I. POLICY

It is the policy of the Davis Police Department to investigate crimes thoroughly and with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

II. PROCEDURE

A. Initial Investigation

1. Officer Responsibilities - An officer responsible for an initial investigation shall complete no less than the following:

   a. Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
      
      1. An initial statement from any witnesses or complainants.
      2. A cursory examination for evidence.

   b. If information indicates a crime has occurred, the officer shall:
      
      1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
      2. Determine if additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required by PP 2.12-C.
      3. If assistance is warranted, or if the incident is not routine, notify a supervisor or the Watch Commander.
      4. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
      5. Collect any evidence.
      6. Take any appropriate law enforcement action.
      7. Complete and submit the appropriate reports and documentation.

   c. If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the informant or complainant of this information.

2. Non-sworn Member Responsibilities

   A nonsworn member assigned to any preliminary investigation (e.g., Police Services Specialist) is responsible for all investigative steps, except making any attempt to locate, contact or interview a suspect face-to-face or take any enforcement action. Should an initial
investigation indicate that those steps are required, the assistance of an officer shall be requested.

B. Custodial Interrogation Requirements

Suspects who are in custody, or when Miranda applies, and subjected to an interrogation shall be given the Miranda warnings first, unless a legal exception applies. The Department has several updated copies of the California Peace Officers Legal Sourcebook that can be used for reference.

1. Audio/Video Recordings

   a. Any custodial interrogation of an individual who is suspected of having committed any violent felony offense should be recorded (audio or video with audio as available) in its entirety. Regardless of where the interrogation occurs, every reasonable effort should be made to secure functional recording equipment to accomplish such recordings.

   b. Consideration should also be given to recording a custodial interrogation, or any investigative interview, for any other offense when it is reasonable to believe it would be appropriate and beneficial to the investigation and is otherwise allowed by law. At minimum, body-worn cameras are issued for this purpose.

   c. No recording of a custodial interrogation should be destroyed or altered without written authorization from the prosecuting attorney. Copies of recorded interrogations or interviews may be made in the same or a different format as the original recording, provided the copies are true, accurate and complete and are made only for authorized and legitimate law enforcement purposes.

   d. Recordings should not take the place of a thorough report and investigative interviews.

   e. Written statements from suspects should continue to be obtained when applicable.

2. Mandatory Recording of Adults

   Any custodial interrogation of an adult who is suspected of having committed any murder shall be recorded in its entirety. The recording should be video with audio if reasonably feasible (Penal Code § 859.5).

   This recording is not mandatory when (Penal Code § 859.5):

   a. Recording is not feasible because of exigent circumstances that are later documented in a report.

   b. The suspect refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.

   c. The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.

   d. The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.

   e. The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer the individual being interrogated or another individual. Such circumstances shall be documented in a report.

   f. A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.

   g. The questions are part of a routine processing or booking, and are not an interrogation.
h. The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

The Department shall maintain an original or an exact copy of the recording until a conviction relating to the interrogation is final and all appeals are exhausted or prosecution is barred by law (Penal Code § 859.5).

3. Juvenile Miranda Requirements (W & I § 625.6)

a. Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 15 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. A juvenile is 15 years of age or younger until the date of his 16th birthday. The consultation may not be waived.

b. This section does not apply to the admissibility of statements of a youth 15 years of age or younger if both of the following criteria are met:

1. The officer who questioned the youth reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat.
2. The officer’s questions were limited to those questions that were reasonably necessary to obtain that information.

C. Discontinuation of Investigations

The investigation of a criminal case or efforts to seek prosecution should only be discontinued (Case Closed) if one of the following applies:

1. An Investigations Sergeant or Lieutenant determines that reasonable investigative efforts have been made, there is no reasonable belief that the person who committed the crime can be identified and the incident has been documented appropriately.

2. The perpetrator of a misdemeanor has been identified and a warning is the most appropriate disposition.

   a. In these cases, the investigator shall document that the person was warned and why prosecution was not sought.
   b. Warnings shall not be given for offenses identified in other policies or by law that require an arrest or submission of a case to a prosecutor.

3. The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.

4. The case has been submitted to the appropriate prosecutor, charges have been filed, and further investigation is not reasonable, warranted or requested, and there is no need to take the suspect into custody.

5. Suspects have been arrested, there are no other suspects, and further investigation is either not warranted or requested.

6. Investigation has proven that a crime was not committed.
D. Computers and Digital Evidence

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, officers should request that computer forensic examiners assist with seizing computers and related evidence. If a forensic examiner is unavailable, officers should take reasonable steps to prepare for such seizure and use the resources that are available.

E. Investigative Use of Social Media and Internet Sources

Use of social media and any other Internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the Internet should only be accessed by members while on-duty and for purposes related to the mission of this Department. If a member encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the member should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practical. The member, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using department equipment. Information obtained via the Internet should not be archived or stored in any manner other than department-established record keeping systems.

F. Access Restrictions

1. Information that can be accessed from any Department computer, without the need of an account, password, email address, alias or other identifier (unrestricted websites), may be accessed and used for legitimate investigative purposes without supervisory approval.

2. Accessing information from any Internet source that requires the use or creation of an account, password, email address, alias or other identifier, or the use of nongovernment IP addresses, requires approval from an Investigations Sergeant or the Investigations Lieutenant prior to access. The supervisor will review the justification for accessing the information and consult with the Police Chief or a deputy chief as necessary to identify any policy or legal restrictions. Any such access and the supervisor approval shall be documented in the related investigative report.

3. Accessing information that requires the use of a third party’s account or online identifier requires approval from a deputy chief and the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

4. Information gathered from any Internet source should be evaluated for its validity, authenticity, accuracy and reliability. Corroborative evidence should be sought and documented in the related investigative report.

5. Any information collected in furtherance of an investigation through an Internet source should be documented in the related report. Documentation should include the source of information and the dates and times that the information was gathered.

6. Intercepting social media communications in real time may be subject to federal and state wiretap laws. Officers should seek legal counsel before any such interception.

G. Members are not authorized to recommend to the prosecutor or to any other official of the court that charges on a non-infraction pending case be amended or dismissed without the
authorization of a sworn administrator. Any authorized request to modify the charges or to recommend dismissal of charges shall be made to the prosecutor.

Darren Pytel
Police Chief
3/17

12/17 W &I 625.6 requirements added

Reviewed 12/17, 05/19