PISCATAQUIS COUNTY SHERIFF'S OFFICE

Recording of Suspects and Witnesses to include cases of Murder and Class A, Class B and Class C Crimes & the Preservation of Notes and Records

Policy: 7

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Division: Law Enforcement

I. PURPOSE

This policy establishes guidelines and procedures for Piscataquis County Sheriff's Office [PCSO] Deputies recording certain custodial interrogations of persons or consensual interviews of witnesses, and for preserving these recordings, their notes, and related records.

II. POLICY

PCSO recognizes the importance of recording custodial interrogations and witness interviews related to serious crimes (as defined by this policy), regardless of location.

III. DEFINITIONS

Custodial Interrogation: The questioning of a person in a setting where a reasonable person would feel he or she is not free to leave, conducted by a law enforcement officer in a way intended or likely to elicit an incriminating response.

Recording: Digital, electronic, audio, video, or other recording.

Witness Interview: A non-custodial interview with a person about an incident under investigation.

Place of Detention: 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: Murder and all Class A, B, and C offenses and the corresponding juvenile offenses. 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. Deputies are responsible for knowing when custodial interrogations and witness interviews must be recorded, as well as PCSO's procedures for recording such interrogations and interviews.

B. Deputies are responsible for knowing how to operate any recording device that may be used when custodial interrogations and witness interviews must be recorded.

C. Deputies are responsible for being familiar with relevant case law regarding custodial interrogations.

D. Unless exempted by this policy, a recording shall be made of any custodial interrogation or witness interview conducted by a deputy when the interrogation or interview relates to any of the serious crimes listed in this policy.

E. The deputy 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 the defendant exhausts all legal options.

F. All investigative notes, if kept or retained, must be filed with the case. These notes are generally discoverable.

G. Exemptions to the Recording of Custodial Interrogations
Recording a custodial interrogation or witness interview does not apply to:

1. A situation when recording is not feasible, including, but not limited to, when recording equipment malfunctions. Make a note in the case report of the malfunction.
2. Spontaneous statements not made in response to interrogation or interview questions.
3. Statements made in response to questions that are routinely asked during detention or the processing of a person's arrest.
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. Deputies 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 English. If there are any questions about a person's ability to understand English, the officer must assess whether an interpreter is needed, including a sign language interpreter for the hearing-impaired.

To determine the language in which a person is fluent when seeking an interpreter, the deputy 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 online.

I. Recording equipment shall be made available by PCSO and maintained according to the manufacturer's instructions.

J. When a custodial interrogation is recorded, regardless of location, the recording shall include administering any warnings, such as Miranda, that are given pursuant to the interrogation.

K. When a deputy is required by this policy to record a custodial interrogation or witness interview, the deputy will note in the incident report that a recording was made. Likewise, the deputy will note in the incident report whether a custodial interrogation or witness interview was not recorded and the reason for that.

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.

M. The agency will keep the original recording.

Sheriff Robert Young