



# DO YOU HAVE LAW ENFORCEMENT POLICIES FOR SEIZING VIDEO RECORDING DEVICES?

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A current national trend in law enforcement litigation that is and will continue to impact law enforcement agencies relates to the seizure of video recording devices.

Agencies are seeing increased litigation for seizing cameras and cell phones for what they consider as “evidence purposes.” The Kentucky League of Cities Insurance Services (KLCIS) offers a model policy for our member agencies titled “Video Recording and Photographing of Police Officers” and strongly suggests that agencies should implement and train all personnel on this critical operational policy. In the best interest of Kentucky law enforcement, KLC’s policies are available to any police department, not just KLCIS members and can be downloaded at [www.klc.org/Insurance Products and Services/Law Enforcement/Model Policies](http://www.klc.org/Insurance_Products_and_Services/Law_Enforcement/Model_Policies). (See sidebar article policy implementation.)

Individuals have a First Amendment right to record police officers in the public discharge of their duties.

### Key Considerations for Seizure of Recording Devices:

- ◆ Members of the media and members of the general public enjoy the same rights in any area accessible to the general public.
- ◆ In situations where members of the public are photographing or recording a police action, officers must not search or seize a camera or recording device (including cell phones) without a warrant, except under very limited circumstances.
- ◆ Officers are prohibited from threatening, intimidating or otherwise discouraging any individual from photographing or recording police activities.
- ◆ Officers must not intentionally block or obstruct cameras or recording devices in any manner.
- ◆ Officers are prohibited from deleting recordings or photographs, and from damaging or destroying recording devices/cameras under any circumstances.
- ◆ 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:
  - \* Physically interfering with the police officer’s official duties. (Interviews with suspects and witnesses/gathering evidence.)
  - \* Hindering a lawful arrest.
  - \* 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:
    - 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.
    - 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.
- ◆ 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

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will not be reasonable. Cameras or recording devices will not be seized without a warrant unless:

- \* Officers have probable cause to believe that critical evidence of a felony crime is contained on/in the camera or recording device; and
- \* Officers first have explained the circumstances to the person in the possession of the recording device;
- \* 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 (OPTION: and the local prosecutor is notified of the seizure for consultation/direction to secure a search warrant); and
- \* Supervisory approval has been granted for the seizure.
- \* Seizing or viewing the evidence contained in the device without a warrant is prohibited unless an exigent circumstance exists; or, until a warrant is obtained for the seizing or viewing.

KLCIS members have access to more than 60 model policies that have been developed in conjunction with a law enforcement task force including KLCIS loss control, the Department of Criminal Justice Training and Jack Ryan of the Legal & Liability Institute.

KLCIS also offers a series of fire protection policies for any fire department to access at [klc.org/klcis.org](http://klc.org/klcis.org).

### The Right Way to Implement a Law Enforcement Policy

The Kentucky League of Cities Insurance Services (KLCIS) provides nationally accepted model policies for our members to utilize in addressing critical areas of law enforcement. Each policy is reviewed and approved by the KLCIS Model Policy Committee prior to posting on our website. The policy committee consists of active and former police chiefs, executive staff, DOCJT Legal and Leadership Sections Staff, KLCIS Law Enforcement and Legal Staff and other experts in police policy writing. Each policy has been

thoroughly researched by LLRMI/PATC to conform to federal and state laws. The policy service includes periodic reviews and updates to ensure the policies offered remain current and compliant with federal and state statutes and applicable court decisions. KLCIS notifies its members of any changes via e-blast and/or weekly newsletter.

When implementing a law enforcement policy, KLCIS recommends:

1. Consultation with local city attorney or other departmental legal advisor.
2. If any changes are made to the policies have the changes and reasons reviewed and approved by attorney or other departmental legal advisor.
3. That departments also have mayor, safety director and/or city council approve policies prior to implementation.
4. Do not adopt policies as ordinances since they are living documents and regular updates will be required. This would require an advertising posting etc. for any changes.
5. Select implementation date of new policy shortly after below steps are completed.
6. Training on each policy for every member of the department.
7. A short quiz or exam showing knowledge by department members on proper application.
8. Each officer signs the accountability roster or sign off sheet with date of training.
9. File sign off sheet with other departmental training records.
10. When updating any current departmental policy, old Policy should be archived departmentally including documenting date range it was effective.



### Questions? KLC is here to help!

Please contact John Clark ([jclark@klc.org](mailto:jclark@klc.org)) or Brian Nunn ([bnunn@klc.org](mailto:bnunn@klc.org)) with KLC Loss Control Law Enforcement at 800.876.4552 or visit [klc.org](http://klc.org) for more information.



John Clark



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