

EAST LANSING POLICE DEPARTMENT

POLICY AND PROCEDURE

ORDER NUMBER: 43-13
SUBJECT: CUSTODIAL INTERVIEWS / INTERVIEW ROOM
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CHIEF OF POLICE:



43.1 PURPOSE

To establish procedures and be compliant with State of Michigan Law (MCL 763.7, 763.8, 763.9, and (763.10) as it pertains to custodial interrogation of suspects and the use of recording equipment during these custodial interrogations.

43.2 POLICY

When a custodial interview is conducted, State Law shall be followed. Certain interviews (to be defined later in this policy) shall be done in the interview room so that the interview can be electronically recorded and time stamped with the date and time of said interview(s). Officers are encouraged to electronically record interviews in other incidents or situations, especially in-custody interviews/interrogations. Officers have no obligation to inform the suspect of the recording.

43.3 DEFINITIONS

- A. Custodial Detention: means an individual's being in a place of detention because a law enforcement official has told the individual that he or she is under arrest or because the individual, under the totality of the circumstances, reasonable could believe that he or she is under a law enforcement official's control and is not free to leave.
- B. Place of Detention: means a police station, correctional facility, holding facility for prisoners, or other government facility where persons are held in detention in connection with criminal charges that have been or may be filed against them.
- C. Interrogation: means questioning in a criminal investigation that may elicit a self-incriminating response from an individual and includes a law enforcement official's words or actions that the law enforcement official should know are reasonably likely to elicit a self-incriminating response from the individual.

- D. **Major Felony:** means a felony punishable by imprisonment for life, for life or any term of years, or for a statutory maximum of 20 years or more, or a violation of section 520d of the Michigan penal code, 1931 PA 328, MCL 750.520d.
- E. **Major Felony Recording:** means the interrogation recording.

43.4 CUSTODIAL INTERVIEW PROCEDURES

- A. A law enforcement official interrogating an individual in custodial detention regarding the individual's involvement in the commission of a **major felony** (as defined above) shall make a time-stamped, audiovisual recording of the entire interrogation. A major felony recording shall include the law enforcement official's notification to the individual of the individual's Miranda rights.
- B. An individual who believes the individual's interrogation is being recorded may object to having the interrogation recorded. The individual's objection shall be documented either by the individual's objection stated on the recording or the individual's signature on a document stating the objection. If the individual refuses to document the objection either by recording or signature, a law enforcement official shall document the objection by a recording or signed document. A major felony recording may be made without the consent or knowledge of, or despite the objection of, the individual being interrogated.
- C. A major felony recording shall be produced using equipment and procedures that are designed to prevent alteration of the recording's audio or visual record.
- D. The following are exceptions to the recording procedure. Should one of these exceptions apply during an investigation, a notation shall be made in the police report why the recording(s) was (were) not made.
 - 1. The accused refuses to be recorded (see above State Law, 43.4 (B)).
 - 2. Statements made in response to routine questions at the time of arrest or processing.
 - 3. Spontaneous utterances not made during interviews.
 - 4. Statements made during interviews of a less serious crime (non Major Felonies).
 - 5. Equipment fails and replacement equipment not readily available.
 - 6. Joint agency investigations in which the participating agency is not the lead entity.
- E. If the person to be interviewed does not speak English, an interpreter shall be contacted to aid in the interview.
- F. Any failure to record a statement as required under 763.8 or to preserve a recorded statement does not prevent any law enforcement official present during the taking of the statement from testifying in court as to the circumstances and content of the individual's statement if the court determines that the statement is otherwise admissible. However, unless the individual objected to having the interrogation

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recorded and that objection was properly documented (see above 43.4 (B)), the jury shall be instructed that it is the law of this state to record statements of an individual in custodial detention who is under interrogation for a major felony and that the jury may consider the absence of a recording in evaluating the evidence relating to the individual's statement.

Officer Responsibilities for Reporting:

1. The lead officer / detective shall email the DB Lieutenant, the DB Sergeant, and the DB secretary about the need to make a CD copy of the interview. This email will be sent prior to the officer going off duty on the day of the interview.
2. When the officer receives the CD copy of the interview, they shall place the copy into evidence.

43.5 DEPARTMENT USE AND RELEASE OF AUDIO/VISUAL RECORDINGS

- A. The department retains all property rights, including copyright, to all images recorded by or on behalf of the department, including released copies.
- B. Duplication or release of department audio/visual recordings is prohibited without a court order or the authorization of the Chief of Police or their designee.
- C. Use of audio/visual recordings is intended only for official departmental business. Any other use is expressly prohibited without the authorization of the Chief of Police or their designee.
- D. All recordings, while in the performance of an employee's duties or on departmental audio/visual equipment shall remain the property of the department and in their original state and shall not be duplicated, altered, or erased except as covered by this policy.
- E. The police report shall make note of the existence of a recorded interview.
- F. Original recordings will not be released. The exception to this practice is an original recording that is evidence and is being released to the court. In those cases, a duplicate recording will be labeled as duplicate and securely maintained.

43.6 MISCELLANEOUS

- A. Officers of this department assigned to or assisting other law enforcement agencies will be guided by this policy.
- B. This order constitutes department policy, and is not intended to enlarge the employer's or employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense with respect to third-

party claims insofar as the employer's or employee's legal duty as imposed by the law. A failure to comply with sections 43.4 (A,B,C,or D) and / or 43.4 (F) does not create a civil cause of action against a department or individual. The requirement in 43.4 (A,B,C or D) to produce a major felony recording is a directive to departments and law enforcement officials and not a right conferred on an individual who is interrogated.

- C. Violations of this policy, or portions thereof, may result in disciplinary action.