

GENERAL ORDER



Subject
Electronic Recording of Custodial Interrogations

Topic	Series	Number
SPT	304	16

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DISTRICT OF COLUMBIA

Replaces
GO-SPT-304.16 (Electronic Recording of Custodial interrogations), dated January 31, 2005

Rescinds
TT #02-007-05, dated February 2, 2005
TT #02-009-05, dated February 1, 2005

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I. BACKGROUND

The Metropolitan Police Department (MPD) is responsible for the investigation of felony and misdemeanor criminal offenses occurring in the District of Columbia. This includes the responsibility to electronically record interrogations for all crimes described in this directive for those who have been arrested, or whose freedom of movement has been restrained to the degree associated with a formal arrest.

The purposes of recording custodial interrogations that are conducted in MPD interview rooms equipped with electronic recording equipment are to:

1. Create an exact record of what occurred during the course of a custodial interrogation;
2. Provide evidence of criminal culpability;
3. Document the subject's physical condition and demeanor;
4. Refute allegations of police distortion, coercion, misconduct, or misrepresentations;
5. Reduce the time required to memorialize the custodial interrogation;
6. Reduce the time required to litigate suppression motions;
7. Enable the interviewer to focus completely on his/her questions and the subject's answers without the necessity of taking notes; and
8. Enable the investigator/detective to more effectively use the information obtained to advance other investigative efforts.

II. POLICY

The policy of the Metropolitan Police Department is to electronically record, in their entirety, and to the greatest extent feasible, custodial interrogations of persons suspected of committing a crime of violence, as that term is defined in D.C. Official Code § 23-1331(4), and other crimes as listed in this directive, and as determined by the Chief of Police, when the interrogation takes place in Metropolitan Police Department interview rooms equipped with electronic recording equipment.

III. DEFINITIONS

When used in this directive, the following terms shall have the meanings designated:

1. Custodial interrogation – Words or actions that the police should know are reasonably likely to elicit an incriminating response from a person who is suspected to have committed a crime of violence, and other crimes as listed in Section IV of this directive, or other crime as determined by the Chief of Police, and who is under formal arrest, or whose freedom of movement has been restrained to the degree associated with a formal arrest.
2. Crime of Violence per D.C. Official Code § 23-1331(4) –
 - a. Aggravated assault;
 - b. Act of terrorism;
 - c. Arson;
 - d. Assault with a dangerous weapon;
 - e. Assault with intent to commit any offense;
 - f. Burglary or attempted burglary;
 - g. Carjacking;
 - h. Child sexual abuse;
 - i. Cruelty to children in the first degree;
 - j. Extortion or blackmail accompanied by threats of violence;
 - k. Kidnapping;
 - l. Malicious disfigurement;
 - m. Manufacture or possession of weapons of mass destruction;
 - n. Mayhem;

- o. Murder;
 - p. Robbery;
 - q. Sexual abuse in the first, second, and third degrees;
 - r. Use, dissemination, or detonation of a weapon of mass destruction;
 - s. Voluntary manslaughter;
 - t. An attempt or conspiracy to commit any of the foregoing offenses, as defined by any Act of Congress, or any State law, if the offense is punishable by imprisonment for more than one year.
3. Interview room – A room at a Metropolitan Police Department facility that is equipped with electronic recording equipment, including, but not limited to, recorders or cameras that use audiotape, videotape, film, CDs, DVDs, or digital equipment.
4. Subject – A person who has been arrested, or whose freedom of movement has been restrained to the degree associated with an arrest.

IV. REGULATIONS

- A. Custodial interrogations of persons suspected of committing a crime of violence, or other offense as determined by the Chief of Police, shall be recorded in their entirety, from the time the subject first enters the MPD interview room, until the subject leaves the interview room, except as provided for in Section IV, I, 1 (a-b).
- B. Additional offenses that require electronic recording:
- 1. Assault on a police officer;
 - 2. Assault with intent to kill, commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse;
 - 3. Theft, or Attempted Theft of a Motor Vehicle;
 - 4. Any offense resulting in a Traffic fatality;
 - 5. Unauthorized Use of a Vehicle.
- C. Electronic recordings are also required for the suspected activities of gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation.

- D. The Watch Commander may determine to electronically record interrogations for other offenses, which will be conducted in accordance with the rules, regulations, policies, and procedures in this directive.
- E. **ALL** custodial interrogations shall be conducted by detectives/investigators. Members who are not detectives or investigators shall request that a detective/investigator be made available when a subject is to be interrogated in accordance with the provisions in this directive. If a detective/investigator is unavailable, members shall contact the Superintendent of Detectives Division Watch Commander, who will arrange to have a detective/investigator conduct the custodial interrogation.
- F. No detective/investigator shall avoid placing a subject in an interview room.
- G. At no time shall a member of any law enforcement agency be armed while conducting a custodial interrogation in an MPD interview room. All firearms shall be secured in a gun-lock box.
- H. Custodial interrogations shall not be conducted unless the subject has waived his/her Miranda rights.
1. If the subject has not previously been given his/her Miranda rights, the recording shall include the giving of rights to the subject, and his/her or her waiver of those rights, if any.
 2. If Miranda rights have been waived before the subject enters the interview room, the interviewer (or another law enforcement officer) shall review the rights card with the subject, and ask the subject to affirm that he/she was informed of, and waived, those rights.
 3. The subject shall be recorded in both instances.
- I. Except for spontaneous utterances, all custodial interrogations, as required in this directive, are to be conducted in an MPD interview room equipped with electronic recording equipment, and shall be **video AND audio recorded**.

The recording equipment shall not be turned off unless:

1. The subject states that he/she does not want the interview to be recorded.
 - a) If the subject requests that he/she does not want the interview to be recorded, the interviewer will record the subject making this request.
 - b) The recording shall be preserved in accordance with the provisions in this directive, and shall include everything that was recorded in the interview room up to, and including, the subject's request that the interview not be recorded, and the giving of the Miranda Warning or an affirmation that the Miranda Warning was

given and the Miranda Rights were waived in accordance with Section IV, H, (1-2) of this directive.

2. The subject, or both subject and interviewer, leave the interview room. The purpose for which a subject leaves the interview room shall be included on the recording before it is turned off. When the recording is turned back on, the interviewer shall state the length of the break, and what transpired during the period of time that the recording was turned off, if anything other than the stated purpose transpired.
- J. The recording of a subject's custodial interrogation shall be documented in the Washington Area Criminal Intelligence Information System (WACIIS).
- K. If the video/audio recording equipment is not working, the detective/investigator responsible for conducting the custodial interrogation shall conduct the interrogation at another interview room, or in an interview room at another MPD facility equipped with electronic recording equipment.
1. If the interrogation is conducted at another MPD facility, the detective/investigator must obtain permission from his/her supervisor at the Detective Unit;
 2. The detective/investigator shall note this in the Electronic Recording logbook of the element at which the recording took place, and the Electronic Recording logbook of his/her assigned element.
 3. In each instance when it is only possible to make an audio recording of the interrogation, the detective/investigator will obtain permission, through the chain of command, from the SDD Commander.
- L. If the equipment malfunctions or is inadvertently not turned on, or for some other reasons the recording cannot be made, the circumstances shall immediately be reported to the SDD Watch Commander, and documented in WACIIS.
- M. Each failure to electronically record a custodial interrogation due to equipment failure shall be explained and documented in a report to the Assistant Chief, Operational Support Command.
- N. The element detective supervisor (Lieutenant or above) shall review the previous day's arrests to ensure that interrogations are being electronically recorded, as required, for the crimes described in this directive.
- O. Pursuant to D.C. Official Code §23-542(b)(2), it is lawful for the police to record a conversation if one of the parties (including the interviewer) has given prior consent to the recording.
1. The police are not required to inform a subject that a recording is being made of the custodial interrogation.

2. The interviewer shall NOT, at any time, explicitly or implicitly, encourage a subject to request that the recording equipment be turned off.
3. If the subject states that he/she will voluntarily speak with law enforcement personnel only if the custodial interrogation is not electronically recorded, then the recording equipment shall be turned off. The interviewer will record the subject making this request in order to document that the request was made.
4. A recording of everything that transpired up to the point where the equipment was turned off shall be preserved.

V. PROCEDURAL GUIDELINES

A. Processing Offenses Requiring Electronic Recording of Interrogations

1. When the offense requires an electronic recording as described in this directive, arresting officers shall notify the District Watch Commander and the supervisor at the Detective Unit, upon arrival at the element.
2. The SDD and District Watch Commanders shall review the arresting officer's completed paperwork to ensure interrogations are being electronically recorded for offenses as required in this directive.

B. Using MPD Recording Equipment

1. The detective/investigator conducting the interrogation shall test the recording equipment prior to recording a custodial interrogation to ensure it is operating properly. A short video and audio test recording can be made and played back prior to the interrogation.
 - a. If the video/audio recording equipment fails to operate properly before, or during, a recorded custodial interrogation, the individual may be transported to the nearest location equipped to handle video/audio recordings as described in Section IV, K.
 - b. Any video/audio recording equipment that is faulty, or in need of repair, shall be immediately be reported to Facilities Branch, the appropriate administrative staff, and the SDD Watch Commander.
 - c. The Facilities Branch shall request that the equipment be repaired by an authorized contractor.
2. Only new, unused recording media shall be used for electronic recordings.
3. A minimum of three copies shall be made from the original video/audio recording of the interrogation. Immediately upon completion of all recordings, the recording(s) shall be removed from the recording

machine. If using a tape cassette, the safety tabs on the tape cassette shall be removed to prevent another recording on the same cassette.

4. Labels shall be placed on all original recordings and the three copies, and include the following information:
 - a. The original recording shall be labeled: "ORIGINAL RECORDING;"
 - b. The first copy shall be labeled "MASTER COPY OF ORIGINAL RECORDING." Subsequent copies shall be labeled "COPY ONE," "COPY TWO," etc.
5. All labels on the original recording, the master copy, and subsequent copies shall contain:
 - a. Case number;
 - b. Date and time the interview began and ended, and location of the custodial interrogation; and
 - c. Name of person who was recorded, and name of interviewers who conducted the custodial interrogation (including the rank of the investigator/detective);
 - d. Name(s) of any other person present in the interview room during the custodial interrogation.
6. The detective who conducted the interview shall retain one copy for the case file, and provide the original and all other copies to a supervisor. The recording(s) shall be considered evidence, and shall be subject to all MPD policies, directives, and regulations pertaining to the storage and handling of evidence as outlined in General Order 601.1 (Recording, Handling and Disposition of Property Coming into the Custody of the Department), GO-SPT-601.02 (Preservation of Potentially Discoverable Material), and any other applicable publications.
7. The supervisor shall:
 - a. Provide the original recording to the Property Clerk at the District to log into the District Property book;
 - b. Place the master copy and all other copies in the storage container in the case file room;
 - c. Log in the Electronic Recording logbook the Property Book entry number, the date and time of the entry, and the subject's full name.

8. Each time a copy is removed from storage, the removing member shall note in WACIIS who removed the copy, the reason for removing, and who reviewed the copy if it was played. A copy of the WACIIS report shall be maintained in the relevant case file.
9. The original video/audio recording shall not be removed from MPD, unless the prosecuting attorney handling the case requests the original. In this instance, it shall be made available.
 - a. The detective/investigator shall ensure there is at least one copy archived before providing the original to the prosecuting attorney. If not, a copy of the original shall be made and maintained as set forth in Section V, B, 1-6 of this directive.
 - b. The prosecuting attorney shall be required to sign for the original, and print his/her name, and the date and time the original was removed from the MPD facility.

C. Conducting An Electronically Recorded Custodial interrogation

1. Only one subject/arrestee shall be in any interview room at any given time.
2. The subject/arrestee shall be thoroughly searched prior to being placed in the interview room.
3. The subject/arrestee shall be seated in the interview room so that his/her face is visible on camera. If possible, the interviewer's face should be visible as well.
4. The interviewer shall activate the recording equipment as set forth in Section V, A. After the equipment is activated, the interviewer shall write down AND verbally state:
 - a. Date, time and location of the interview;
 - b. Identity of all persons present;
 - c. Case number; and
 - d. Subject matter of the investigation.
5. The subject shall be read his/her Miranda rights, using a PD 47 (Warning as to Your Rights) and shall be asked to sign the card acknowledging those rights. If the subject indicates he/she previously waived his/her Miranda rights prior to the electronic recording of the custodial interrogation, the interviewer shall inquire whether the subject has been advised of his/her rights, whether a PD 47 was executed, and affirm that the subject waived his/her Miranda rights.

6. The interviewer shall ask the subject whether any promises have been made, and whether the subject has been threatened or mistreated in any manner.
7. If a subject refers to any injuries or marks on his/her body during the recorded session, or if the interviewer observes any injuries or marks, the interviewer shall ask the subject how he/she received the injuries, and request that they be displayed (if practicable) so they may be recorded.
 - a. In instances where the subject suggests that he/she may have acted in self-defense, the interviewer should request that the subject demonstrate what the respective parties allegedly did, including the manner in which the subject used a weapon, when applicable.
 - b. In all interviews, the subject/defendant shall be given an opportunity to explain, in his/her own words, what occurred during the commission of the offense.
8. The recording should run without interruption, unless extenuating circumstances require a break. In the event that an interruption occurs, the interviewer shall state the time and reason for the interruption (Example: "The time is now 10:23 a.m. and we are going to take a short break so that_____.")

After recording is resumed, the interviewer shall again state the time. (Example: "The time is now 10:30 a.m.; we have completed our break, and will now resume the custodial interrogation.") The interviewer shall ask the subject whether anything occurred during the break other than the stated purpose of the break.

- D. Recording of Non-English Speaking/Hearing Impaired Persons shall be conducted as follows:
1. When an interviewer needs to record a custodial interrogation of a non-English speaking/hearing-impaired person, he/she shall obtain and utilize a qualified interpreter (as defined by the Interpreter Act, D.C. Official Code § 2-1901), or provide the subject with the USAO form that permits the subject to waive his/her right to a qualified interpreter.
 - a. The waiver shall be made available in the language in which the subject is fluent.
 - b. If the waiver is not available in the appropriate language, a qualified interpreter shall read the waiver to the subject.
 2. When recording custodial interrogations of deaf/hearing-impaired persons, interviewers shall adhere to the procedures outlined in GO-OPS-304.14 (Deaf or Hearing-Impaired Arrestees).

- E. Juveniles who are subject to custodial interrogations shall be transported to the Youth Investigations Branch to be electronically recorded. The electronic recording shall be conducted prior to the juvenile's transportation to the Juvenile Processing Center. (CALEA 44.2.3, a-c)
1. Juveniles shall be handled in accordance with General Order 305.1 (Handling Juveniles).
 2. The electronic recording of juvenile interrogations shall be conducted in accordance with the provisions in this directive, and consistent with all law, rules, regulations, and policies pertaining to the interrogation of juveniles.
- F. Interviews with victims, witnesses, and other persons who are not under arrest, or whose freedom of movement has not been restrained to the degree associated with a formal arrest, are not required to be recorded under this directive.
- G. District Commanders shall ensure Watch Commanders for each tour of duty are reconciling the arrests that require electronically recorded interrogations as described in Section V, A, (1-2).
- H. Commander, Superintendent of Detectives Division shall:
1. Ensure that detectives/investigators are made available to conduct custodial interrogations in accordance with the provisions in this directive;
 2. Approve all requests to conduct audio recordings only;
 3. Ensure that the video/audio equipment and recording media are maintained/replaced as applicable;
 4. Ensure that requests for original recordings from prosecuting attorneys are satisfied in a timely manner, and that backup copies are made of all original recordings before they are provided to the prosecution;
 5. Compile statistics on custodial interrogations that include, but are not limited to:
 - a. The total number of custodial interrogations conducted;
 - b. The number of custodial interrogations required to be recorded as outlined in this directive;
 - c. The number of custodial interrogations that were not recorded as required;
 - d. The reasons given for not recording as required; and

- e. The sanctions imposed for failing to record as required.
6. Forward the compiled statistics to the attention of the Assistant Chief, Office of Professional Responsibility, by the 5th of each month.
7. Ensure Detective Units maintain an Electronic Recordings logbook that contains, at minimum:
 - a. An inventory of all custodial interrogation recordings;
 - b. A record of all copies that are made, including the name of the person making the copy, the time and date the copy was made; and the name(s) of any persons to whom the copy was provided;
 - c. A record of any removal of the original recording from the Property Section, to include the name of the person removing the original recording, the time and date of the removal, the name of the prosecuting attorney requesting the original recording (as applicable), the name of the person returning the original recording, and the time and date of the return.
8. Ensure that members are made aware of, and act in accordance with, the provisions in this directive.
- I. The Assistant Chief, Office of Professional Responsibility, shall submit to the Chief of Police relevant annual statistics on custodial interrogations conducted by MPD that shall include, but not be limited to:
 1. The total number of custodial interrogations conducted;
 2. The number of custodial interrogations required to be recorded as outlined in this directive;
 3. The number of custodial interrogations that were not recorded as required;
 4. The reasons given for not recording as required; and
 5. The sanctions imposed for failing to record as required.

VI. CROSS REFERENCES

- A. DC Law/Official Code
 1. DC Law 15-351 (Electronic Recording Procedures Act of 2004)
 2. D.C. Official Code §23-1331(4) (Definitions)

3. D.C. Official Code §23-542(b)(2) (Interception, disclosure, and use of wire or oral communications prohibited)
- B. General Orders
1. General Order 601.01 (Recording, Handling and Disposition of Property Coming into the Department)
 2. GO-SPT-601.02 (Preservation of Potentially Discoverable Material)
 3. GO-OPS-304.14 (Deaf or Hearing-Impaired Arrestees)
 4. General Order 1202.1 (Disciplinary Procedures and Processes)
- C. SDD Standard Operating Procedures for Maintaining the Electronic Recording Logbook, and the Storage and Labeling of Recording Media

VII. PROVISION

In **ALL** cases where the provisions of this order are in conflict with orders previously issued, the provisions of this order shall prevail.

//SIGNED//
Charles H. Ramsey
Chief of Police

CHR:MJF:NMJ:SOA:DAH:jah