



Cover Memorandum

Observation & Recording of Police Services, JHPD Directive #110

Purpose of the Directive

The purpose of this Directive is to ensure members of the Johns Hopkins Police Department (JHPD) are aware of and respect the rights of the public to observe and record law enforcement officers in their public activities.

Summary of Directive Requirements

This Directive explains the legal protections related to members of the public observing and recording police activity. It specifically dictates that JHPD members 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 in all public spaces (including sidewalks, parks, and other locations for lawful public protest) on its 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), so long as the observation or recording does invade the privacy of members of the community, does not threaten the safety of any member or any other person, and does not physically interfere with the performance of any member's duties. The Directive also provides guidance to JHPD members as to how to mitigate these issues so a person can continue recording, such as instructing the person recording to move to a location where they can continue recording without interfering with the legitimate law enforcement objective.

It also provides specific guidance to JHPD members regarding interacting with people that are recording their public activities, including remaining courteous at all times. In addition, this Directive strictly prohibits JHPD members from retaliating against any person observing and recording JHPD members in their public activities.

Finally, it provides JHPD members with specific guidance to follow if a member 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.

Blueprint for the Policy Development Process

The draft JHPD policies (hereinafter referred to as "directives") shared for community feedback are based on examples of 21st century best practices in public safety policy, identified through extensive benchmarking of university and municipal law enforcement agencies across the nation. Taken together, they represent a comprehensively progressive approach to policing that prioritizes equity, transparency, accountability, and community-based public safety strategies.

The JHPD's draft directives embody approaches that community advocates and leading experts have championed locally and in law enforcement reform efforts across the nation. The draft directives have also been developed based on input received through robust community engagement in prior phases of

JHPD development, including suggestions received in the legislative process as well as last fall's Memorandum of Understanding (MOU) public comment period and feedback opportunities.

In addition, the directives were drafted to exceed the minimum requirements of the Constitution and laws of the United States and the State of Maryland, to align with the Community Safety and Strengthening Act (CSSA) and to fulfill the requirements of the MOU between the Johns Hopkins University and the Baltimore Police Department. The Hopkins community and our neighbors throughout Baltimore can help improve and strengthen these directives further through their feedback and input.

Material that was considered in the drafting of the Directive and Procedure Manual, include:

a. Publicly available policies from municipal police departments that have undergone substantial reform efforts, including: the New Orleans Police Department; Seattle Police Department; Portland Police Department; Detroit Police Department; Ferguson Police Department; and Baltimore Police Department;

b. National guidance on best practices and model policies from criminal justice reform efforts, social science research centers, and civil rights organizations, including: the Leadership Conference on Civil and Human Rights; American Civil Liberties Union (ACLU), including the ACLU of Massachusetts's "Racially Just Policing: Model Policies for Colleges and Universities"; the International Association of Chiefs of Police (IACP); the Police Executive Research Forum (PERF); U.S. Department of Justice Office of Community Oriented Policing Services (COPS Office); The Justice Collaboratory (The JC) at Yale University Law School; and The Center for Innovation in Community Safety (CICS) at Georgetown Law School.

c. National and local higher education institutions that are based in comparable environments and make policies publicly available, including: Carnegie Mellon University; Morgan State University; Towson University; University of Chicago; University of Cincinnati; University of Maryland, Baltimore County; University of Pennsylvania; and Yale University.

To ensure that the proposed directives captured national best practices in community-focused public safety services, the development team collaborated with independent experts from two organizations: National Policing Institute (the Institute), a non-profit dedicated to advancing excellence in policing through research and innovation, and 21CP Solutions, an expert consulting team of former law enforcement personnel, academics, civil rights lawyers, and community leaders dedicated to advancing safe, fair, equitable, and inclusive public safety solutions. Each directive was reviewed by experts selected by both organizations, who provided feedback, suggestions, and edits that were fully incorporated into the current draft.

Finally, individuals and organizations representing the diversity of the Johns Hopkins University community provided feedback to ensure the policies and procedures reflect and respond to the values of our institution and to our community's public safety service needs.

Now they are available for your review. Johns Hopkins is committed to adopting, incorporating, or otherwise reflecting recommended changes and feedback in the final version of policies so long as feedback is aligned with our values and commitments, permissible within legal parameters, and supported by national best practices for community policing and public safety.



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.
Issued: [full date]
Revised: [full date]

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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 Fourteenth Amendments to the United States 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, non-sworn, 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 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 or their duties in all public spaces (including sidewalks, parks, and other locations for lawful public protest) on its 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), so long as the observation or recording does invade the privacy of members of the community, does not threaten the safety of any member or any other person, and does 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 or 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), without being subject to retaliation.

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, a member 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 officer'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 of 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 (including repeatedly instructing a witness being questioned by a member not to respond to the member's questions).
 - 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.
 - 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 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. The member may also respectfully request the person recording or

photographing to voluntarily stop, but shall not order them to do so, unless that activity threatens the safety of themselves or others or physically interferes with the ability to perform their duties.

- o Officers must record on body-worn camera (BWC) a statement explaining the basis for ordering the person to stop recording.
 - o 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).
 - o If the officer does not have a working BWC at the time that they give the order to stop recording, the member 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, 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, which 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.
 - 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 the possession of a non-member 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 #468, Collection & Preservation of Evidence.
- 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.
 - Designating a reasonable police perimeter. This perimeter must be applied to all individuals equally, and the recording party should not be singled out.
- O.** Members shall inform persons who violate the foregoing restrictions that they are engaged in prohibited activity and given 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 an officer to obtain a search warrant. Members shall not alter or erase files and media under any circumstances.

III. 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.

IV. Seizure of Evidentiary Video, Audio, and 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 member, voluntarily transmit the evidence, via electronic mail or text message, to the officer's official electronic mail account or to the member's 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 Public Safety Accountability Unit should be asked to respond to the scene to do so, and if 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 IV (A) above.
- C. **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.

- D.** If the person voluntarily provides the recording device or recording medium to the member, 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.
- E.** 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:
- 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 media in conformance with JHPD Directive #469, Property & Evidence Management.
 - 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.
- F.** 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.
- G.** **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 and 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, officers 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 #469, Property & Evidence Management.
- Officers shall complete all appropriate field reports.

H. 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.

I. Only officers of the Investigative Division or Public Safety Accountability Unit 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.

J. Supervisors - Supervisors shall approve or deny requests of any warrantless seizures by members of a recording device or medium 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:
 - o Through voluntary consent of the person in possession of the item.
 - o Through execution of a search and seizure warrant.
 - o Through some valid exception to the warrant requirement. See

JHPD Directive #409, Field Interviews, Investigative Stops & Pat-Downs, and #411, Search and 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 and Seizure.

Policy Enforcement

Enforcement	JHPD managers and supervisors are responsible for enforcing this Directive.
Reporting Violations	Suspected violations of this Directive should be reported to the Public Safety Accountability Unit.

Related Resources

University Policies and Documents
Operational Procedure #409, Field Interviews, Investigative Stops & Pat-Downs Operational Procedure #411, Search and Seizure Operational Procedure #460, Criminal Investigations Operational Procedure#468, Collection & Preservation of Evidence Operational Procedure #469, Property & Evidence Management Operational Procedure #486, Assemblies, Demonstrations & Disruptions of Campus Activities
External Documentation
Police Department Forms and Systems

Contacts

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation			