

New NY rules allow secret videos of interrogations

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ALBANY, N.Y. — Next time you find yourself being questioned by police, you might want to ask whether you're on the law enforcement version of "Candid Camera."

Under new guidelines announced Tuesday, New York's prosecutors and police may video record interrogations of suspects using even hidden equipment, although it's not expected to change common techniques that include lying to suspects about evidence against them.

It's up to each of New York's 550 police departments to choose either a hidden camera or one clearly in view of the person being questioned.

Investigators are supposed to tell a suspect if he or she is being secretly recorded on video, if the suspect asks.

"The one thing that's very clear is if someone asks, you're to tell them they're being monitored," said Franklin County District Attorney Derek Champagne. Also president of the state district attorneys association, he acknowledged being initially opposed to videotaping but said it represents progress and juries increasingly expect to see it.

"Those who truly want to bare their souls, so to speak and have a conscience, typically are still going to talk to the law enforcement and talk to the police," Champagne said. "I don't really see a big decrease or a big increase, either way."

The prosecutors' guidance to police is that recordings should be complete and continuous, including police questions and answers. But that doesn't mean everything police tell a suspect about evidence or witnesses or an accomplice's statement is true. Video recording hasn't changed police "deceptions" meant to prompt confessions, said Police Chief Steve Heider of the Albany County town of Colonie.

"It's still allowable. It's an accepted practice. And while the DA may have to explain that to a jury, because they're going to see it on video, it has not changed the outcome of any of our cases," he said.

The protocols say use of accusatory questions, deception and other similar tactics are recognized as appropriate interrogation techniques unless "fundamentally unfair" as defined by case law. That generally means coercive. It allows, however, falsely telling a suspect his DNA was found at a crime scene or that an alleged accomplice implicated him.

Suspects who won't talk often quickly ask for a lawyer, ending the interview.

The New York State Bar Association, whose members include defense lawyers, has advocated taping for several years.

"The interests of justice are not served when there is doubt about what happens in the interview room," said Hermes Fernandez, a member of the group's executive committee. "The system should have an accurate, indisputable record about what was said and done."

Albany Law School Professor Laurie Shanks, a former prosecutor and defense attorney, said secret videotaping is less problematic to her than lying to suspects. "Police lie about other witnesses' testimony. In co-defendant cases, it's a given."

"Videotaping protects both honest police officers and citizens," Shanks said. "The reality is most people who confess have actually done something."

New York City police plan to start pilot programs next year at two precincts, one in the Bronx and one in Brooklyn, though prosecutors in the five boroughs have already started using videotapes, NYPD Deputy Chief Jack Donohue said. His department plans to examine how it affects investigators, suspects and cases, he said.

The state Division of Criminal Justice Services has already provided more than \$1.5 million to prosecutors and police to buy recording equipment for interview rooms. DCJS Acting Commissioner Sean Byrne said Tuesday another \$400,000 in federal grants are available.

The State Police started videotaping in 1995 and now have 30 stations in 20 counties doing it, typically with top felonies and drunken driving cases with serious injuries or deaths, Deputy Superintendent Tom Fazio said.

"It's an important tool to see exactly what goes on in the confession and all aspects of the interview process and protecting the rights of the individual," he said.

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