



# POLICY & PROCEDURE

## HOLMEN POLICE DEPARTMENT

SUBJECT:	<b>CUSTODIAL INTERROGATIONS</b> (ELECTRONIC RECORDING OF JUVENILES / ADULTS)	NUMBER:	4.4
		ISSUED:	05/03/2016
SCOPE:	All Sworn Personnel	REVIEWED:	01/28/2017
DISTRIBUTION:	Policy & Procedure Manual		
REFERENCE:	WI §938.195, §968.073(2) & §972.115(2)(a)	WILEAG 4 <sup>th</sup> EDITION STANDARDS:	15-6.3.6, 6.6.4

INDEX AS: Adult Custodial Interrogations  
Juvenile Custodial Interrogations  
Mandatory Recording  
Contact with Parent or Guardians  
Duration/Participants

**PURPOSE:** The purpose of this Policy & Procedure is to establish guidelines, policies and procedures for electronic recording and the associated use, management, storage and retrieval of recordings of custodial questioning. 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 Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROCEDURE
- IV. ADDITIONAL JUVENILE CONSIDERATIONS

### I. POLICY

Electronic recording provides persuasive documentary evidence and helps defend against civil litigation and allegations of officer misconduct. 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. For purposes of this policy, there shall not be a distinction between the terms "questioning", "interviews" and "interrogations".

## II. DEFINITIONS

ANALOG RECORDING: An electronic recording typically stored on a VHS, cassette or micro-cassette tape.

AUDIOVISUAL: A recording with both video and audio.

CUSTODIAL INTERROGATION: Has the meaning found in WI §968.073(1)(a)

DIGITAL RECORDING: An electronic recording typically stored on a CD, DVD or microchip, being recordings that can be viewed and stored on a computer.

ELECTRONIC RECORDING: A visual and/or audio recording using digital or analog storage format.

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.).

## III. PROCEDURE

A. Electronic recording is intended:

1. To accurately capture statements and events during the course of a custodial questioning;
2. To enhance the ability to document and review statements and actions for internal reporting requirements and for courtroom preparation and presentation;
3. To capture visual and/or audio information for use in current and future investigations.
4. To document acknowledgment of and rigid adherence to suspects' rights and the law;
5. To 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. To allow the opportunity to review the process that led to the confession or admission; and
7. To preserve the integrity of officers and the investigative process.

B. Recording Recommended.

1. Whenever possible and practical, officers should electronically record all custodial questioning. Recording should begin at the start of questioning and continue without interruption until questioning ends. Officers should record anytime they would normally advise constitutional warnings, regardless of where the questioning occurs – “A *Miranda* moment is a recording moment.”
2. Whenever possible and practical, officers should electronically record all interviews with suspects and witnesses.
  - a. Even though electronic recording is not generally required during traffic detentions as traffic stops are typically not considered to be custodial, officers should consider that if the traffic stop matures into an arrest situation, then subsequent questioning would require electronic recording.
3. 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 interrogation, the recording device malfunctions without the officer's knowledge; or
  - d. A person makes a statement to law enforcement spontaneously or in response to a routine booking question.
  - e. The suspect refuses to speak while being recorded (in general, officers should only conduct unrecorded questioning based on a suspect's refusal if the refusal itself is recorded).
4. Digital audiovisual recording is preferred when possible and practical. Digital audio-only and/or analog recording, however, is acceptable.

C. It is the responsibility of this Department to ensure that audio and/or video recording equipment is available and properly set up according to its manufacturers' recommendations.

D. Department personnel are responsible for inspection and general maintenance of equipment assigned.

1. Malfunctions, damage or theft of equipment shall be reported to the police chief or his/her designee promptly if recording equipment fails or malfunctions. Officers will document the malfunction through a department email and will include information on the suspected cause(s) of equipment failure, as available, and any recommendations for corrective action.

E. Recording is mandatory for: (6.6.4.1)

1. Any custodial questioning of juveniles for an offense that could be a crime if prosecuted under the Wisconsin Statutes.
2. Any custodial questioning of adults [persons seventeen (17) years of age or older] for a crime that is a felony.
3. Any situation or incident that the officer, through training and experience, believes should be audibly and/or visually recorded.

F. Court Proceedings – Pursuant to WI §972.115, failure to record in adult felony cases may result in a jury instruction stating that electronic recording is statewide policy and that the failure to record can be considered in evaluating the evidence surrounding the making of a statement.

In juvenile cases, the failure to record custodial interrogations may result in suppression of unrecorded statements.

G. Operation of the Equipment.

1. To help ensure accuracy and consistency of accounts, officers shall review recordings when preparing written reports of events.
2. With the exception of police radios, officers shall ensure that the volume from other electronic devices does not interfere with recordings.
3. Officers shall not erase, alter, reuse, modify or tamper with recordings. Only the police chief or his/her designee may erase and re-issue previously captured recordings and even then may only do so pursuant to the provisions of this policy.
4. To prevent damage, original recordings shall not be viewed in any equipment other than the equipment issued or authorized by the police chief.
5. Recordings shall be marked as containing evidence and then submitted to the property officer to be held and/or duplicated for criminal prosecution in accordance with Department Policy 5.1, Collection and Preservation of Evidence/Property.
6. 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. Gaps in electronic recording could invite allegations of misconduct.
7. Voice activated equipment should be avoided since a recorded event should be an accurate documentation of what happened.

#### H. Duplication of the Recorded Media.

1. All recording media, recorded images and audio recordings are the property of the Department.
2. Unofficial or unauthorized dissemination outside of the agency is strictly prohibited without specific written permission of the police chief.
3. To prevent damage to, or alteration of, the original recorded media, it shall not be copied, viewed or otherwise inserted into any device not approved by the police chief or his/her designee.
4. 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.
5. 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 police chief or his/her designee for retention and storage.

#### I. Consider Giving Notice or Obtaining Consent for Recording.

1. Law enforcement authorities are not required to inform adult or juvenile suspects of recording.
2. Lack of consent to recording does not affect the admissibility of a recorded statement.
3. Giving notice of recording 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.

#### J. The Role of Written Interview Summaries.

1. Officers shall continue to prepare incident narrative reports of interviews and continue to obtain written statements from suspects. Electronic recording is not a substitute for traditional methods of memorializing interviews.
2. Defendants might not dispute the questioner's version of what occurred during an interview, and some cases might be resolved based on written reports alone, thus minimizing the costs of copying or transcribing recordings. Written statements are important because they can provide clear and concise evidence of guilt. Statements also tend to demonstrate that incriminating

statements were made voluntarily. It is not necessary for written statements to include all the details of an interview; it is sufficient to summarize the relevant portions.

#### **IV. ADDITIONAL JUVENILE CONSIDERATIONS**

- A. All interrogations, interviews, and questioning of juveniles shall be conducted in a manner to ensure the protection of the juvenile's constitutional rights; the same rights as afforded an adult. Officers shall exercise good judgment in accepting a waiver of rights from a juvenile. The juvenile's physical condition, age, intelligence, educational level, prior experience with the juvenile justice system, and his/her ability to comprehend the meaning and effect of his/her statements shall be carefully evaluated in each case.
  
- B. In cases where a juvenile is a suspect in a criminal matter and requests to speak with a parent or guardian, he/she may be afforded the opportunity to confer with their parent. This is not a requirement by law, however; the decision whether or not to allow contact with a parent may carry considerable weight in determining whether an admission/confession is admissible in court. In all instances in which there is a difference of opinion between a juvenile and his/her parents or guardian regarding whether or not the juvenile will agree to speak with police regarding a suspected criminal offense and the juvenile has a rational capacity to pursue his/her best interest, the juvenile's wishes will prevail. (6.6.4.2)
  
- C. All custodial interrogations of juveniles must be electronically recorded when feasible, and without exception when questioning occurs at a place of detention. This should also include Village ordinance violations along with any criminal matters.
  - 1. Audio taping is sufficient to satisfy this requirement, videotaping is preferred. Videotaping may provide a better picture of what transpired during the interrogation. All interview/interrogations conducted at the Holmen Police Department will be done in the interview room.
  
  - 2. If the interview cannot be conducted in the interview room because the room is in use, it may be conducted in a conference room and an audio recording will be made.
  
  - 3. It is recognized that interviews may be conducted at other locations such as schools or the juvenile's home. These interviews should be electronically recorded.
    - a. It is preferred that interviews take place at the juvenile's home, or Stepping Stones if the interviewer believes a hostile environment might per sway the child's interview at home.
    - b. If it becomes necessary to interview at schools

- 1) Police officers have no absolute right to enter the school premises and demand to interrogate any pupil.
  - 2) On arrival at a school, officers should contact the school administrator or his/her designee, and the SRO, stating the purpose of his/her presence prior to personally requesting information, interviewing, or taking a juvenile into custody.
  - 3) As a general rule, students should only be questioned in a private room or office and in the presence of a representative of the school. School officials should limit their numbers in attendance and participation at these interviews
  - 4) Officers should make all attempts to abide by school district rules pertaining to law enforcement related dealings with students.
4. Interrogations shall not be unreasonable in length. When questioning a juvenile, officers shall not prolong the interrogation beyond what is needed in order to complete the investigation, with one officer conducting the investigation. When appropriate, parents will be advised of the results of the interrogations. (6.6.4.3)
  5. During the course of the 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.
  6. All interviews whether adult or juvenile should contain the following Information:

The interviewing officer shall begin the recording by stating the following:

- Incident Report Number
- Location of the Interview
- Officer's First and Last Name
- Juvenile's / Adults Full Name
- Names of Everyone Else Present
- Date
- Beginning Time of Interview
- The officer shall advise the juvenile / Adult of his/her Miranda warnings, when required by law.
- Conduct the Interview
- Once the interview is completed the officer shall close with the ending time of the interview.

Shane Collins  
Police Chief

This Policy & Procedure cancels and supersedes any and all previous written directives relative to the subject matter contained herein.

Initial 05/03/2016