



Colorado Springs Police Department

General Order

1102 Interviews & Interrogations

Section 1100 – Investigative Functions

Effective Date: 5/29/2024

Supersedes Date: 9/1/2022

.01 Purpose

The purpose of this directive is to distinguish between interviews and interrogations, clarify legal considerations for both, and specify guidelines.

.02 Cross Reference

[GO 104 Determining Probable Cause](#)

[GO 1100 Investigative Procedures](#)

[GO 1903 Body Worn Camera \(BWC\)](#)

[DL-1050-01 Juvenile Victims](#)

[DL-1050-10 Juvenile Offenders](#)

[DL-1100-01 Initial Investigation Procedures](#)

.03 Discussion

Active gathering of verbal information about an incident under investigation involves two general techniques: interview and interrogation. Department personnel who participate in any investigative activity must be familiar with statutes, ordinances, departmental directives, and binding judicial interpretations pertaining to these activities.

.04 Policy

CSPD personnel will:

- Gather information from victims, witnesses, suspects, and arrestees that will help establish the facts in an incident under investigation
- Remain equally alert to ensure that interviews and interrogations conform to legal standards
- Interview, interrogate, or otherwise question persons in accordance with the law and established procedures of the department to ensure court admissibility

.05 Definitions

All Crimes Interview: The process by which a department member seeks to acquire information from a suspect related to criminal activity not directly associated with the investigation being conducted, the case in which the suspect was arrested, or the case in which the suspect is a suspect. Typically, this information is offered in exchange for consideration of pending or current charges and/or leniency during a sentencing procedure.

Department Members: As it relates to this policy, department members refer to sworn and non-sworn department members who are responsible for interviewing victims, witnesses, and suspects in a crime, including some Civilian Criminal Investigators.

Interview: The process by which an officer or other employee obtains information from a person who is not believed to be the suspect in a criminal investigation but may have personal knowledge of the investigation. Interviews are conducted to collect facts related to an incident, substantiate information obtained from other sources, develop investigative leads, or get additional relevant information.

Interrogation: The formal questioning of a person suspected of having committed a criminal act or of a person who is reluctant to fully disclose information in their possession that is pertinent to the investigation. Interrogation implies a more active role on the department member's part in questioning, including preparation, keen observation, and persistence. It is generally designed to determine the extent (if any) of a person's involvement in the commission of a criminal offense. Interrogation of a suspect in custody typically requires an advisement of Miranda rights.

Investigative Questioning: Refers to the routine questioning of persons by department personnel with the intent to obtain identifying or administrative information such as name, address, telephone numbers, and occupation without intentionally eliciting incriminating information. It may also refer to a brief questioning of suspicious persons who have not been formally arrested but are asked to explain their presence. This line of questioning may be accomplished without a Miranda rights advisement.

.10 Custody Considerations

Department personnel may question any individual without prior advisement of Miranda rights if the person is not presently in custody. Department personnel must be aware that for questioning purposes, custody could be inferred even when a person has not been formally arrested but when the person's freedom of action has been deprived in any significant way. Determination of what constitutes custody may vary from case to case and will ultimately be judged on the totality of circumstances.

For example, although most questioning in an individual's home is considered non-custodial, courts have occasionally ruled that custody exists. Conversely, questioning inside the police station might be regarded as non-custodial, depending on the circumstances. The combination of custody and interrogation requires a Miranda warning; when it is reasonable to believe that an individual is in custody, such warnings must be given before interrogation.

Courts will consider the totality of circumstances when determining whether or not a person was in custody at the time of questioning, applying the test of whether a "reasonable person" would have believed their freedom of action was substantially deprived under the circumstances. The department member's stated intent as to custody will usually carry much less weight. Department personnel should be aware that courts are generally uninterested in what label the police have applied to a particular interaction in a case report (interview v. interrogation). The courts will consider the totality of the circumstances when deciding whether or not an individual was in custody during questioning. Factors to be considered include, but are not limited to:

- *Place of Questioning*: When conducted at a police station or in a police vehicle, the courts will likely interpret the person as in custody. This interpretation may be overcome if the subject is told they are not in custody and are free to leave; the associated physical circumstances (number of officers present, doors locked/unlocked, physical restraints, etc.) are also considerations. While questioning in a subject's home is typically non-custodial, when multiple officers are present, the subject's movements are controlled, etc., the atmosphere could be considered custodial.
- *Time of Questioning*: Custody is more likely to be inferred when questioning is prolonged and/or conducted during unusual hours. Consistent with current procedure, statute, and accepted case law, as a general rule, persons being interviewed/interrogated should be permitted reasonable access to restroom facilities, water, and comfort breaks.
- *Persons Present*: If a person is removed from the presence of family or friends or if several officers are present, a custodial interrogation may be indicated.
- *Physical Restraint Used*: Any physical restraint usually leads to a finding of custody.
- *Orders To Perform Tasks Not Required By Law*: Any orders to do something the law does not require, such as ordering a person not to leave a room, may indicate custody.
- *Length and Form of Questioning*: Lengthy questioning consisting of accusatory statements, confrontation with witnesses or evidence, and leading questions may lead to a finding of custody.
- *Demeanor*: The department member's overall demeanor and tone of voice (e.g., conversational, sympathetic, excited, angry, etc.) are factors that may be considered in

considering custody. A custody finding may occur when an officer is accusatory and confronts a person with alleged guilt.

When an officer has not arrested a person or otherwise taken the person into custody in a manner that restricts the person's freedom or ability to discontinue the conversation, then department members may ask whatever questions are necessary and pertinent. The key in this circumstance is custody: where there is no custody, the law places no restrictions on questioning. An example of an unrestricted situation is when an officer talks to a person in a voluntary, non-custodial setting about crime conditions or leads.

.12 Interview Room Usage

Interview rooms are available in each patrol division and at various locations in the Police Operations Center (POC). Secure areas designed for interviewing/interrogating persons in custody are located within each facility's locked holding cell area. Department members should utilize designated interview rooms whenever practicable, consistent with operational needs and security considerations.

Areas designated as interview rooms should be adequate in size and equipped with furniture that will facilitate the interview process, such as tables and chairs. Other items, such as recorders, telephones, office supply storage, etc., may be added as needed, but care should be taken to avoid furnishings that have the potential to be converted into improvised weapons.

The location and design of interview rooms should consider the personal security of department members utilizing them, such as observation windows, intercoms, duress alarms, etc.

Interview rooms will be equipped with audio and/or video recording equipment, either in plain view or concealed, and this equipment will be utilized in accordance with current procedure, case law, and applicable statutes. Department members not familiar with the operation of installed recording equipment should seek assistance from someone trained in its operation to ensure a quality recording and avoid damaging the equipment.

No more than two department members (including the interviewer) will be allowed in the interview room at the same time unless articulable reasons are present to warrant additional personnel. Reasons include the suspect behaving violently, the type of investigation, additional subject matter experts needed, etc. If additional personnel are to be present, supervisory approval is required.

No person being interviewed in a department facility will be allowed to possess any deadly weapon. Interviewing officers will also ensure that voluntary interviewees are unarmed before entering any secured portion of a police facility. Individuals under arrest will be searched for weapons before being brought into an interview room.

Exceptions can be made for active-duty peace officers as warranted by circumstances. An officer being interviewed as a suspect in a felony investigation or allegation of serious misconduct will not be armed during the interview. It is the interviewing officer's responsibility to determine whether interviewees are armed and to secure an interviewee's weapons as appropriate.

Interviewing officers in rooms outside secure holding cells should retain their duty weapons during interviews. Officers may be armed with any or all department-approved weapons. It is critical that armed officers do not allow themselves to become distracted during the interview process. Interviewing officers must remain alert to sound officer safety and weapons retention practices.

Some interview rooms are equipped with duress alarms, and interviewing officers should be familiar with their location and function. When using rooms not so equipped, the interviewing department member should make basic security arrangements appropriate to the circumstances at hand with other officers in the area, such as informing someone else that they are conducting an interview in a particular room, arranging for occasional spot checks, agreeing on a duress signal, or utilizing the duress alarm (BOB button) on their hand-held radio, etc.

.20 Interviewing Victims

Department members who are responsible for interviewing victims should strive to provide each, regardless of the offense type, with a victim-centered, trauma-informed experience.

.22 Sexual Assault Victims

Adults

In interviewing an adult victim of sexual assault, the officer should conduct as thorough of an interview as soon as possible, seeking to establish the elements of the crime, identifying perpetrators and witnesses (direct or outcry), and locating evidence related to the event.

Although victims who are severely traumatized or intoxicated may be difficult to interview, department members should make every reasonable effort to obtain as much information as possible, which will assist in making arrest decisions and contribute to follow-up investigations.

Depending on each unique situation, department members should consider others who may be helpful in obtaining a statement from a victim, including, but not limited to, Victim Advocacy Unit (VAU) personnel and professional on-duty hospital staff (sexual assault nurse examiners, social workers, physicians, etc.).

While the victim's welfare is a priority, department members should exercise caution in allowing family members or persons associated with non-police victim advocacy groups to stay in the room

during the interview. These persons are likely to be subpoenaed to court later, and testimony as to different recollections of the interview could lead to unnecessary confusion.

Children

The Colorado Children's Code (C.R.S. §19-3-308.5) strongly encourages audio/video recorded interviews of child sexual assault victims by specially trained personnel in a setting such as the Safe Passage Children's Advocacy Center; this is especially important with young children or those who are severely traumatized.

Department members responding to initial reports of sexual assault involving children should obtain as much basic information as possible to establish the elements of the crime and identify, with particular attention being paid to statements from a responsible adult (e.g., relatives, witnesses, hospital personnel, etc.). Some children, specifically older teens, may be able to be interviewed by the responding officer.

Department members should thoroughly detail the best information available under these conditions and reliable contact information for the child and guardian so that Crimes Against Children detectives or investigative specialists with the Forensic Interview Unit (FIU) can schedule a structured victim interview as soon as possible.

.30 Interviewing Witnesses

As soon as is practicable upon arriving at a crime scene or initiating an investigation, department members will attempt to locate and identify all witnesses who may have information **related or pertinent to the incident under investigation**. Witnesses may tend to separate themselves from the scene or become overlooked.

Complete identifying information, including full name, date of birth (confirmed through documentation when possible), physical and clothing description, etc., as well as reliable home and work contact information, may prove critical to the investigation and should be recorded by department members with respect to each witness as soon as possible. To the degree practicable, witnesses should be quickly separated from one another to help preserve the integrity of individual memory.

With due consideration given to those injured or traumatized by an event, witnesses should be questioned as soon as possible following the incident while their memory is fresh and the opportunity for a thorough statement is best.

Witness behavior may range from cooperative to hostile, and department members must remain sufficiently flexible in their approach and obtain the most thorough statement possible. Witnesses

may display varying degrees of reluctance to answer questions for various reasons, including inconvenience, misplaced loyalty, fear, or a desire to conceal criminal culpability.

Although every witness should be identified, department members should attempt to make a preliminary determination of how significant a particular witness' information may be to the investigation so that resources can be prioritized.

Department members should always begin by requesting witness cooperation. If unsuccessful, officers should continually evaluate their legal authority given the information and circumstances encountered. For example, as a rule, witnesses cannot be forcibly detained or compelled to make a statement. However, if their behavior and attendant circumstances create a reasonable suspicion that they may be criminally culpable in some way, detention may be appropriate until probable cause for arrest is either established or ruled out.

Witnesses who have agreed to cooperate should be interviewed in a controlled, quiet environment that is free of distractions and allows for good interaction between officer and subject. Without compromising safety or sound investigative practice, department members should consider interviewing witnesses in surroundings that are familiar and comfortable to the interviewee and in a manner that causes minimal inconvenience to them.

Young children who are eyewitnesses to violent crimes or who are themselves severely traumatized should be given special consideration. In serious cases, when appropriate to the circumstances, department members should consider requesting/arranging for the child to be interviewed by representatives from the FIU.

.32 Factors Affecting Witnesses

Department members will note the witnesses' physical and mental condition, their relationship to the incident under investigation, and any other information indicating the credibility and reliability of the person being interviewed.

The following essential elements should be determined about each witness or other person interviewed:

- *Presence at the scene:* Was the person present during all or part of the event under investigation?
- *Awareness:* Was the person conscious of the event, or a portion of the event, which prompted the investigation?
- *Observant:* Was the person attentive to the details of the incident?

- *Narrative Ability*: Is the person capable of discussing the observed event in a manner that is understandable and complete?

.40 Voluntary Confession

Any confession, whether custodial or non-custodial, must be shown to be voluntary before it is admissible. In court, a preponderance of the evidence must establish that the confession was knowingly, intelligently, and freely given.

The advisement of Miranda rights will not automatically render a confession voluntary if the defendant can establish that the rights were not knowingly waived or that he was subjected to coercion in making a statement. The constitutional principle is that no innocent person may be compelled to confess and that any tactic or technique apt to make an innocent person confess is not permissible.

When engaged in an interrogation, department members will refrain from knowingly engaging in techniques that can reasonably be expected to compromise the voluntariness of a confession, including:

- The application or threat of physical harm to induce a statement
- Making promises that the member does not have the ability or authority to fulfill, such as freedom or **prosecutorial** leniency. Promises within the member's authority, such as recommending light bail or telling a judge or prosecutor that the subject cooperated, may be used, but with caution.
- Deception or trickery that "shocks the conscience" of the court or community, such as pretending to be a chaplain or defense attorney. In some instances, strategic deception, such as falsely telling a suspect that physical evidence or an accomplice has implicated them, will not automatically render a confession involuntary but should be used with caution. **In a juvenile interrogation, C.R.S. § 19-2.5-203(8) states that statements or confessions made by the juvenile may be presumptively inadmissible at trial if the department member knowingly communicates untruthful information or belief to obtain the statement or admission. See [DL-1050-10 Juvenile Offenders](#) for more information.**

.50 Standard Miranda Warning

When a Miranda warning is required, it will be administered in substantially the following format:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.

3. You have the right to consult a lawyer prior to questioning and have the lawyer present during questioning.
4. If you cannot afford to hire a lawyer, a lawyer will be appointed to represent you before any questioning if you request one.
5. You can stop the interview and request to remain silent or request a lawyer at any time before or during questioning.

.52 Waiver of Constitutional Rights

Before statements made by suspects become admissible in court, the prosecution must offer evidence that a suspect was advised of their rights, acknowledged they understood the advisement, and waived those rights knowingly and intelligently.

To secure a waiver, the following questions will be asked, and the suspect needs to respond with an unambiguous, affirmative reply before questioning begins:

- Do you understand each of these rights I have explained to you?
- Having these rights in mind, do you wish to talk to me now?

Circumstances that contribute to establishing an affirmative reply include, but are not limited to, the following:

- *Formal Waiver:* Suspects state orally and unequivocally that they understand their rights and wish to talk
- *Waiver Followed by Statement:* An acknowledgment by a suspect that they understand, followed closely by a statement, is held to be a waiver
- *Non-Verbal Waivers:* Nods and shrugs may be sufficient, absent coercion, but are subject to different interpretations. Whenever possible, officers should obtain a verbal and/or written response.
- *Request to Talk to an Attorney Later:* A clear desire to answer questions now but talk to an attorney later may be considered a waiver but must be viewed with extreme caution. Any mention of an attorney by the suspect prior to questioning could later be interpreted as an expression of a desire for counsel, and officers must clarify these remarks before proceeding.

If the suspect waives their rights, department members may proceed with questioning.

.54 Invocation of Constitutional Rights

Fifth Amendment

The interrogation must cease immediately if an in-custody suspect invokes their right to counsel. Department members cannot question the suspect further about any crime without their lawyer present for as long as they remain in custody. This prohibition is not offense-specific and applies to questions about the crime(s) the suspect was arrested for and any other crime(s).

If a suspect is released from custody (e.g., released on bond) after invoking either their right to remain silent or their right to counsel, department members may re-initiate questioning provided that the release was not contrived to circumvent the suspect's constitutional rights. If this questioning takes place in a custodial setting, department members must advise the suspect of the Miranda warning and obtain a valid waiver of rights before beginning questioning.

Department members may attempt to interview a suspect, either in or out of custody, who previously invoked their Fifth Amendment protections when the suspect, entirely of their own volition, later re-initiates the conversation (at the time or later). In such a circumstance, department members will again advise the suspect of the Miranda warning and be required to obtain an unambiguous, affirmative reply before questioning begins.

If the suspect does not re-initiate the conversation, department members may re-initiate questioning, provided that the suspect's original decision to remain silent was honored and a significant amount of time has passed since the suspect first asserted their desire to remain silent. Under these circumstances, department members will again give the suspect the Miranda warning and obtain an unambiguous, affirmative reply before questioning begins.

Sixth Amendment

Department members can initiate (or re-initiate) questioning of a defendant in custody who has been arraigned and who has requested or obtained the appointment of counsel provided that the suspect has not previously asserted their Fifth Amendment right to counsel.

Department members should advise the defendant of their Miranda warning and obtain an unambiguous, affirmative reply before questioning begins. If the suspect invokes their rights, officers may not "badger" the suspect by making periodic or repeated attempts at questioning.

If a defendant has been arraigned but is no longer in custody, department members may approach and attempt questioning even if the suspect has previously requested or retained counsel. Before questioning begins, department members must advise the defendant of the Miranda warning and obtain an unambiguous, affirmative reply, even though the defendant is not in custody.

The circumstances surrounding any questioning of a suspect after that suspect has invoked their constitutional rights must be thoroughly documented in the associated case report(s).

.56 Notice of Invocation

Periodically, the department receives communication from the Courts, the District Attorney's Office, and the Public Defender's Office indicating a suspect has or intends to assert their Fifth and Sixth Amendment Rights. Any member receiving such communication will immediately adhere to the order and work with the chain of command responsible for the investigation to disseminate that information to all department members as soon as practicable.

.58 Collecting Investigative Information

While department members are permitted to obtain the information necessary to sufficiently identify a suspect (e.g., name, date of birth, home address, phone number, etc.), certain pieces of information may only be obtained after a suspect has been advised of and provided an unambiguous, affirmative reply; specifically, any information that could be used in the furtherance of an investigation, including but not limited to a suspect's email address or social media accounts.

.60 Unsolicited or Spontaneous Statements

Department members are expected to remain alert and note spontaneous, unsolicited statements made by suspects in their presence. If the statements are voluntary, a Miranda warning **is not required.**

Department members should not interrupt a suspect who has begun to make incriminating statements of their own volition so long as the Department members did not elicit, encourage, or entice the suspect into making such statements.

If/when the department member interrupts or begins to ask clarifying questions, Miranda warnings are usually required.

Any unsolicited statements germane to the investigation will be documented in the associated case report.

.62 All Crime Interviews

In accordance with Rule 16 and Rule 3.8 of Professional Conduct, the District Attorney's Office is required to provide a suspect's defense counsel with any information in possession of law enforcement, including information that could mitigate the offense (e.g., information from all crime interviews). All department members who conduct all crime interviews will document the interview details in the incident number corresponding to the person's arrest or investigation of a

crime where the person is identified as a suspect. All crime interviews will be recorded in accordance with department policy.

In an effort to ensure the continuity of various investigative resources, department members who conduct all crime interviews should email the department's Strategic Information Center, Crime Analysis Unit at [REDACTED], detailing the case number, type/s of criminal activity provided, and the name of the person interviewed.