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48933-2012

CUSTODIAL INTERROGATION RECORDING TASK FORCE PROTOCOL FOR AUDIO/VISUAL RECORDING

I. Purpose

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

II. Policy

- a. The department requires custodial interrogations of any person in a place of detention and suspected of committing a crime listed in this policy 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.

III. 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 “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*: 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.

IV. Procedure

- a. A recording shall be made of any custodial interrogation conducted by an officer of this agency when the interrogation is related to:
 - i. Homicide – All degrees and forms
 - ii. Robbery all degrees and forms including carjacking and assaults with intent to rob
 - iii. Criminal Sexual Conduct – all degrees
 - iv. Felony Assaults

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- 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 why the recordings were not made.
 - i. Accused refuses to be recorded (refusal must be recorded).
 - ii. Statements made in response to routine questions at the time of arrest or processing.
 - iii. Spontaneous utterances not made during interrogations.
 - iv. Statements made during interrogation of a less serious crime.
 - v. Equipment fails and replacement equipment not readily available.
 - vi. Joint agency investigations in which the participating agency is not the lead entity.
- c. The recording may be made with any department authorized audio or audio/visual recording device that is available to the officer at the time of the custodial interrogation. 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.

V. Officers Will Obtain Recorded Documentation of the Following:

- a. Officers shall attend to the basic needs of the person being interrogated that may include food, beverages, and/or other basic human comforts.
- b. Officers will inquire if the person is under a doctor's care for any illness or disorder.
- c. Officers will inquire if the person is taking any medication, illegal drugs, or is under the influence of alcohol, how long ago they last consumed it and, in the case of prescribed medication, when the next time they should have it. If needed, the officer shall arrange to get the medication.

VI. Officer Responsibilities for Reporting

- a. The officer leading the interrogation is responsible to ensure proper reports are filed and for the preservation of all recordings, notes, and any other evidence obtained during the interrogation.

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- 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 Chief, Sheriff, Director or 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.

VII. 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 audio/visual recordings is prohibited without a court order or the authorization of the Chief, Sheriff, Director or 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, Sheriff, Director or 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 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 Chief, Sheriff, Director or 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.

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In those cases, a duplicate recording will be labeled as duplicate and securely maintained.

h. The Chief, Sheriff, Director or designee, documenting the release, shall keep a record of the release from and return to secured storage of the original recorded interrogation. The record is to contain the following information:

- Identification of the recording released,
- Name of person authorizing and releasing the recording,
- Reason for release,
- Name of person to whom the recording is released,
- Date and time of release/return of the recording, and
- The name of person releasing/receiving the recording.

i. Any original recording 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 date and time of 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.

j. A record of all duplicate recordings and to whom they are given shall be maintained.

VIII. Requirements for Compliance

a. Recordings made by an audio/visual system of the 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 Chief, Sheriff, Director or 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.

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,

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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 recording device or a recording assigned to an officer without the consent of the Chief, Sheriff, Director or 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.

IX. Officers Assigned to Other Agencies

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

X. Application

- a. 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.