



# ORONO POLICE DEPARTMENT

## STANDARD OPERATING PROCEDURES

Protect with Vigilance & Serve with Compassion and Excellence

<b>Subject:</b>	<b>Custodial Interrogation</b>	<b>Policy #</b>	<b>O-55</b>
<b>Effective Date:</b>	<b>February 16, 2023</b>	<b>Review Cycle:</b>	<b>2 Years</b>
<b>Distribution:</b>	<b>All Sworn Personnel</b>	<b># of pages:</b>	<b>5</b>
<b>MLEAP:</b>	<b>7.06</b>		
	<b><i>Rescinds All Previous Policies Related to This Current Policy</i></b>		
<b>Issuing Authority:</b>	<b>Chief of Police Daniel Merrill</b>		

### I. POLICY:

It is the policy of the Orono Police Department to safeguard and ensure respect for the constitutional rights of all persons. Accordingly, all persons shall be advised of their constitutional rights before custodial interrogation.

### II. PURPOSE:

It is the purpose of this policy to establish guidelines to ensure the constitutional rights of all persons taken into custody and submitted to questioning are protected.

### III. DEFINITIONS

**Custodial Interrogation**- Express questioning or its functional equivalent conducted by a law enforcement officer that is designed to or is likely to elicit an incriminating response from a person in custody but does not include questions or answers that are part of the routine booking process.

**Custody** – A person who is either under formal arrest or would reasonably believe that they are under arrest.

### IV. INDIVIDUAL RIGHTS

- A. Before initiating a custodial interrogation, the officer shall advise the person of the *Miranda* rights (Miranda v. Arizona 384 U.S. 436, 1966). Each officer will make the advisement by reading aloud from the *Miranda* warning. This advisement will accompany a signed acknowledgement of rights and a signed waiver of rights, and the individual's response should be electronically recorded.
- B. While the Sixth Amendment right to counsel is not a *Miranda* issue and one need not be in custody for such right to apply, the *Miranda* advisement and waiver procedures are appropriate and necessary before questioning a person whose Sixth Amendment right to counsel has attached.

## **V. CUSTODIAL INTERROGATION REQUIREMENTS**

### **MLEAP 7.06**

- A. To ensure that questioning is conducted constitutionally and professionally, persons interrogated must understand their rights, and these rights will be respected.
- B. A custodial interrogation is preferred to occur in a controlled environment that contains audio/video recording equipment to memorialize the interrogation. Therefore, officers shall make all reasonable efforts to make an audio and visual recording of all custodial interrogations (including advisements and completion of waiver forms) whenever practicable. Recording preferences are as follows:
  - 1. The preferred method is to record the interview in a controlled environment with audio/video equipment.
  - 2. The second preference is to use a higher quality video and audio recording device than the body worn camera (BWC).
  - 3. The third preference is recording via BWC.
  - 4. The fourth preference is to utilize an audio recorder or use of the officer's cell phone
  - 5. In general, the BWC should be activated throughout interactions with a suspect unless there is a controlled environment with other audio/video equipment activated. In the rare circumstance when an officer is with a suspect without any recording, upon the occurrence of an excited utterance by the suspect that prompts the officer to ask to follow up questions, the officer must turn on the BWC or cell phone's audio recorder before asking any follow-up questions. The officer must also document in their written report the circumstances of the excited utterance and why the BWC was not activated.
  - 6. Under exigent circumstances where none of the above recording capabilities are available, the officer must notify their supervisor as soon as practical, either before or after the unrecorded custodial interrogation. Following that notification, officers must also document in their written report that
    - i. The interrogation was not recorded.
    - ii. When the supervisor was notified.
    - iii. The reason the interrogation was not recorded.
    - iv. The efforts taken to obtain recording capabilities.
    - v. The substance of the interrogation.
- C. If encountering a person who displays signs that their ability to understand is impaired by behavioral health or intellectual disability (including use of alcohol or other drug use, suicidal ideation, mental illness, or a developmental disability), language barriers, deafness/hearing impairment, illiteracy (in the case of written advisement) or youth, refer to the section below, before proceeding with the Explanation and Waiver of Rights.
  - 1. If the officer has reason to believe that one of these categories applies, but is uncertain whether it affects the person's ability to understand, the officer should inquire about whether the person is under the influence of any substance, has a mental health disability, developmental disability, language barrier, or physical disability that may affect the person's ability to understand or engage in this process.
  - 2. Interrogations of youth must always follow special guidance for youth, regardless of perceived maturity or comprehension of the youth.

## **VI. EXPLANATION AND WAIVER OF RIGHTS**

- A. Complete the Explanation and Waiver of Rights to provide a written record of the explanation of constitutional rights and a waiver of counsel for each suspect subject to custodial interrogation, unless impractical to do so.
1. Determine whether the suspect can read the Explanation and Waiver of Rights form.
  2. Read each sentence aloud to the suspect.
  3. Ask suspect if they understand each right and have the person initial after each statement, unless not practicable to do so, such as when a suspect is physically unable to initial, unable to read or write, or where it is unsafe to obtain the suspect's initials (i.e., a physically combative suspect or a suspect who may try to harm himself or herself).
  4. Read the waiver statement to the suspect.
  5. Ask if the suspect is willing to sign the waiver statement. If the suspect refuses to sign, they may still waive the Miranda rights orally or by implication. Refusal to sign and the decision to provide an oral waiver must be documented on the form.
  6. Fill out all requested information in the appropriate lines.

### **Assertion of *Right to Silence* by In-Custody Suspect**

1. Cease all interrogation efforts immediately.
2. No further interrogation efforts on anything until:

The suspect has been left alone by police for at least several hours, *Miranda* warnings are repeated, and waiver obtained,

**OR**

The suspect initiates new discussion with police of involvement in criminal activity, *Miranda* warnings are repeated, and waiver obtained,

**OR**

The suspect leaves custody whereupon there is no requirement of *Miranda* warning and waiver.

### **Assertion of *Right to Counsel* by In-Custody Suspect**

Prior to approaching a suspect to initiate interrogation, determine whether the suspect has previously invoked *the right to counsel* while in custody or during a prior custodial interrogation. There must have been a 14-day break in custody since invoking the right to counsel.

1. Cease all interrogation efforts immediately.
2. No further interrogation efforts on anything until:

Legal counsel is actually present at any subsequent interrogation, *Miranda* warnings are repeated, and waiver obtained,

**OR**

The suspect initiates new discussion with police of involvement in criminal activity, *Miranda* warnings are repeated, and waiver obtained,

**OR**

At least 14 days have elapsed after release from custody, *Miranda* warnings are repeated, and waiver obtained.

### **Attachment of *Sixth Amendment Right to Counsel* by Charged Suspect**

1. No further interrogation efforts regarding the formally charged crime until:

Legal counsel is actually present, *Miranda* warnings are given, and waiver obtained,

**OR**

The suspect initiates discussion with police regarding the formally charged crime, *Miranda* warnings are repeated, and waiver obtained.

### **Voluntariness and Coerced Statements**

Independent of *Miranda* and the Sixth Amendment right to counsel, an incriminating statement must be voluntary *beyond a reasonable doubt* and not compelled by coercion of any sort.

## **Miranda Warning**

I am a Law Enforcement Officer. I want to ask you some questions. Before I do so, I want to explain your rights.

1. You have the absolute right to remain silent. Do you understand that?  
(Get a verbal response)
2. Anything you say can, and will, be used against you in a court of law. Do you understand that?  
(Get a verbal response)
3. You have the absolute right to the advice of a lawyer before any questioning, and to the presence of a lawyer here with you during questioning. Do you understand that?  
(Get a verbal response)
4. If you cannot afford a lawyer, one will be furnished to you free before any questioning, if you desire. Do you understand that?  
(Get a verbal response)
5. If you decide to answer questions now, with or without a lawyer present, you have the right to stop answering at any time, until you can talk to a lawyer. Do you understand that?  
(Get a verbal response)

### **(Waiver)**

Now, having all those rights which I just explained to you in mind, do you wish to answer questions at this time? (Get a verbal response)

Signature: \_\_\_\_\_

Date and Time: \_\_\_\_\_

Officer's Signature: \_\_\_\_\_

Witness Signature: \_\_\_\_\_