- NOTE: Members may have interaction with First Amendment Auditors. During any interaction with a First Amendment Auditor, members shall, at all times, remain calm, courteous, and helpful and shall avoid debates with such individuals on the scope of their legal rights or any other matter.
- G.** If an incident escalates to where an officer determines that a person should be arrested for obstructing or hindering law enforcement while recording police activity, when feasible, that officer must seek approval to make the arrest from the highest-ranking supervisor present at the scene.
- H.** In areas open to the public, members shall allow any person the same access for photography and recording as is given to the news media, as long as the person has a legal right to be present where they are located.

II. Prohibited Actions

- A.** Members shall not tell a person observing, photographing, or recording police activity that the person's actions are not allowed, require a permit, or require their consent.
- B.** Members shall not order that person to cease such activity, unless that activity threatens the safety of themselves or others or physically interferes with the ability of the member to perform their duties. Members should direct the person to move to a position that will not physically interfere as a first step, instead of ordering the person to cease recording. If these efforts are unsuccessful, a supervisor shall be consulted.
- NOTE: In some instances, the photographing or recording of police activity may not be welcomed by individuals involved in the interaction with the police. To preserve the privacy of the person involved in the interaction with police, a member may ask the

person they are interacting with whether they would like to go to a more private location. Per the wishes of the individual involved in the interaction, the member may also respectfully request the person recording or photographing to voluntarily stop but shall state that the request is not an order, unless that activity threatens the safety of themselves or others or physically interferes with the ability to perform their duties.

- Officers must record on body-worn camera (BWC) a statement explaining the basis for ordering the person to stop recording.
 - When titling this BWC footage, the officer shall choose “Ordered to Stop Recording” as one of the categories attached to this footage (more than one category may be selected).
 - If the officer does not have a working BWC at the time that they give the order to stop recording, the officer shall document the basis for ordering the person to stop recording on an Administrative Report and submit the completed report to their supervisor before completion of their duty shift.
- C.** Members shall not in any way threaten, intimidate, or otherwise discourage a person who is not violating any other law from observing, photographing, or recording a member’s enforcement activities.
- D.** Members shall not demand a person’s identification because the person is observing, photographing, or recording police activity.
- E.** Members shall not demand that the person state a reason why the person is observing, photographing, or recording police activity.
- F.** Members shall not stop, detain, search, arrest, issue a citation to, or use force against a person solely because the person is observing, photographing, or recording police activity.
- G.** Members shall not regard observing, photographing, or recording police activity as suspicious conduct on its own. Members may initiate consensual encounters with any person, but the person’s refusal to answer questions or speak to the member during a consensual encounter does not provide a basis for ordering a person to stop observing, photographing, or recording police activity, nor is it a basis for an investigative stop or search. See JHPD #409, Field Interviews, Investigative Stops & Weapons Pat-Downs.
- H.** Members shall not intentionally block or obstruct cameras or recording devices.
- I.** Members shall not demand to review or erase any image, sound recording, or video recording.

- J.** Members shall not request or seize a person's camera or recording device for the purpose of deleting, destroying, or otherwise concealing any recorded material, including sounds, images, or videos, that they believe may portray individual members or the JHPD in a negative light. Concerns of this nature do not provide a basis to request or seize cameras or recording devices.
- K.** Members shall not retaliate against any person who lawfully exercises the rights to witness, observe, record, comment on, criticize, or peacefully protest police activity and shall not take any other type of police action in retaliation for the exercise of any of those rights. This includes:
- Ordering persons or groups to disperse,
 - Stopping, detaining, searching, arresting, or issuing a citation to any person or group, and
 - Threatening to stop, detain, search, arrest, or issue a citation to any person or group.
- L.** Members shall not, under any circumstances, erase or delete or instruct any other person to erase or delete any recorded images, videos, or sounds from any camera or other recording device that is in a person's possession or that has been voluntarily turned over or seized under the terms of this Directive.
- M.** Members shall not search, seize, or otherwise coerce (implicitly or explicitly) production of recorded images, videos, or sounds without obtaining a warrant, unless the person in possession of the recorded material voluntarily provides the recorded material or unless the exigency described in JHPD Directive #467, Evidence Collection & Preservation, is present.
- N.** Some appropriate police responses by officers being recorded are:
- Informing the recording party that they have a right to record but there are some restrictions,
 - Advising the recording party if they are doing something that is not permitted,
 - Directing the recording party to a location at a reasonable distance where they can record, and
 - Designating a reasonable police perimeter. This perimeter must be applied to all individuals equally, and the recording party should not be singled out. The perimeter should be no larger than necessary to secure the incident scene and allow the member to safely complete their task and shall allow individuals to continue to observe the public police activity.

- O. Members shall inform persons who violate the foregoing restrictions that they are engaged in prohibited activity and give information on acceptable alternatives, when appropriate, prior to making an arrest.
- P. An arrest of a person who is observing, recording, and/or verbally commenting on or complaining about the performance of police duties occurring in public by an officer shall be related to an objective, articulable violation of the law unrelated to the act of observing, recording, and/or verbally commenting on or complaining about the performance of police duties occurring in public. The action does not, in itself, provide grounds for detention or arrest. Should such an arrest be made, a supervisor should be immediately notified.
- Q. Arrest of a person does not provide an exception to the warrant requirement justifying search of the individual's recording equipment or media. While equipment may be seized during an incident in an arrest, downloading, viewing, or otherwise accessing files requires that an officer obtain a search warrant.
- R. Members shall not alter or erase files or media under any circumstances.

III. Seizure of Evidentiary Video, Audio & Photographs

- A. If an officer has probable cause to believe that a bystander or witness has captured video, audio, or photographic evidence related to a crime on a recording device, the officer shall request that the person in possession of that device either (1) voluntarily provide the device or recording medium (e.g., the memory chip) to a supervisor or other commander not present during the event or, (2) where possible and practicable, and in the presence of the officer, voluntarily transmit the evidence, via electronic mail or text message, to the officer's official electronic mail account or departmental mobile phone.
- B. If an officer has probable cause to believe that a bystander or witness has captured video, audio, or photographic evidence of alleged misconduct, no officer involved in the incident will request evidentiary video, audio, or photographic evidence. A supervisor or member of the Public Safety Accountability Unit (PSAU) should be asked to respond to the scene to do so; if one is not available and the witness or bystander cannot be delayed, an uninvolved officer may request the evidentiary video, audio, or photographic evidence, via the methods in Section III.A above.
 - NOTE: Consent is not considered voluntary when the officer asserts their official status and claims a right to the evidence and the person gives the evidence or allows a search because of these assertions. If consent is obtained under duress, threat, or intimidation, it is not voluntary and thus not valid.

- C. If the person voluntarily provides the recording device or recording medium, the officer shall:
- Complete a Permission for Search Form, including specifically what items the person is consenting to be searched and/or taken and indicating if there are any limitations to what the JHPD is permitted to search.
- D. The property owner has a right to revoke consent at any time. If the person decides to revoke their consent, the officer must return the property to the person. In addition, the officer shall do the following:
- Give the person the opportunity to review the device or medium prior to handing it over.
 - Exercise care and caution with the device or medium.
 - Complete a Property Receipt, providing a copy to the person and informing them of the process of retrieving the device or medium in conformance with JHPD Directive # 467, Evidence Collection & Preservation.
 - Provide the person with the name and contact information of the officer who took custody of the device or medium.
 - In the Property Listing or Evidence Recovered section of any applicable field report, list the items surrendered by the person that are held or submitted as evidence.
 - Document their request, and the person's response, in the narrative of applicable field reports and/or charging documents.
 - Refrain from any attempt to view, download, or otherwise access any material contained on the device or medium.
- E. If the person declines to voluntarily provide the recording device or electronically transmit the recorded video, audio, or photographic evidence to the JHPD; if there is probable cause to believe that the recording device or medium contains critical evidence related to a serious crime; and if such evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, then an officer may temporarily secure the recording device and immediately contact a supervisor while a legal subpoena, search warrant, or other valid court order is obtained.
- Officers shall not make any attempt to view, download, or otherwise access any material contained on the device or medium without first obtaining a search warrant, unless a warrantless search is justified by exigent circumstances, such as an immediate threat to public safety.

- **Example:** If a person was recording a video and caught a fleeing suspect of a violent crime on their video, if the person is armed and still at large, and if the person's flight poses an immediate threat to public safety, an officer may be required to view the video for prompt suspect identification purposes.
- Officers shall apply for, execute, and return any search and seizure warrants in accordance with JHPD Directive #411, Search & Seizure, as soon as reasonably possible with diligent effort.

NOTE: If the subpoena, warrant, or other court order is denied for lack of probable cause, members shall not continue to hold the recording device or medium while seeking additional evidence to support the request for subpoena, warrant, or other court order. Instead, members shall return the recording device or medium to the person immediately.

- Officers shall obtain approval from the on-duty commander within two hours when exigent circumstances have required the warrantless seizure of a recording device or medium. If approval is not obtained, the recording device or medium must be returned to the person immediately.
- Officers shall submit the recovered device or medium to the Police Department in conformance with JHPD Directive #467, Evidence Collection & Preservation
- Officers shall complete all appropriate field reports.

- F. Officers shall maintain recording devices and media that are in JHPD custody so that they can be returned to the owner intact with all images or recordings undisturbed.
- G. Only officers of the Investigations Division or PSAU may make efforts to access material contained on a recording device or medium after a subpoena, warrant, or other court order permitting the search and seizure is obtained.

IV. Supervisory Requirements

- A. A member shall contact a supervisor after unsuccessful attempts at directing an observer to move to a position that does not threaten or physically interfere with the member's ability to perform their duties; the supervisor shall determine the best course of action to protect the rights of the observer while ensuring the member is able to perform their duties fully.
- B. Supervisors shall ensure that members who have stopped the recording of police activity in public because of legitimate safety or interference

concerns have properly ordered a person or people to stop recording and have properly documented the order and the reasons for the order.

- C. Supervisors shall approve or deny requests of any warrantless seizures of a recording device or medium by members due to exigent circumstances as soon as practicable and no later than two hours after the seizure. If reasonably practicable, supervisors shall respond to the scene and assess the situation in person.
- Supervisors shall ensure that any recording device, recording medium, video recording, audio recording, or photograph that comes into JHPD custody has only come into custody in one of the following circumstances:
 - Through voluntary consent of the person in possession of the item.
 - Through execution of a search-and-seizure warrant.
 - Through some valid exception to the warrant requirement. See JHPD Directive #409, Field Interviews, Investigative Stops & Pat-Downs, and JHPD Directive #411, Search & Seizure. A valid exception could include the seizure for safekeeping of a recording device or medium that appears to be lost, discarded, or abandoned.
 - Supervisors shall review and approve or disapprove all applications for search-and-seizure warrants, as required by JHPD Directive #411, Search & Seizure.

Policy Enforcement

Enforcement	JHPD managers and supervisors are responsible for enforcing this Directive.
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Reporting Violations	Suspected violations of this Directive should be reported to PSAU.
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Related Resources

University Policies and Documents
Operational Procedure #409, Field Interviews, Investigative Stops & Pat-Downs
Operational Procedure #411, Search & Seizure
Operational Procedure #460, Criminal Investigations
Operational Procedure #467, Evidence Collection & Preservation
Operational Procedure #486, Assemblies, Demonstrations & Disruption of Campus Activities

External Documentation
Police Department Forms and Systems

Contacts

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Policy Management	(667)306-8618	jhpdpolicyinquiry@jh.edu