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<b>WASPC Standard(s):</b> 2.4		<b>Subject:</b> INTERVIEWS AND INTERROGATIONS

### **305.1 PURPOSE**

The purpose of this policy is to provide standards and general guidelines for law enforcement interviews and interrogations that are accurate, credible and professionally accomplished.

### **305.2 POLICY**

- a) It is the policy of the Bothell Police Department that, interviews and interrogations comply with all constitutional requirements, applicable state and local laws are strictly adhered to agency investigative procedures.
- b) It is the policy of the Bothell Police Department that, the conduct of police interviews and interrogations should be fair, competent, and totally objective. It is extremely important that this practice should also be perceived as non-coercive and unbiased by the courts and the general public.
- c) It is the policy of the Bothell Police Department to accurately and completely record or otherwise document the conditions, content, and conclusions of any interview or interrogations.
- d) The Bothell Police Department acknowledges the advantages of electronic recording whenever investigative and environmental conditions allow.

### **305.3 DEFINITIONS**

Definitions related to this policy include:

**Custodial Interrogation:** Express questioning or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstances would consider themselves in custody.

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**Custody:** A suspect is considered to be in custody if, under similar circumstances, a reasonable person in the suspect's position would feel that his/her liberty to move about freely or leave was being restrained in any way.

**Electronic Recording:** An audio recording or audio and video recording that accurately records a custodial Interrogation. "Record electronically" and "recorded electronically" have a corresponding meaning.

**Interview:** A purposeful and non-accusatory conversation with a victim, a complainant, a witness, or even a possible criminal suspect. The atmosphere is non-custodial and the interviewee should feel that he/she is free to end or terminate the interview and leave at any time.

**Place of Detention:** A fixed location under the control of a law enforcement agency where individuals are questioned about alleged crimes or status offenses. The term includes a jail, police or sheriff's station, holding cell, correction or detention facility, police vehicle, and the case of juveniles, schools.

**Statement:** A communication whether oral, written, electronic, or nonverbal.

## **305.4 PROCEDURES**

### **a) Interviews:**

1. Interviews are critical components of a police investigation. Most police interviews are conducted with victims, complainants and witnesses to a criminal act. Interviews may be conducted in the field, in police facilities, in vehicles, or in any other convenient location.
2. Officers should give clear notification, followed by acknowledgment by the person being interviewed that the questioning is non-custodial and that the person being questioned is free to discontinue and leave at any time.
3. A fact-finding interview of a possible criminal suspect is not an interrogation. Thus, the *Miranda* warnings are not required.
4. If, at any time during an interview, a person's responses incriminate, or tend to incriminate him/her in the commission of a crime, the questioning officer shall give the *Miranda* warnings before continuing the interrogation, regardless of whether the person has been arrested. The warnings indicate that the person is now a suspect and that they are not at liberty to leave.
5. Whenever possible and practical, officers should prepare a typed (or written)

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statement of an interview and have it reviewed, acknowledged as accurate and signed by the interviewee.

6. While electronic recording may be appropriate for interrogation of criminal suspects, non- custodial interviews of crime victims, witnesses and associated individuals may also be electronically recorded.
7. Any interview that is electronically recorded must have the express consent of all parties. Persons being interviewed should sign a consent form.

b) Interrogations:

1. Custodial interrogations of criminal suspects shall always be predicated by *Miranda* warnings, using the agency pre-printed form. If at any stage of the custodial questioning, the suspect indicates that they want to stop talking or to consult with an attorney before continuing, the questioning shall stop.
2. Interrogations should be pre-planned and investigating officers should have a clear understanding of the issues to be covered. This ordinarily includes an understanding of the evidence available, victim/witness accounts, offense elements, possible alibis and defenses, and applicable laws.
3. Interrogations should, whenever possible, be conducted by two officers. Prior to the interrogation each officer should have a clear understanding of the respective roles each will perform.
4. If a confession to a criminal act is obtained, officers should prepare a written statement to that effect and endeavor to have it reviewed, acknowledged as accurate, and signed by the suspect.
5. If the interrogation is to be electronically recorded, the suspect should first sign a consent form. Covert or surreptitious electronic audio recordings of interviews and interrogations are prohibited by Washington law.
6. Under no circumstances are interrogating officers allowed to utilize physical force or any physically inhumane or abusive coercion against a suspect to make them provide incriminating information. The use of physical force or employment of torture techniques or psychological coercion during an interrogation is unconstitutional.
7. Officers have no authority to offer promises of leniency or special consideration as inducements for admissions or cooperation. This subtle form of coercion is prohibited. Any promises of leniency or special consideration must only be made by an assigned prosecutor.

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8. Information developed through interrogations and/or confessions should be corroborated to the fullest extent possible by information and evidence available through other investigative means.
9. If there is more than one suspect, any incriminating statements or information supplied by one suspect against another must be independently substantiated.

c) Special Cases – Juveniles:

1. Juveniles have the same *Miranda* rights as adults. A juvenile suspect may waive *Miranda* and make a voluntary statement during a custodial interrogation, but whether the statement is voluntary depends on factors such as: age; experience; education; background; intelligence; capacity to understand his or her rights and the consequences of waiving them; and presence of a parent during the interrogation.
2. Interrogation of juveniles shall always be preceded by granting them access to an attorney and in accordance with laws requiring access to counsel. Interrogation of juveniles should be limited to a reasonable time-duration with opportunities for periodic rest breaks. The number of officers participating in the interrogation of a juvenile should be limited.

d) Miranda Rights:

1. “The term ‘interrogation’...refers not only to express questioning, but also to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that *Miranda* safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. Since the police cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of the police officers that they *should have known* were reasonably likely to elicit an incriminating response.” “Once a suspect asks to speak with an attorney, that person may not be interrogated further until either counsel has been made available or until the suspect validly waives the earlier request for an attorney.” *Blake v. Maryland (2004)*
2. Officers are reminded any statement or action that might be perceived as likely to elicit an incriminating response from the suspect is considered a form of

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interrogation. If such a statement or action occurs after the suspect has requested to speak to an attorney, any statement obtained will most likely be held inadmissible at trial.

3. If a suspect makes it known that they wish to exercise their right(s), questioning cannot occur. If the interrogation has already begun, it must cease. If the suspect later initiates conversation with the police and indicates that they want to make a statement, or communicates that willingness via an attorney, the police may question the suspect. The officer should read the *Miranda* warnings again to the suspect before interrogation begins.

### **305.4 ELECTRONIC RECORDING OF STATEMENTS**

Unless otherwise directed in this policy, a custodial interrogation, including the giving of any required warning, advice of the rights of the individual being questioned, and the waiver of any rights by the individual, must be recorded electronically in its entirety if the interrogation subject is a juvenile or if the interrogation relates to a felony crime. A custodial interrogation at a jail, police or sheriff's station, holding cell, or correctional or detention facility must be recorded by audio and video means. A custodial interrogation at any other place of detention must be recorded by audio means at minimum.

If an officer conducts a custodial interrogation for the above listed situations, without electronically recording it in its entirety, the officer shall prepare a written or electronic report explaining the reason for not complying with this section and summarizing the custodial interrogation process and the individual's statements.

An officer shall prepare this required report as soon as practicable after completing the interrogation. An officer conducting a custodial interview outside a place of detention shall prepare a written or electronic report explaining the decision to interrogate outside a place of detention and summarizing the custodial interrogation process and the individual's statements made outside a place of detention.

The recording of statements does not apply to a spontaneous statement made outside the course of a custodial interrogation or a statement made in response to a question asked routinely during the processing of the arrest of an individual.

### **305.5 EXCEPTION FOR EXIGENT CIRCUMSTANCES**

A required interrogation need not be recorded electronically if the recording is not feasible because of exigent circumstances. The officer conducting the interrogation shall record electronically an explanation of the exigent circumstances before conducting the interrogation, if feasible, or as soon as practicable after the interrogation is completed.

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### **305.6        EXCEPTION FOR INDIVIDUAL’S REFUSAL TO BE RECORDED ELECTRONICALLY**

A custodial interrogation to which recording applies need not be recorded electronically if the individual to be interrogated indicates that they will not participate in the interrogation if it is recorded electronically. If feasible, the agreement to participate without recording must be recorded electronically.

If, during a custodial interrogation, the individual being interrogated indicates that they will not participate in further interrogation unless electronic recording ceases, the remainder of the custodial interrogation need not be recorded electronically. If feasible, the individual's agreement to participate without further recording must be recorded electronically.

An officer, with intent to avoid the requirement of electronic recording may not encourage an individual to request that a recording not be made.

### **305.7        EXCEPTION FOR INTERROGATION CONDUCTED BY OTHER JURISDICTION**

If a custodial interrogation occurs in another state in compliance with that state's law or is conducted by a federal law enforcement agency in compliance with federal law, the interrogation need not be recorded electronically unless the interrogation is conducted with intent to avoid the requirement of electronic recording.

### **305.8        EXCEPTION BASED ON BELIEF RECORDING NOT REQUIRED**

A custodial interrogation need not be recorded electronically if the interrogation occurs when no officer conducting the interrogation has knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed an act that requires that a custodial interrogation be recorded electronically.

If, during a custodial interrogation the individual being interrogated reveals facts and circumstances giving a law enforcement officer conducting the interrogation reason to believe that an act has been committed that requires a custodial interrogation be recorded electronically, continued custodial interrogation concerning that act must be recorded electronically, if feasible.

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### **305.9        EXCEPTION FOR THE SAFETY OF AN INDIVIDUAL OR PROTECTION OF IDENTITY**

A custodial interrogation need not be recorded electronically if a law enforcement officer conducting the interrogation or the officer's superior reasonably believes that electronic recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the individual being interrogated, or another individual. If feasible and consistent with the safety of a confidential informant, an explanation of the basis for the belief that electronic recording would disclose the informant's identity must be recorded electronically at the time of the interrogation. If contemporaneous recording of the basis for the belief is not feasible, the recording must be made as soon as practicable after the interrogation is completed.

### **305.10       EXCEPTION FOR EQUIPMENT MALFUNCTION**

All or part of a custodial interrogation need not be recorded electronically to the extent that recording is not feasible because the available electronic recording equipment fails, despite reasonable maintenance of the equipment, and timely repair or replacement is not feasible.

If both audio and video recording of a custodial interrogation are required recording may be by audio alone if a technical problem in the video recording equipment prevents video recording, despite reasonable maintenance of the equipment, and timely repair or replacement is not feasible.

If both audio and video recording of a custodial interrogation are otherwise required recording may be by video alone if a technical problem in the audio recording equipment prevents audio recording, despite reasonable maintenance of the equipment, and timely repair or replacement is not feasible.

### **305.11       HANDLING AND PRESERVING ELECTRONIC RECORDINGS**

Any recordings or interrogations shall be handled as digital evidence and properly stored and maintained in accordance with the Bothell Police Department's digital evidence policies and procedures.