



INTERVIEW & INTERROGATION PROCEDURES	
✓ new: rescinds: amends: All previous	
cross-reference: accreditation standards: NYSLEAP Standard(s): 50.1	
effective date: December 2023	amend date:

I. PURPOSE

The purpose of this policy is to establish and describe policies and procedures for interviewing and interrogating adult subjects to assure that Sheriff's Office members afford everyone their constitutional rights. Personnel conducting interviews and taking statements from juveniles will follow *G.O. 1004 Juvenile Contact & Arrest Procedures*.

II. POLICY

It is the policy of the Office to comply with all legal mandates governing custodial and non-custodial interviews/interrogations of subjects and the taking of statements from subjects. This order is intended to provide guidelines and procedures for the interview/interrogation of and taking of statements/confessions from subjects. It is not intended and should not be construed to limit officers from engaging in any lawful conduct or method for doing so.

III. DEFINITIONS

Custodial Questioning: The questioning of an individual conducted by police officers after the individual has been arrested. A functionally equivalent situation exists when a "reasonable person" in the subject's position would feel that they are deprived of freedom of action in a significant way.

Interrogation: Means express questioning in a criminal investigation that may elicit a self-incriminating response from an individual and includes a law enforcement official's words or actions that the law enforcement official should know they are reasonably likely to elicit a self-incriminating response from the individual.

Note: "Both the elements of police custody and police interrogation must be present before law enforcement officials constitutionally are obligated to provide the procedural safeguards imposed upon them by Miranda" (People v. Huffman, 41 NY2d 29, 33 [1976]).

Interview: The act of questioning a person not under arrest or in custody.

Interview/Interrogation Room: A room designated for the sole purpose of interviews or interrogations with recording capabilities.

Miranda Warnings: A statement telling an arrested person about their Miranda Rights.

Non-Custodial Interview: For purposes of this order, the questioning of a subject who is neither under arrest nor deprived of his or her freedom in a significant way.

IV. PROCEDURES

A. Non-Custodial Interviews:

1. It is not necessary to give Miranda Warnings or receive a waiver of same for non-custodial interviews. Thus, Miranda Warnings are not required:

a. When an officer questions a motorist during a vehicle stop for a traffic infraction or crash.

Note: If the motorist is in custody for a traffic misdemeanor or felony (i.e., DWI), Miranda Warnings are required.

b. When an officer conducts a brief interview of a person temporarily detained during an investigative detention based on reasonable suspicion that an individual is engaged in, or about to be engaged in criminal conduct. Such interviews are commonly referred to as a Terry Stop or Field Interview.

c. During routine informational questioning at the scene of an incident or crime when questions are not reasonably likely to elicit incriminating responses. "Although the police may ask a suspect preliminary questions at a crime scene in order to find out what is transpiring, where criminal events have been concluded and the situation no longer requires clarification of the crime or its suspects, custodial questioning will constitute interrogation" [internal citations omitted]; *People v. Soto*, 183 AD2d 926, 927 [2d Dept 1992] [same])

d. When obtaining routine booking information that is not reasonably likely to elicit incriminating responses.

e. When information or statements are made spontaneously, voluntarily, and without prompting by police, commonly referred to as "spontaneous statements" or "excited utterances." Such statements shall be documented on the office-approved *Notice of Intent to Use Statements (CPL Section 710.30) Form*. Follow-up questions that exceed simple requests for clarification of initial statements may require Miranda Warnings.

f. When information or statements are made voluntarily and without prompting by police that are incriminating in nature or that are relevant to proving the crime. Such statements shall be documented on the office-approved *Notice of Intent to Use Statements (CPL Section 710.30) Form*. Follow-up questions that exceed simple requests for clarification of initial statements may require Miranda Warnings.

2. Officers may invite a subject to come to a police facility to be interviewed on a non-custodial and voluntary basis. In such cases, it is not necessary to give Miranda Warnings. However, officers must bear in mind that in such cases the prosecution has the burden of proving that the interview was voluntary and non-custodial in order to ensure the admissibility of any statement made by the subject in the absence of Miranda Warnings. Thus, officers should clearly inform the subject that the interview is voluntary and that he or she is free to leave at any time and fully document this in their report.

Note: If, during a non-custodial interview, for any reason a decision is made that the questioning has changed to a custodial interrogation, the interview process must stop **immediately** and Miranda Warnings must be given and a waiver obtained to continue.

B. Administering Miranda Warnings and Obtaining Waivers in Custodial Interrogations

1. Prior to the commencement of any custodial interrogation the person to be questioned must first be read Miranda Warnings as contained on the *Miranda Warnings* form. This form shall be read and completed in full. If in the field the officer may use the *Miranda Warnings* form or an authorized Miranda Rights card. Officers will have in their possession a Miranda Rights Card at all times while on duty.

Note: In custodial situations, recitation from memory or paraphrasing the warnings should be avoided, as it precludes officers from testifying in court and to the precise wording used.

2. After the notification, the person may waive his or her rights and consent to be questioned. Any waiver of rights and consent to be questioned must be done so voluntarily, knowingly, and intelligently. The officer shall read the 'waiver of rights' section contained in the *Miranda Warnings* form to the subject.
 - a. Officers will not engage in any coercive conduct that may impair the voluntariness of a waiver of rights or consent to be interviewed.
 - b. The prosecution in a criminal case has the burden of proving that any waiver of rights, consent to be interviewed or consent to give a statement was lawful, voluntary, and knowing. Therefore, officers must carefully document the circumstances of any such waiver or consent.
3. It is a court-accepted practice to provide a written copy of the Miranda Warning to the subject of the custodial interrogation when it is being read, and to have them sign the copy to indicate the warning was read and understood or provide an oral statement that they understood the warning read to them. The officer shall document the person's exact response on the *Miranda Warnings* form.
4. Officers shall ensure that individuals understand their right to remain silent and their right to an attorney.

- a. Waivers of one or both of the Miranda rights must be performed affirmatively.
- b. Oral waivers are sufficient but written waivers, particularly in felony charges, are preferred and should be obtained whenever possible. However, if an officer has reason to believe that requesting a written waiver may hinder the investigation then an oral waiver is sufficient.

The fact that a defendant “did not execute a written waiver of his Miranda rights does not invalidate his oral waiver or otherwise render his statement involuntary” (People v. Rankin, 127 AD3d 1335, 1339 [3rd Dept 2015]). “Whether a defendant knowingly and intelligently waived his [Miranda rights] is determined ‘upon an inquiry into the totality of the circumstances surrounding the interrogation,’ including an evaluation of the defendant’s ‘age, experience, education, background, and intelligence’ ” (People v. Dunbar, 104 AD3d 198, 210 [2nd Dept 2013] citing Fare v. Michael C., 442 US 707, 725 [1979]). The Second Department has repeatedly held that an express waiver of Miranda is not required, rather the totality of the circumstances, including a defendant’s prior involvement with the law and his express indication that he understands his rights, must be considered (see People v. Harris, 115 AD2d 619, 619 [2nd Dept 1985]).

- c. If an oral waiver is obtained, the officer shall document the person’s exact response on the *Miranda Warnings* form.
5. When interrogating persons in custody who are deaf, the officer shall make arrangements to procure the assistance of a qualified interpreter.
6. When interrogating persons in custody who speak only a foreign language, the officer shall make arrangements to procure the assistance of a qualified interpreter.
7. Whenever possible, Miranda Warnings should be audio and video recorded.
8. The complete original *Miranda Warnings* form will be attached to the case file.

C. Invoking the Right of Silence

1. When a subject invokes his right to remain silent, all interrogation shall terminate immediately.
2. If a subject invokes their right to remain silent but later initiates communication that indicates his willingness to answer questions, interrogation can begin after re-administering Miranda Warnings and obtaining a waive. The subject’s statements that initiated communication with the officer should be documented in the case report.
3. Officers may, after waiting a significant period of time, attempt interrogation of a subject who has previously invoked their right to remain silent, to determine if they have changed their mind. However, prior to questioning Miranda Warnings shall be

re-administered and a waiver obtained.

D. Invoking the Right to Counsel

1. When a subject makes reference to counsel, but their intentions are unclear, officers may question the subject further to clarify their intentions.
2. When a subject invokes their right to counsel, all interrogation shall cease immediately. The subject may not again be interrogated about the crime for which they are charged, other crimes, or by other officers (from this or other agencies) unless:
 - a. the subject's attorney is present at the questioning; or
 - b. the subject initiates new contact with the police. In this later case, Miranda rights must again be administered, and a waiver obtained before any questioning may take place. Officers shall also document and, if possible, obtain written verification that the subject initiated the communication.
 - c. Officers shall cooperate in any reasonable way with efforts by counsel to contact or meet with subjects in custody.

E. Documenting Statements and Confessions

1. Officers are encouraged to employ the use of written statements of the subject when they have been given the Miranda Warning and agrees to make a statement.
 2. Written statements taken by officers will be prepared using the office-approved *Voluntary Statement* form. The written statement can be made in question and answer format.
 3. The statement will include:
 - The time and location of the statement;
 - The name(s) of the officer(s) taking the statement; and
 - A transcription of the defendant's account of the crime in his or her own words.
- Note:** It is an acceptable practice to have the officer dictate the statement and have the subject read and sign it when complete. Officers must ensure that they do not substitute their terminology or words for those of the person being interviewed.
4. Each page of the statement will be numbered and show the total number of pages, i.e., "Page ___ of ___."
 5. The officer will give the person making the statement the opportunity to correct any mistakes, or make any additions, deletions, or other changes after the statement is read out loud. An officer will request the person to initial any corrections or changes made in the statement.

6. Once the reading and correction process is completed the officer will request the person making the statement to sign and swear that the statement is true and correct. The person will initial each separate page of the statement. An officer will request that the person cross out any blank space remaining between the end of the statement and the bottom of the page. The original signed statement will be attached to the case file.
7. In the event the person refuses to sign the statement the officer will write "Refused to Sign" at the end of the statement, initial and note the date and time of the refusal. The original unsigned statement will be attached to the case file.
8. If the person makes a verbal statement, but refuses to give a written one, the officer will include a detailed synopsis of the verbal statement in their report.
9. Officers shall use video and audio recording for purposes of recording statements and confession consistent with legal regulations and in accordance with *G.O. 1009 Recording Custodial Interviews/Interrogations*.
10. Any notes made by an officer during the interview and/or statement process must be preserved.
11. The prosecutor is required to serve on the defendant advance notice of any verbal or written statement by the defendant being used against them in court. In order to ensure that the prosecutor is informed of a verbal or written statement by the defendant, the existence of such statement must be noted in the accusatory instrument, in the case report, or in a supplemental report.

Attachments:

- A. *Notice of Intent to Use Statements (CPL Section 710.30) Form.*
- B. *Miranda Warning Form*
- C. *Voluntary Statement Form*

By Order Of



Derek Osborne
Sheriff