



ST. CHRISTOPHER AND NEVIS

CHAPTER 3.26

INTERVIEWING OF SUSPECTS FOR SERIOUS CRIMES ACT

Revised Edition

showing the law as at 31 December 2017

This is a revised edition of the law, prepared by the Law Commission under the authority of the Law Commission Act, Cap. 1.03.

This edition contains a consolidation of the following laws—

INTERVIEWING OF SUSPECTS FOR SERIOUS CRIMES ACT

Act 38 of 2012 ... in force 29th November 2012

Page

3

Published in
2019
Consolidated, Revised and Prepared under the Authority of the Law Commission Act,
on behalf of the Government of Saint Christopher and Nevis
by
The Regional Law Revision Centre Inc.,
P.O. Box 1626, 5 Mar Building,
The Valley, AI-2640, Anguilla,
West Indies.

Available for purchase from—

Attorney General's Chambers,
Government Headquarters, P.O. Box 164,
Church Street, Basseterre, St. Kitts,
West Indies

Tel: (869) 465-2521

Ext. 1013

Tel: (869) 465-2127

Fax: (869) 465-5040

Email: attorneygeneral@gov.kn

© Government of Saint Christopher and Nevis
All rights reserved. No part of this publication may be reproduced in any form or by any means
without the written permission of the Government of Saint Christopher and Nevis except as
permitted by the Copyright Act or under the terms of a licence from
the Government of Saint Christopher and Nevis.

CHAPTER 3.26

INTERVIEWING OF SUSPECTS FOR SERIOUS CRIMES ACT

ARRANGEMENT OF SECTIONS

1. Short title
 2. Interpretation
 3. Application of Act
 4. Custodial interview
 5. Conduct of custodial interview
 6. Recordings required if a statement is provided
 7. Presumption of inadmissibility
 8. Overcoming the presumption of inadmissibility
 9. Exceptions
 10. Recorded interview to be made available to the suspect
 11. Effect of charge for a matter otherwise than a serious crime
 12. Regulations
 13. Amendment of First Schedule
- FIRST SCHEDULE: Serious Crimes
- SECOND SCHEDULE: Guidance Principles for Electronic Recording of Interviews

CHAPTER 3.26

INTERVIEWING OF SUSPECTS FOR SERIOUS CRIMES ACT

AN ACT TO MAKE PROVISION FOR THE CREATION OF THE VIDEO AND AUDIO RECORDING OF SUSPECT INTERVIEWS BY LAW ENFORCEMENT OFFICERS, AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

Short title.

1. This Act may be cited as the Interviewing of Suspects for Serious Crimes Act.

Interpretation.

2. In this Act, unless the context otherwise requires—

“authorising officer” means a law enforcement officer of equivalent or higher status to a police inspector;

“court” means the Magistrates’ Court, the High Court or the Supreme Court of Appeal;

“custodial interview” means an interview which occurs while a person is under arrest in a place of detention, involving a law enforcement officer’s questioning under caution that is reasonably likely to elicit incriminating responses;

“defendant”, in relation to any criminal proceeding, means any person charged with a serious crime to which the proceedings relate, whether or not convicted;

“electronic recording” or “electronically recorded” means an audio, video or digital recording that is an authentic, accurate, unaltered record of a custodial interview, beginning with a law enforcement officer’s advice of the person’s constitutional rights and ending when the interview has completely finished;

“law enforcement agency” means the Royal Saint Christopher and Nevis Police Force, the Customs Department, the Immigration Department, the White Collar Crime Unit or other State Investigatory agency within Saint Christopher and Nevis;

“law enforcement officer” means a police officer, customs officer, immigration officer or investigator of the White Collar Unit or officer of any other law enforcement agency within Saint Christopher and Nevis;

“legal counsel” means a person who is duly admitted and entitled to practice law as a barrister or a solicitor within the state of Saint Christopher and Nevis;

“Minister” means the Minister charged with responsibility for justice and legal affairs;

“place of detention” includes a jail or police station, a holding cell, or other place where a person is held in connection with juvenile or criminal charges and where the recording equipment is located;

“remote communication” means communicating from a different location from which the custodial interview takes place;

“serious crime” means an offence specified in the First Schedule to this Act;

“statement” means an oral, written, sign language or non-verbal communication made by the suspect;

“suspect” for a serious crime, means a person who is reasonably suspected of having committed the serious crime and is under arrest for the serious crime;

“written statement” means any statement made in writing and signed by the suspect in relation to his or her arrest for a serious crime.

Application of Act.

3. Where any provision of this Act is in conflict with any other law, or where the exercise of any power conferred by or under this Act would be inconsistent with the exercise of a power conferred by or under any other law, the provisions of this Act apply in so far as it so conflicts.

Custodial interview.

4. (1) Subject to the provisions of subsection (2), a law enforcement officer may conduct a custodial interview when a suspect is arrested for any serious crime and where such interview is conducted it shall be electronically recorded.

(2) Notwithstanding the provisions of subsection (1), an authorising officer may, in accordance with the provisions of sub-paragraph 3.2 of the Second Schedule to this Act, authorise the interviewing officer not to electronically record the custodial interview.

Conduct of custodial interview.

5. (1) If during a custodial interview it is found necessary to use an interpreter, such interpreter may participate in the interview by remote communication.

(2) The law enforcement officer shall remind the suspect of his or her right to a legal counsel.

(3) The Guidance Principles contained in the Second Schedule to this Act shall apply to the procedure of electronic recording of a custodial interview.

Recordings required if a statement is provided.

6. A written statement made by a suspect and read during a custodial interview relating to a serious crime shall be electronically recorded.

Presumption of inadmissibility.

7. Subject to the provisions of sections 8 and 9, a statement made by a suspect during a custodial interview which is not electronically recorded pursuant to the provisions of section 4, shall be presumed inadmissible as evidence against the suspect in any juvenile or criminal proceeding brought against the suspect.

Overcoming the presumption of inadmissibility.

8. A presumption of inadmissibility referred to in section 7 may be rebutted, and a statement that is not electronically recorded may be admitted into evidence in a juvenile or criminal proceedings brought against the suspect, if the court finds—

- (a) that the statement is admissible under applicable rules of evidence;
- (b) the statement is proven beyond reasonable doubt to have been made voluntarily, and is reliable;

- (c) that, if practicable to do so, a law enforcement officer made a contemporaneous record of the reason for not making an electronic recording of the statement; and—
- (i) a question put by a law enforcement officer, and the responsive statement of the suspect was part of the routine processing of the suspect;
 - (ii) a law enforcement officer failed in good faith to make an electronic recording of the custodial interview because the law enforcement officer failed to operate the recording equipment properly, or the recording equipment malfunctioned or stopped operating;
 - (iii) the custodial interview took place in another jurisdiction and was conducted by a law enforcement officer of that jurisdiction in compliance with the law of that jurisdiction;
 - (iv) the law enforcement officer conducting the custodial interview reasonably believed that the making of an electronic recording would jeopardise the safety of the suspect, a law enforcement officer, another person, or the identity of a confidential informant;
 - (v) the law enforcement officer conducting the custodial interview reasonably believed that the crime for which the person was taken into custody, or was being investigated or questioned was not a serious crime;
 - (vi) that equipment to make an electronic recording of the custodial interview could not be obtained while it was reasonable to detain the suspect; or
 - (vii) exigent circumstances existed which prevented the making of, or rendered it not practicable to make, an electronic recording of the custodial interview.

Exceptions.

9. (1) A statement that is electronically recorded which is relevant to any matter in issue in juvenile or criminal proceedings may be admitted into evidence in the proceedings unless it is represented to the court that the statement was or may have been unfairly obtained.

(2) Where the suspect represents to the court that the statement was unfairly obtained, the court shall not allow the statement to be given in evidence against a defendant except in so far as the prosecution proves to the court beyond reasonable doubt that the statement was made by the defendant voluntarily, and is reliable.

(3) In any juvenile or criminal proceedings where the prosecution proposes to give in evidence a statement that is electronically recorded, the court may on its own motion require the prosecution to prove beyond reasonable doubt that the statement was made by the defendant voluntarily, and is reliable.

Recorded interview to be made available to the suspect.

10. (1) If an electronic recording is made of a custodial interview and the suspect is charged with an offence to which the custodial interview relates, a copy of the electronic recording shall be made available to the suspect or the suspect's legal counsel within a period of fourteen days after the suspect is charged or, if that is not practicable, as soon as practicable after that period.

(2) A suspect or the legal counsel is not entitled to a transcript of an electronic recording of a custodial interview, or any part of such an electronic recording.

(3) A court shall not order that a transcript be made unless it is satisfied that—

(a) words spoken in the custodial interview cannot be understood satisfactorily; and

(b) it is practicable to prepare a transcript.

(4) The provisions of subsections (2) and (3) shall not prevent a law enforcement officer from making a transcript of an electronic recording of a custodial interview and supplying a copy of it to the suspect or the legal counsel.

Effect of charge for a matter otherwise than a serious crime.

11. If the defendant is charged for a matter that is not a serious crime the custodial interview will still be admissible in any criminal proceedings against the defendant.

Regulations.

12. The Minister may generally make regulations to give effect to the provisions of this Act.

Amendment of First Schedule.

13. (1) The Minister may, by Order, amend the First Schedule to this Act.

(2) An Order made under subsection (1) shall be subject to negative resolution of the National Assembly.

FIRST SCHEDULE

(Section 2)

SERIOUS CRIMES

1. drug trafficking offence as defined in section 2(1) of the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Cap. 9:08;
2. money laundering;
3. murder;
4. manslaughter;
5. rape;
6. kidnapping;
7. armed robbery;
8. treason;
9. human trafficking offence contrary to sections 4, 5 and 6 of the Organized Crime (Prevention and Control) Act, Cap. 4:22;
10. trafficking in persons offence as defined by the Trafficking in Persons (Prevention) Act, Cap. 4:40;
11. firearms offence as defined by the Firearms Act, Cap. 19:05;
12. conspiring, procuring, counselling, aiding and abetting or attempting to commit an offence listed above.

SECOND SCHEDULE

(Section 5(3))

GUIDANCE PRINCIPLES FOR ELECTRONIC RECORDING OF INTERVIEWS

1. General.
 - 1.1 These Guidance Principles must be readily available for consultation by—
 - (a) law enforcement officers;
 - (b) law enforcement staff;
 - (c) suspected or arrested persons; and
 - (d) members of the public.
 - 1.2 Definition of certain terms—

“admission” means an admission made by a suspect to a law enforcement officer, whether the admission is by spoken words or by acts or otherwise;

“appropriate adult” means—
 - (a) in the case of a juvenile—

- (i) the parent, guardian; or
 - (ii) an officer approved by the Director of Department of Probation and Child Protection Services, if the juvenile is in the care of the Department of Probation and Child Protection Services;
 - (iii) failing these, some other responsible adult aged 18 or over who is not a law enforcement officer or employed by a law enforcement agency, and who has no connection with the matters involved in the investigation;
- (b) in the case of a person who is mentally disordered or mentally vulnerable—
- (i) a relative, guardian or someone responsible for his or her care or custody; or
 - (ii) someone experienced in dealing with mentally disordered or mentally vulnerable persons but who is not a member of a law enforcement agency, or has any connection with the matters involved in the investigation:

Provided that if the suspect expresses a preference for a relative to a better qualified stranger, or objects to a particular person, every effort should be made to respect his or her wishes so far as is practicable;

- (iii) failing these, some other responsible adult aged 18 or over who is not a law enforcement officer or employed by a law enforcement agency, or has any connection with the matters involved in the investigation;

“authorising officer” means a law enforcement officer of equivalent or higher status to a police inspector;

“court” means the Magistrates’ Court, the High Court or the Supreme Court of Appeal;

“custodial interview” means an interview which occurs while a person is under arrest in a place of detention, involving a law enforcement officer’s questioning under caution that is reasonably likely to elicit incriminating responses;

“defendant”, in relation to any criminal proceeding, means any person charged with a serious crime to which the proceedings relate, whether or not convicted;

“electronic recording” or “electronically recorded” means an audio, video or digital recording that is an authentic, accurate, unaltered record of a custodial interview, beginning with a law enforcement officer’s advice of the person’s constitutional rights and ending when the interview has completely finished;

“law enforcement agency” means the Royal Saint Christopher and Nevis Police Force, the Customs Department, the Immigration Department, the White Collar Crime Unit or other State Investigatory agency within Saint Christopher and Nevis;

“law enforcement officer” means a police officer, customs officer, immigration officer or investigator of the White Collar Unit or officer of any other law enforcement agency within Saint Christopher and Nevis;

“legal counsel” means a person who is duly admitted and entitled to practice law as a barrister or a solicitor within the state of Saint Christopher and Nevis;

“place of detention” includes a jail or police station, a holding cell, or other place where a person is held in connection with juvenile or criminal charges and where the recordings equipment is located;

“recording equipment” means any device which is able to record electronically the custodial interview using recording media;

“recording media” means any removal, physical audio recording medium, such as magnetic tape, optical disc or solid state memory, which can be played and copied;

“remote communication” means communicating from a different location from which the custodial interview takes place;

“serious crime” means any the following offences—

- (a) drug trafficking offence as defined in section 2(1) of the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Cap. 9.08;
- (b) money laundering;
- (c) murder;
- (d) manslaughter;
- (e) rape;
- (f) kidnapping;
- (g) armed robbery;
- (h) treason;
- (i) human trafficking offence contrary to sections 4, 5 and 6 of the Organized Crime (Prevention and Control) Act, Cap. 4.22;
- (j) trafficking in persons offence as defined by the Trafficking in Persons (Prevention) Act, Cap. 4.40;
- (k) firearms offence as defined by the Firearms Act, Cap. 19.05; and
- (l) conspiring, procuring, counselling, aiding and abetting or attempting to commit an offence listed above;

“statement” means an oral, written, sign language or non-verbal communication made by the suspect;

“suspect” for a serious crime, means a person who is reasonably suspected of having committed the serious crime and is under arrest for the serious crime;

“vulnerable person” means a person who—

- (a) is mentally disordered or otherwise mentally vulnerable person; or
- (b) is a juvenile under the age of 16 as defined by the Child Justice Act, Cap. 4.15;

“written statement” means any statement made in writing and signed by the suspect in relation to his arrest for a serious crime.

1.3 These Guidance Principles are not meant to discourage field interviews. Gathering “real time” information in the field can be critical for an investigation. For example, information is often immediately needed to locate a weapon, to find victims or accomplices, or to secure a crime scene (i.e. a qualifying event). If information is gathered from the suspect in the field regarding a qualifying event, efforts should be

made to record the statements at the earliest practicable time and the procedure for significant statements pursuant to sub-paragraph 4.6 followed.

1.4 Prior to the interview, the interviewing officer should be certain that the suspect, who is in custody, was searched for weapons, contraband, evidence, electronic devices or telephones and that all relevant items were removed.

2.0 Electronic recording and sealing of recording media.

2.1 Electronic recording of interviews on recording media shall be carried out openly to instill confidence in its reliability as an impartial and accurate record of the interview.

2.2 One copy of the electronic recording (referred to as the master recording) will be sealed in the suspect's presence. A second copy of the electronic recording will be used as a working copy. The master recording is either of the two recordings used in a twin deck or twin drive machine or the only recording in a single deck or single drive machine. The working copy is either the second or third recording used in a twin or triple deck or twin or triple drive machine or a copy of the master recording made by a single deck or single drive machine.

3.0 Interviews to be electronically recorded.

3.1 Electronic recording shall be used at a place of detention for any custodial interview—

- (a) with a person who has been cautioned in respect of an offence;
- (b) which takes place as a result of a law enforcement officer exceptionally putting further questions to a suspect about a serious crime after he has been charged with, or information he may be prosecuted for, that offence; or
- (c) in which law enforcement officer wishes to bring to the notice of a suspect, after he has been charged with, or informed he may be prosecuted for, a serious crime any written statement made by another person, or the content of an interview with another person.

3.2 The authorising officer may authorise the interviewing officer not to electronically record the custodial interview—

- (a) where it is not reasonably practicable to do so because of failure of the recording equipment or the non-availability of a suitable interview room or recording equipment and the authorising officer considers on reasonable grounds that the custodial interview should not be delayed until the failure has been rectified or a suitable room or recording equipment becomes available; or
- (b) where it is clear from the outset that no prosecution will ensue.

In such cases the Custodial Interview shall be recording in writing.

3.3 In all cases the authorizing officer shall make a note in specific terms of the reasons for not electronically recording the custodial interview.

3.4 Where a custodial interview takes place with a person voluntarily attending the place of detention and the law enforcement officer has grounds to believe that person has become a suspect (that is the point at which he should be cautioned and Section 4 of the Interviewing of Suspects for Serious Crime applies) the continuation of the custodial interview shall be electronically recorded, unless an authorizing officer gives authority in accordance with the provision of sub-paragraph 3.2 for continuation of the custodial interview not to be electronically recorded.

3.5 The whole of each custodial interview shall be electronically recorded, including the taking and reading back of any written statement.

4.0 Commencement of custodial interview.

4.1 When the suspect is brought into the interview room the law enforcement officer shall without delay, set the recording equipment to record. The recording media must be shown to the suspect before commencing the custodial interview.

4.2 The law enforcement officer shall sign the master recording and ask the suspect and any third party present to sign. If the suspect or the third party refuses to sign the master recording, an authorising officer, shall be called into the interview room and asked to sign it.

4.3 The law enforcement officer shall then tell the suspect formally about the electronic recording. He shall say—

- (a) that the custodial interview is being electronically recorded;
- (b) his or her name and rank and the name and rank of any other law enforcement officer present;
- (c) the name of the suspect and any other person present;
- (d) the date, time of commencement and place of the custodial interview; and
- (e) that the suspect will be given a notice about what will happen to the electronic recording.

4.4 The law enforcement officer shall then caution the suspect. Minor deviations do not constitute a breach of the requirement provided that the sense of the caution is preserved.

4.5 The law enforcement officer shall remind the suspect of his rights to a legal adviser.

4.6 The law enforcement officer shall then put to the suspect any significant statement, which occurred before the start of the electronically recorded custodial interview, and shall ask him whether he confirms or denies that earlier statement or whether he wishes to add anything.

4.7 A significant statement means one, which appears capable of being, used in evidence against the suspect, in particular a direct admission of guilt.

5.0 Custodial interviews with the deaf and suspects who cannot speak English.

5.1 If the suspect appears deaf or there is doubt his hearing or speaking ability or ability to understand English, and effective communication cannot be established, the custodial interview should be given or sought through an interpreter and this may be by remote communication.

6.0 Vulnerable persons.

6.1 An electronically recorded custodial interview of a vulnerable person must take place in the presence of an appropriate adult.

6.2 If the only obstacle to an electronically recorded custodial interview is that a juvenile's parent or guardian is unavailable and all reasonable efforts to contact them have failed, an authorising officer may authorise the law enforcement officer to proceed with the electronically recorded custodial interview. In all such cases the authorising officer shall make a note in specific terms of the reasons for proceeding

with electronically recording the custodial interview in the absence of an appropriate adult.

6.3 If a person is blind, seriously visually impaired or unable to read, an authorising officer shall make sure his legal adviser, relative, appropriate adult or some other person likely to take an interest in him, and who is not involved in the investigation, is available to help check any documentation, when the Guidance requires signing, the person assisting may be asked to sign instead, if the suspect prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is not a juvenile, or mentally disordered or otherwise mentally vulnerable.

6.4 If any procedure in this Guidance requires information to be given to or sought from a suspect, it must be given or sought in the appropriate adult's presence if the suspect is mentally disordered, otherwise mentally vulnerable or a juvenile. If the appropriate adult is not present when the information is first given or sought, the procedure must be repeated in the presence of the appropriate adult when he arrives, so that the appropriate adult is fully informed before the procedure takes place.

7.0 Changing recording media.

7.1 When the recording equipment indicates that the recording media have only a short time left to run, the law enforcement officer shall tell the suspect that the recording media are coming to an end and round off that part of the custodial interview.

7.2 If the law enforcement officer wishes to continue the custodial interview but does not already have a second set of recording media, he shall obtain a set. The suspect nor the legal adviser shall be left unattended in the interview room.

7.3 The law enforcement officer will remove the recording media from the recording equipment and insert the new recording media, which shall be shown to the suspect before the recommencement of the custodial interview.

7.4 The recording equipment shall then be set to record on the new recording media. Care must be taken, particularly when a number of sets of recording media have been used, to ensure that there is no confusion between the recording media.

7.5 Marking the recording media with an identification number immediately after they are removed from the recording equipment may do this.

8.0 Taking a break during the custodial interview.

8.1 When a break is to be taken during the course of a custodial interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time shall be recorded. The recording media shall then be removed from the recording equipment and the procedures for the conclusion of a custodial interview set out in paragraph 12 followed.

8.2 When a break is to be a short one both the suspect and a law enforcement officer are to remain in the interview room the fact that a break is to be taken, the reason for it and the time shall be recorded. The recording equipment may be turned off; there is, however, no need to remove the recording media and when the custodial interview is recommenced the electronic recording shall be continued on the same recording media. The time at which the custodial interview recommences shall be recorded.

8.3 When there is a break in questioning under caution the interviewing law enforcement officer must ensure that the suspect being questioned is aware that he remains under caution and of his right to a legal adviser. If there is any doubt the caution must be given again in full when the custodial interview resumes.

9.0 Failure of recording equipment.

9.1 If there is a failure of the recording equipment which can be rectified quickly, for example by inserting new recording media, the appropriate procedures set out in paragraph 7 shall be followed, and when the electronic recording is resumed the law enforcement officer shall explain what has happened and record the time the custodial interview recommences. If, however, it will not be possible to continue electronically recording on that particular recording equipment and no replacement recording equipment or recording equipment in another interview room is readily available, the custodial interview may continue without being electronically recorded. In such circumstances the procedures in sub-paragraph 3.2 for seeking the authority of an authorizing officer will be followed.

10.0 Refusal to go to into interview room.

10.1 If a person refuses to go into or remain in a suitable interview room, and the authorizing officer considers, on reasonable grounds, that the custodial interview should not be delayed the custodial interview may, at the authorizing officer's discretion, be conducted in a cell using portable recording equipment or, if none is available, recorded in writing as in procedures in sub-paragraph 3.2. The reasons for this shall be recorded in accordance with sub-paragraph 3.3.

11.0 Removing recording media from the recording equipment.

11.1 When recording media are removed from the recording equipment in the course of a custodial interview, they shall be retained and the procedures set out in paragraph 12 followed.

12.0 Conclusion of custodial interview.

12.1 At the conclusion of the custodial interview, the suspect shall be offered the opportunity to clarify anything he has said and to add anything he may wish.

12.2 At the conclusion of the custodial interview, including the taking and reading back of any written statement, the time shall be recorded and the recording equipment switched off. The master recording media shall be sealed and treated as an exhibit.

12.3 The suspect shall be handed a notice which explains the use which will be made of the recording media and the arrangements for access to it and that a copy of the recording media shall be supplied to him as soon as practicable if the person is charged or informed that he will be prosecuted.

13.0 After the custodial interview.

13.1 The law enforcement officer shall make a record of the fact that the custodial interview has taken place and has been electronically recorded, its time, duration and date and the identification number of the master recording media.

13.2 Where no proceedings follow in respect of the person whose custodial interview was electronically recorded the recording media must nevertheless be kept securely in accordance with sub-paragraph 14.1.

14.0 Recording media security.

14.1 The Commissioner of Police or head law enforcement officer where relevant, shall make arrangements for the master recording media to be kept securely and their movements accounted for on the same basis as other material, which may be used for evidential purposes.

14.2 A law enforcement officer has no authority to break the seal on a master recording media, which is required for criminal proceedings. If it is necessary to gain access to the master recording media, the law enforcement officer shall arrange for its

seal to be broken in the presence of a representative of the Director of Public Prosecutions. The defendant or his legal adviser shall be informed and given a reasonable opportunity to be present. If the defendant or his legal adviser is present he shall be invited to reseal and sign the master recording media. If either refuses or neither is present the representative of the Director of Public Prosecutions shall do this.

14.3 Where no criminal proceedings result it is the responsibility of the Commissioner of Police or head law enforcement officer where relevant, to establish arrangements for the breaking of the seal on the master recording media, where this becomes necessary.
