

Public Recording of Probation Officer Activity and Recording on County Property

512.1 PURPOSE AND SCOPE

This policy provides guidelines for handling situations in which members of the public photograph or audio/video record probation officers' actions and other public activities that involve members of this department, as well as film on County property. In addition, this policy provides guidelines for situations where the recordings may be evidence.

512.2 POLICY

The San Diego County Probation Department recognizes the right of persons to lawfully record members of this department who are performing their official duties and to film on County property. Members of this department will not prohibit or intentionally interfere with such lawful recordings. Absent exigent circumstances, any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully by local law enforcement having jurisdiction.

Officers should exercise restraint and should not resort to seeking highly discretionary arrests for offenses such as interference, failure to comply, or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

512.3 RECORDING PROBATION OFFICER ACTIVITY

Members of the public, including media representatives, have an unambiguous First Amendment right to record officers in public places, as long as their actions do not interfere with the officers' duties or the safety of officers or others. Officers should assume that they are being recorded at all times when on duty in a public space.

Members of the public who wish to record probation officer activities are limited only in certain aspects.

- (a) Recordings may be made from any public place or any private property where the individual has the legal right to be present.
- (b) Beyond the act of photographing or recording, individuals may not interfere with probation officer activity. Examples of interference include but are not limited to:
 - 1. Tampering with a witness or suspect.
 - 2. Inciting others to violate the law.
 - 3. Being so close to the activity as to present a clear safety hazard to the officers.
 - 4. Being so close to the activity as to interfere with an officer's effective communication with a client or other individual.
- (c) The individual may not present an undue safety risk to self, to the officer, or to others.

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512.4 RESTRICTED AREAS

While the Probation Department respects individuals' First Amendment rights, the Department also takes seriously its responsibility to protect the privacy of our clients. If members of the public were to publish video footage of the lobby areas of our facilities, it would constitute a substantial invasion of that privacy, as it would expose those individuals' identities and make their status as probation clients public knowledge. Additionally, it could deter clients from appearing for court or probation appointments, making it difficult to conduct County business.

The law allows for reasonable restrictions to be placed on activities within a nonpublic forum to protect the rights of others, and Penal Code section 602.1 subdivision (b) prohibits interference with the lawful business of a public agency. Therefore, filming and photography will be prohibited in the area of the Intake, Booking and Release sally port and within the interior of department facilities, and "No Filming" signs will be posted in those facilities to provide notice of the restriction to all who enter. This restriction on filming and recording in these areas applies to all members of the public and employees.

512.5 LAWFUL RECORDING OF PROBATION ACTIVITY

It should always be a primary concern of probation officers to recognize and protect the constitutional rights of members of the public, as we have sworn an oath to do so. While officers must always be cognizant of safety concerns, they should not assume individuals recording probation activities are suspicious or motivated by anti-law enforcement ideas. Recording in and of itself is not a suspicious activity, and an inappropriate reaction by officers can negatively impact the public trust, which is essential to the effective performance of our duties.

One acceptable response to the presence of an individual recording probation activity is to politely greet them and then go about our duties as if they were not there. If an officer chooses to engage the individual, it would be appropriate to acknowledge their right to record and inform them of any potential concerns related to the restrictions in 512.3 and 512.4 above.

If asked, an officer should provide basic information such as the officer's name and badge number. If additional information is requested, the person may be directed to the Department's official website or the County's Group Communications Officer. If the individual persists in engaging in debate, the officer can ask if the person would like to speak to a supervisor.

Officers must not threaten, intimidate, or otherwise discourage members of the public who are legally recording probation officer activity. Additionally, officers are not to demand that an individual present their identification. Officers should always strive to remain calm, collected, and respectful in their interactions with the public.

512.6 UNLAWFUL RECORDING OF PROBATION OFFICER ACTIVITY

Officers should promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with probation officer activity or it is believed that the recording may be evidence. If practicable, officers should wait for the supervisor to arrive before taking further action or seizing any cameras or recording media.

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Whenever practicable, officers or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or behavior to be unlawful. Accompanying the warnings should be clear directions on what an individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing individuals to clear the area, an officer could advise individuals they may continue observing and recording from the sidewalk across the street.

If an arrest or further action is taken as the result of a recording that interferes with probation officer activity, officers shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

512.7 SUPERVISOR RESPONSIBILITIES

When practicable, a supervisor should respond to the scene any time the circumstances indicate a likelihood of interference or other unlawful behavior by a person recording probation officer activity.

The supervisor should review the situation with the officer and:

- (a) Request any additional assistance as needed to ensure a safe environment.
- (b) Take a lead role in communicating with individuals who are observing or recording regarding any appropriate limitations on their location or behavior. When practicable, the encounter should be recorded. Only department-owned devices should be used for such recordings.
- (c) When practicable, allow adequate time for individuals to respond to requests for a change of location or behavior.
- (d) Ensure that any enforcement, seizure, or other actions are constitutional and consistent with this policy and state law.
- (e) Explain alternatives for individuals who wish to express concern about the conduct of department members, such as how and where to file a complaint.

512.8 SEIZING RECORDINGS AS EVIDENCE

Probation Officers should not seize recording devices or media unless (42 USC § 2000aa):

- (a) There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably necessary for prosecution of the person.
 1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.
- (b) There is reason to believe that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
- (c) The person consents.
 1. To ensure that the consent is voluntary, the request should not be made in a threatening or coercive manner.

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2. If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to be present while the copy is being made, if feasible. Another way to obtain the evidence is to transmit a copy of the recording from a device to a department-owned device.

Recording devices and media that are seized will be submitted within the guidelines of the Property and Evidence Management Policy.