

Contemporary Issues in Criminal Investigation and Prosecution Working Group

ELECTRONIC RECORDING OF INTERROGATIONS

Model Policy

April 2016

This policy is intended to allow for the individual needs of law enforcement agencies in the State of Kansas, regardless of size or resource limitations. Law enforcement agencies are encouraged to customize these protocols to meet their regional needs. This policy is non-binding upon agencies and is meant to serve as a guide to be used in developing a department's individual policy.

I. PURPOSE

The purpose of this policy is to establish guidelines and procedures for the electronic recording of custodial interrogations in cases involving major crimes.

II. POLICY

It is the policy of [*law enforcement agency*] to create an electronic recording as an evidentiary record when conducting custodial interrogations in a place of detention for cases involving major crimes.

III. DEFINITIONS

Custodial Interrogation: An interrogation of a suspect who is required to be given Miranda warnings.

Major Crimes: Criminal investigation of any case known at the time of interrogation to involve a death, an off-grid felony, or a severity level 1 non-drug felony. [NOTE: This list is a minimal set of crimes. Insert other crimes the agency determines should be included.]

Place of Detention: A fixed location under the control of a Kansas law enforcement agency where individuals are questioned about an alleged crime.

Electronic Recording: A video recording with audio.

IV. PROCEDURES

A. General Requirements

1. In cases involving major crimes, officers shall make an electronic recording of custodial interrogations conducted in a place of detention.
2. This procedure applies to both adult and juvenile suspects.
3. Officers are not required to record noncustodial interviews with suspects, witnesses, or victims but may do so when deemed appropriate, in accordance with law and agency policy.
4. The office of the prosecutor, the investigator in charge, or other authorized agency official may request a recording be made of a specific interrogation or case not covered by this policy.

B. Recording Protocol

1. Interrogations should be recorded in their entirety starting as soon as practicable upon the suspect's entrance into the interview room and concluding upon departure of the interrogator and suspect.
2. Each recording should verbally include:
 - a. Date and time the recording began,
 - b. Identification of participants,
 - c. Administration of *Miranda* warnings, even if the recording is a follow up to a prior interview or the suspect has been previously Mirandized, and
 - d. Date and time the interrogation ends.
3. Any lapse in the recording for comfort breaks or other reasons shall be verbally accounted for on the recording by a statement of the reason and time the recording is stopped and the time the recording resumes. It is acceptable to allow the recording to continue without interruption.
4. Recording or observing attorney-client conversations is prohibited unless such conversation is part of the interrogation process with an officer present.
5. If the original recording is stored on a server or cloud service that is not backed up, the recording should be:
 - a. Duplicated with the copy maintained in a secure place independent of the original,
 - b. Marked with the date, name of person interrogated, officer name, and agency case number, and whether the recording is the original or a copy, and
6. If the original recording is on a hard medium such as disc or memory stick,
 - a. The original should be handled as provided in agency evidence handling policies.
 - b. A copy shall be maintained in a secure place independent of the original.
7. Original recordings shall be retained in their original unedited form for the longest period of time required by agency policy, state law, the prosecutor, or a court. Disposal of original electronic recordings must comply with agency policy on disposal of evidence after conferring with the prosecutor. Destruction of the original should be documented in the agency case file.
8. Review the electronic recording to verify the recording successfully captured both video and audio and to assist with accuracy of written reports.

C. Written Documentation

1. If an electronic recording is not created as otherwise required by this policy, the reasons shall be documented.
2. The reporting officer's follow-up report shall note if and how the interview was recorded.
3. Key points of the entire interrogation procedure should be memorialized and documented in the written reports. Do not use "see video."
4. Document where the interrogation took place, who was present, and the date and time it occurred.
5. Document the reasons leading to any of the listed exceptions in subsection D.
6. Document the electronic recording verification in subsection B.8.

7. Follow all agency policy regarding documentation of evidence, documents signed by the suspect, or any other required documentation related to the electronic recording.
- D. The procedures of subsection A are not required if:
1. An unforeseen equipment malfunction prevents recording the interrogation in its entirety and replacement equipment is not immediately available;
 2. The suspect affirmatively asserts the desire to speak with officers but not while being recorded;
 3. The suspect makes a spontaneous statement not in response to an interrogation question;
 4. The suspect makes a statement following a question routinely asked during the processing of the arrest of a suspect; or
 5. The suspect makes a statement at a time when the interrogator is unaware of the suspect's involvement in an offense covered by this policy.