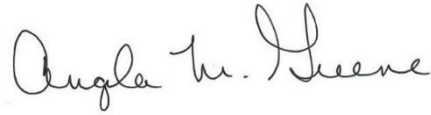
	LEXINGTON POLICE DEPARTMENT POLICY AND PROCEDURE GENERAL ORDER	Distribution ALL PERSONNEL	General Order Number 6.17
		Original Issue Date 01/06/2024	Reissue/Effective Date 01/06/2024
Order Title: INTERVIEW AND INTERROGATIONS	CALEA Accreditation Standard: 1.2.3; 42.2.8 VLEPSC: OPR 14.01	Section 6	
	Rescinds: OPR 15		
Section Title: INVESTIGATIVE FUNCTIONS	 Angela M. Greene, Chief of Police		

This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting

I. PURPOSE

The purpose of this order is to establish procedures for the interview of suspects in criminal investigations.

II. POLICY

Members of the Lexington Police Department (“Department”) will ensure that all suspects are afforded their due process and other constitutional rights during any investigation. Officers will also follow those guidelines issued by the court that may afford additional protections to suspects, over and above constitutional mandates, including the recording of in-custody statements, when practical.

III. DEFINITIONS

Custody: When a person is placed under formal arrest, or there is a restraint of the person’s freedom of movement of the degree associated with a formal arrest and a reasonable person, in view of all the circumstances, would have believed that he or she was not free to leave.

Interrogation: Questioning initiated by a law enforcement officer or any words on the part of a law enforcement official, other than those normally attendant to arrest and custody, that such official should know are reasonably likely to elicit an incriminating response from the person.

Custodial Interrogation: Means any interview conducted by a law-enforcement officer in such circumstances that would lead a reasonable person to consider himself to be in custody associated with arrest and during which the law-enforcement officer takes actions or asks questions that are

reasonably likely to elicit responses from the person that could incriminate him. (VA Code §19.2-390.04).

Electronic recording: An audiovisual recording made by use of an electronic or digital audiovisual device.

Suspect: A person who has either been charged with a crime or a person for whom there is a reasonable basis to believe that he may in the future be charged with a crime. Witnesses, victims, and other persons who provide information to a law enforcement officer are not considered suspects unless and until there develops a reasonable basis to change their status.

Place of Detention: Means a police station, sheriff's office, jail, detention center, or other similar facility in which suspects may be detained (VA Code §19.2-390.04).

Field Interview: are those situations where an officer speaks with a person who is not in custody or there is limited custody such as a Terry Stop situation

IV. PROCEDURES

A. Custodial Interrogations

1. All arrestees will be thoroughly searched for weapons, contraband and evidence prior to being allowed in the interview room.
2. The interview room shall not be used as a holding cell. All subjects placed into the interview room shall be constantly monitored through in person and/or audio/video technology.
3. Arresting/interviewing officers will ensure that the comfort needs (water, restroom, etc.) of the person placed in the interview room are met.
4. Prior to and immediately after utilizing the interview room, the interviewing officer shall search the room for the presence of weapons, contraband and evidence.
5. Officers will fill out a checklist for either a custodial interrogation or a non-custodial interview after utilizing the interview room. Officers are to give the appropriate checklist form to the Detective after completion. The forms will be located in an accessible location in the interview room.
6. The interview room door has a lock and shall be secured when the room is not in use. All officers are issued a key that permits access to this room for utilization.

B. Miranda Warnings

1. Officers shall give Miranda warnings as soon as practical whenever a person is placed in custody or deprived of their freedom in a significant manner and is subject to interview. The officer administering the warning will assess the suspect's ability to understand the rights and that the suspect has freely and knowingly waived such rights.
2. Whenever practical the officer will attempt to have the suspect complete a written waiver of rights form (*See General Order [6.17a: Miranda Waiver of Rights Form](#)*).
3. Whenever an officer has any doubt as to the applicability of the Miranda warnings in any particular case, it is advisable that these warnings be given to the suspect to avoid any subsequent legal barrier to the admissibility of any statements obtained.
4. If, at any time, a suspect requests to read their rights or to be informed of their rights, these requests shall be granted.
5. Officers should read the suspect the warnings from a Miranda Card or have the suspect read, initial and sign a rights form. The warnings must clearly inform the suspect that they:
 - a. Have a right to remain silent;
 - b. If they choose to speak anything they say can and will be used as evidence against them;
 - c. They have the right to consult with an attorney prior to questioning and may have an attorney with them during questioning;
 - d. If they cannot afford an attorney and wants one, a lawyer will be provided for them free of charge; and
 - e. If they choose to answer questions they may stop at any time.

Following the advisement the officer will ask "Do you understand your rights?" and "Do you wish to waive your rights?"

6. Procedures concerning interview and interrogation of juveniles are covered in General Order [6.06: Youth Investigations](#).

C. Documenting Statements

1. The circumstances surrounding the conduct of interviews and recording of statements shall be fully documented in the interviewer's police report. The report should include:
 - a. Location, date, time of day and duration of interview;
 - b. Identities of officers or others present;

- c. Miranda warnings given, suspect responses and waivers provided, if any; and
 - d. The nature and duration of the interrogation process to include breaks in questioning and providing the suspect food, drink, use of the restroom, or for other purposes.
2. The suspect shall be asked to read, sign and date all written statements.
3. The interviewing officer(s) shall sign and date all written statements.

D. Recording Statements

1. Pursuant to VA Code §19.2-390.04, a law-enforcement officer conducting a custodial interrogation of any person at a place of detention shall cause an audiovisual recording of the entirety of such custodial interrogation to be made. This subsection shall not apply when a law-enforcement officer conducting a custodial interrogation has good cause not to record such custodial interrogation. Good cause shall include those circumstances where (i) the recording equipment fails, (ii) the recording equipment is unavailable, or (iii) exigent circumstances relating to public safety exist that prevent the recording of such custodial interrogation.
2. Patrol officers should seek the assistance of Detectives when recording a statement.
3. The Detectives will maintain audio and video equipment for the purpose of recording statements.
4. Once the suspect knows or reasonably should know that he is being recorded, the law enforcement officer may record the interview without asking for or receiving explicit consent to do so.
5. To the extent it is practical, the law enforcement officer should electronically record the entire interview of a suspect. VA Code states that, the failure of a law-enforcement officer to cause an audiovisual or audio recording to be made shall not affect the admissibility of the statements made by the subject of the custodial interrogation, but such failure may be considered in determining the weight given to such evidence.
6. Under normal circumstances only two (2) officers should conduct the interview. To assist in the creation of the record, officers should do the following:
 - a. Start the recording device;
 - b. Inform the suspect that he is being recorded;

- c. State the date, time, location and names of persons present. If a video recording device is used which imprints the time on the tape or disk, verify that the correct time is displayed;
 - d. State the full name of the suspect; and
 - e. Execute appropriate departmental forms including but not limited to *Miranda* warning and waiver.
- 5. If the officer must suspend the recording for any reason, the officer should record the reasons for stopping (*i.e.*, taking a break or a malfunction), the time the recording device is turned off, the time it is turned back on, and what transpired while the recording device was turned off.
- 6. If the officer uses or refers to documents or other items during the interview, the officer should describe those documents or items on the record and mark them with a unique number (similar to an exhibit number at trial) and the officer's initials. If the officer is unable to write on the actual document or item, the officer may write on a bag, envelope or case in which the document or item is placed or on a piece of tape attached to the document or item.
- 7. Officers will conclude the recording by stating the date and the time the interview is completed.
- 8. If a suspect refuses to make a recorded statement, the officer should record the refusal, document it in the report, and follow the following procedures:
 - a. If the suspect refuses to be recorded before the recording device is turned on, the law enforcement officer should, if it is practical, turn on the recording device to record the refusal;
 - b. The officer should identify himself and the suspect, state the date, time and location, inform the suspect of any applicable rights (such as *Miranda*), and inform the suspect that there are potential benefits to recording the interview, including the fact that a recording will create a clear and complete record of what was said to the suspect, and what the suspect said during the interview;
 - c. The officer should then ask the suspect on the record if he is willing to make an electronically recorded statement;
 - d. The officer should advise the suspect that if at any time they changes their mind and decides that he does want the interview to be recorded, he should let the officer know and the officer will turn on the recording device;
 - e. If the suspect still refuses, the officer should turn off the device and proceed with the interview.

9. If the suspect objects to having their refusal electronically recorded, the officer may proceed without recording the refusal or the interview. The officer should advise the suspects of the benefits of recording and proceed with the interview.
10. If, during the course of a recorded interview, a suspect decides that he will no longer answer questions unless the recording device is turned off, the officer should again advise the suspect of the benefits of recording the interview. If the suspect still refuses, the officer should turn off the recording device and proceed with the interview.
11. If the recording device malfunctions, the law enforcement officer conducting the interview must make a decision whether to continue the interview and the officer must document what occurred.
 - a. If the recording device can be restarted, the officer should state on the record that the device malfunctioned, how long the device was not working, and whether or not the suspect made any statements that were not recorded;
 - b. If the recording device cannot be restarted, the officer should include in their interview or case report the fact that the device malfunctioned and whether or not the suspect made any statements that were not recorded;
 - c. If the recording device cannot be restarted, the officer should ask the suspect whether he wishes to continue the interview without a recording device, or whether he wishes to suspend the interview until an operable recording device is available;
 - d. If the suspect consents to continuing the interview without a recording device, that consent and the interview should be documented in some manner, such as in a signed written statement by the suspect or in the officer's interview or case report.
12. If there is no recording device available or the recording device is inoperable, the officer should defer the interview until an operable recording device can be obtained. If it is impractical to defer the interview, and the suspect consents to continuing the interview without a recording device, that consent and the interview should be documented in some manner, such as in a signed written statement by the suspect or in the officer's interview or case report.
13. The officer who conducted the interview must take steps to preserve the original recording. The storage medium should be removed from the recording device, clearly labeled, and appropriately stored. If the interview is recorded digitally, the officer should preserve at least one whole copy which must be clearly labeled and appropriately stored.

14. To the extent it is practical, statements from multiple suspects should not be recorded on the same tape or disk.
15. As soon as it is practical, the Detective Unit supervisor should create at least one exact copy of the original recording. The copy should be clearly labeled as a copy and appropriately stored.
16. Once the copy has been made, the copy, and not the original, should be used to make additional copies. Additionally, copies, and not the original, should be used to prepare a written transcript, to comply with discovery obligations, and for all other purposes.
17. All electronically recorded interviews shall be preserved as criminal evidence. The original storage device shall be labeled as such and any copies labeled as such. Each original and copy shall be authenticated by the interviewing officer with the following information:
 - a. Date and time of recording;
 - b. Location of the interview;
 - c. Name of person interrogated;
 - d. Name of person(s) conducting the interview; and
 - e. Case number.
18. The original copies of all forms (notice of rights, consent to record, etc.) will be forwarded to Records. The original recording will be secured as evidence.
19. Any electronic recording of any statement made by a person at a custodial interrogation that is made by any law enforcement agency, as described above, shall be confidential and not subject to disclosure under the Freedom of Information Act, and the information shall not be transmitted to any person except as needed to comply with state law.

III. Presence of Attorney

1. If a suspect requests to consult an attorney, the suspect must not be questioned further by police until the suspect has had an opportunity to consult an attorney. However, if the suspect initiates statements or conversation, the police may respond to those statements or conversation.
2. Although a suspect has voluntarily waived their right to remain silent, the suspect may still invoke this right by refusing to answer any further questions

or by requesting the services of an attorney, and at this point the police questioning must cease.

3. If the police are advised that there has been a timely request by an attorney to provide the suspect with legal assistance, the police must inform the suspect that the attorney wishes to be present during questioning. However, once so informed, the suspect may waive their right to have the attorney present. The reporting officer will document the time and nature of the advisement in their police report.
4. A suspect may answer some questions and refuse to answer others. The officer is not required to discontinue questioning unless the suspect indicates that he wishes to remain totally silent, to stop the questioning or to consult with a lawyer.
5. Once a suspect has been arraigned, the suspect has the right to counsel, for any questioning related to the crimes for which the suspect has been arraigned. This right is not dependent upon the issue of custody and the suspect shall not be questioned in the absence of counsel unless the suspect specifically waives this right.

IV. Field Interviews

1. Field interviews involve situations where the suspect is not in custody. Examples include informal discussions on the street or during a traffic stop.
2. Field interviews do not typically trigger Miranda warnings, however, actions such as handcuffing, placement in the rear of the cruiser, etc. may trigger a custodial event.
3. Officers should continue to document field interviews in an IBR or case report to support future investigations. This includes situations where an officer may observe suspicious behavior, but no specific interview takes place.

V. Interview Room

1. Uniformed and plainclothes personnel using the interview room will follow the following guidelines with regard to use of these room.
2. For purposes of this directive the “interview room” are designated as:

The Detective’s Office

3. Officers will secure/holster their weapon before conducting interviews in the other interview room.

4. Any time an officer will be conducting an interview alone in an interview room the officer will notify dispatch and have another officer in close proximity to the interview room, available to intervene on behalf of the person or the agency immediately as needed, for safety reasons.
5. Unless approved by a supervisor, no more than two (2) officers will remain in an interview room while an interview is being conducted.
6. Phones are located in each of the interview room for summoning assistance if needed.
7. The interview room will be equipped with audio and video resources to allow proper recording of interviews if appropriate. Chairs and desks will be kept to a minimum and no other equipment will be kept in the interview room to assure officer safety. If interviews are conducted in other room that require recording, the officer will bring in a portable recording device.
8. Interviewees will be afforded restroom, water, and comfort breaks when appropriate or necessary.

VI. Training

1. All personnel authorized to utilize the interview room will be trained on the use of the interview room and the use of the associated audio/video equipment.