



CPC 409.7 MEDIA ACCESS AT DEMONSTRATION AND PROTEST EVENTS

BACKGROUND:

Effective January 1, 2022, Senate Bill 98 added section 409.7 to the California Penal Code. The legislative intent of 409.7 PC is to provide access and protections for journalists and news media consistent with 409.5 PC, which allows for a "duly authorized representative" of any news service, newspaper, or radio or television station, or network to enter areas closed for public health and safety reasons.

Section 409.7 of the California Penal Code reads:

409.7(a) If peace officers, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, close the immediate area surrounding any emergency field command post or any other command post, or establish a police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in activity that is protected pursuant to the First Amendment to the United States Constitution or Article I of the California Constitution, the following requirements shall apply:

- (1) A duly authorized representative of any news service, online news service, newspaper, or radio or television station or network may enter the closed areas described in this section.
- (2) A peace officer or other law enforcement officer shall not intentionally assault, interfere with, or obstruct the duly authorized representative of any news service, online news service, newspaper, or radio or television station or network who is gathering, receiving, or processing information for communication to the public.
- (3) A duly authorized representative of any news service, online news service, newspaper, or radio or television station or network that is in a closed area described in this section shall not be cited for the failure to disperse, a violation of a curfew, or a violation of paragraph (1) of subdivision (a) of Section 148, for gathering, receiving, or processing information. If the duly authorized representative is detained by a peace officer or other law enforcement officer, that representative shall be permitted to contact a supervisory officer immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so.

(b) This section does not prevent a law enforcement officer from enforcing other applicable laws if the person is engaged in activity that is unlawful.

(c) This section does not impose, and shall not be used as the basis for, criminal liability.





FAQs:

Does Penal Code Section 409.7 apply to the deployment of a command post at criminal incidents?

No. Section 409.7 only applies to events in which people are engaged in activity that is protected pursuant to the First Amendment to the United States Constitution or Article I of the California Constitution. Events defined in the section include, but are not limited to, demonstrations, marches, protests, and rallies.

What is a Command Post?

There is no definition in the statute. FEMA defines a Command Post as, "the field location where the primary functions are performed. The Incident Command Post may be co-located with the Incident Base or other incident facilities." OCS D Policy uses the FEMA definition (Sections 322 and 331). The Department's Patrol Operations Manual, Section 51.IV.C.5 states, "the command post should be established immediately, so the Incident Commander can coordinate all the responding assets. It can be a radio car; a residence or any location where responding deputies can gather and receive instructions." Command Posts are areas of land which may or may not contain multiple structures and/or vehicles. Command Posts are not defined solely as the structure or vehicle on the designated area of land.

What is a "duly authorized representative of the news media?"

There are no specific criteria for a "duly authorized representative." In most cases, a "duly authorized representative" is someone who has been "duly authorized" by a news organization to go to the scene and report about the event for the news organization. This includes any news service, online news service, newspaper, or radio or television station or network who is gathering, receiving, or processing information for communication to the public.

The absence of media identification or credentials does not preclude an individual from being recognized as a member of the media. OCS D does not issue media credentials. The decision to disallow an individual who identifies as a member of the media should be determined by the circumstances presented and in consultation with a supervisor.

Persons with a known history of participating and coordinating activities at events as participants and not news media, interfering with police operations, or engaging in criminal conduct should be referred to a supervisor if they identify themselves as a journalist or member of the media and request access to closed areas.

What is the "Immediate area surrounding..." a command post?

The space abutting a command post which may be closed to the public must remain open to media representatives. The legislature does not define the size of a command post, but the intent is to allow the media access to the immediate area surrounding the command post.





Establishing a large command post with the intent of keeping media representatives at extended distances is not permitted.

Are command posts open to the media?

The media is not allowed inside a command post unless approved by the Incident Commander.

Can members of the media be issued a citation for remaining in a closed area?

Media shall not be cited for failure to disperse, a violation of curfew, or a violation of paragraph (1) of subdivision (a) of Section 148, for gathering, receiving, or processing information. This section does not prevent law enforcement from enforcing other applicable laws if the person is engaged in activity that is unlawful.

BOTTOM LINE:

Members of the media are granted access to closed areas during demonstrations, marches, protests, and rallies. Those areas include the immediate areas surrounding a command post and areas closed by an established police line or rolling closure. Media is not granted access inside the command post at these events. Members of the media may not be cited for failure to disperse, a violation of curfew, or a violation of paragraph (1) of subdivision (a) of Section 148, for gathering, receiving, or processing information.

All attempts will be made to have Department PIOs on location to assist with media access and inquiries.

QUESTIONS:

For questions related to media access at demonstrations, marches, protests, and rallies, consult your immediate supervisor or contact the Mutual Aid Bureau. Additional questions can be addressed by the Public Affairs and Community Engagement (PACE) Division on-duty PIO at [REDACTED]

