

## Rules and Procedures

### RULE 332

August 6, 2010

#### RULE 332 - SUSPECT INTERROGATIONS - DOCUMENTATION

**Purpose:** To standardize the procedures for the documentation of suspects' interviews, especially those occurring in police facilities.

**Sec. 1 General Considerations:** The Boston Police Department seeks to ensure that the information it elicits in criminal investigations is accurate and complete. To further this goal, all members of the Department are encouraged to document statements made by victims, witnesses, and suspects. That documentation may take several forms depending on the circumstances in which it is obtained.

The Supreme Judicial Court has indicated its preference for the electronic recording of suspects' interviews if the prosecution seeks to introduce a defendant's confession or statement at trial. Failure to do so will require a judge to instruct the jury to weigh the statement made by the defendant with great caution and care, as well as to scrutinize the circumstances in which it was obtained for evidence that the statement was not voluntary. (*Commonwealth v. DiGiambattista*, 442 Mass. 423, (2004))

In order to balance the Supreme Judicial Court's preference for electronic recording of a suspect's interview with the operational needs of the department to gather and document information from suspects involved in all types and levels of crimes, and in a variety of situations, locations, and settings, it is appropriate to provide guidance to officers while maintaining sufficient flexibility to ensure that the Department continues to carry out its mission efficiently and effectively.

This Rule does not apply to interviews of individuals who are victims or witnesses but is strictly limited to interviews of persons who are, or who are likely to become, defendants in a criminal matter.

Officers are reminded that Mass. General Law Chapter 272 section 99 does not allow the recording of any individual without that person's knowledge except in very narrow circumstances with a court's permission.

**Sec. 2 Definitions:** For purposes of this special order only, the following definitions shall apply:

Electronically record: Create a permanent record by means of audio or video recording (audiotape, videotape, digital recording, or any other electronic means).

Suspect: A person who, based upon any level of suspicion, is believed to be involved in a crime.

Interview: A conversation with a suspect where it is expected that the suspect may provide incriminating information that the interrogator intends to submit into evidence in a criminal proceeding against that suspect.

Police facility: Any building utilized by a law enforcement agency for any purpose, that is under the control of the police administration, and in which the public does not have unfettered access. This may include police stations, substations, garages, offices, and other buildings, regardless of whether such building normally holds persons who have been arrested. It does not include any building in which a reasonable person would believe that he or she is free to move about without the permission of a police officer or other law enforcement agent.

**Sec. 3 Policy:** The preferred method of documenting statements made during the interview of a suspect in a police facility is to electronically record the interview. This preference shall apply regardless of whether the interview is custodial or consensual.

The decision whether to electronically record an interview of a suspect outside of a police facility should be made by the interrogator, preferably in consultation with his supervisor when feasible, and the investigator shall consider such factors such as practicability, location, permission of the suspect, and severity of the crime.

**Sec. 4 Procedure:** If the decision is made to offer a suspect the opportunity to have his/her interview electronically recorded, the interrogator shall ensure that appropriate Department forms have been completed and maintained in the case file. These forms may include but are not limited to the following:

- [Miranda warning and waiver form](#)  
(BPD Form 0078-BFS-0413)
- [Waiver of Prompt Arraignment form](#)  
(BPD Form 0003-BIS-0105)
- [Electronic Recording of Interview Refusal form](#)  
(BPD Form 0001-BIS-1204)

Interrogators shall endeavor to electronically record the original administration of all warnings and waivers.

In situations where the interview is not recorded because the suspect refuses to be electronically recorded, the interrogator must have the suspect fill out the Electronic Recording of Interview Refusal form before the interview commences. This form must also be completed by the suspect if, during the interview, (s)he decides (s)he no longer wants to be electronically recorded. If possible, the interrogator shall electronically record all warnings and waivers, along with any refusal.

In situations where the interview is not recorded from the beginning, but the suspect later elects to have the interview electronically recorded, the interrogator shall note "on tape" the time that the initial interview began and the time the suspect elected to be recorded. If the interview is

custodial, every effort shall be made to review or repeat the administration of appropriate warnings and waivers. If the initial interview was not recorded due to the suspect's election not to be recorded, the interrogator shall review this fact "on tape", as well as the fact that no threats, promises, inducement, or rewards were offered to the suspect prior to taping. Notes of all "off tape" statements by a suspect shall be taken and preserved in the original case file, even if duplicative of information contained in a subsequent recorded statement. If an interview is not recorded for any reason other than the refusal of the subject, such as failure of equipment, the reason(s) why the interview was not recorded must be documented in a written report. Any failure of the recording equipment, wherever situated, must be immediately reported to the Commander of the unit conducting the investigation.

**Sec. 5 Storage:** The lead investigator assigned to the case shall ensure that all electronic recordings of police interviews shall be preserved, at least until the final disposition of the criminal matter for which they were obtained. Digitally recorded audio and video police interviews shall be preserved on the server in accordance with the guidelines for the device. The investigator shall download a copy of the original digital recording file to a compact disc (CD) from the server in accordance with the guidelines for the device. This CD will now be labeled the "original" disc.

The original recording shall be labeled as such and authenticated by the interrogator with the following information:

- § Date and time recording is initiated and concluded
- § Name of person being interviewed
- § Name of all person(s) present during the interview
- § Location of interview
- § Incident report number (CC#)
- § The nature of all interruptions

All audio and video tapes and original CD's of digitally recorded interviews shall be bar-coded, logged into the BPD Evidence Management System, and stored with the case file, or in a district or unit filing system designed to accommodate electronic tapes. All video recordings of homicide interviews shall be stored in the case file in the Homicide Unit.

**Sec. 6 Duplication:** Duplicates of recordings shall be so labeled and shall include information required by Section 5. The name of a party to whom a duplicate is issued shall be noted in the case file.

**Sec. 7 Transcription:** After consultation with the Assistant District Attorney prosecuting a case, a Unit Commander may request the transcription of a recording if deemed necessary to the

successful prosecution of the case. The name of a party to whom a transcript is issued shall be noted in the case file.

Note: See Special Order 04-48 issued November 8, 2004 – Documentation of Interviews of Suspects. SO 04-48 has been incorporated in its entirety into Rule 332

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Police Commissioner