



ACLU

AMERICAN CIVIL LIBERTIES UNION
of VIRGINIA

Your Right to Take Photographs and Make Video and Audio Recordings

Taking photographs and videos of things that are plainly visible from public spaces is your constitutional right. That includes federal buildings, transportation facilities, and police and other government officials carrying out their duties. Unfortunately, law enforcement officers often order people to stop taking photographs or video in public places, and sometimes harass, detain or even arrest people who use their cameras or cell phone recording devices in public. This sheet explains your rights.

Your Right to Take Video and Photographs

- When in outdoor public spaces where you are legally present, you have the right to capture any image that is in plain view. That includes pictures and videos of federal buildings, transportation facilities (including airports), and police officers.
- When you are on private property, the property owner sets the rules about the taking of photographs or videos. If you disobey property owners' rules, they can order you off their property. If you don't leave, you could be arrested for trespassing.
- Police should not order you to stop taking pictures or video. **Under no circumstances should they demand that you delete your photographs or video.**
- Police officers may order citizens to cease activities that are truly interfering with legitimate law enforcement operations. In general, a court will trust an officer's judgment about what is "interfering" more than yours. So if an officer orders you to stand back, it is probably best to do so.
- If the officer says they will arrest you if you continue to use your camera, in most circumstances it is better to put the camera away and inform the ACLU rather than risking arrest.
- **Police officers may not generally confiscate or demand to view your photographs or video without a warrant.** It is possible that courts may approve the seizure of a camera in some circumstances if police have a reasonable, good-faith belief that it contains evidence of a crime by someone other than the police themselves (it is unsettled whether they still need a warrant to view them).

Download the App: *MOBILE JUSTICE VA*

Mobile Justice VA is a smartphone app that allows users to record law enforcement interactions and submit videos and incident reports automatically to the ACLU. Individuals who believe that they have witnessed a civil liberties violation can complete an incident report along with their contact information for follow-up. The app can be found in both the App Store and Google Play, and is 100% free.

Using a Video Recorder (Including Cell Phones) With Audio Capacity

- **You have a right to capture images in public places, but you don't always have a right to record what people say.** §19.2-62 of the Code of Virginia makes it illegal to record private conversations – which can include conversations in public places – without the consent of at least one party to the conversation. This means if the conversation is between other people and can reasonably be seen as private, you will need the consent of at least one person to record. Conversations with police in the course of their official duties are **not** private conversations, but many other things you may record on a public street are.
- **You have the right to videotape and audiotape police officers performing official duties in public.** It is not a violation of §19.2-62 to do so. That means you can record an officer during a traffic stop, during an interrogation, or while he or she is making an arrest.
- You can record people protesting or giving speeches in public.

If You Are Stopped or Detained for Taking Photographs or Videos

- Always remain polite and never physically resist a police officer.
- If stopped for photography, ask if you are free to go. If the officer says no, then you are being detained, something an officer cannot do without reasonable suspicion that you have or are about to commit a crime or are in the process of doing so. Until you ask to leave, your being stopped is considered voluntary under the law and is legal.
- If you are detained, politely state that you believe you have the right to take pictures or video and that you do not consent to the officer looking through or deleting anything on your camera. But if the officer reaches for your camera or phone, do not resist. Simply repeat that you do not consent to any search or seizure. You don't want to invite a charge for "resisting arrest."

If you think your rights have been violated, contact the ACLU of Virginia immediately.

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