

	POLICY & PROCEDURE	SERIES # 711	PAGE 1 OF 3
	SUBJECT		EFFECTIVE DATE
	<b>RECORDING CUSTODIAL INTERVIEWS &amp; INTERROGATIONS</b>		<b>01/24/06</b>
			<b>OVERSIGHT Investigations</b>
DISTRIBUTION <b>ALL MANUALS</b>	AMENDS/SUPERSEDES/CANCELS P&P # NEW POLICY		

I. PURPOSE:

The purpose of this policy is to establish guidelines for electronically recording custodial interviews and interrogations to:

- A. Reduce or eliminate the loss of criminal evidence through suppression hearings.
- B. To ensure the suspect's right to due process under the Constitution.
- C. To safeguard officers conducting the interviews from allegations of coercion, misconduct, or statement distortion.

II. POLICY:

It is the policy of the Hampton Police Division to electronically record custodial interviews of felony suspects at places of detention whenever feasible. A person is considered in custody whenever he/she has been deprived of the ability to freely move about or to leave such as after arrest, while incarcerated, or while being transported in a police unit. Thus, a person may be in custody without the formality of arrest.

III. DEFINITION:

A. Electronic Recording:

Electronic recording pertains to audio recording or, digital or video camcorder style equipment used for visual and audio recording of motion and/or sound.

B. In-Custody:

A person is considered in custody whenever he/she has been deprived of the ability to freely move about or to leave such as after arrest, while incarcerated, or while being transported in a police unit. Thus, a person may be in custody without the formality of arrest.

C. Custodial-Interrogation:

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APPROVED:  
CHIEF OF POLICE



Questioning conducted when a person is in custody (as defined above) to gather testimonial evidence that establishes the factual elements of a crime.

#### IV. DISCUSSION:

Due to the fact that evidence and testimony pertaining to confessions can and more than likely will be challenged in suppression hearings, law enforcement agencies must continue incorporating new ideas and strategies that will lead to successful prosecution while safeguarding the individual's rights. This is certainly the case in regards to major criminal investigations.

Case law, although from other jurisdictions, recognizes the legality and reasonableness of electronically recorded interviews. For example, in State (of Minnesota) v. Scales, 518 N. W. 2d 587 (1994), the Minnesota Supreme Court was asked by the defendant to find that the Minnesota Constitutional requirement of due process required the recording of custodial interrogations. Although the Minnesota Supreme Court refused this finding, in citing the case of Stephan v. State, 711 P.2d at 1150-1160, the court held the recording of custodial interrogations was a reasonable and necessary safeguard essential to protecting the right to due process of the accused.

In essence the Minnesota Supreme Court established a prospective rule requiring, where feasible, that custodial interrogations be recorded and mandated recording at places of detention.

#### V. PROCEDURE:

##### A. RECORDING CUSTODIAL INTERVIEWS & INTERROGRATIONS

1. In an effort to counter these concerns, Division policy mandates that all custodial interviews and interrogations pertaining to felonious crimes be recorded when feasible. All recordings whether digital, video or audible should begin at and include the Miranda warning.
  - a. The interrogation/interview shall be recorded from the reading of the Miranda warning to the conclusion of the interview.
  - b. In all other offenses the decision whether to record a custodial interview or interrogation shall be within the judgment and discretion of the investigating officer.
2. The investigating officer will use electronic equipment to record interviews/interrogations where the subject is suspected of direct or indirect involvement in these crimes and is in custody. The recording should contain the following:
  - a. The date and time of the recording.
  - b. The name of the officer/investigator and the suspect being interviewed.

- c. The interview should be recorded from reading of the Miranda warning to the conclusion of the interview.
  - d. Only one interviewed recording per digital, video or audio tape/disk.
  - e. Time and date the interview was terminated and reasons for the termination.
3. On the occasion when a suspect is reluctant to cooperate because of the recording equipment, only then should the investigating officer stop the recording device and proceed with traditional interview techniques, i.e., the handwritten note-taking method.
  4. If there is an equipment malfunction that is not repairable the investigating officer should resort to traditional interview measures. However, this information should be captured in the investigating officers case file.
  5. The investigating officers of cases involving electronic recordings shall promptly notify the Commonwealth Attorney's Office when the case is forwarded for prosecution (this is discoverable evidence for the defense attorney and must be reported as such).
  6. All recorded statements pertaining to the defendant will be preserved until the Courts or the Hampton Commonwealth Attorney's Office authorizes the destruction or release of the evidence.

#### B. CHAIN OF CUSTODY AND STORAGE

1. All electronically recorded custodial interviews/interrogations taken for investigative purposes shall constitute items of evidence.
2. As with all evidentiary issues, the chain of custody will be maintained in accordance with the Hampton Police Division's Policies and Procedures.

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