



**Date:** Monday, May 20<sup>th</sup>, 2019  
**To:** All Personnel  
**From:** Sergeant Nick Nicholas  
**Subject:** Training Bulletin #19-02 – Media/Press Access to Disaster Areas

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## **MEDIA ACCESS**

**OCSD Video - <https://youtu.be/ZfAEDZ2MWwU>**

### **CROSSING LINES:**

**Penal Code Section 409.5** provides for an exception to the media to cross a police or fire line into an area that has been closed to the public due to menace to public safety or calamity.

Such areas might include: train wreck, earthquake, disaster area, brush fire, flood, hurricane, or explosion.

### **Press Passes:**

Media credentials are a reporter's ticket through a police or fire line where the general public cannot enter.

**Assuming risk.** Members of the media who cross a police or fire line into a restricted disaster area assume the risk of the danger the area poses. Officers should warn the media about the potential danger before allowing access. **Never use safety as a reason to restrict media access.**

**Credentials.** Most media outlets issue credentials to employees. Such credentials, even a business card, should be enough to verify a member of the media. Most police and fire departments honor press passes issued by other agencies.

## **CRIME SCENES**

Access to crime scenes and police and fire command posts do not fall under the media exception to Penal Code Section 409.5.

- Media can go wherever the public has access.
- Officers may provide **more** access to media than the public at scene, but **not less**.
- Media may film or report anything they observe while legally present at the scene.
- Do not create artificial barriers.
- **Media may get as close to the crime scene as the farthest piece of evidence.**

# **Media Access to Areas Closed to the Public**

## **Questions and Answers**

### *Penal Code Section 409.5 and California Case Law*

#### **What constitutes justification to close an area?**

"Menace to public health or safety created by a calamity." Examples: flood, storm, fire, earthquake, explosion, accident, or other disaster. Others: beach closures from sewage spills, hazardous materials, riot or civil disturbance.

#### **Who has authority to close an area?**

Full-time peace officer personnel named in 409.5 PC, and/or designated as peace officers in 830.2 PC.

#### **Does a mayor, city manager, or fire chief have closure authority?**

Consult Government Code Section 8630-34.

#### **How many types of areas can be designated for closure?**

1. Disaster area: covered in (A) of 409.5 PC. The area can be broadly defined as the disaster may spread. It can include actual disaster site as well as location immediately surrounding, including staging areas. Note: According to an Attorney General's (AG) opinion, school districts have special rules, AG opinion 95-509.

2. Command Post Areas: covered in (B) of 409.5 PC. CP can be closed, including area immediately surrounding the CP. Command posts can be an emergency field CP or a regional EOC (Emergency Operations Center) at a distance from the disaster.

3. Victims' shelters and Medical Facilities: These areas are not in the statute, but are often closed as they are on private property and tenants can regulate entry.

#### **How long can area be closed?**

For the duration of the emergency, this can include the aftermath of disaster for cleanup.

#### **How are closed areas identified?**

Ropes, markers or guards. This is broadly defined, but the area must be designated or marked. Courts have given reasonable interpretation.

#### **What constitutes violation of being in closed area?**

An unauthorized person who willfully and knowingly enters, and who willfully remains within the area after receiving notice to evacuate is guilty of a misdemeanor. Thus elements are: entering and remaining after given notice to leave.

#### **What action can be taken against violators?**

Can arrest any unauthorized person who willfully remains after notice to leave.

#### **Is anyone exempted, other than "Authorized person"?**

By the statute, "duly authorized representatives of the news media" are exempted from staying out. They assume the risk of the danger for which the area was closed to the public. This includes representatives from news services, newspapers, television stations, radio stations, etc.

### **What is "duly authorized"?**

"Duly authorized" does NOT mean government authorized, according to the AG. Thus, "duly authorized" is authorized by any news agency. Thus, limiting access for the want of a police issued press pass is not justifiable in the presence of other proof affiliation with news agency.

### **What about freelance reporters/photographers for the internet or high school reporters?**

This becomes more problematic. You need to use your discretion. Consider the age of the reporter (minor?). What is the public interest in the calamity? What is the interest to the questionable reporter's entity? Is it worth the hassle to keep them out? What harm will they cause by being allowed access?

### **Can the media be required to check in?**

Probably not. Again, what's the point? Why taken on the hassle and added work?

### **Can media vehicles be excluded even when reporters are given access?**

Yes, when their presence interferes with emergency operations, e.g. restricting access for police and fire vehicles.

### **Does the media have greater right than the public to enter disaster scenes?**

Yes, that was the legislative intent when the policy was made.

### **Can news media ever be restricted in a closed area, under 409.5 PC?**

Yes, for a limited duration, but only when their presence is interfering with work of emergency crews. The case was *Leiserson v. City of San Diego* (1986) Cal.Rptr. 22-29. A reporter at a plane crash in 1978 was arrested after he was warned to leave and refused. Police initially believed crash may have been related to a bomb, constituting a crime scene.

The Court wrote:

*...press representatives must be given unrestricted access to disaster sites unless police personnel at the scene reasonably determine that such unrestricted access will interfere with emergency operations. If such a determination is made, the restrictions on media access may be imposed for only so long and only to such an extent as is necessary to prevent actual interference. (p. 29.)*

### **What If the disasters site is more than a disaster site, i.e. a crime scene?**

If police reasonably believe the closed area is also a crime scene, the media may be restricted entry under Penal Code Section 148.2.

### **Should an officer at the scene seize a reporter's press pass if the reporter is causing a problem?**

Not a good idea. To gain access the reporter needs to identify him or herself, so better to write down his/her name and agency. If you are going exclude him/her, do it without taking the pass. Report them to your media liaison for your department and let the authority which issues the press pass revoke his/her privileges and get the pass back.