

adopted: 02/11/2005

GENERAL ORDER

SUBJECT: RECORDING OF SUSPECTS IN SERIOUS CRIMES Number: 2-23A
& THE PRESERVATION OF NOTES & RECORDS

EFFECTIVE DATE: 00/00/0000

REVIEW DATE: 00/00/0000

AMENDS/SUPERSEDES: 00/00/0000

APPROVED: _____
Chief Law Enforcement Officer

I. POLICY

This agency recognizes the importance of recording custodial interrogations related to serious crimes when they are conducted in a place of detention. A recorded custodial interrogation creates compelling evidence. A recording aids law enforcement efforts by confirming the content and the voluntariness of a confession, particularly when a person changes his testimony or claims falsely that his or her constitutional rights were violated. Confessions are important in that they often lead to convictions in cases that would otherwise be difficult to prosecute. Recording custodial interrogations is an important safeguard, and helps to protect the person's right to counsel, the right against self-incrimination and, ultimately, the right to a fair trial. Finally, a recording of a custodial interrogation undeniably assists the trier of fact in ascertaining the truth.

Minimum Standard: 1

II. PURPOSE

To establish guidelines and procedures for officers of this agency regarding the recording of certain custodial interrogations of persons and to preservation of these recordings and the notes and other records related to the recordings.

III. DEFINITIONS

A. Custodial Interrogation: An interrogation during which (1) a reasonable person would consider that person to be in custody in view of the circumstances, and (2) the person is asked a question by a law enforcement officer that is likely to elicit an incriminating response.

Minimum Standard: 3

B. Recording: Includes digital, electronic, audio, video or other recording.

Minimum Standard: 2

C. Place of Detention: A building owned or operated by a law enforcement agency, including a police station, at which persons may be held in detention in connection with criminal charges.

Minimum Standard: 4

D. Serious Crimes: Murder and all Class A, B and C offenses listed in Chapters 9, 11, 12, 13 and 27 of the Maine Criminal Code and the corresponding juvenile offense. Specifically they are:

		Class
17-A § 201	Murder	
17-A § 202	Felony Murder	A
17-A § 203	Manslaughter	A/C
17-A § 207	Assault of a child < 6 YOA	C
17-A § 208	Aggravated Assault	B
17-A § 209	Elevated Aggravated Assault	A
17-A § 210	Terrorizing	C
17-A § 210-A	Stalking	C
17-A § 213	Aggravated Reckless Conduct	B
17-A § 253	Gross Sexual Assault	A/B/C
17-A § 254	Sexual Abuse of Minors	C
17-A § 255-A	Unlawful Sexual Contact (formerly § 255)	A/B/C
17-A § 256	Visual Sexual Aggression Against Child	C
17-A § 258	Sexual Misconduct With Child < 14 YOA	C
17-A § 259	Solicitation of Child by Computer to Commit a Prohibited Act	C
17-A § 282	Sexual Exploitation of Minor	A/B
17-A § 283	Dissemination of Sexually Explicit Material	A/B/C
17-A § 284	Possession of Sexually Explicit Material	B/C
17-A § 301	Kidnapping	A/B
17-A § 302	Criminal Restraint	C
17-A § 303	Criminal Restraint by Parent	C
17-A § 651	Robbery	A/B

E. Excluded are Class D and E crimes in the applicable chapters that is increased to a felony crime by virtue of 17-A MRSA § 1252.

Minimum Standard: 5

IV. PROCEDURE - Law Enforcement Officers

A. Officers of this agency are responsible for knowing when custodial interrogations must be recorded, as well as this agency's procedures for the recording of such interrogations.

Minimum Standard: 9

- B. Officers of this agency are responsible for knowing how to operate any recording device that may be used when custodial interrogations must be recorded.
- C. Officers of this agency are responsible for being familiar with relevant case law regarding custodial interrogations. Two (2) references are the Maine Law Enforcement Officers Manual and the Maine Law Officer's Bulletin. The Bulletin is available online at www.state.me.us/ag/investigations/Bulletin

Minimum Standard: 9

- D. Unless exempted by this policy, a recording shall be made of any custodial interrogation conducted by an officer of this agency at a place of detention when the interrogation relates to any of the serious crimes listed in this policy.
- E. Preservation of Recording and Notes: The officer conducting the custodial interrogation or the case officer is responsible for preserving the recording and investigative notes and records specifically related to the recording as part of the investigative file until such time as the defendant plead guilty, is convicted, sentenced, direct appeal is exhausted, waived or procedurally defaulted; federal habeas corpus and appeal therefrom is exhausted, waived or procedurally defaulted, and; any writ of certiorari to the Supreme Court of the United States is exhausted, waived or procedurally defaulted. In those situations of custodial interrogation where there is no recording, the investigative notes and records specifically related to the interrogation shall likewise be preserved as part of the investigative file for the same period of time as set forth in this policy for the recording of interrogations.
- F. All investigative notes kept or retained must be filed with the case. These notes are generally discoverable.

Minimum Standard: 6

G. Exemptions to the Recording of Custodial Interrogations:

The requirement for a member of this agency to record a custodial interrogation does not apply to:

1. A situation when the recording is not feasible, including, but not limited to, when recording equipment malfunctions.
2. Spontaneous statements that are not made in response to interrogation.
3. Statements made in response to questions that are routinely asked during the processing of the arrest of a person.
4. Statements given in response to custodial interrogations at a time when the interrogator is unaware that a serious crime has occurred.
5. A situation when the person who is the subject of a custodial interrogation, refuses in writing or in a recording, to have the interrogation recorded.

Minimum Standard: 7

H. Officers must be aware that some persons with whom they come in contact and who will be the subject of a custodial interrogation may not understand or be fluent in the English language. If there are any questions about a person's ability to understand English, the officer must explore the need for an interpreter, including a sign language interpreter for the hearing impaired.

I. To determine the language in which a person is fluent for the purpose of seeking an interpreter, the officer should consider the agency's list of local interpreters available to provide services and any such lists maintained by the court, local colleges or universities. Fee-based telephone interpretation services can be researched over the Internet. Two such services may be found at www.language.com and www.lle-inc.com.

Minimum Standard: 8

V. PROCEDURE - Availability and Maintenance of Equipment

A. Availability: The acquisition and installation of any recording device shall be at the direction of the Chief Law Enforcement Officer of this agency. All officers will have available through a supervisor a device for the purpose of recording a custodial interrogation. The agency shall supply the recording media.

Minimum Standard: 10

- B. Maintenance and Repair:** An employee will be assigned to maintain all agency recording devices and that employee will:
1. Maintain and routinely clean the equipment according to the manufacturer's guidelines.
 2. Make arrangements for the servicing or repair of equipment by a qualified repair service.
 3. Notify the Chief Law Enforcement Officer when the equipment is beyond repair and needs to be replaced.

Minimum Standard: 10

VI. PROCEDURE - Control/Disposition of Recording and Notes Related to Custodial Interrogations

- A. Reporting:** When an officer of this agency is required by this policy to record a custodial interrogation, the officer will note in the incident report that a recording was made and whether notes relating to the recording were also made. Likewise, the officer will note in the incident report if a custodial interrogation is not recorded and the reason for not recording the interrogation.

- B. Control of Tapes and Notes Containing Evidence:**
1. All recordings and notes shall be labeled with the law enforcement officer's name, tape number (if known), incident number, and date of incident.
 2. All recordings and notes shall be stored with the case file or in a manner consistent with all other evidence.
 3. No person shall in any manner or for any purpose alter a recording of a custodial interrogation.

Minimum Standard: 11

- C. Discovery Requests for Copies of Recordings:**
1. If the prosecuting attorney requests to view or listen to a recording, the recording will be made available to the prosecutor for that purpose. The same opportunity will be afforded the defense, but only by instruction of the prosecuting attorney.
 2. The original recording of a custodial interrogation shall be retained by the agency.
 3. All investigative notes kept or retained must be filed with the case. These notes are generally discoverable.

Minimum Standard: 12

D. Public Requests for Copies of Recordings:

1. Any person who requests a copy of a particular recorded custodial interrogation should forward a written request to the Chief Law Enforcement Officer.
2. The request should be reviewed by the Chief Law Enforcement Officer to determine if it constitutes a public document to which the public has legitimate access.
3. Copies of recordings thus provided to the public (including insurance carriers) will be the subject of a reasonable charge for the purpose of recovering the cost to the agency of providing the copy.

Minimum Standard: 12

MAINE CHIEFS OF POLICE ASSOCIATION - ADVISORY

This Maine Chiefs of Police Association model policy is a generic policy provided to assist your agency in the development of your own policies. All policies mandated by statute contained herein meet the standards as prescribed by the Board of Trustees of the Maine Criminal Justice Academy. The Chief Law Enforcement Officer is highly encouraged to use and/or modify this model policy in whatever way it would best accomplish the individual mission of the agency.

DISCLAIMER

This model policy should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy will only form the basis for administrative sanctions by the individual Law Enforcement Agency and/or the Board of Trustees of the Maine Criminal Justice Academy. This policy does not hold the Maine Chiefs of Police Association, its employees or its members liable for any third party claims and is not intended for use in any civil actions.