



# ORONO POLICE DEPARTMENT

## STANDARD OPERATING PROCEDURES

Protect with Vigilance & Serve with Compassion and Excellence

<b>Subject:</b>	<b>Recording of Suspects and Witnesses in Serious Crimes &amp; Preservation of Notes &amp; Records</b>	<b>Policy #</b>	<b>O-4</b>
<b>Effective Date:</b>	<b>September 8, 2023</b>	<b>Review Cycle:</b>	<b>2 Years</b>
<b>Distribution:</b>	<b>All Sworn Personnel</b>	<b># Of pages:</b>	<b>2</b>
<b>MLEAP:</b>	<b>N/A</b>	<b>MCJA Mandatory Policy</b>	
	<i>Rescinds All Previous Policies Related To This Current Policy</i>		
<b>Issuing Authority:</b>	<b>Chief of Police Daniel Merrill</b>		

### I. Policy

This agency recognizes the importance of recording custodial interrogations and witness interview related to serious crimes, regardless of where the interrogation or interview takes place. **BOT 7-1, 7-2**

Given that this is a statutorily mandated policy, law enforcement officers must abide by this agency's policy as it applies to all standards of the mine Criminal Justice Academy Board of Trustees. **BOT 7-17**

### II. Purpose

To establish guidelines and procedures for Orono Police Department officers regarding the recording of certain custodial interrogations of persons or consensual interviews of witnesses and preservation of these recordings and the notes and other records related to the recordings.

### III. Definitions **BOT 7-2, 7-3, 7-4, 7-5**

Interrogation: Means an interrogation during which;

1. A reasonable person would feel that he or she was not free to leave, thus in custody; 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(s).

Witness Interview: A non-custodial interview with a person who may have knowledge of an incident under investigation.

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 Orono Police Department are responsible for knowing when custodial interrogations and witness interviews must be recorded, as well as this agency's procedures for the recording of such interrogations and interviews. **BOT 7-13**
- B. Officers of this agency are responsible for knowing how to operate any recording device that may be used when custodial interrogations and witness interviews must be recorded. **BOT 7-13**
- C. Officers of this agency are responsible for being familiar with relevant case law regarding custodial interrogations. **BOT 7-13**
- D. Unless exempted by this policy, a recording shall be made of any custodial interrogation or witness interview conducted by an officer of this agency when the interrogation or interview relates to any of the serious crimes listed in this policy. **BOT 7-8**
- E. The officer conducting the custodial interrogation or witness interview, or the primary investigating 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. **BOT 7-6, 7-07**
- F. All investigative notes, if kept or retained, must be filed with the case. These notes are discoverable.
- G. Exemptions to the Recording of Custodial Interrogations **BOT 7-10, 7-11**

The requirement for a member of this agency to record a custodial interrogation or witness interview 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 or interview questions.
  - 3. Statements made in response to questions that are routinely asked during a detention or the processing of the arrest of a person.
  - 4. Statements given in response to custodial interrogations or witness interviews at a time when the interviewer is unaware that a serious crime has occurred.
  - 5. A situation when the person who is the subject of a custodial interrogation or witness interview refuses in writing or in a recording, to have the interrogation or interview 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 or witness interview may not understand or be fluent in the English language. If there are any questions about a person's ability to understand English, the interviewer must explore the need for an interpreter, including a sign language interpreter for the hearing impaired. **BOT 7-12**
- 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. **BOT 7-14**
  - 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. **BOT 7-9**
  - K. When an officer of this agency is required by this policy to record a custodial interrogation or witness interview, 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 or witness interview is not recorded and the reason for not recording the interrogation or interview.
  - 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. **BOT 7-16**
  - M. The original recording will be kept by the agency. **BOT 7-6, BOT 7-15**