

AGENDA RESERVATION REQUEST

CITY OF FRANKLIN
BOARD OF PUBLIC WORKS AND SAFETY
Please type or print

Date Submitted:	October 12, 2011	Meeting Date:	October 18, 2011
Contact Information:			
Requested by:	Chief Tim O'Sullivan		
On Behalf of Organization or Individual: Franklin Police Department			
Telephone:	317-736-3670		
Email Address:	tosullivan@franklin-in.gov		
Mailing Address:	2801 N Morton Street, Franklin, IN 46131		
Describe Request:			
Approval of SOP 1.27 – Custodial Interrogation			
List Supporting Documentation Provided:			
SOP 1.27 – Custodial Interrogation			
Who will present the request?			
Name:	Chief Tim O'Sullivan	Telephone:	317-736-3670

The Franklin Board of Works meets on the 1st and 3rd Tuesday of each month at 9:30 a.m. in the Council Chambers of City Hall located at 70 E. Monroe Street. In order for an individual and/or agency to be considered for new business on the agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 12:00 p.m. on the Wednesday prior to the Board of Works meeting.

FRANKLIN POLICE DEPARTMENT STANDARD OPERATING PROCEDURE NO. 1.27

Subject: CUSTODIAL INTERROGATION		References: Attachment - IN Evidence Rule 617
Special Instructions:		No. of pages: -2 -
Distribution: All Units	Effective Date: 10/18/2011	Reevaluation Date: 10/18/2013

1.27.1 PURPOSE:

To ensure compliance with the Indiana Supreme Court's amended Rules of Evidence which prohibits evidence of a suspect's statement taken during police station questioning unless it was electronically recorded. There are certain exceptions to this rule, as noted below.

1.27.2 DEFINITIONS:

"Electronic Recording" means an audio-video recording that includes at least not only the visible images of the person being interviewed but also the voices of said person and the interrogating officers;

Custodial Interrogation" means an interview conducted by law enforcement during which a reasonable person would consider himself or herself to be in custody;

"Place of Detention" means a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which persons are detained in connection with criminal investigations.

1.27.3 POLICY:

It is the policy of the Franklin Police Department that all Custodial Interrogations conducted in a Place of Detention must be Electronically Recorded except upon clear and convincing proof that one of the noted exceptions existed at the time of the interrogation. The Electronic Recording must be a complete, authentic, accurate, unaltered, and continuous record of a Custodial Interrogation.

1.27.4 EXCEPTIONS:

1. The statement was part of a routine processing or "booking" of the person; or
2. Before or during a Custodial Interrogation, the person agreed to respond to questions only if his or her Statements were not Electronically Recorded, provided that such agreement and its surrounding colloquy is Electronically Recorded or documented in writing; or
3. The law enforcement officers conducting the Custodial Interrogation in good faith failed to make an Electronic Recording because the officers inadvertently failed to operate the recording equipment properly, or without the knowledge of any of said officers the recording equipment malfunctioned or stopped operating; or

4. The statement was made during a custodial interrogation that both occurred in, and was conducted by officers of, a jurisdiction outside Indiana; or
5. The law enforcement officers conducting or observing the Custodial Interrogation reasonably believed that the crime for which the person was being investigated was not a felony under Indiana law; or
6. The statement was spontaneous and not made in response to a question; or
7. Substantial exigent circumstances existed which prevented the making of, or rendered it not feasible to make an Electronic Recording of the Custodial Interrogation, or prevent its preservation and availability at trial.

1.27.5 PROCEDURE:

Custodial Interrogations conducted at the Franklin Police Department or other Places of Detention shall be audio-video recorded unless one of the aforementioned exceptions exists at the time of the Custodial Interrogation.

When conducting Custodial Interrogations at the Franklin Police Department one of the two provided interview rooms must be used. An introduction should be recorded at the beginning of the interview to include the day, date, time, person(s) present and the appropriate incident number. Patrol officers should forward a request via voice mail and/or email to Chief of Detectives or the supervisory Detective, requesting the interview be preserved, and request a CD/DVD copy of the interview if needed. If transcripts of the interview are needed, this request should also be made through investigations.

When conducting Custodial Interrogations at other Places of Detention, that facilities Electronic Recording devices should be utilized. If there is no Electronic Recording devices available, request a portable Electronic Recording device through investigations.

This SOP is in addition to, and does not diminish, any other requirement of law regarding the admissibility of person's statements.

**OFFICE OF THE
PROSECUTING
ATTORNEY**



BRADLEY D. COOPER

Johnson County
Prosecuting Attorney
1 Caisson Drive
Franklin, Indiana 46131
317-346-4525
317-736-5709 (FAX)

Joseph M. Villanueva
Chief Deputy

Daylon L. Welliver
Chief Trial Deputy

Janine M. Jackson
Administrative Deputy

David M. Abbott
Robert C. Seet
Joseph D. Gaunt
Andrew K. Foster
Carlos F. Lam
Felony Court Deputies

Douglas B. Cummins
Sex Crimes Deputy

Jennifer M.K. Pinnick
Juvenile Deputy

Lori M. Lampert
Child Support

Ryan K. Bland
Domestic Violence Deputy

Joseph M. Saylor
City Court Deputy

Maryjo Lykins
Investigator

December 16, 2010

To: All Law Enforcement Heads

From: Joe Villanueva

Re: Recorded interrogation requirement starting January 1, 2011

Greetings Gentlemen:

I wanted to simply send a reminder to your respective agencies about **Evidence Rule 617**, which goes into effect January 1. In essence this rule states that in a felony prosecution, evidence of a defendant's confession which is given within the confines of a "place of detention" will only be admissible if it is recorded with both video and audio. "Place of detention" is defined as a jail, police station, or another any other building where law enforcement detains people in conjunction with criminal investigations.

A non-recorded confession may still be admissible if we can prove by clear and convincing evidence one of the following exceptions:

- 1) Statement was made as part of the routine "booking" process
- 2) Person agrees to provide a statement, but only if it is not recorded. (** Note however that we will still be required to have evidence of that specific request either on video or in writing)
- 3) Police tried to make the recording in good faith, and the equipment malfunctioned or stopped operating without their knowledge
- 4) Statement by suspect took place outside IN with questions by non-IN officers
- 5) Police reasonably believe crime they are investigating is not a felony under IN law
- 6) Statement was spontaneous and not made in response to a question, or
- 7) Substantial exigent circumstances existed which made recording the statement or preserving it for trial not feasible.

If anyone has any questions as to how this rule applies in specific situations I would be happy to discuss it. For those agencies which do not have any independent recording devices I have enclosed a copy of the rule which proves the requirement. I would suggest you present this rule along with an appropriations request to your respective governing board or council to obtain this equipment as soon as possible. If they have any questions concerning the legitimacy of this kind of expense you may feel free to pass along my contact information to them in support thereof. These kinds of cameras are relatively inexpensive and can be purchased either on-line or at any local Walmart for less than \$100.

Sincerely,

Joseph M. Villanueva
Chief Deputy, JCPO

Rule 617. Unrecorded Statements During Custodial Interrogation

- (a) In a felony criminal prosecution, evidence of a statement made by a person during a Custodial Interrogation in a Place of Detention shall not be admitted against the person unless an Electronic Recording of the statement was made, preserved, and is available at trial, except upon clear and convincing proof of any one of the following:
- (1) The statement was part of a routine processing or "booking" of the person; or
 - (2) Before or during a Custodial Interrogation, the person agreed to respond to questions only if his or her Statements were not Electronically Recorded, provided that such agreement and its surrounding colloquy is Electronically Recorded or documented in writing; or
 - (3) The law enforcement officers conducting the Custodial Interrogation in good faith failed to make an Electronic Recording because the officers inadvertently failed to operate the recording equipment properly, or without the knowledge of any of said officers the recording equipment malfunctioned or stopped operating; or
 - (4) The statement was made during a custodial interrogation that both occurred in, and was conducted by officers of, a jurisdiction outside Indiana; or
 - (5) The law enforcement officers conducting or observing the Custodial Interrogation reasonably believed that the crime for which the person was being investigated was not a felony under Indiana law; or
 - (6) The statement was spontaneous and not made in response to a question; or
 - (7) Substantial exigent circumstances existed which prevented the making of, or rendered it not feasible to make, an Electronic Recording of the Custodial Interrogation, or prevent its preservation and availability at trial.
- (b) For purposes of this rule, "Electronic Recording" means an audio-video recording that includes at least not only the visible images of the person being interviewed but also the voices of said person and the interrogating officers; "Custodial Interrogation" means an interview conducted by law enforcement during which a reasonable person would consider himself or herself to be in custody; "Place of Detention" means a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which persons are detained in connection with criminal investigations.
- (c) The Electronic Recording must be a complete, authentic, accurate, unaltered, and continuous record of a Custodial Interrogation.
- (d) This Rule is in addition to, and does not diminish, any other requirement of law regarding the admissibility of a person's statements.