



Audit and Review Section
Professional Standards and Accountability Bureau

Custodial Interrogations Audit October 2020 (FOB and ISB)

Report # Custodial Interrogations 2020-(Apr-Sep)
April 14, 2021

Audit Team

This audit was managed and conducted by the Audit and Review Unit individuals listed below:

Auditor Betty Johnson
Auditor Tim Lindsey
Auditor Charmel Peterson
Auditor Faith Thornton

Summary

The Audit and Review Unit (ARU) of the Professional Standards and Accountability Bureau (PSAB) completed a Custodial Interrogations Audit in October 2020. Custodial Interrogations Audits are conducted to ensure that New Orleans Police Department (NOPD) officers conduct custodial interrogations in accordance with the subjects' rights secured or protected by the Constitution and laws of the United States, including the rights to counsel and against self-incrimination. NOPD agrees to ensure that custodial interrogations are conducted professionally and effectively, in order to elicit accurate and reliable information. This process is regulated by Chapter 42.11 of the New Orleans Police Department's Operations Manual.

This audit, conducted in October 2020, was completed prior to the completion of the Custodial Interrogations Audit Protocol, which is still in draft status as of this writing. This audit addresses the following Consent Decree (CD) questions: Log entries, Video/Audio documentation; Detective notes; Miranda rights; and LEP rights as documented in CD paragraphs 163, 164, 166, 167 and 168.

Scores of 95% or higher are considered substantial compliance. Supervisors should address any noted deficiencies with specific training through In-service Training classes or Daily Training Bulletins (DTBs). This training should be reinforced by close and effective supervision in addition to Supervisor Feedback Logs entries.

The overall score of the Custodial Interrogations Audit is as follows: Overall – 97%

More detailed results are embedded in the Scorecards and Conclusion sections.

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Introduction

The Audit and Review Unit of the Professional Standards and Accountability Bureau conducted a Custodial Interrogations Audit in October of 2020.

Purpose

Custodial Interrogations Audits are completed to ensure custodial interrogations are conducted effectively and in accordance with the rights secured or protected by the Constitution and laws of the United States. These requirements are regulated by the following policies of the New Orleans Police Department's Operations Manual:

Chapter 42.11 Custodial Interrogations

Chapter 1.9.1 – Miranda Rights

Chapter 55.4 – Limited English Proficiency

Chapter 55.5.1 – Communication with Persons Who are Deaf or Hard of Hearing

In addition, Consent Decree paragraphs 163, 164, 166, 167 and 168 should be understood and referenced as needed.

This list is not all inclusive.

Objectives

This audit is designed to ensure that all custodial interrogations conducted by NOPD officers are done so in accordance of the U.S. Constitution, DOJ Consent Decree and NOPD policies. All Custodial Interrogations conducted by NOPD officers must be documented in the Custodial Interrogation log either electronically or in a written log. During the audit, while reviewing the log, auditors need to ensure that it was accurately completed. The audit qualitatively assesses custodial interrogations to ensure compliance and each audit consists of a random sample of all Custodial Interrogations conducted by officers/detectives in the duty location since the prior PSAB audit.

Generally, the auditor is responsible for verifying and documenting that the NOPD conducted a proper custodial interrogation through:

1. Inspection of the Custodial Interrogations log to determine compliance with stated requirements.
2. Documentation must exist in each case file as evidence of compliance with the following:
 - All custodial interrogations that took place in a police facility were audio/video recorded. The custodial interrogation log requires an entry as to where the recording was made (also see 6B above)
 - All interrogations that involved suspected homicides or sexual assaults, were audio/video recorded
 - There is a video/audio recording of the statement as listed in the log

- The duty location does have a designated interview room(s) equipped with functioning audio and video recording technology that allows for recording and maintenance of all phases of Interrogations
- The recording does not reflect any threat or use of physical violence on the individual or the individuals' family
- The custodial interrogation recording was recorded in its entirety
- The custodial interrogation recording was not preceded by a "pre-interview"
- The recording equipment was not turned off during any part of the interview
- If the recording was turned off, it was the suspect's decision that he/she did not want the interrogation recorded
- If the recording was turned off and it was the suspect's decision that the interrogation was not to be recorded, the suspect's request was recorded and documented in the case report
- There was not a video/audio equipment failure during the recording of an interrogation
- If there was a video/audio equipment failure during the recording of an interrogation, it is noted in the case file
- If there was a video/audio equipment failure during the recording of an interrogation, it is noted in the EPR
- If there was a video/audio equipment failure during the recording of an interrogation, it is noted in a memo to the appropriate Deputy Chief
- If the interrogation was not able to be video and audio recorded because of equipment failure or malfunction, the detectives recorded the interrogation by means of a digital or cassette recorder, body worn camera, or another recording device
- The case file contains all of the officers' notes taken during interviews and interrogations
- The interview was conducted in the accused person's primary language
- If an interpreter was a police department employee, the case file reflects that the interpreter identified himself/herself as an officer or employee of the Department
- The interpreter is authorized by the Department to interpret
- The interpreter is trained in using interpretation protocols

Background

Custodial Interrogations Audits have been conducted, whole or in part, as of May of 2016. This Custodial Interrogations Audit was not conducted until the fall of 2020 because of other Consent Decree priorities and as a result of the December 2019 cyber-attack that victimized the technology infrastructure of the City of New Orleans. As of this writing, a new enhanced Custodial Interrogations Audit Protocol is being developed. All future audits will be completed using this protocol.

Methodology

Auditors qualitatively assess supervision using the audit forms for each of the 5 sections of the Custodial Interrogations Audit (see Appendix A). Auditors analyze the following data sources:

1. Officer Daily Activity Sheets (trip sheets)
2. Supervisor's Daily Activity Sheets
3. Daily lineups
4. Felony arrest reports
5. Use of force reports
6. After action reports for specialized units
7. List of misconduct complaints reported to an officer or a supervisor either in the police station or in the field
8. Counseling/Redirection files or SFL entries
9. INSIGHT data
10. List of disciplinary actions
11. List of all vehicles assigned to the district/unit
12. List of vehicles with AVL
13. Record of testing for AVLS
14. List of vehicles with MVRs
15. Record of testing for MVRs
16. Record of recording equipment failures and repairs
17. BWC recordings
18. CEW recordings
19. MVR recordings
20. Equipment repair records
21. Log of supervisor reviews of recordings, if available
22. Documentation that supervisors used information learned from the reviews of recordings for officer performance evaluations
23. Evidence officers reported non-working recording equipment – possible sources include:
 - a) Log of officers reporting non-working equipment
 - b) Activity sheets (trip sheets)
24. Evidence supervisors ensured non-operating equipment was repaired– possible sources include:
 - a) Log of supervisors reporting non-working equipment for repairs
 - b) List of repairs to recording equipment
 - c) Other documented evidence of supervisors ensuring recording equipment was repaired
25. Evidence supervisors ensured officers used recording devices
26. Evidence supervisors have a hand-held recording device
27. Evidence supervisors use the devices for use of force and misconduct investigations

All documents and related incidents that are in the sample and are not audited must be deselected. All deselections are recorded in the Deselection Log. A review of the Deselection Log shows there were no items deselected for this audit.

Auditors read the guidance in the audit forms on a regular basis. Changes to audit forms are clearly communicated to auditors by the audit supervisor. Auditors re-read policies when guidance in audit forms recommends they do so or when the policy requirements are not clear enough to the auditor to allow him/her to confidently score an audit criterion.

When audit results require comments, auditors thoroughly explain the evidence they observed that led to their determination of the result for the audit criteria in question. Drawing on their knowledge of NOPD policies, auditors note any policy violations they observe that are not specifically addressed in the Custodial Interrogations Audit tools in the “Auditor Comments” section of the form.

Initiating and Conducting the Custodial Interrogations Audit

By applying the audit forms as a guide, the auditors qualitatively assessed the Custodial Interrogation data to determine whether officers/detectives substantively met the requirements of policy.

1. A week prior to the audit, districts/units were notified of the audit to ensure the duty location was prepared for the audit and all documentation was available for review.
2. One auditor was assigned to each district/unit to be audited.
3. The auditor used the digital audit form to verify the existence of the required documentation while in the field.
4. The auditor inspected the selected documents provided by the district/unit as evidence of compliance or reviewed online data.
5. When the documentation was unavailable at the time of the audit, the district/unit was given until the end of the audit period to provide the documentation.
6. **Audit Criteria**
 - A. **An L3 or Evidence.com Recording Exists** - There is a video/audio recording of the statement as listed in the log.
 - B. **The Entire Interrogation is Recorded** - The custodial interrogation recording was recorded in its entirety. The custodial interrogation recording was not preceded by a “pre-interview”. The recording equipment was not turned off during any part of the interview. If the recording was turned off, it was the suspect’s decision that he/she did not want the interrogation recorded. If the recording was turned off and it was the suspect’s decision that the interrogation was not to be recorded, the suspect’s request was recorded and documented in the case report. There was not a video/audio equipment failure during the recording of an interrogation. If there was a video/audio equipment failure during the recording of an interrogation, it is noted in the case file. If there was a video/audio equipment failure during the recording of an interrogation, it is noted in the EPR. If there was a video/audio equipment failure during the recording of an interrogation, it is noted in a memo to the appropriate Deputy Chief. If the interrogation was not able to be video and audio recorded because of equipment failure or malfunction, the detectives recorded the interrogation by means of a digital or cassette recorder, body worn camera, or another recording device.
 - C. **No Threats of Violence** - The interpreter is trained in using interpretation protocols and the officer/detective made no verbal threats nor made physical contact which might bias the interrogation. The recording does not reflect any threat or use of physical violence on the individual or the individuals’ family
 - D. **Miranda is Recorded on Video or Audio** - Each Interrogation must be preceded by the oral presentation of Miranda Rights explaining to the person what his rights and protections are prior to the start of the interrogation.
 - E. **IF LEP, Interpreter is Qualified** - The interview was conducted in the accused person’s primary language. If an interpreter was a police department employee, the case file reflects that the interpreter identified himself/herself as an officer or employee of the Department. The interpreter is authorized by the Department to interpret. The interpreter is trained in using interpretation protocols.

- F. **Each District/Unit Has L3 Video System Operational** - The duty location does have a designated interview room(s) equipped with functioning audio and video recording technology that allows for recording and maintenance of all phases of Interrogations
- G. **If Notes Taken, Documentation is Available in Each Case File** - The case file contains all the officers' notes taken during interviews and interrogations

7. Once the auditors entered their audit results, the compliance rate for each of the requirements was determined. This final report documents whether the compliance rate for each requirement met the threshold for substantial compliance (95%).

Reviews - Scorecards

Audit results data in Excel spreadsheet, raw data based on individual questions on the Custodial Interrogations Audit Forms.

Custodial Interrogation Scorecard

Review Period: Apr-Sep 2020

Percent of custodial interrogations that are in compliance by requirement

District	# of Interrogations	¶164: Recording Exists	¶164: Entire Interrogation Recorded	¶163: No Threats of Violence	¶168: Miranda Is Recorded	¶168: If LEP, Interpreter Is Qualified	¶167: Has L3 Video System	¶166: Notes In Case File	Overall
1	-	-	-	-	-	-	-	-	-
2	2	100%	50%	100%	100%	-	100%	100%	90%
3	5	100%	100%	100%	100%	-	100%	-	100%
4	5	100%	100%	100%	100%	-	100%	100%	100%
5	2	100%	100%	100%	100%	-	100%	100%	100%
6	5	100%	100%	100%	100%	-	100%	0%	80%
7	-	-	-	-	-	-	-	-	-
8	5	100%	100%	100%	100%	-	100%	100%	100%
SOD	5	100%	100%	100%	100%	-	100%	50%	90%
Child Abuse	7	100%	100%	100%	100%	-	100%	100%	100%
Sex Crimes	5	100%	60%	100%	100%	-	100%	100%	92%
Homicide	8	100%	100%	100%	100%	-	100%	100%	100%
Total	49	100%	94%	100%	100%	-	100%	86%	97%

For guidance on meeting Consent Decree requirements for custodial interrogations, refer to the "Custodial Interrogation Compliance Guide" at NOPD.org > Resources > Compliance Guides.

Notes: 1) The overall scores do not include ¶167. 2) This review does not include CD ¶165 and the prohibition on pre-interviews in ¶164. 3) If no video was located for an interrogation, the interrogation was marked noncompliant for all relevant categories.

*Scores below 95% are highlighted in red.

Attached raw data file:



Raw Data.xlsx

Conclusion

The results of this audit were verified through a Custodial Interrogations Review. Once this process was finished, the districts/units had an opportunity to review all the audit results and scorecards. If they identified any discrepancies or had any concerns, an Audit Re-Evaluation Request Form could have been submitted to PSAB documenting their concerns. No Audit Re-Evaluation Request Forms were submitted, however.

Custodial Interrogations - as noted above, requires that officers/detectives conduct interrogations in compliance within all U.S. laws, consent decree agreements and department policies to ensure the trust and safety of individuals in the community, and provide counseling, redirection, and support to officers.

The compliance percentage for requirements in the Custodial Interrogations audit are as follows for the reviews of up to 5 samples per district/unit:

1. **An L3 or Evidence.com Recording Exists** – this requires the district/unit to show the existence of video for each reviewed interrogation. The overall score for this category is **100%**. Of the 49 items reviewed, 47 were audited as positive, none were negative and 2 were NA (not applicable). D-11420-20 and E-12374-20 were conducted “Not in NOPD Facility & Not Home or SA”.
2. **The Entire Interrogation is Recorded** – this requires the district/unit to show that there was “complete” video or audio of the reviewed interrogation. Auditors used the L3 system or Evidence.com to view video. The complete video consists of observing the interview room prior to the subject entering and observing the conclusion of the interrogation where the subject exists the interview room. The overall score for this category is **94%**. Of the 49 items reviewed, 46 were audited as positive, 3 were negative and none were NA (not applicable). I-17098-20, H-29635-20, and I-05754-20 were identified as “No-Incomplete Recording”.
3. **No Threats of Violence** – this requires the officer/detective made no threats nor caused harm to the person being interrogated. The overall score for this category was **100%**. Of the 49 items reviewed, 47 were audited as positive, none were negative and 2 were NA (not applicable). I-17098-20 and H-29635-20 were identified as “NA-Incomplete Recording”.
4. **Miranda is Recorded on Video or Audio** - this requires that the officer/detective narrate the “Miranda Rights” and having subject sign documentation acknowledging the presentation. The overall score for this category was **100%**. Of the 49 items reviewed, 46 were audited as positive, none were negative and 3 were NA (not applicable). I-17098-20 and H-29635-20 were identified as “NA-Incomplete Recording”, and H-32620-20 was identified as “NA-no interview occurred”.
5. **IF LEP, Interpreter is Qualified** – this requires that the officer/detective interviewing a n LEP person, provide qualified interpreters to assist in translating and speaking on behalf of the individual. The overall score for this category was **NA**. No LEP interpreters were required in the randomized sample of case files reviewed. Of the 49 items reviewed, 48 were identified as “NA-Not LEP”, and 1 (H-29635-20) was “NA – Incomplete Recording”.

6. **Each District/Unit Has L3 Video System Operational** - this requires that the district/unit where interrogations occur have the necessary systems in place to conduct the required video recorded interrogation. The overall score for this category was **100%**. All Districts were compliant in this category.
7. **If Notes Taken, Documentation is Available in Each Case File** – this requires that an officer/detective who scribed notes, then saved such notes in each case file as required. The overall score for this category was **86%**. Of the 49 items reviewed, 14 were identified as having taken notes. Of those, 12 were identified as positive, 2 as negative, and none were NA. D-07350-20, and C-15115-20 were identified as not having notes in the case file.

Recommendations - There were no serious deficiencies identified by this audit.

Only two categories in this audit were below the substantial compliance threshold of 95%. “¶164: Entire Interrogation Recorded” was 94% and “¶166: Notes in Case File” was **86%**. No serious or systemic deficiencies were identified.

The “¶164: Entire Interrogation Recorded” score was driven by two district/unit’s non-compliance scores, which impacted the overall score slightly (**94%**) but does not signify a need for corrective action.

The “¶166: Notes in Case File” score was driven by three district/unit’s non-compliance scores, which impacted the overall score modestly (**86%**) but does signify a need for modest corrective action. The key take-away is to ensure all notes are properly archived in each digital and/or hard-copy case file. Process reminders should be thoroughly executed as a result.

1. This report will serve as notification of district/unit performance during this audit.
2. Work with Policy Standards Section to develop DTB’s to address the training issues identified in this report.


Timothy A. Lindsey

Innovation Manager, Auditing


Auditing and Review Unit, Professional Standards and Accountability Bureau

Appendix A – Custodial Interrogations Audit Forms

Custodial Interrogations Audit Forms:



Custodial Interrogations Audit Form



ID Info **1-7** Review

Created By

- Tim Lindsey
- Faith Thornton
- Charmel Peterson
- Betty Johnson
- Michael Sarver
- Matt Sarver

Item Number	Interrogation DateTime	Interrogation Location
<input type="text"/>	<input type="text"/>	<input type="text"/>
Reporting Year	Reporting Month	Unit
<ul style="list-style-type: none">20192020202120222023	<ul style="list-style-type: none">JanFebMarAprMayJun	<ul style="list-style-type: none">123456678ISBMSBOtherSOD*Homicide

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Custodial Interrogations Audit Form



ID Info 1-7 Review

1 Does a video recording or audio recording exist?

Recording Exists

If an audio recording exists there must be documentation of the video equipment not working at the time of the interrogation.

Recordings are not required if the interrogation took place outside of an NOPD facility and was not part of a homicide or sexual assault investigation.

CD 164 + 165

[Redacted]

Yes-Video
Yes-Audio with Reason Documented
No
NA-Not in NOPD Facility & Not Hom or SA

2 Does the video or audio recording capture the entire interrogation?

Entire Interrogation Recorded

If the interrogation took place in an NOPD facility, the recording must capture the subject entering and exiting the room and must not have any breaks or gaps in the middle.

CD 164 + 165

[Redacted]

Yes
No-Incomplete Recording
No-No Recording
NA - Video unavailable

3 If the video is complete, does it show that the officer(s) conducting the interrogation did not use physical violence or make threats to individuals or their families?

No Threats of Violence

CD 163

[Redacted]

Yes
No
NA-No Recording
NA-Incomplete Recording

4 A Does the recording show the detective(s) took notes during the interrogation?

Detective Took Notes

CD 166

[Redacted]

Yes

CD 166	No NA-No Recording NA-Incomplete Recording NA - Video unavailable
Notes do not include the miranda card/form.	
4 B If video shows the detective took notes, are the notes in the case file?	Notes In Case File
CD 166	Yes No NA-No Notes Taken NA - Video unavailable
Look in the relevant networked drive and the EPR attachments. If you can't find them, contact the relevant DSA.	
5 Does the investigative unit conducting this	Unit has Interrogation Rm with Video



Custodial Interrogations Audit Form



ID Info 1-7 Review

Auditor
Comments
Custodial

Reviewer
Comments
Custodial

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Appendix B – Report Distribution

Superintendent Shaun D. Ferguson

Chief Deputy Superintendent John Thomas – Filed Operations Bureau

Deputy Superintendent Otha Sandifer – Professional Standards and Accountability Bureau

Deputy Superintendent Arlinda Westbrook- Public Integrity Bureau

Deputy Superintendent Christopher Goodly- Management Services Bureau

City Attorney Sunni LeBeouf – City Attorney’s Office

Assistant City Attorney Isaka Williams – Superintendent's Office