



MICHIGAN STATE POLICE LEGAL UPDATE

No. 105

October 17, 2013

This update is published by the Michigan State Police, Office of the Director, Legal Resource and Education Unit. Questions and comments may be directed to MSPLegal@michigan.gov. Past editions can be found at www.michigan.gov/msp-legal.

CRIMINAL PROCEDURE

Audiovisual recording of custodial interrogations for major felonies.

[Public Act 479 of 2012](#) (Act), MCL 763.7 – 763.11, was passed last year to require law enforcement agencies to make an audiovisual recording of certain interrogations for major felonies. The recording requirements of the Act do not become effective until the expiration of certain time periods as detailed in [MCL 763.11\(3\) and \(4\)](#) and explained in the “Compliance” section below.

The Michigan Commission on Law Enforcement Standards (MCOLES) is required by the Act to set quality standards for the audiovisual recording of statements and standards for the geographic accessibility of equipment in this state. The MCOLES adopted the standards on September 18, 2013. The standards can be found on the [MCOLES Web site](#).

Definitions

Definitions of terms for purposes of the Act are prescribed in [MCL 763.7](#).

"Interrogation" means questioning in a criminal investigation that may elicit a self-incriminating response from an individual and includes a law enforcement official's words or actions that the law enforcement official should know are reasonably likely to elicit a self-incriminating response from the individual.

"Custodial detention" means an individual's being in a place of detention because a law enforcement official has told the individual that he or she is under arrest or because the individual, under the totality of the circumstances, reasonably could believe that he or she is under a law enforcement official's control and is not free to leave.

"Place of detention" means a police station, correctional facility, or prisoner holding facility or another governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

"Major felony" means a felony punishable by life, life or any term of years, or a statutory maximum of 20 years or more, or a violation of third degree criminal sexual conduct.

Audiovisual Recording Requirements

[MCL 763.8](#) requires a law enforcement official interrogating an individual in custodial detention to make a time-stamped audiovisual recording of an interrogation of an individual regarding the individual's involvement in the commission of a major felony, including the notification of the individual's *Miranda* rights.

Officers should note that the Act only applies if the individual being interrogated is in custodial detention which requires the individual to be in a police station, correctional facility, or prisoner holding facility or another governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

As detailed in [MCL 763.8\(3\)](#), an individual may object to his or her interrogation being recorded; however, an audiovisual recording may be made without the individual's consent or knowledge and despite the individual's objection.

Compliance

Except as provided in the following paragraph, a law enforcement agency shall comply with the recording requirements within 120 days of receiving funds from the MCOLES or acquiring access to audiovisual recording equipment as directed by the MCOLES standards.

A law enforcement agency that already had audiovisual recording equipment that meets the [MCOLES standards](#) as of the date the standards were adopted (September 18, 2013) shall comply with the recording requirements of [MCL 763.8](#) within 60 days. A law enforcement agency that did not have audiovisual recording equipment that meets the standards as of the date of adoption shall comply within 60 days after the date the law enforcement agency subsequently obtains equipment that complies with the standards.

SUBSCRIPTIONS

In order to receive the Update via e-mail, click [here](#) or go to www.michigan.gov/msp-legal and click on "subscribe to legal updates."

This update is provided for informational purposes only. Officers should contact their local prosecutor for an interpretation before applying the information contained in this update.