TIVERTON POLICE DEPARTMENT
GENERAL ORDERS

Subject: Electronic Recording of Custodial Interrogations		**General Order Number:** 300.25
Section: 300- Law Enforcement Operations		**Subsection:** 30- Internal Operations
Amends/Supersedes: 300.25 (12/02/2014)		
Effective Date: 12/02/2014	**Revised Date:** 05/18/2020	**Review Date:** As Needed
Per Order Of: Patrick W. Jones, Chief of Police		
RIPAC: 8.10		
Distribution: Sworn Department Members		

NOTE: This written directive is for the internal governance of the Tiverton Police Department, and is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

I. PURPOSE

The purpose of this policy is to provide guidelines for the conduct of custodial interrogation to enhance the quality of the investigation of capital offenses, and well as to minimize the likelihood of a wrongful conviction caused by a false confession.

II. POLICY

This policy governs the custodial interrogation of persons suspected of having committed a capital offense crime, punishable by up to life in prison.

Within the guidelines provided in this policy, all custodial interrogations of capital offense crimes will be electronically recorded at a place of detention, under the control of the Tiverton Police Department.

The determination of the crime being investigated shall be based upon the facts known to the officer or officers conducting the interrogation at the time the interrogation begins.

Capital offenses are crimes which carry a maximum penalty of life in prison which include:

§ 11-4-2	Arson – First degree
§ 11-5-4	Assault with dangerous weapon in dwelling house
§ 11-8-1	Burglary
§11-16-5	Poisoning with intent to kill
§ 11-23-1	Murder
§ 11-23-2.1	Murder of a kidnapped person under the age of eighteen (18)
§ 11-23-6	Controlled substance transaction resulting in death of minor

§ 11-26-1.4	Kidnapping of a minor
§ 11-26-2	Kidnapping with intent to extort
§ 11-37-2	First degree sexual assault
§ 11-37-8.1	First degree child molestation sexual assault
§ 11-39-1	First degree robbery
§ 11-39-2	Robbery of the owner, lessor, or occupant of a motor vehicle
§ 11-43-1	Treason
§ 11-43-7	Unlawful exercise of functions of state office
§ 11-47-3	Carrying dangerous weapons or substances when committing crime of violence (upon a third or subsequent conviction)
§11-47-3.1	Carrying a stolen firearm when committing a crime of violence (upon a third or subsequent conviction)
§ 11-47-3.2	Using a firearm when committing a crime of violence (upon a second or subsequent conviction, or if use results in injury to police officer engaged in the performance of his or her duty, or the death or incapacity of any person.)
§ 11-47-20.3	Use of armor piercing bullets resulting in injury or death of law enforcement officer
§ 21-28-4.01(a)(2)	Delivery of or possession with intent to deliver a Schedule I or II controlled substance by a non-drug addicted person (excluding marijuana)
§ 21-28-4.01.2	Minimum sentence – Certain quantities of controlled substances
§ 21-28-4.07	Distribution to persons under age 18
§ 21-28-4.08	Conspiracy to violate the Uniform Controlled Substances Act (if substantive offense is punishable by life in prison)
§ 21-28-4.15	Employment of person under age 18 (Schedule I and II controlled substances punishable by up to life in prison)

III. DEFINITIONS

Custodial Interrogation – Express questioning or its functional equivalent including words or actions on the part of the police other than those normally attendant to arrest and custody that the police should know are reasonably likely to elicit an incriminating response from the suspect initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way such that a reasonable individual in the same circumstances would consider themselves in custody.

Electronic Recording – Audio recording or audio and video recording that accurately records a custodial interrogation. "Record electronically" and "recorded electronically" have a corresponding meaning.

In Their Entirety– Audio recording or audio and video recording begins at the time the suspect enters the interview room, until the suspect leaves the interview room. This includes any and all breaks taken during the interrogation and the reading of rights or review of rights issued and signed prior to entering the interview room.

Place of Detention– A fixed location under the control of a law enforcement agency where individuals are questioned about alleged crimes. The term includes a jail, police station, holding cell, and correctional or detention facility.
Statement– A communication whether oral, written, electronic or nonverbal.

IV. PROCEDURES

A. Custodial interrogations required by this policy will be audio and video recorded in their entirety, from the time the suspect enters the interview room, until the suspect leaves the interview room.

B. All custodial interrogations required by this policy should be conducted in designated interview rooms. Exceptions can be made, with supervisor approval, if a suspect is incarcerated at a place of detention that allows for audio/video recording of the interview.

C. Interrogations shall not be conducted unless the suspect has waived his/her Miranda rights.

D. At any time prior to or during the interrogation, if a suspect invokes his/her constitutional rights, all questioning shall stop immediately.

E. If a request is made for counsel, that request must be afforded immediately.

F. It is the Policy of this department to record custodial interrogations without obtaining consent of suspect

1. It is this department's policy to record all custodial interrogations with a suspect being investigated for capital offenses. The subject will not be informed of the recording nor asked for his/her consent. Because Rhode Island is a "one party consent state" it is generally legal for a custodial interrogation to be electronically recorded in its entirety without the knowledge of the suspect. If the suspect has agreed to give a statement but refuses to be recorded, the interview shall be recorded. The suspect who agrees to give a statement but refuses to be recorded need not be informed that the interview will be recorded and may be informed that the department is dispensing with the recording requirement. The recording of such interrogations shall take place.

2. If a suspect, refuses to give a statement in a room equipped for recording the custodial interrogation and insists upon providing his statement in an alternate place and that alternate place is not equipped for recording (either audio or audio-video), the department is permitted to dispense with the requirement of electronically recording the custodial interrogation, and nothing in this policy obligates the law enforcement agency to further attempt to surreptitiously record the interview.

3. In cases where the interview is not recorded because of circumstances as stated above, the interrogator must present the refusal to be recorded form before the interview commences. All attempts shall be made to document the refusal by means of recording.

4. In such cases where the interview is not recorded because of circumstances as stated above, a typed statement will be

permitted. Such instances shall be documented in the case narrative.

G. Exceptions to Audio and Video Recording (Audio Only/Typed)

1. When the use of audio and video recording is impossible or impractical, members shall use audio only recording. Such instances shall be documented in the case narrative.
2. A statement may be taken by other means, such as audio only or written format, when exigent circumstances exist that would cause a reasonable person to believe that prompt action was necessary to prevent physical harm to officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence interfering with legitimate law enforcement efforts.

H. The recording equipment shall not be turned off unless:

1. Subject states that he/she does not want the interview to take place in room they believe is being recorded
   a. If the subject requests that he/she does not want to be recorded and further refuses to be interviewed in room where he/she believes is being recorded, the interviewer will record the subject making this request.
   b. In cases where the subject is aware that he/she is being recorded, a *Refusal to be recorded form (TPD 13-075)* must be completed by the suspect if, during the interview, (s) he decides(s) he no longer wants to be electronically recorded.
   c. The recording shall be preserved in accordance with the provisions contained in Section IV and shall include everything that was recorded in the interview room up to, and including, the subject's request that the interview not be recorded
2. The subject, or both subject and interviewer, leave the interview room.
   a. The purpose for which a subject leaves the interview room shall be included on the recording before it is turned off.
   b. When the recording is turned back on, the interviewer shall state the length of the break, what transpired during the period of time.

I. When dealing with non-English speaking/hearing impaired persons, department members shall obtain and utilize a qualified interpreter during the recording of the custodial interrogation.

J. Upon arrest of the subject, the arresting officer must ensure that there is not an unreasonable delay in the arraignment.

V. EQUIPMENT

A. Department members will use only those recording systems approved by the department for the recording of custodial interrogations.

1. DVR recording system located in the Interview Room.
2. DVR recording system located in the Statement Room.
3. The monitor's and DVR's for both systems are located in the Booking Room.

B. When using equipment other than a digital recording system, only new and unused recording media shall be used.

C. At no time, and under no circumstances, will a department member use a personally owned recording system (i.e. cell phone, smart phone, digital audio recorder, camcorder) to record a statement.

D. Prior to use department members will ensure the equipment is in proper working order and have reason to believe the equipment will remain in working order throughout the course of the interview.

VI. STORAGE, PRESERVATION AND TRANSCRIPTION

A. Digitally recorded audio and video interviews shall be preserved on in accordance with department protocols for property and evidence. Two copies of the original digital recording file will be downloaded to a DVD in CD-R format which will prohibit deletion or addition of data.

1. One CD will be marked "original", logged into the Records Management System (RMS) as property and tracked in accordance with department protocols for property and evidence.
2. One copy will be kept as a "working" copy with the case file.

B. If a record of the interview is not preserved in a digitally recorded format in accordance with Paragraph VI (A), a non-digitally recorded record may be utilized. In that instance:

1. One copy of the original will be produced in a format which will prohibit deletion or addition of data and kept as a "working" copy with the case file.
2. The "original" recording will be logged into the Records Management System (RMS) as property and tracked in accordance department protocols for property and evidence.

C. The "original" recording shall be labeled as such and authenticated by the interviewer with the following information:

1. Date and time recording is initiated and concluded
2. Name of person being interviewed
3. Name of all person(s) present during the interview
4. Location of interview
5. Incident report number

D. Transcription of a recording should be accomplished when necessary, or when requested by the Attorney General's office. The name of a party to whom a transcript is issued shall be noted in the case file.