

MUNICIPAL ORDER NO:__:2019

WHEREAS, the City of Morehead Board of City Council voted to enact policies and procedures of the Morehead Police Department by Municipal Order; and

WHEREAS, the Morehead Police Department desires to adopt Policy #53, Video Recording and Photographing of Police Officers:

NOW, THEREFORE, BE IT ORDERED by the City of Morehead, Board of City Council that the Morehead Police Department's Standard Operating Policy #53, Video Recording and Photographing of Police Officers, a copy of which is attached hereto, is hereby approved. A complete copy of the policy shall be added to the Morehead Police Department's Policies and Procedures Manual retained on file in the City Clerk's office.

Adopted this ____ day of _____ 2019.

CITY OF MOREHEAD

Laura White-Brown, Mayor

Attested: _____
Crissy Cunningham, City Clerk

Policy # 53 VIDEO RECORDING AND PHOTOGRAPHING OF POLICE OFFICERS	Related Policies:
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable State Statutes:	
KACP Standard: 17.12	
Date Implemented:03/11/2019	Review Date:

- I. Purpose:** Individuals have a First Amendment right to record police officers in the public discharge of their duties. The right to record is not limited to streets and sidewalks -- it includes areas where individuals have a legal right to be present, including an individual's home, business, or other private property where the person has a right to be present.

II. Procedure:

- A.** Members of the press and members of the general public enjoy the same rights in any area accessible to the general public. No individual is required to have or to display 'press credentials' in order to exercise his/her right to observe, photograph, or record police activity taking place in an area accessible to, or within view of, the general public.
- B.** In situations where members of the public are photographing or recording a police action, officers may not search or seize a camera or recording device (including cell phones) without a warrant, except under very limited circumstances as described herein.
- C.** Officers are prohibited from threatening, intimidating, or otherwise discouraging any individual from photographing or recording police activities.
- D.** Officers may not intentionally block or obstruct cameras or recording devices in any manner.
- E.** Officers are prohibited from deleting recordings or photographs and from damaging or destroying recording devices/cameras under any circumstances.

F. A person may record/photograph 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, or incite others to violate the law. Examples of such actions include but are not limited to:

- a.** Physically interfering with the police officer's official duties. (Interviews with suspects and witnesses/gathering evidence).
- b.** Hindering a lawful arrest;
- c.** Inciting bystanders to hinder or obstruct an officer in the performance of their duties. Conduct taken alone which would be insufficient to meet hindering or obstructing would include, but not be limited to:
 - i.** An individual's recording/photographing of police activity from a safe distance without any attendant action intended to obstruct the activity or threaten the safety of others does not amount to interference.
 - ii.** A person's expression of criticism of the police (or the police activity being observed) does not amount to interference.

The U.S. Supreme Court has held that 'a properly trained officer may reasonably be expected to exercise a higher degree of restraint' than the average citizen when it comes to reacting to insults or 'fighting words.'

Courts have given First Amendment protection to persons who made obscene gestures and yelled profanities at police officers and they have prohibited the police from interfering with such speech.

G. The warrantless seizure of material protected by the First Amendment (photos, videos, etc.) will be strictly scrutinized by a court. In ordinary circumstances, the seizure of cameras or recording devices without a warrant has been held to be unreasonable. Cameras or recording devices will not be seized without a warrant unless:

- a.** Officers have probable cause to believe that critical evidence of a felony crime is contained on/in the camera or recording device; and
- b.** Officers first have explained the circumstances to the person in the possession of the recording device;
- c.** The seizure of the camera/recording device is for no longer than reasonably necessary for the officer, acting with diligence, to obtain a search warrant to seize the evidence.
- d.** If a camera/recording device is seized without a search warrant pursuant to Section H above, officers are prohibited from seizing or viewing the evidence contained in the device until a warrant is obtained for that seizure.