

PITTSFIELD POLICE DEPARTMENT  
PROCEDURE

POLICY & PROCEDURE: 39	SUBJECT: Recording of Custodial Interrogations	
EFFECTIVE DATE: 01/01/2008	EXPIRATION DATE: Indefinite	
THIS POLICY RESCINDS ANY PREVIOUSLY ISSUED MEMORANDUM, DIRECTIVES, NOTICES, SPECIAL OR GENERAL ORDERS IN CONFLICT WITH THIS POLICY.		
AUTHORIZED BY:	Matthew E. Harshberger Director of Public Safety	
REVISIONS: 12-01-10, 01-01-13		

**POLICY:**

This policy shall be followed by all Department Personnel. Adherence to any and all procedures related to this policy are required and hereby incorporated by reference for the purpose of determining compliance.

**PURPOSE:**

To establish procedures for conducting electronically recorded custodial interrogations in a place of detention.

**APPLICATION:**

This Policy is for internal use only and is not intended to enlarge or negate the employee's civil and criminal liability in any way. Non-compliance with this policy and procedures constitutes a violation of Department Rules and Regulations, except in such case where compliance would cause a violation of state or federal laws.

**I. GENERAL POLICY**

- A. The department requires custodial interrogations of any person in a place of detention and suspected of committing a major felony to be electronically recorded.
- B. Officers are encouraged to electronically record interviews/interrogations in other incidents or situations.
- C. Officers have no obligation to inform the suspect of the recording.

**II. DEFINITIONS**

- A. **Custodial:** For the purpose of this policy, a custodial situation exists when an officer tells a person that they are under arrest, or in a situation when a
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“reasonable person” in that person’s situation would feel that, under the circumstances, they are not free to leave.

- B. **Interrogation:** Includes any questioning that may elicit an incriminating response from the suspect about a crime. It also includes any words or an action by the officers that the officers should know is reasonably likely to elicit an incriminating response from the suspect.
- C. **Place of Detention:** Defined as a police station, correctional facility, holding facility for prisoners, other government facility, or the backseat of a patrol vehicle where persons are held in detention in connection with criminal charges that have been, or may be, filed against them.
- D. **Major Felony:** Defined as a felony punishable by imprisonment 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 (criminal sexual conduct 3<sup>rd</sup>).

### III. PROCEDURE

- A. A recording shall be made of any custodial interrogation conducted by an officer of this agency when the interrogation is related to:
  - 1. Homicide – All degrees and forms;
  - 2. Robbery - All degrees and forms including carjacking and assaults with intent to rob;
  - 3. Criminal Sexual Conduct – All degrees; and
  - 4. Assaults involving significant injuries.
- B. The following are exceptions to the recording procedure. Should one of these exemptions occur during an investigation, a notation shall be made in the report as to why the recordings were not made.
  - 1. Accused refuses to be recorded (refusal must be recorded or in writing).
  - 2. Statements made in response to routine questions at the time of arrest or processing.
  - 3. Spontaneous utterances not made during interrogations.
  - 4. Statements made during interrogation of a less serious crime.

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5. Equipment failures and replacement equipment is not readily available.
6. Joint agency investigations in which the participating agency is not the lead entity.
- C. The recording may be made with any department authorized audiovisual or audiovisual recording device that is available to the officer at the time of the custodial interrogation. This equipment includes L-3 both in-car and in the interview rooms, and hand held digital audiovisual recording devices. All officers are responsible for being familiar with the operating requirements of the equipment they are using.
- D. Miranda Warnings given during the interrogation shall be part of the recording.
- E. If the person to be interrogated does not speak English, an interpreter shall be contacted to aid in the interrogation.

**IV. OFFICER RESPONSIBILITIES FOR REPORTING**

- A. The officer leading the interrogation is responsible for ensuring proper reports are filed and for the preservation of all recordings, notes, and any other evidence obtained during the interrogation.
- B. Reports, recordings, notes, evidence, or any other records of the department related to any incident will be distributed and released according to department policy and at the direction of the Director of Public Safety or his/her designee.
- C. All recording devices shall be maintained as required by department policy. It is each officer's responsibility to ensure the equipment they are assigned or using is operating properly.
- D. Officers will note verbally on the recording anytime the device is stopped, the time of the stop, and the reason. When the recording resumes, officers will verbally note the break has ended and the time of restart.

**V. DEPARTMENTAL USE AND/OR 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 audiovisual recordings is prohibited without a court order or the authorization of the Director of Public Safety or his/her designee.

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- C. Use of audiovisual recordings is intended only for official departmental business. Any other use is expressly prohibited without the authorization of the Director of Public Safety or his/her designee.
- D. All recordings, while in the performance of an employee's duties or on departmental audiovisual 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 preview of recordings is intended for official department business. Officers shall not allow anyone other than authorized employees of the department to view recordings produced in the performance of their duties, or by a departmental recorder, except when authorized by the Director of Public Safety or his/her designee.
- F. The police report shall make note of the existence of a recorded interrogation.
- G. 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.
- H. Any original media and/or segment released outside the department shall be appropriately identified as property of the department. The original recording and/or segment shall be labeled as to its contents including the date and time of the recording. These recordings shall remain the property of the department. The original shall be returned to the department as soon as it is practical after the completion of the official business.
- I. A record of all duplicate recordings and to whom they are given shall be maintained.

**VI. REQUIREMENTS FOR COMPLIANCE**

- A. Recordings made by an audiovisual system of this department are considered official reports of the department. Any abuse, misuse, alteration, sabotage, intentional obstruction, or intentional destruction, theft, intentional misplacement, of any recording or recording device is prohibited and will result in disciplinary action up to and including dismissal. The editing or distribution of any recording device or recording assigned to an officer without the consent of the Director of Public Safety or his/her designee will be considered a falsification of an official police record, evidence tampering, or other rule violation that will result in disciplinary action up to and including dismissal.

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- B. Any recording made, no matter what the method or electronic device used, by an employee of this department while in the performance of their duties or when acting in the capacity of their employment, is considered as an official record of the department. Any theft, misuse, intentional misplacement or destruction, alteration, sabotage of any recording device or recording is prohibited and will result in disciplinary action up to and including dismissal. The distribution or editing of any media recording device, or a recording assigned to an officer without the consent of the Director of Public Safety or his/her designee, will be considered a falsification of an official police record, evidence tampering, or other rule violation that will result in disciplinary action up to and including dismissal.
- C. Violations of this policy, or portions thereof, may result in disciplinary action up to and including dismissal.

**VII. OFFICERS ASSIGNED TO OTHER AGENCIES**

Officers of this department assigned to or assisting other law enforcement agencies will be guided by this policy.

**VIII. APPLICATION**

This policy 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.

**IX. REVISION RESPONSIBILITY**

- A. Responsibility for the continuous updating and revision of this Order lies with the Director of Public Safety. Continuous shall mean when necessary or when mandated by law.
- B. In the event that this Policy conflicts with, or supersedes, any previous Departmental Order, Procedure, or Directive, to that extent, the conflicting or superseded Order is cancelled.

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