



# KENOSHA POLICE DEPARTMENT

## POLICY AND PROCEDURE

### 42.1 Electronic Recording of Custodial Interrogations and Confessions

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#### I. Purpose

The purpose of this policy is to establish guidelines and procedures for electronic recording and the associated use, management, storage and retrieval of recordings of custodial questioning, interrogations, confessions and statements. Electronic recording provides persuasive documentary evidence and helps defend against civil litigation and allegations of police officer misconduct and may increase the likelihood of successful prosecution. Further, this policy is intended to reduce the risk of wrongful conviction of innocent persons and to ensure that the highest-quality evidence possible is obtained from custodial interviews.

#### II. Policy

It is the policy of the Kenosha Police Department to electronically record specific (all juvenile and adult felony) custodial questioning in order to provide an evidentiary record of statements made by suspects. To maximize the effectiveness of electronic recording and the integrity of audio and/or video documentation, officers shall utilize department recording devices and shall adhere to the operational objectives and protocols outlined in this policy.

#### III. Definitions

- A. Recorded Media: Refers to audio and/or video signals recorded on any of several storage media, including analog tape (VHS, SVHS, Hi 8mm), digital tape (DV) or other portable digital media (CD, DVD, flash memory, microchip, hard drive, etc.).
- B. Electronic Recording: A visual and/or audio recording using digital or analog storage format.
- C. Custodial Questioning: The questioning of a person whose freedom is restricted in any significant way, or if the person believes they are in custody and they are being questioned for a criminal matter. For the purposes of this policy, custodial questioning, interrogation, interview and statement shall be synonymous with each other.
- D. Place of Detention: A police station, jail, school or other similar holding facility in which suspects may be detained in connection with criminal charges. A police vehicle used to transport arrestees may be deemed a custodial environment but is not a place of detention as defined by this policy. Nevertheless, during transportation of suspects who meet the requirements for electronic recording, transporting officers shall observe applicable procedures defined in this policy.
- E. Digital Recording: An electronic recording typically stored on a CD, DVD, microchip or hard drive.

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- F. Analog Recording: An electronic recording typically stored on a VHS, cassette or micro-cassette tape.

### IV. Procedures

#### A. General Requirements

- i. Electronic recording is intended to:
  1. Accurately capture statements and events during the course of custodial questioning as well as to accurately convey the appearance and demeanor of the suspect.
  2. Enhance the ability to document and review statements and actions for courtroom preparation and presentation.
  3. Capture video and/or audio information for use in current and future investigations as well as allow for the opportunity to review the process that led to the confession or admission.
  4. Document acknowledgement of, and rigid adherence to, suspects' rights and the law.
  5. Allow the questioning process to become part of the investigation's collection of information, rather than simply a means to secure an admission or confession.
  6. Preserve the integrity of officers and the investigative process.
- ii. Officers **shall** electronically record **all** custodial interviews conducted in a place of detention for any juveniles (person under 17 years of age) for an offense that could be a crime if prosecuted under state statute and adults (persons 17 years of age and older) for a crime that is a felony.
- iii. Officers are not required to record non-custodial interviews with suspects, witnesses or victims, but are *encouraged* to do so whenever it would be beneficial to the investigative process.
- iv. There will be an exception to the recording requirement if any of the following conditions apply:
  1. Equipment failure (whether prior to or during the interview) and there is no other appropriate device reasonably available.
  2. Lack of suspect cooperation.
  3. The officer operating the recording device inadvertently fails to operate it properly.
  4. The recording device malfunctions without the user's knowledge.
  5. The person makes spontaneous declarations or other statements not elicited by police questioning.
  6. In all cases listed above, the basis for such occurrences shall be thoroughly documented in the officer's reports.
- v. Transporting officers need not refrain from questioning a suspect who has indicated a willingness to talk either at the scene or en route to the place of detention. However, officers shall not purposefully engage in custodial interviews/ interrogations of those persons who meet the electronic recording requirements stated above in order to avoid the department's requirement for electronic recording.

#### B. Recording Protocol/Operation of Equipment

- i. Officers shall not bring other electronic devices (cell phones, radios, pagers, etc.) into the interview room that may interfere with recordings.
- ii. Officers do not have to inform the person being interviewed they are being recorded. Lack of consent to a recording does not affect the admissibility of a

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recorded statement. However, giving notice of recording can foster public trust in law enforcement. Further, if the person asks if the interview is being recorded, officers are obligated to inform the person correctly. Ultimately, officers should trust their discretion about whether a particular suspect is likely to be inhibited by giving notice of recording.

- iii. Recording shall begin with the officer(s) / suspects entrance into the interview room prior to the start of questioning. Should the suspect then refuse to be questioned or speak, the refusal will be recorded. The recording shall continue without interruption until questioning ends and the officer(s) and suspect exit the interview room. The recording equipment shall remain running even during comfort / recess breaks during the interview.
- iv. Upon commencing the interview, the primary officer shall announce the names of officer(s), suspect and any others present and the date, time, case number and location (include room identifier) of the interview. If the interview is interrupted for a comfort break, recess or other legitimate purpose, the interviewer shall announce the date and time the interview resumes. At the conclusion of the interview, the primary officer shall state that the interview has ended and again note the names of those persons present at the interview, case number, date and time of termination.
- v. Officers should try to ensure the suspect / subject statements will be audible and comprehensible on playback. If the person is speaking in a soft voice or does not enunciate clearly, ask for the response to be repeated. It may be valuable for the officer to repeat the response or certain portions of the response if the officer believes the audible quality from the person is insufficient.
- vi. Recording attorney-client conversations is prohibited where an expectation of privacy would reasonably exist.
- vii. Recordings shall only be used in conjunction with official police business.
- viii. No covert recording will be made of any department employee conversations.
- ix. This policy does not govern the use of surreptitious recording devices used in undercover police operations or for internal investigations conducted / directed by the Chief of Police or designee.

### C. Duplication of Recorded Media

- i. All recording media, recorded images and audio images are the property of the Kenosha Police Department.
- ii. Unofficial or unauthorized dissemination of recordings outside the department is strictly prohibited without specific written permission of the Chief of Police or designee.
- iii. To prevent damage to or alteration of the original recording media, it shall not be copied, viewed or otherwise inserted into any device not issued or authorized by the department.
- iv. Whenever possible and practical, a *working copy* of the original media should be used for further investigative purposes, training or viewing by appropriate staff members.

### D. Evidence

- i. Recordings of interviews are considered evidence and shall be governed by the Departments policy and procedure for the handling and preservation of evidence.
- ii. When using a device that requires tapes or CD/DVD's, new media shall be used.
- iii. Only one interview / interrogation shall be recorded on each recording media.
- iv. Both the original and copies of all recordings shall be protected from re-recording.

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- v. Officers shall not erase, alter, edit, modify or tamper with recordings unless at the explicit written direction of the court or under the direction of the District Attorney's Office. All editing shall be done on a copy of the recording and clearly marked as an edited version.
- vi. The original recording shall be labeled as such and then submitted to Joint Services Evidence Bureau for secure storage as soon as practical. A copy of the recording shall be attached to the case reports and submitted to the District Attorney's Office.
- vii. All recordings shall be retained by the Department in secure storage until every person in custody as a result of the conviction, adjudication or commitment for that crime has reached his or her discharge date. Recordings also need to be retained in accordance with open records retention policies and other controlling statutes. Recordings in unsolved / uncharged investigations should be securely stored and preserved until the statute of limitations for that offense has expired.

#### E. Documentation

- i. Officers shall continue to prepare written summaries (police reports) and continue to obtain written statements from suspects.
  - 1. Electronic recording is not a substitute for traditional methods of memorializing interviews. Defendants may not dispute the officers version of what occurred during the interview and some cases might, therefore, be resolved based on written reports and statements alone, thus minimizing the costs of additional copying or transcribing of recordings.
  - 2. Written statements are important because they can provide clear and concise evidence of guilt or innocence. Written statements also tend to demonstrate that incriminating or exculpatory statements were made voluntarily. It is not necessary for written statements to include all the details of an interview; it is sufficient to summarize the relevant portions, both incriminating and/or exculpatory.
  - 3. To help ensure the accuracy and consistency of accounts, officers should review recordings when preparing written reports of events. Included in the report should be the dates, time, and interview room number used.