

# CUMBERLAND COUNTY DISTRICT ATTORNEY'S OFFICE POLICY FOR RECORDING OF INTERVIEWS FOR LAW ENFORCEMENT OFFICERS

## I. Purpose

To establish guidelines and procedures for law enforcement officers of this agency regarding the recording of certain custodial interrogations of persons and preservation of these recordings and the notes and other records related to the recordings.

## II. Policy

This agency recognizes the importance of recording custodial interrogations related to serious crimes, regardless of where the interrogation takes place.

Given that this is a statutorily mandated policy, LEO's must abide by this agency's policy as it applies to all standards of the Maine Criminal Justice Academy Board of Trustees.

## III. Definitions

Interrogation: Means an interrogation during which:

1. A reasonable person would feel that he or she was under arrest and;
2. The person is asked a question by a law enforcement officer that is designed to or is likely to elicit an incriminating response.

Recording: Means digital, electronic, audio, video or other recording.

Place of Detention: Means a building owned or operated by a law enforcement agency, including a police station, at which persons may be held in detention in connection with criminal charges.

Serious Crimes: Means Murder and all Class A, B and C offenses and the corresponding juvenile offense. Not included are Class D and E crimes in the applicable chapters that are enhanced to a felony crime by virtue of 17-A MRSA § 1604.

## IV. Procedures

- A. Officers of this agency are responsible for knowing when custodial interrogations must be recorded, as well as this agency's procedures for the recording of such interrogations.
- B. Officers of this agency are responsible for knowing how to operate any recording device that may be used when custodial interrogations must be recorded.
- C. Officers of this agency are responsible for being familiar with relevant case law regarding custodial interrogations.
- D. Unless exempted by this policy, a recording shall be made of any custodial interrogation conducted by an officer of this agency when the interrogation relates to any of the serious crimes listed in this policy.
- E. The officer conducting the custodial interrogation or the case officer is responsible for preserving the recording and investigative notes and records specifically related to the recording as part of the investigative file until such time as the defendant exhausts all legal options.
- F. All investigative notes, if kept or retained, must be filed with the case. These notes are generally discoverable.

G. Exemptions to the Recording of Custodial Interrogations

The requirement for a member of this agency to record a custodial interrogation does not apply to:

1. A situation when a recording is not feasible, including, but not limited to, when recording equipment malfunctions.
2. Spontaneous statements that are not made in response to interrogation.
3. Statements made in response to questions that are routinely asked during the processing of the arrest of a person.
4. Statements given in response to custodial interrogations at a time when the interrogator is unaware that a serious crime has occurred.
5. A situation when the person who is the subject of a custodial interrogation, refuses in writing or in a recording, to have the interrogation recorded.

- H. Officers must be aware that some persons with whom they come in contact and who will be the subject of a custodial interrogation may not understand or be fluent in the English language. If there are any questions about a person's ability to understand English, the LEO must explore the need for an interpreter, including a sign language interpreter for the hearing impaired.

To determine the language in which a person is fluent for the purpose of seeking an interpreter, the officer should consider the agency's list of local interpreters available to provide services and any such lists maintained by the court, local colleges or universities. Fee-based telephone interpretation services can be researched over the Internet.

- I. Recording equipment shall be made available by this agency.
- J. When a custodial interrogation is recorded, the recording shall include the administration of any warnings, such as Miranda, that are given pursuant to the interrogation.
- K. When an officer of this agency is required by this policy to record a custodial interrogation, the officer will note in the incident report that a recording was made. Likewise, the officer will note in the incident report if a custodial interrogation is not recorded and the reason for not recording the interrogation.
- L. All recordings will be made available to the prosecuting attorney. The same opportunity will be afforded to the defense attorney but only by the instruction of the prosecuting attorney.
- M. The original recording will be kept by the agency.

PER ORDER OF: \_\_\_\_\_

Chief Executive Officer