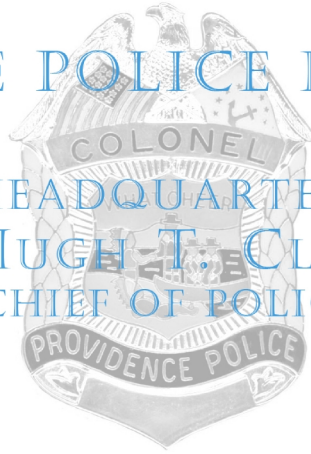


# PROVIDENCE POLICE DEPARTMENT

HEADQUARTERS

COLONEL HUGH T. CLEMENTS, JR.  
CHIEF OF POLICE



TYPE OF ORDER	NUMBER/SERIES	ISSUE DATE	EFFECTIVE DATE
General Order	360.04	3/28/2014	3/30/2014
SUBJECT TITLE		PREVIOUSLY ISSUED DATES	
Electronic Recording of Custodial Interrogations		N/A	
REFERENCE		RE-EVALUATION DATE	
1.2.3(b)(c)		3/28/2017	
SUBJECT AREA		DISTRIBUTION	
Law Enforcement Operations		All Sworn Personnel	

## PURPOSE

The purpose of this policy is to provide guidelines for the electronic recording of custodial interrogations made during the investigation of any capital offenses; to ensure the constitutional rights of the interrogated suspects; and to minimize the likelihood of a wrongful conviction caused by a false confession.

## 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 that is under the control of the Providence 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 when the interrogation begins.

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

- § 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 a 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 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).

**DISCUSSION**

For the purpose of this General order, the following definitions shall apply:

*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*: Any audio or audio-video recording that accurately records a custodial interrogation.

*In Their Entirety*: Audio or audio-video recording begins at the time the suspect enters the interrogation room, until the suspect leaves the interrogation room. This includes any and all breaks taken during the interrogation; the reading of rights; and/or the review of rights already issued and/or signed.

*Law Enforcement Officer*: Any sworn member of a law enforcement agency, such as:

1. The Rhode Island State Police.
2. Any municipal or local police department.
3. The Rhode Island Airport Corporation Police.
4. The Rhode Island Capitol Police.
5. The Rhode Island Department of Environmental Management Division of Law Enforcement.
6. The Rhode Island State Fire Marshal.
7. Providence Fire Department Arson Investigators/
8. Brown University Police Department.
9. Rhode Island School of Design Public Safety Department.
10. University of Rhode Island Campus Police.
11. Rhode Island College Campus Security.
12. Community College of Rhode Island Campus Security.

13. Rhode Island Sheriff's Department.
14. Rhode Island Attorney General's Office Inspectors appointed pursuant to 42-9-8.1.

*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:* Any communication, whether oral, written, electronic, or nonverbal.

This directive is to be referenced in conjunction with General Order 370.01, "Juvenile Operations", whenever an interrogation of a juvenile suspected of having committed a capital offense crime is being conducted.

## **PROCEDURE**

### **I. GENERAL CONSIDERATIONS**

- A. Only Investigative Division personnel who have received approval from their supervisor shall conduct custodial interrogations.
- B. Custodial interrogations required by this policy shall be audio and video recorded in their entirety whenever practicable.
- C. All custodial interrogations required by this policy should be conducted in designated interrogation rooms within the Department. 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 interrogation.
- D. Interrogations shall not be conducted unless the suspect has waived his/her Miranda rights.
- E. At any time prior to or during the interrogation, if a suspect invokes his/her constitutional rights, all questioning shall stop immediately.
- F. Once a suspect makes a request to secure the services of an attorney, all questioning shall stop and steps shall be taken immediately to facilitate the fulfillment of the request.

### **II. PRACTICAL IMPLEMENTATION**

- A. It is the policy of this Department to record custodial interrogations without obtaining consent of the suspect.
  1. The subject will neither be informed that recording is occurring 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 interrogation shall be recorded anyway if at all possible. The suspect who agrees to give a statement but refuses to be recorded need not be informed that the interrogation will be recorded and may even be erroneously informed that the Department is not recording the interrogation.

- B. If at any point a suspect refuses to give a statement in a room equipped for recording the custodial interrogation and insists upon providing a statement in an alternate place, and if that alternate place is not equipped for either audio or audio-video recording and/or it is not practicable to attempt to audio or audio-video record the interrogation at the alternate place, then 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 interrogation. However, the Department shall attempt to document the refusal by means of audio or audio-video recording the actual refusal portion of the interrogation.
- C. When the use of audio-video recording is impossible or impracticable (i.e., the suspect's refusal; the existence of exigent circumstances that would cause a reasonable officer to believe that prompt action was necessary; or some other consequence interfering with legitimate law enforcement efforts), Department members shall attempt to use audio-only recording. Such instances and relevant circumstances shall be documented in the case narrative.
- D. In cases where the interrogation is not audio or audio-video recorded because of a refusal on the part of the suspect, the interrogator must ensure that the "Electronic Recording of Interrogation" form is completed before the interrogation commences.
  - 1. In such cases where the interrogation is not audio or audio-video recorded, a typed statement will be permitted. Such instances and circumstances shall be documented in the case narrative.
- E. The recording equipment shall not be turned off unless at least one of the following conditions exists:
  - 1. The suspect, at any point during the interrogation, refuses to be interrogated in a room that he/she believes is being recorded, in which case the procedures already outlined above shall be followed.
  - 2. The suspect, or both the subject and the interrogator, leave the interrogation room.

- a. The purpose for which a subject leaves the interrogation room shall be included on the recording before it is turned off.
  - b. When the recording is turned back on, the interrogator shall state the length of the break and what transpired during the period of time that the recording was turned off.
3. The interrogation is completed.
- F. When dealing with non-English speaking or hearing impaired suspects, Department members shall obtain and utilize a qualified interpreter during the recording of the custodial interrogation.
- G. Upon the arrest of the suspect, the arresting Bureau and the Prosecution Bureau must ensure that there is not an unreasonable delay in the arraignment.

### **III. RECORDING EQUIPMENT**

- A. Department members shall use only those recording systems obtained by and/or installed by the Department for the specific purpose of recording custodial interrogations.
  1. Personnel shall not use any unauthorized equipment, including but not limited to any personal devices capable of audio and/or video recording, for the purpose of recording any portion of a custodial interrogation.
- B. When using equipment other than a digital recording system, only new, unused recording media shall be used.
- C. Prior to use, Department members will ensure that the recording equipment is in proper working order and have reason to believe that the equipment will remain in proper working order throughout the course of the interrogation.

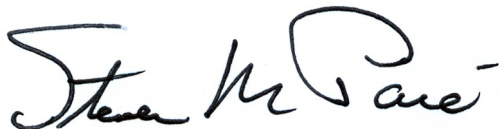
### **IV. STORAGE, PRESERVATION AND TRANSCRIPTION OF RECORDINGS**

- A. Digitally recorded audio or audio-video interrogations shall be preserved on the Department server in an electronic restricted-access folder. Two copies of the original digital recording file will be downloaded to compact disc (CD) from the server in CD-R format which will prohibit deletion or addition of data.
  1. One CD will be marked "original", logged into the Aegis™ Records Management System as property, and tracked in accordance with Department protocols for property and evidence.

2. One copy will be kept with the case file as a working copy.
- B. If a record of the interrogation is not preserved in a digitally recorded format, an analog format may be utilized. In that instance:
1. One copy of the original recording will be produced in a format which will prohibit deletion or addition of data, and shall be kept as a working copy with the case file.
  2. The “original” recording will be logged into the Aegis™ Records Management System as property and tracked in accordance Department protocols for property and evidence.
- C. All “original” recordings shall be labeled as such and authenticated by the interrogator with the following information:
1. Date and time recording is initiated and concluded.
  2. Name of person being interrogated.
  3. Name of all person(s) present during the interrogation.
  4. Location of interrogation.
  5. Incident report number.
  6. The nature of all interruptions.
- D. Transcription of a recording should be accomplished when either necessary or 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.

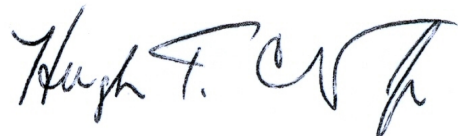
**NOTE: This order is for internal use only, and does not enlarge an Officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.**

**APPROVED:**



STEVEN M. PARÉ  
COMMISSIONER  
DEPARTMENT OF PUBLIC SAFETY

**APPROVED:**



HUGH T. CLEMENTS, JR.  
COLONEL  
CHIEF OF POLICE



# PROVIDENCE POLICE DEPARTMENT



## ELECTRONIC RECORDING OF INTERROGATION REFUSAL FORM

I, \_\_\_\_\_, hereby certify that I have refused to have my interrogation recorded by the Providence Police Department.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

\_\_\_\_\_

(As Applicable):

Having initially refused to have my interrogation recorded, I now AGREE to have the remainder of my interrogation recorded.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Having agreed to have my interrogation recorded, I now REFUSE to have the remainder of my interrogation recorded.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_