
INTERVIEWS AND CUSTODIAL INTERROGATIONS

389.1 POLICY

The purpose of this policy is to provide guidance for conducting custodial interrogations of detained individuals, whether arrested or not, in compliance with RCW 10.122 - UNIFORM ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS ACT.

389.2 DEFINITIONS

Custodial interrogation - Express questioning or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstances would consider themselves in custody. RCW 10.122.020

Electronic recording - an audio recording or audio and video recording that accurately records a custodial interrogation. RCW 10.122.020

Place of Detention - a jail, police or sheriff's station, holding cell, correctional or detention facility, police vehicle, and, in the case of juveniles, schools. RCW 10.122.020.

Statement - a communication whether oral, written, electronic, or nonverbal. RCW 10.122.020

Temporary Investigative Detention (Terry Stop) - The brief detainment or seizure of an individual, whether on foot or in a vehicle, based on reasonable suspicion that a suspect is committing, has committed, or is about to commit a crime. Reasonable Suspicion must be based on specific, articulable and rational facts.

389.3 VOLUNTARY CONTACTS

The police activity of inquiring into a person's identity and the reason for his/her presence at an unusual time, and/or place, or under circumstances plays an important role in the prevention of crime and the apprehension of criminals. It is the policy of the Vancouver Police Department to encourage its members to actively engage in this process.

During voluntary contacts, officers should not use any words, actions, demeanor, or other show of authority that would reasonably indicate that a person is not free to leave; voluntary contacts are not seizures.

Voluntary Contacts fall under two categories:

1. **Social Contact:** A voluntary and consensual encounter between the police and a subject with the intent of engaging in casual and/or non-investigative conversation. The subject is free to leave and/or decline any of the officer's requests at any point; social contacts are not seizures.

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2. **Non-Custodial Interview:** A voluntary and consensual investigatory interview that an officer conducts with a subject during which the subject is free to leave and/or decline any of the officer's requests at any point; non-custodial interviews are not seizures.

If a voluntary contact develops into a custodial interrogation or temporary investigative detention of a juvenile, officers will comply with recording requirements under RCW 10.122 and/or juvenile access to an attorney under RCW 13.40.740.

389.4 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an incident may be lost or the integrity of their statements compromised with the passage of time, officers should, when warranted by the seriousness of the case, take reasonable steps to identify all persons present at the scene and in the immediate area. When feasible, officers should obtain a statement or make arrangements for a statement to be made.

Any potential witness who is unwilling to remain available or identify themselves should not be detained unless there is probable cause to arrest or reasonable suspicion to conduct a temporary investigative detention.

389.5 CUSTODIAL INTERROGATIONS

Pursuant RCW 10.122, custodial Interrogations conform to the following:

1. A custodial interrogation must be recorded in its entirety if the interrogation subject is a juvenile or if the interrogation relates to a felony crime.
 - (a) Pursuant RCW 13.40.740, juveniles shall be provided with access to an attorney prior to waiving their rights before any custodial interrogation.
2. Consent is not required to record the interrogation.
3. A custodial interrogation at a jail, police or sheriff's station, holding cell, or correctional or detention facility must be recorded by audio and video means. A custodial interrogation at any other place of detention must be recorded by audio means at minimum.

389.6 ELECTRONIC RECORDING

Officers should use Department issued recording devices to make electronic recordings of custodial interrogations meeting the requirements of RCW 10.122.

Video and/or sound recordings will conform to the following:

1. The arrested person shall be informed that a recording is being made and the statement so informing him or her shall be included in the recording;
2. The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;
3. At the commencement of the recording the arrested person shall be fully informed of his or her constitutional rights, and such statements informing him or her shall be included in the recording.

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389.6.1 EXCEPTIONS TO ELECTRONIC RECORDING

A custodial interrogation to which RCW 10.122.030 otherwise applies need not be recorded electronically under the following circumstances;

1. When a spontaneous statement made outside the course of a custodial interrogation or a statement made in response to a question asked routinely during the processing of the arrest of an individual. Such statements may be included in the officer's report.
2. If recording is not feasible because of exigent circumstances.-The law enforcement officer conducting the interrogation shall record an explanation of the exigent circumstances before conducting the interrogation, if feasible, or as soon as practicable after the interrogation is completed.
3. If the individual to be interrogated indicates they will not participate in the interrogation if it is recorded - If feasible, the agreement to participate without recording will be recorded.
4. If, during a custodial interrogation the individual being interrogated indicates they will not participate further unless the recording ceases, the remainder of the custodial interrogation need not be recorded. If feasible, the individual's agreement to participate without further recording will be recorded.
5. If a custodial interrogation occurs in another state in compliance with that state's law or is conducted by a federal law enforcement agency in compliance with federal law, the interrogation need not be recorded.
6. The officer conducting the interrogation has no knowledge or reasonable belief that the interrogation subject committed an act requiring the interrogation to be recorded under RCW 10.122.
 - (a) If, during such an interrogation the individual reveals facts and circumstances giving the officer conducting the interrogation reason to believe that an act requiring the interrogation be recorded, continued interrogation concerning that act must be recorded, if feasible.
7. If an officer conducting the interrogation or the officer's superior reasonably believes that recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the individual being interrogated, or another individual.
 - (a) If feasible and consistent with the safety of a confidential informant, an explanation of the basis for the belief that recording would disclose the informant's identity must be recorded at the time of the interrogation.
 - (b) If recording of the basis for the belief is not feasible at the time of the interrogation, the recording must be made as soon as practicable after the interrogation is completed.
8. When recording is not feasible because the available recording equipment fails, and timely repair or replacement is not feasible.

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389.6.2 VIDEO RECORDING EQUIPMENT PLACEMENT

When utilizing video recording of a custodial interrogation, the officer should seek to ensure the angle, focus, and field of vision of the recording device reasonably promotes accurate recording of the custodial interrogation.

389.7 HANDLING AND PRESERVING ELECTRONIC RECORDING

To preserve the chain of custody of an electronic recording, within a reasonable time, recording files are submitted into the Department RMS or the Department evidence system consistent with established procedures.

When submitting a recording of a custodial interrogation the recording file or evidence item submission description should be labeled by the name of the subject interviewed at a minimum to ensure the specific recording can be readily identified and accessed.

Recordings made utilizing a body-worn camera may be referenced in the officer's report.

389.8 DOCUMENTATION

If an officer conducts a custodial interrogation to which the recording requirement under state law applies without recording it in its entirety, the officer shall complete a report explaining the reason for not recording, and summarizing the custodial interrogation process and the individual's statements as soon as practicable.

Recorded custodial interrogations conducted outside a place of detention (ie: in a residence, business, etc.) shall include in the related report an explanation of why the subject was interrogated at that location, and summarizing the custodial interrogation process.

389.9 SUPERVISOR RESPONSIBILITY

There is no requirement for the review of recordings of custodial interviews by supervisors. However, supervisors may choose to randomly or selectively review recordings of custodial interviews consistent with, and as a part of, the report approval process in the Department RMS subject to VPD Policy 343 Report Preparation.

389.10 MATERIAL RESOURCES

The Department shall provide adequate electronic recording equipment in good repair for the use of officers to comply with the requirements of RCW 10.122.

389.11 TRAINING

The Training Unit will provide education and training, to ensure that all sworn personnel are familiar with the requirements of RCW 10.122 - UNIFORM ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS ACT.