

# BEST PRACTICES STATEMENT FOR LAW ENFORCEMENT

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL

October 2008

## RECOMMENDATIONS FOR ELECTRONIC RECORDING OF CUSTODIAL INTERVIEWS<sup>1</sup>

1. Any custodial interrogation of a person who is in a fixed place of detention and who, at the time of the interrogation, is suspected of having committed any violent felony offense, as defined in Utah Code Ann. §76-3-203.5(1)(c)(i), should be electronically recorded in its entirety.
2. Any custodial interrogation of a person who is not in a fixed place of detention and who, at the time of the interrogation, is suspected of having committed any violent felony offense, as defined in Utah Code Ann. §76-3-203.5(1)(c)(i), should, where practicable, be electronically recorded in its entirety.
3. The interrogating entity should not destroy or alter any electronic recording made of a custodial interrogation until the time that a conviction for any offense relating to the interrogation is final and all direct and collateral appeals are exhausted or the prosecution for that offense is barred by law. To facilitate storage and protection of the record during the time period specified above, the interrogating entity may make true, accurate, and complete copies of the electronic recording.
4. The guidelines for electronic recording of a custodial interrogation are not applicable if:
  - a. The suspect refuses to speak to law enforcement if the interrogation is electronically recorded. Such refusal should be documented either by electronic recording demonstrating such refusal, or through a written statement signed by the suspect.
  - b. Access to recording equipment required to electronically record an interrogation is not reasonably available during the period of time that the suspect is lawfully detained.
  - c. The equipment malfunctions and replacement equipment is not reasonably available.

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<sup>1</sup> Developed in cooperation with the Utah Chiefs of Police Association, the Utah Sheriffs' Association, the Utah Department of Public Safety, and Utah Prosecution Council.

d. The law enforcement officers, in good faith, fail to record the custodial interrogation because the officers inadvertently fail to operate the recording equipment properly, or without the officer's knowledge the recording equipment malfunctions or stops operating.

e. The law enforcement officers conducting the custodial interrogation reasonably believe that the crime of which the person is suspected is not among those listed in Utah Code Ann §76-3-203.5(1)(c)(i).

f. Exigent circumstances make electronic recording impossible or impractical.

5. Definitions applicable to this best practices statement are as follows:

a. "Custodial interrogation" means express questioning or its functional equivalent that is conducted by a law enforcement officer from the time the suspect is, or should be, informed of his or her "Miranda" rights, until the time that the questioning ends. It does not include questions put by law enforcement personnel, and the person's responsive statements, which are part of a routine processing or booking of the person.

b. "Electronic recording" refers to either audio recording or combined audio and video recording. The latter is recommended. Law enforcement officers are encouraged, if videotaping, to position the camera to capture the suspect's face.

c. "Fixed place of detention" means a jail, a police or sheriff's station, a holding cell, or a correctional or detention facility.

d. A person is "suspected of" committing a violent felony if law enforcement officers have reasonable cause, at the time of the interrogation, to believe that the person committed a violent felony.

6. Law enforcement officers should continue to prepare written summaries of custodial questioning, and continue to obtain written statements from suspects.

*[NOTE: This document provides recommendations for electronic recording of custodial questioning. No document can address all the circumstances or exigencies which officers may encounter, and this model is not intended to be a comprehensive treatment of all the factors involved in criminal investigations. While it is a general guide outlining methods for custodial questioning, the recommendations are intended to be used as guidelines, and are not intended to create any substantive or procedural rights.]*