

OGDEN CITY POLICE

Office of the Chief

Policy No: 57

Subject	Effective Date
Recording of Custodial Interrogations	March 2018
Department	Replaces Policy Dated May 2014
Police	
Division	Review Date March 2024
All Police Personnel	
Authorized Signature	

NOTE: This rule or regulation is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this agency, and then only in a non-judicial administrative setting.

I. PURPOSE

The purpose of this policy is to establish broad guidelines for the electronic recording of suspects' statements in custodial interrogations and the associated use, management, storage, and retrieval of such recordings. The policy endorses the practice of recording custodial interrogations, it also recognizes the dynamics of police work, field operations and suspect encounters. This policy is mindful of the benefits of recordings balanced with the overwhelming public policy demands upon the police in solving crimes. This policy provides latitude for officers in conducting interrogations at times that may lend themselves to the availability of recording equipment.

It is expected that electronically recording custodial suspect interrogations will enhance the investigative process and assist in the investigation and prosecution of criminal cases. Critical evidence can be captured through the recording of interrogations. The recording will also preserve information needed regarding a person's right to counsel and the right against self-incrimination and it can be used to resolve a person's claim of innocence. Similarly, the electronic recording of custodial interrogations will assist in defending against civil litigation and allegations of officer misconduct.

II. DEFINITIONS

A. **Custodial interrogation:** means questioning, or its functional equivalent, that is conducted by a law enforcement officer from the time

the suspect is, or should be, informed of his or her "Miranda" rights, until the time that the questioning ends. It does not include questions put by law enforcement personnel, and the person's responsive statements, which are part of a routine processing or booking of the person.

Custodial: The objective standard for determining a suspect's custodial status is whether a reasonable person, innocent of any wrongdoing, would have believed that he or she was not free to leave.

Interrogation: Interrogation refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally associated with arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.

B. **Electronic recording:** refers to either audio recording or combined audio and video recording. The latter is recommended. Law enforcement officers are encouraged, if videotaping, to position the camera to capture the suspect's face.

C. **Electronic media:** Video signals recorded on any of several storage media, including, but not limited to, analog tape, digital recording, or other portable digital storage media.

D. **Fixed place of detention** means a jail, a police or sheriff's station, a holding cell, or a correctional or detention facility.

E. **Recording room:** for the purpose of this policy, includes any designated room outfitted with audio-video recording equipment, and any police vehicle similarly equipped.

F. A person is "suspected of" committing a violent felony if law enforcement officers have reasonable cause, at the time of the interrogation, to believe that the person committed a violent felony.

III. PROCEDURE

1. Any custodial interrogation of a person who is in a fixed place of detention and who, at the time of the interrogation, is suspected of having committed any violent felony offense, as defined in Utah Code Ann. §76-3-203.5(1)(c)(i), should be electronically recorded through electronic media in its entirety.
2. Any custodial interrogation of a person who is not in a fixed place of detention and who, at the time of the interrogation, is suspected of having committed any violent felony offense, as defined in Utah Code Ann. §76-3-

203.5(1)(c)(i), should, where practicable, be electronically recorded through electronic media in its entirety.

3. The interrogating entity should not destroy or alter any electronic recording made of a custodial interrogation until the time that a conviction for any offense relating to the interrogation is final and all direct and collateral appeals are exhausted or the prosecution for that offense is barred by law. To facilitate storage and protection of the record during the time period specified above, the interrogating entity may make true, accurate, and complete copies of the electronic recording.

4. Nothing in this policy prohibits the use of electronic recording equipment for any other interview or offense at the discretion of the police department.

IV. EXCEPTIONS

It is understood that recording may not always be possible. The following are some, but not all, of the practical reasons that may prevent an interrogation from being recorded. The guidelines for electronic recording of a custodial interrogation are not applicable if:

- a. The suspect refuses to speak to law enforcement if the interrogation is electronically recorded. Such refusal should be documented either by electronic recording demonstrating such refusal, or through a written statement signed by the suspect.
- b. Electronic recording equipment malfunctions.
- c. Electronic recording equipment is not available, i.e. it is already in use.
- d. Statements are made in response to questions that are routinely asked during the process of arresting a person.
- e. Spontaneous statements are made that are not in response to police questioning.
- f. Statements are given in response to a custodial interrogation at a time when the interviewer is unaware that a qualifying offense occurred.
- g. Statements are made during a custodial interrogation that is conducted at another location not equipped with recording devices, and the reason for using that location(s) are not to subvert intent of this policy.
- h. Statements are made during a custodial interrogation at a location other than the recording room identified in these procedures because

the defendant cannot be in the recording room, i.e., the defendant is out of state, in a hospital or is in a correctional facility. Audio recording is advised to be utilized.

- i. Statements are made after a suspect has made a documented refusal to participate in the interrogation if it is recorded.
- j. Inadvertent error or oversight occurs that was not the result of intentional conduct of law enforcement personnel.

V. PRIOR TO RECORDING

- a. **Record entire interview:** The recording equipment should be turned on prior to the subject being placed within the recording room and should only be turned off after the subject has left the room after the interrogation is completed. All discussions in the recording room, including any pre-interrogation discussions, even if they occur before the reading of Miranda Warnings, must be included in the recording. Should the need arise for either the subject or the interrogating officer to leave the recording room; recording devices should continue to operate without interruption. If the recording is temporarily stopped, the reason for stopping the recording and the duration should be documented.
- b. **Suspect search:** Prior to the interview, the interviewing officer should be certain that the suspect, who is in custody, was searched for weapons, contraband, evidence, electronic devices, or telephones and that all relevant items were removed.
- c. **Recording date and time:** Date and time stamping of the electronic recording is encouraged. If the equipment cannot digitally time stamp the recording, then proper documentation of date and time should be noted.
- d. **Recording capacity:** Before the interrogation begins, the officer should make sure there is enough capacity to record the entirety of the interrogation.
- e. **Document equipment challenges:** The date, time and nature of any irregularities that occur with the recording equipment should be documented by the officer in writing and submitted through the chain of command.

VI. DURING RECORDING

- a. **Attorney visit:** If the subject of a recorded interrogation has an attorney visit, the subject and attorney shall be offered a separate, private area in which to confer if one is available. The recording of the empty room can continue during their absence to memorialize the event until such time that the interrogation is either resumed or terminated. Alternatively, a record can be made of when the recording was discontinued for the attorney visit. If the interrogation recommences after the attorney visit, then there should be documentation of the attorney's agreement to allow the questioning to continue and the time that the recording began again. In no event shall the visit between the attorney and the suspect be recorded.
- b. **Written statements:** After the subject of the recorded custodial interrogation has provided all of the pertinent information, a written statement may be obtained from the suspect.
- c. **Identification of parties:** All persons within the recording room should be identified on the recording, whether by the interviewing member or by the subjects themselves.
- d. **Acknowledgement of provisions to subject:** Where possible, it should be made clear on the recording when a subject is or has previously been provided with food, drink, cigarettes, access to restroom facilities, etc.

VII. AFTER INTERVIEW

- a. **Label recording media:** After the custodial interrogation, the officer(s) conducting the interrogation, or an employee designated by the department, shall label all applicable documents, recorded media and notes according to department protocols.
- b. **Avoid altering media:** No person shall alter their operations of the electronic recording equipment. No person shall, in any manner or for any purpose, alter the original "master" electronic recording of a custodial interrogation.
- c. **Copies:** Reproduction of the recorded interrogation should be made according to department protocols. Any defense request for a copy of the interrogation should be referred to the County Attorney's Office.
- d. **Originals:** The original of the electronic media should be appropriately vouchered in accordance with the departmental evidence procedures. The original should be classified and retained according to the

department's retention policy. Accordingly, electronic media may be utilized to create an authoritative original of the recording for systems that write and maintain the video on a hard drive or server.

- e. **Dissemination of recordings:** Any dissemination of any recording shall be carried out according to documented department rules and procedures. The viewing of recordings should be allowed under approval through the chain of command and the County Attorney's office. The use of the recording should be limited, but may be used to develop training presentations, assist in related investigations, quality control, supervision, and oversight.
- f. **Documentation:** Any irregularities or exceptions to recordings must be documented in the police report.