

GENERAL ORDER

PORT WASHINGTON POLICE DEPARTMENT

SUBJECT:	CUSTODIAL INTERROGATION / ELECTRONIC RECORDING	NUMBER:	6.3.3
		ISSUED:	5/6/09
SCOPE:	All Sworn Personnel	EFFECTIVE:	5/6/09
DISTRIBUTION:	General Orders Manual	<input checked="" type="checkbox"/> RESCINDS	34.4
		<input type="checkbox"/> AMENDS	
REFERENCE:	WI State Statutes: 938.195, 968.053, 968.31, 972.115, 2005 Wisconsin Act 60	WILEAG 3 RD EDITION STANDARDS: 6.3.6, 6.6.4	

INDEX AS: Custodial Interrogation
 Juvenile Custodial Interrogation
 Electronic Recording

PURPOSE: The purpose of this policy is to establish guidelines for electronic recording and the associated use, management, storage and retrieval of recordings of custodial questioning. Further, this policy is intended to reduce the risk of wrongful conviction of innocent persons and to ensure that the highest-quality evidence possible is obtained from custodial interviews.

This Order consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROCEDURES

I. POLICY

Electronic recording provides persuasive documentary evidence and helps defend against civil litigation and allegations of officer misconduct. As a general rule, it is the policy of the Port Washington Police Department to record all custodial juvenile interviews and all custodial interviews of adults arrested for felony offenses.

To maximize the effectiveness of electronic recording and the integrity of audio and/or video documentation, officers assigned the use of recording devices shall adhere to the operational objectives and protocols outlined in this policy.

II. DEFINITIONS

- A. Recorded Media: Refers to audio and/or video signals recorded on any of several storage media, including analog tape (VHS, SVHS, Hi 8mm), digital tape (DV) or other portable digital storage media (CD, DVD, hard drive, etc).
- B. Electronic Recording: A visual and/or audio recording using digital or analog storage format.
- C. Digital Recording: An electronic recording typically stored on a CD, DVD or microchip.
- D. Analog Recording: An electronic recording typically stored on a VHS, cassette or micro-cassette tape.

III. PROCEDURES

- A. Electronic recording is intended to:
 - 1. Accurately capture statements and events during the course of a custodial questioning;
 - 2. Enhance the ability to document and review statements and actions for internal reporting requirements and for courtroom preparation and presentation;
 - 3. Capture visual and/or audio information for use in current and future investigations;
 - 4. Document acknowledgment of and rigid adherence to suspects' rights and the law;
 - 5. Allow the questioning process to become part of the investigation's collection of information, rather than simply a means to secure an admission or a confession;
 - 6. Allow the opportunity to review the process that led to the confession or admission; and
 - 7. Preserve the integrity of officers and the investigative process.
- B. Mandatory Recording Requirements
 - 1. Recording is mandatory for any custodial questioning of juveniles (persons under 17 years of age) for an offense that could be a crime if prosecuted under state statute; When Miranda is required, recording is required;

2. Recording is mandatory for any custodial questioning of adults (persons 17 years of age and older) for a crime that is a felony;
3. Recording should begin at the start of questioning to include the reading of Miranda, and continue without interruption until questioning stops; and
4. In situations where recording is mandatory, in custody questioning should occur only at a place of detention equipped with the necessary recording equipment.

C. Exceptions

1. Recording may not be possible if:
 - a) The recording device does not work and there is no other device reasonably available;
 - b) The officer operating the recording device inadvertently fails to operate it properly;
 - c) During the interview, the recording device malfunctions without the officer's knowledge.
 - d) Person makes a statement to law enforcement spontaneously or in response to a routine booking question.
 - e) The exigency of the situation requires immediate questioning to protect the safety of officers and the public, and to prevent the destruction of evidence.

D. Equipment Maintenance

1. It is the responsibility of this agency to ensure that audio and/or video recording equipment is available and properly set up according to manufacturers' recommendations.
2. Personnel are responsible for inspection and general maintenance of equipment assigned.
3. Malfunctions, damage or theft of equipment shall be reported to the immediate supervisor promptly if recording equipment fails or malfunctions, a subsequent written report is required and shall include information on the suspected cause(s) of equipment failure, as available, and any recommendations for corrective action.

E. Equipment Operation

1. It is up to the individual officer to ensure that he/she is trained in the use of the recording equipment.
2. To help ensure accuracy and consistency of accounts, officers shall review recordings when preparing written reports of events.
3. With the exception of police radios, officers shall ensure that the volume from other electronic devices does not interfere with recordings.
4. Officers shall not erase, alter, reuse, modify or tamper with recordings.
5. To prevent damage, original recordings shall not be viewed or played back in any equipment other than the equipment issued or authorized by the department or IT technician.
6. Recordings shall be marked as containing evidence and then submitted to the property custodian or IT technician to be held and/or duplicated for criminal prosecution.
7. If the recording is to be stopped for any reason, such as breaks or the returning of a suspect to lock up, the reason shall be documented by the interviewer and included in the incident report narrative.
8. Except as previously noted, when recording equipment is activated to document an event, the equipment shall not be deactivated until the event has been concluded.

F. Recorded Media

1. All recording media, recorded images and audio recordings are the property of the Port Washington Police Department.
2. Unofficial or unauthorized dissemination outside of the agency is strictly prohibited without specific written permission of this agency's chief executive officer or designee.
3. When possible and practical, a copy of the original media shall be used for viewing by investigators, staff, training personnel and the courts (unless otherwise directed by the courts) to preserve the original media in pristine condition.
4. At the conclusion of any trial proceedings or as otherwise authorized by the prosecutor's office for which the media was required, all

copies shall be submitted to the property custodian for retention and storage.

G. Notice and Consent for Recording

1. Surreptitious recording of suspect's conversations are prohibited by Wisconsin State Statute 968.31. However, during custodial interrogations of which the officer is a party, a one party consent recording is permitted.
2. Law enforcement authorities are not required to inform adult or juvenile suspects of recording, but are encouraged to do so.
3. Since consent is not a prerequisite to recording, lack of consent to record does not affect the admissibility of a recorded statement. However, providing notice of the intent to record can foster public trust in law enforcement.
4. Officers should trust their discretion about whether a particular suspect is likely to be inhibited by notice of recording.
5. For juveniles, interrogations shall not be unreasonable in length, with no more than two officers present. When appropriate, parents will be advised of the results of the interrogations.
6. During the course of a juvenile interview/interrogation, the officer shall attempt to answer questions, as well as explain department and juvenile justice system procedures to the juvenile offender and his/her parent/guardian.

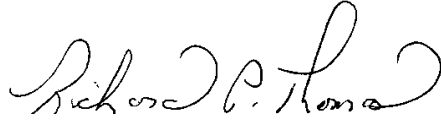
H. Written Summaries of Custodial Questioning and Written Statements

1. Preparing written summaries/reports is still important. Electronic recording is not a substitute for traditional methods of memorializing interviews. Defendants might not dispute the questioner's version of what occurred during an interview, and some cases might, therefore, be resolved based on written reports alone, thus minimizing the costs of copying or transcribing recordings.
2. Obtaining written/signed statements from suspects is still very important. Such statements can provide clear and concise evidence of guilt. Written/signed statements also tend to demonstrate that incriminating statements were made voluntarily.
3. Written statements should summarize the suspect's relevant oral statements and admissions.

4. A signed statement serves as a valid backup should a recording device malfunction.

APPROVED:

DATE:



5/6/09

Chief Richard P. Thomas