

Institute for
Constitutional Advocacy and Protection

GEORGETOWN LAW

Video Recording In or Near Polling Places

Do police officers need to turn off their body cameras when responding to incidents arising at or near polling places?

No. Unless internal departmental regulations or guidelines specifically prohibit officers from recording activities in or around a polling place, officers should keep their body cameras on at all times when responding to incidents of voter-intimidation (or other unlawful activity) at the polls, just as they would when responding to any other situation. Although some states prohibit *private citizens* from using recording devices at the polls, *see infra*, those prohibitions should not be construed to bar on-duty law enforcement officers from using their body cameras in or around the polls.

Can private citizens record incidents of voter intimidation or harassment that they observe at the polls?

It depends. Laws governing the use of recording devices inside the polls vary widely from state to state. In some states, voters are expressly barred by statute from recording other people at the polls. These statutes vary in their scope; some prohibit any recording only inside the polling place while others prohibit recording both inside the polling place and in the areas surrounding it. *Compare, e.g.,* Ga. Code § 21-2-413(e) (“No elector shall use photographic or other electronic monitoring or recording devices or cellular telephones while such elector is within the enclosed space in a polling place.”), *with* Tex. Elec. Code Ann. § 61.014(b) (“A person may not use any mechanical or electronic means of recording images or sound within 100 feet of a voting station.”).

Many states do not explicitly prohibit voters from using recording devices at the polls but, instead, leave it to the discretion of polling place officials to determine whether and under what conditions recording may be permissible. In these jurisdictions, voters are often free to use recording devices as long as they do so in a manner that complies with other election laws and is not meant to harass or intimidate other voters. *See, e.g.,* Va. A.G. Op. (Sept. 29, 2016), 2016 WL 5867844, at *3 (expressing the view that “voters shall be permitted to take photographs or pictures within the polling place, where doing so does not constitute a violation of [other election laws]”).

Given the wide variation in state election laws, voters and local officials should consult with state election officials to determine whether and under what conditions recording devices are permitted at the polls.

This guidance was prepared by the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center. ICAP’s mission is to use strategic legal advocacy to defend constitutional rights and values while working to restore confidence in the integrity of governmental institutions. Connect with ICAP at www.law.georgetown.edu/icap/, reachICAP@georgetown.edu, or [@GeorgetownICAP](https://twitter.com/GeorgetownICAP).