



MAINE STATE POLICE GENERAL ORDER

M-11

SUBJECT: MAINE STATE POLICE POLICY REGARDING THE CREATION AND PRESERVATION OF RECORDINGS, ORIGINAL NOTES, AND RECORDS RELATING TO INVESTIGATIONS OF POSSIBLE SERIOUS CRIMES

EFFECTIVE DATE: 09.24.2021

EXPIRATION DATE: 09.24.2028

RECENT HISTORY: AMENDED (09.24.2021); AMENDED (08.01.2020); AMENDED (11.12.2019); REVISED (09.19.2019); AMENDED (12.21.20172); AMENDED (11.30.2017); RESCINDS AND REPLACES MSP GO M-11; RESCINDS MSP GO E-94 & MSP GO PD 2008-002 (08.23.2011); RESCINDS G.O. 2006 MSP 3B (12.14.2006)

DISTRIBUTION CODE: 2 (MAY BE PUBLICLY DISCLOSED)

APPLICABILITY CODE: S, Z

MLEAP: 7.06, 7.07

MCJA MINIMUM STANDARDS POLICY 7

SIGNATURE OF COLONEL:

A handwritten signature in black ink, appearing to read "W. B. Rowe", is written over a light blue rectangular background.

I. PURPOSE

1. The purpose of this General Order is to establish the Maine State Police policy regarding the recording of interviews of persons who are suspected by an officer of having possibly committed murder or any Class A, B, or C crime (or any corresponding juvenile crimes/offenses), and the preservation of investigative notes and records in such cases.

II. POLICY MCJA MS 7.1.

1. The Maine State Police recognizes the importance of recording custodial interrogations of persons who are suspects in cases of murder, as well as in cases involving Class A, Class B, and Class C crimes (as well as corresponding juvenile crimes/offenses), regardless of the location where such interrogations are conducted. Accordingly, the policy of the agency is –
 - A. To record interviews of persons who are suspected by an officer of having possibly committed one or more serious crimes, as the term “serious crimes” is defined in this policy; and
 - B. To preserve such recordings, as well as investigative notes and records in such cases, in accordance with Maine law and this policy.

Note: Because this is a statutorily-mandated policy, officers shall abide by the policy as it applies to all standards of the Maine Criminal Justice Academy Board of Trustees. Any violation of the standards may result in action by the Board.
MCJA MS 7.14

III. DEFINITIONS

1. For the purposes of this General Order, the terms included in this section are defined as follows, unless otherwise indicated in the order.
 - A. Custodial interrogation. “Custodial interrogation” means an interrogation during which (1) a reasonable person would consider her- or himself to be in custody in view of the circumstances, and (2) that person is asked one or more questions by a law enforcement officer that is likely to elicit an incriminating response. MCJA MS 7.3
 - B. Record. “Record” means:
 1. When used as a verb, the act of making a recording; and
 2. When used as a noun, any written, printed, or graphic matter, or any mechanical or electronic data compilation, from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension.
 - C. Recorder. “Recorder” means a device capable of making a recording.
 - D. Recording. “Recording” means a memorialization of information in a medium that, at a minimum, allows for subsequent audio reviews of that information, including, but not limited to, such a memorialization that is made by analogue, digital, electronic, audio, or audio-video means. MCJA MS 7.2

- E. Serious crimes. “Serious crimes” means murder or any Class A, Class B, or Class C crime, as well as any corresponding juvenile crimes/offenses. MCJA MS 7.4

IV. PROCEDURE

1. GENERAL

- A. The Maine State Police recognizes the value of recording interviews of persons suspected of committing serious crimes, and officers shall do so in accordance with this policy, except in circumstances specified in the policy. MCJA MS 7.10
- B. The admissibility of incriminating statement is paramount to the successful prosecution of criminal violations; therefore, the Maine State Police shall train its officers in the basic concepts of proper interrogation. MLEAP 7.07
- C. The Maine State Police shall ensure that all officers are properly trained in, and know when to administer, *Miranda* warnings. MLEAP 7.06

2. RECORDING OF CERTAIN INTERVIEWS REQUIRED MCJA MS 7.6, 7.7, 7.10

- A. Unless otherwise expressly excepted by this policy, an officer shall record interviews of persons who are suspected by the officer of having possibly committed one or more serious crimes.
 - 1. Such interviews must be conducted in accordance with relevant case law, including, but not limited to, relevant case law regarding custodial interrogations.
 - 2. When such a recording of an interview is made, the recording must include the administration of any warnings, such as *Miranda*, that are given as part of the interview.
 - 3. The admissibility of incriminating statement is paramount to the successful prosecution of criminal violations; thus, the Maine State Police shall train its officers in the basic concepts of proper interrogation. MLEAP 7.07
 - 4. The Maine State Police shall ensure that all officers are properly trained regarding when to administer *Miranda* warnings. MLEAP 7.06

3. REQUESTS FOR INTERPRETER ASSISTANCE MCJA MS 7.9, 7.10

- A. If a person whose interview must be recorded pursuant to this policy does not speak fluent English, then the officer who is to conduct the interview shall consider whether requesting an interpreter to assist with the interview is necessary.

1. If the officer determines that such assistance is necessary, then the officer shall request the assistance of the regional communications center of jurisdiction to locate an interpreter.
 2. If the person whose interview must be recorded requests an interpreter, then the officer shall request the assistance of the regional communications center of jurisdiction to locate an interpreter, and shall not conduct the interview until an interpreter is present to assist with the interview.
4. DOCUMENTATION OF RECORDINGS REQUIRED BY THIS POLICY
MCJA MS 7.10
 - A. An officer shall document each instance in which an interview is recorded pursuant to this policy.
 1. If an interview that should have been recorded pursuant to this policy is not recorded, the officer shall document the reason or reasons why the recording was not made.
5. RECORDERS MCJA MS 7.10
 - A. Each officer of the Maine State Police shall be issued an audio recorder.
 1. Personally-owned recorders should **not** be used to conduct Maine State Police business.
 - a. **THE USE OF A PERSONAL DEVICE (SUCH AS, AS EXAMPLES, A PERSONAL CELL PHONE OR PERSONAL COMPUTER) TO CONDUCT OFFICIAL STATE OF MAINE BUSINESS POTENTIALLY COULD RESULT IN THE DEVICE ITSELF BEING SUBJECT TO SUBPOENA OR COURT ORDER, INCLUDING, BUT NOT LIMITED TO, FOR THE PURPOSES OF BEING FORENSICALLY ANALYZED OR SEARCHED.**
 - B. Each officer of the Maine State Police is responsible for knowing how to properly operate and maintain a recorder issued to her or him.
MCJA MS 7.11
 1. If an officer does not know how to properly operate or maintain a recorder, the officer shall seek instruction from her or his supervisor on how to do so.

- C. If an audio recorder that has been issued to an officer is lost or not working properly, the officer shall promptly inform her or his supervisor and a temporary or replacement recorder must be issued.
MJCA MS 7.11

6. PRESERVATION AND STORAGE OF RECORDINGS MCJA MS 7.12

- A. An officer who makes a recording required by this policy shall ensure that the original copy of the recording is properly preserved.
 - 1. Original recordings must be stored at Maine State Police-controlled facilities or on Maine State Police-controlled computer systems.
 - 2. Original recordings may ***neither*** be stored at any facility or place not controlled by the Maine State Police, ***nor*** on any computer or other device not controlled by the Maine State Police.
 - a. This prohibition includes, but is not limited to, the storage of original recordings at officers' residences and on officers' personal computers or personal electronic devices.
 - 3. Original recordings must be stored and disposed of in accordance with applicable Maine State Police record retention schedules.

7. OWNERSHIP OF RECORDINGS MCJA MS 7.12

- A. Recordings created during the course of a Maine State Police investigation are the **exclusive property** of the Maine State Police and may ***neither*** be retained for personal use ***nor*** disseminated outside the scope of an officer's employment.

8. EXCEPTIONS TO THE RECORDING REQUIREMENT OF THIS POLICY
MCJA MS 7.9

- A. The following circumstances are exempt from the interview-recording requirement of this policy:
 - 1. Circumstances in which recording the interview is not feasible, including, but not limited to, circumstances in which a recorder malfunctions or is not available;
 - 2. Circumstances in which spontaneous statements are made that are not in response to interview questions;

3. Circumstances in which statements are made in response to a question that is routinely asked during the processing of the arrest of a person;
4. Circumstances in which a statement is being given during a custodial interrogation at a time when the interviewer is unaware that a serious crime has occurred;
5. Circumstances in which a person who is subject to a custodial interrogation refuses to have an interview electronically recorded and that refusal is made in writing or is electronically recorded.

9. ORIGINAL NOTES; RECORDS MCJA MS 7.5

- A. In all cases involving one or more serious crimes, investigating officers shall ensure that their original notes are preserved until such time that either all appeals in a case are exhausted or all post-conviction review periods have passed, whichever period is longer.
- B. In all cases involving one or more serious crimes, investigating officers shall ensure that the records material to the investigation of such a crime are preserved until such time that either all appeals in a case are exhausted or the post-conviction review periods have passed, whichever period is longer.
- C. Original notes and records must be stored at Maine State Police-controlled facilities or on Maine State Police-controlled computer systems, and may **neither** be stored at any facility or place not controlled by the Maine State Police, **nor** on any computer or other device not controlled by the Maine State Police.
 - a. This prohibition includes, but is not limited to, the storage of original notes and records at officers' residences and on officers' personal computers or personal electronic devices.

10. OWNERSHIP OF ORIGINAL NOTES AND RECORDS

- A. Original notes and records created or ascertained during the course of a Maine State Police investigation are the **exclusive property** of the Maine State Police and may **neither** be retained for personal use **nor** disseminated outside the scope of an officer's employment.

11. DISCOVERY OBLIGATIONS MCJA MS 7.13

- A. Recordings, original notes, and records contemplated in this policy must be made available to prosecuting attorneys, including, but not limited to, so that copies of such may be provided to accused persons or their attorneys.

NOTICE

THIS GENERAL ORDER IS FOR USE OF THE MAINE STATE POLICE AND NOT FOR ANY OTHER AGENCY. THE GENERAL ORDER IS NOT INTENDED TO BE RELIED UPON BY ANY OTHER INDIVIDUAL OR PRIVATE OR PUBLIC AGENCY. THE GENERAL ORDER EXPRESSLY DOES NOT CREATE, AND IS NOT INTENDED TO CREATE, A HIGHER LEGAL STANDARD OF SAFETY OR CARE IN AN EVIDENTIARY SENSE WITH RESPECT TO THIRD-PARTY CLAIMS. VIOLATIONS OF THIS ORDER ONLY MAY FORM THE BASIS FOR ADMINISTRATIVE SANCTIONS BY THE MAINE STATE POLICE.