

Interacting with Police

RECORDING THE POLICE

WHAT IS THE LAW?

- Florida has a statute, § 934.03, that prohibits the “intentional[] interception [of] any wire, oral, or electronic communication” and makes it a third-degree felony. The statute makes an exception when all parties to the communication give their consent. **For an oral communication to be protected under the statute, the person speaking must have a reasonable expectation of privacy, and society must recognize that expectation as reasonable. Private property owners can set rules for speech on their property.**
- **Case law from the U.S. Court of Appeals for the 11th Circuit, which presides over Florida, has also clearly held that individuals have “a First Amendment right, subject to reasonable time, manner and place restrictions, to photograph or videotape police conduct.”**¹ It also held that individuals have “the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” Importantly, this right has been upheld by the Court in instances where an individual was recording police activity during a protest.²

SO, WHEN CAN YOU RECORD THE POLICE?

- **Anytime you are in an open public space (for example, most public roads, public parks, and public beaches) where other individuals can witness what is happening, you can record the police as long as you are not interfering with police activity.**³ Always make sure that you have the right to be in that area.
- Anytime you are in a more private place (for example, a public road that is not easily visible by other individuals), there are a couple of questions you should ask yourself before recording the interaction:

Can other people still witness what is happening?
Has the officer consented to being recorded?

If the answer to either of those questions is yes, you may proceed to record with caution. If the answer to both questions is no, the law is less clear. Please see below for precautionary steps that should be taken any time a recording is made.

PRECAUTIONARY STEPS YOU SHOULD ALWAYS TAKE:

- **Announce that you are recording what is going on.**
- **Do not interfere with the police's actions while recording.**
- **Stay a reasonable distance away from whatever activity you are recording.**

¹Smith v. City of Cumming, 212 F.3d 1332 (11th Cir. 2000)

²Toole v. City of Atlanta, 798 F. App'x 381 (11th Cir. 2019)

³Ford v. City of Boynton Beach, 323 So. 3d 215, 220 (Fla. 4th DCA 2021)