



San Diego Community College District Police Department Policy and Procedures

3.10 MEDIA EVIDENCE RECOVERY & IMPOUNDING/PRESERVING PROCEDURES

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I. PURPOSE

This Department procedure establishes guidelines and limitations regarding video recording, audio recording, or photographing conducted by Department members; and, procedures for seizing, preserving, and impounding film, videotapes, or digital media, taken by Department members or third parties.

II. SCOPE

This procedure applies to all members of the Department.

III. DEFINITIONS

Media - includes photographs, audio recordings, and video footage.

IV. PROCEDURE

A. Video Recording, Audio Recording, and Photographing by Department Personnel

1. General Guidelines

- a. Department personnel shall make use of video recording, audio recording, and photography for work-related purposes only.
 - b. While working, Department personnel shall not take video, audio, or photographs for personal use.
 - c. Department personnel shall not convert to their own use video, audio, or photographic evidence recovered or produced in connection with an investigation or other police activity. This includes any video, audio, or photography taken with Department equipment, personal equipment, or equipment seized from a crime scene or third party.
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- d. Public release of video, audio, or photographs is prohibited unless approved by the Chief of Police.

2. Peaceful Demonstrations

As a general policy, Department personnel should refrain from video recording or photographing peaceful demonstrations. When there is reason to believe that a planned event has the potential for unlawful activity, commanding officers should make the determination whether video recording or photographing is appropriate. If, during the course of an event, information exists that unlawful activity may occur, the incident commander may use his/her discretion concerning the use of a video or still camera.

3. Video and Audio Taping Traffic Stops and Citizen Contacts

When an officer uses any form of media recording of any citizen contact (i.e., traffic stop, field interview, etc.), those recordings shall be treated as evidence, regardless of whether used as evidence or for any other purpose.

The following regulations shall apply:

a. Documentation of the recording

- (1) The recording officer shall discern each contact separately by indicating date, time, location, and citation/warning number, if issued, on the recording;
- (2) When a citation will be issued, the issuing officer will write "Recording" in the "Case No." box near the top of the citation;
- (3) When documenting the contact on a Field Interview, Traffic Warning, or other report, indicate a recording was made and include the incident number.

4. Personal Video, Audio, or Photography Equipment

a. The use of personal video or photography equipment is generally prohibited due to problems associated with securing and maintaining the chain of custody of such media. Exceptions would be:

- (1) The personal equipment meets or exceeds the standards of the equipment provided by the Department.
- (2) The media on the personal equipment can be preserved according to

established Department standards.

- b. The use of personal audio equipment is allowed as long it can be preserved according to established Department standards.
- c. If personal equipment is used, it is strictly prohibited to convert the video, audio, or photographs for personal use or to disseminate the information to the public.

B. Video Recording, Audio Recording, and Photographing by Third Parties

1. Recording and Photographing of Police Activity

- a. The general public has a First Amendment right to video record, and/or photograph Department members while they are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.
- b. A bystander has the same right to take photographs or make recordings as a member of the media as long as the bystander has a legal right to be present where he or she is located—public or private property; including an individual's home or business, and common areas of public and private facilities and buildings.
- c. Members shall not threaten, intimidate, or otherwise discourage an individual from recording police enforcement activities or intentionally block or obstruct cameras or recording devices.
- d. The fact a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any designated crime scene.
- e. A person may record public police activity unless the person engages in actions that jeopardize the safety of the officer, the suspect, or others in the vicinity, violate the law, incite others to violate the law, or interfere with police activity. Interference consists of conduct, threats, actions or activities that prevent or hinder, or purport to prevent or hinder, members from doing their job.
- f. A person's recording of members' activity from a safe distance, and absent any action that obstructs the activity or threatens the safety of the member(s), does not constitute interference. Criticism of the police or the police activity being observed also does not amount to interference.

- g. Members are encouraged to provide ways in which individuals can continue to exercise their First Amendment rights, as officers perform their duties.

2. Officers Making an Arrest

If the video recording, audio recording, or photographing merely depicts an officer making an arrest, the person recording the video, audio, or taking photographs should be contacted and requested to preserve the media. The name, address, and telephone number of the person recording the video, audio, or taking the photographs should be obtained since that person is a potential percipient witness. The actual media should not be seized.

3. Crimes in Progress

- a. If the video recording, audio recording, or photographing was performed by a reporter or newsperson, the name and organization of the person recording the video, audio, or taking the photographs should be obtained and provided to the Regional Lieutenant where the incident occurred. The actual media should not be seized. The Privacy Protection Act of 1980, codified at 42 U.S.C. § 2000aa et seq., protects journalists from seizure and disclosure of unpublished and non-broadcasted material. It specifically prohibits government officials from searching or seizing any work product or documentary materials possessed by journalists. In addition, California's "shield law" protects journalists from punishment for contempt for refusing to disclose their sources, or any unpublished information obtained in the course of gathering, receiving, or processing information for communication to the public. (California Evidence Code Section 1070).
- b. If the video recording, audio recording, or photographing was performed by a member of the public and shows any element of a crime in progress, the person video recording, audio recording, or taking the photographs should be contacted and requested to transfer the media to police custody or permit a copy of the media to be made by the Department. If the person refuses to surrender custody of the media and the investigating officer concludes that the media contains evidence of a crime in progress and should be seized, the officer should request permission from the on-duty lieutenant or, if unavailable, from the Chief of Police, to authorize immediate seizure of the media.

If there is no exigency to view the media, it shall not be viewed until a search warrant or court order has been obtained. Exigent circumstances exist if the officer believes that there is a possibility that evidence might be lost if not timely retrieved from the device. (*People v. Bullock*, 226 Cal. App. 3d 380)

(1990)).

C. Impounding Procedures

1. Whenever media containing evidence is seized, the seizing officer has an absolute duty to preserve the evidence and maintain a chain of custody. Failure to do so may result in loss of evidence and/or discipline to the seizing officer. Refer to Department Procedure 3.02, Property and Evidence Procedures for additional details.
2. A receipt shall be completed whenever media is seized. The item description will be listed as, "Videotape, CD, DVD, USB flash drive, film, audio tape, or photograph." The receipt may be handwritten by the officer using the officer's notebook (PD-145) or a Receipt and Inventory form (Municipal Court Form 197) may be used.
3. When marking CDs and DVDs for permanent record, the following steps should be followed:
 - a. Use a black felt-tipped marker, preferably an acid-free Sharpie pen.
 - b. Make sure the data side of the disc is face down. Write the identifying information on the label side of the disc.
 - c. Minimally, the name and identification number of the photographer, the date the image(s) were made, and the case number and/or incident number will be printed on both the original and working copy of the CD/DVD in permanent ink.
 - d. The original CD/DVD and working CD/DVD shall be placed in disc envelopes. A photo label sticker, PD-1135-A, shall be placed on the back of the envelope to seal it. DO NOT place the original CD/DVD into an additional sealed envelope. The sealed photo envelope is all that is required. The information on the photo label sticker shall be filled out as completely as possible. The original USB flash drive will be placed in impound envelopes and sealed with a photo label sticker, PD-1135A. The photo label sticker will be filled out with information from the case/arrest.

D. Preserving Photographic Media

1. The person who captured the media is responsible for personally transferring the files from the camera to the disc and for impounding the original disc.

2. Images from only one crime scene shall be placed on the memory device at any one time.
3. The images shall be copied onto two non-rewriteable blank CD/DVD discs. One CD/DVD will be labeled "original", to be impounded, and the other CD/DVD will be marked "working copy", to be provided to investigators.
4. The copied images will immediately be checked to confirm that all files were completely and accurately copied, by comparing the file name, date and size for each digital image on both CD/DVDs.
5. While the original CD/DVD is to be impounded in the property room at an SDPD area station or SDPD Headquarters, the working copy is intended for use by investigators and City or District Attorneys and may be subject to discovery by the defendant's counsel.
6. No digital image files of an evidentiary nature will be permanently stored on a Departmental or District network directory. Any images saved to the system must be deleted after copies are made. Memory cards will be re-formatted after the above steps have been completed.
7. A working/investigative copy of the disc may be sent to the City and/or District Attorney when cases are submitted for prosecution.
8. Officers and Detectives are reminded to ensure that the date and time is properly set on their cameras as this data is encoded on every photograph taken (whether displayed in the image or not). Having incorrect dates or times encoded on photographs could lead to problems in subsequent prosecutions.

E. Preserving Audio Media

Regardless of the type of audio recording device used, the following steps must be adhered to when preserving media for evidentiary purposes:

1. The person who captured the audio recording is responsible for personally transferring the files from the device to the disc and for impounding the original disc.
2. Audio files from only one criminal investigation shall be placed on the device at any one time.
3. The audio files shall be copied onto two non-rewriteable blank CD-R or DVD-R

discs. One disc will be labeled “original”, to be impounded, and the other disc will be marked “working copy”, to be provided to investigators.

4. All audio files shall be in a format that allows them to be played natively from within the Microsoft Windows operating system (i.e. .wav or .wma) formats.
5. The copied audio files will immediately be checked to confirm that all files were completely and accurately on both CD/DVDs.
6. While the original CD/DVD is to be impounded in the property room at any SDPD area station or SDPD Headquarters, the working copy is intended for use by investigators and City or District Attorneys and may be subject to discovery by the defendant’s counsel.
7. No audio files of an evidentiary nature will be permanently stored on a Departmental or District network directory. After files have been transferred to CD/DVDs and verified, the original media will be re-formatted or deleted. Any files saved to the system must be deleted after copies are made and verified.
8. A working/investigative copy of the disc may be sent to the City and/or District Attorney when cases are submitted for prosecution.