

ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



VOLUME: 3

CHAPTER: 4

OF PAGES: 16

SUBJECT: INTERVIEW, INTERROGATION, ACCESS TO COUNSEL

EFFECTIVE DATE:

October 6, 2020

ACCREDITATION STANDARDS:

3.2.1, 3.2.2

BY THE ORDER OF:

Chief Giacomo Sacca

BY AUTHORITY OF:

Police Director Earl J. Graves

SUPERSEDES ORDER #:

PURPOSE The purpose of this general order is to maintain procedures for assuring the constitutional rights of individuals subjected to field and custodial interviews or interrogations, and their access to counsel.

POLICY It is the policy of the Elizabeth Police Department to safeguard the constitutional rights of individuals at all times in all law enforcement encounters. It is also the policy of this department to adhere to New Jersey Attorney General directives and guidelines, Union County Prosecutor's Office directives, and [Court Rule 3:17](#) concerning the electronic recording of custodial statements.

It is also the policy of this department to conduct investigative detentions with due respect for the public and in accordance with applicable law, guidelines, and current criminal procedure.

PROCEDURES

I. DEFINITIONS

- A. Custodial interrogation is questioning initiated by an officer/detective after a person has been taken into custody or otherwise deprived of their freedom of action in any significant way. The test to be applied to determine whether a custodial interrogation has taken place is the objective reasonable person test. Custody exists if the action of the interrogating officers/detectives and the surrounding circumstances, fairly construed, would lead a detainee to believe he or she is not free to leave.
- B. Custody – is defined as an actual arrest or any conduct on the part of law enforcement officials, which deprive a person of his/her freedom of action in any significant way. To determine if an individual is in custody, courts will examine the following elements:
1. The duration of the detention;
 2. The nature and degree of the pressure applied to detain the individual;
 3. The physical surroundings of the questioning;
 4. The language used by the officers/detectives in summoning the individual;
 5. Whether the individual was advised that he/she was not under arrest and free to leave;
 6. Whether the individual is the target of a criminal investigation.
- C. Interview – is an information-gathering process, when the individual being questioned is not being accused or suspected of an offense or crime. During the interview process, the officer/detective is merely attempting to gather general background information and facts concerning an incident. It is important for officers and detectives to recognize the fact that an interview may easily shift into an interrogation process. If custody exists or develops and the questions rise to interrogation, the officer is required to provide the individual with his/her constitutional rights.
- D. Interrogation – is the formal and systematic questioning of an individual in regard to a criminal investigation by a law enforcement officer in an attempt to solicit incriminating information.
- E. Investigative detention is the brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion of criminal/quasi-criminal activity for the purposes of determining the individual's identity and resolving officers' suspicions.
- F. Note means any handwritten or typed writing or notation made by an officer or detective that describes or memorializes observations at the scene of a crime and/or the substantive content of a witness interview, that is, what transpired during the course of the interview. These writings or notations include, but are not limited to:

- a. The questions that were posed;
 - b. What the interviewee said;
 - c. Any description of the interviewee's reaction and physical appearance, such as a notation that the interviewee appeared to be nervous, excited, angry, defiant, sad, etc.);
 - d. Notations made after the interview that memorializes the officer or detective's personal recollection of what transpired during the interview.
 - e. The term does not include notes made in the course of a criminal investigation that do not describe or otherwise document the substantive content of a witness interview (e.g., information learned outside the witness interview; surveillance notes; notations made during the interview concerning investigative tasks to be accomplished such as a 'to do' list, or reference to information from outside the interview to be checked against statements made by the interviewee to verify or dispel the witness' account; possible lines of inquiry or specific questions that were not pursued or actually posed to the witness; etc.).
- G. Statement is both written or oral information provided by a person, either voluntarily or in response to custodial police-initiated questioning, that pertains to a matter under investigation by law enforcement authorities.
- H. Witness includes all persons, adult or juvenile, interviewed during the course of an indictable crime investigation, and is not limited to a suspect or target of the investigation.
- I. Witness interview means any interview, whether custodial or non-custodial, of any person, adult or juvenile, done in the course of investigating an indictable crime under New Jersey law. The term does not include an interview of a witness as part of the investigation of a disorderly person or petty disorderly person offense, or a motor vehicle violation, accident, ordinance violation, or any other non-indictable matter.

II. GENERAL

- A. Officers shall remain familiar with current criminal procedure regarding interviews, interrogation, and access to counsel.
- B. Officers conducting interviews or interrogations shall not withhold food, water, or restroom privileges from anyone as an interview tactic. Individuals being interviewed or interrogated will be permitted reasonable access to water and restrooms and will be fed when appropriate.
- C. Interviews and/or interrogations may be conducted until such time as the interviewee invokes their right to counsel or their right to silence, further interviewing would be fruitless, or the purpose of the interview/interrogation has been accomplished.

- D. The release of any information to the media or the public regarding the results of any interview or interrogation must comply with N.J.S.A. 47:1A-1, et seq., or other applicable Attorney General or Union County Prosecutor guideline or directive, and other written general orders of this agency.

III. INTERVIEWS – GENERAL

- A. Officers may conduct interviews to gain information for a legitimate law enforcement purpose. An interview takes place when personnel ask questions to obtain information from the interviewee.
- B. Officers may ask any questions of any person in furtherance of a legitimate law enforcement purpose until the questioning rises to the level of a custodial interrogation (see subsection IV) at which point the rules pertaining to custodial interrogations must be applied prior to further questioning.
- C. Types of interviews that may be conducted include, but are not limited to:
 - 1. Investigative detention interviews (field interviews);
 - 2. Victim interviews;
 - 3. Witness interviews;
 - 4. Suspect interviews.
- D. Officers shall conduct all interviews with due respect for the person being interviewed.
- E. In all cases, officers' reports must include a synopsis of any statement, including quotes of a defendant regarding any admission of guilt. If it is later discovered that there had been an equipment malfunction with any electronic recording equipment, the written synopsis of the statement could constitute the only record memorializing the statement.
- F. Interviews of witnesses, relatives, friends, co-workers, and other persons who may have information relevant to an incident under investigation is an indispensable tool in the investigative process and do not require Miranda warnings.

IV. INVESTIGATIVE DETENTIONS / FIELD INTERVIEWS

- A. Officers can stop anyone at anytime not based solely upon the person's protected class (e.g. race, gender, ethnicity, etc.) to make a mere inquiry as long as officer(s) do not detain the person or impede their ability to leave. Inquiries of this type are not considered investigative detentions for reporting/documentation purposes.
- B. Officers may stop individuals for the purpose of conducting an investigative detention only where reasonable suspicion is present. Reasonable suspicion must be more than a hunch or feeling, but need not meet the test for probable cause sufficient to make an arrest. In justifying the stop, officers must be able to point to specific and articulable facts that, when taken together with rational inferences, reasonably warrant the stop.

1. Facts that have previously been determined to support reasonable suspicion include, but are not limited to:
 - a. The actions of a person suggest that he/she is part of a criminal enterprise or is engaged in a criminal act;
 - b. The hour of day or night is inappropriate for the person's presence in the area;
 - c. The person is carrying a suspicious object that warrants attention;
 - d. The person's clothing bulges in a manner that suggests he/she is carrying a weapon (see *General Order V3C5 Search Procedures* for Terry frisk procedures);
 - e. The person is located in proximate time and place to the alleged crime;
 - f. In addition to any of the above facts, an officer has knowledge of the person's prior criminal record or involvement in criminal activity.
- C. Officers have the authority to make an investigative detention in any place where they have a right to be including but, not limited to:
 1. Any public place;
 2. Any place or area that is open to the public;
 3. Any private premises entered with a valid warrant, by consent, or under emergent circumstances.
- D. Investigative detentions should be reasonably brief, generally no longer than the period of time necessary to verify the subject's identity and the reliability of their story, unless information is obtained that establishes probable cause to make an arrest.
- E. A frisk is an external feeling of the outer garments of an individual for weapons only; see *General Order V3C5 Search Procedures*.
- F. The following guidelines should be followed when conducting an investigative detention field interview.
 1. Notify communications of the stop.
 2. When approaching the person, officers should clearly identify themselves as police officers; if not in uniform, by announcing their identity and displaying agency badge and identification.
 3. Officers should not stand directly in front of a subject. Instead, officers should stand at an angle to the subject with their sidearm side away from the subject(s), unless impracticable.

4. Officers should announce the purpose of the inquiry and begin with exploratory questions regarding the subject's identity.
 - a. To verify information obtained from the subject, it may be necessary to remove them from within earshot of any radio or telephone conversation.
 - b. Under some circumstances, the subject may be placed into the rear seat of a police vehicle, when applicable. (Examples: heavy traffic, extreme weather, hostile crowd gathering, etc.). Be careful not to give the appearance of custody, which would require Miranda Warnings.
 5. Officers should be courteous at all times during the contact, but must remain cognizant and alert to any suspicious movements that may indicate that the person being detained is attempting to gain access to a weapon, conceal or discard contraband, or other articulable suspicious actions.
 6. Before approaching more than one person, officers should determine whether the circumstances justify a request for backup assistance and whether the contact can and should be delayed until such assistance arrives.
 7. Officers should confine their questions to those necessary to resolve their suspicions. However, officers shall not detain persons longer than is reasonably necessary to make these limited inquiries.
 8. Officers are not required to give suspects Miranda warnings unless the person is in custody and about to be interrogated.
 9. With the exception of general pedigree information necessary for an investigation, persons are not required nor can they be compelled to answer any questions posed during an investigative detention. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to make an arrest although it may provide justification for additional observation and investigation.
 10. Officers should conduct the necessary warrant/records checks for stopped persons and act upon positive hits as appropriate.
- G. Officers shall record all investigative detentions to the extent possible on their body worn camera (BWC).
- H. Investigative detentions shall be documented in on a field interview report or on the incident report of the precipitating event/investigation, if applicable.

V. INTERROGATIONS

- A. Persons being subjected to custodial interrogation shall be advised of their constitutional rights (Miranda warnings). An individual is considered in custody for Miranda purposes when the circumstances convey to them that they are not free to leave. Whenever there is doubt about custody, the Miranda warnings should be given. Exceptions to the Miranda warning requirement include:

1. Routine booking questions – questions posed regarding a detainee's name, address, age, sex, marital status, date of birth, height, weight, eye color, etc. are considered ministerial in nature and do not require Miranda warnings.
 2. General on-scene questioning – questions as to the facts surrounding a crime or other general questioning of citizens in the fact-finding process are generally devoid of the compelling atmosphere present in the process of in-custody interrogation and therefore Miranda is not implicated.
 3. Public safety exception – in certain situations concern for public safety must be paramount to adherence to the rules set forth in Miranda. In certain limited situations where there is a bona fide threat to an officer's safety or the safety of the public, questions necessary to secure the safety of the officer or the public may be asked without first meeting the requirements of Miranda.
 4. Volunteered statements – volunteered statements are admissible even if the defendant was in custody when the statement was made and no Miranda warnings had been given. Because Miranda only applies where the suspect is in custody and is being interrogated, a statement may be volunteered even where the suspect is in custody and the police have done something (other than interrogation or its functional equivalent), which has prompted that statement.
- B. Officers/detectives must advise all suspects of pending criminal charges with a simple declaratory statement at the outset of the custodial interrogation before asking for a waiver of rights.
1. Such warning of pending charges should not be woven into accusatory questions posed during the interrogation.
 2. Officers/detectives can notify suspects immediately before or after giving Miranda warnings, so long as the suspect is aware of pending charges before he/she is asked to waive the right against self-incrimination.
 3. Such advisement can appear on the *Constitutional Rights Waiver Form*, *Juvenile Rights Form*, or on the electronic recording of the interrogation.
- C. Unless impracticable, warnings should be given using an *Advisement of Constitutional Rights Form* or *Juvenile Constitutional Rights Form* (English or Spanish, as required). Personnel should read the warning statements directly from the form to avoid confusion and/or omissions. The subject, the advising personnel, and whenever possible, a witness should then sign the form where indicated. When electronically recording statements, ensure that the Miranda warnings are memorialized on the medium used.
- D. Miranda waivers must be knowingly, intelligently, and voluntarily given. Officers/detectives should clarify ambiguous responses when necessary to differentiate between the person's right to counsel and the right to silence.
1. Officers have the burden to prove that a defendant voluntarily, knowingly and intelligently waived his/her constitutional rights in order for the

defendant's statement or confession to be admissible.

2. In determining whether a defendant has waived his/her constitutional rights under Miranda, the judge will examine the totality of the circumstances surrounding the interrogation.
 3. If the subject is intoxicated or under the influence of drugs to the point that he/she cannot understand his/her constitutional rights, then any waiver could be considered void.
 4. If the subject is suffering from a mental disability, which renders him/her incapable of understanding his/her constitutional rights, then any waiver could be considered void.
 5. Upon encountering a subject who appears intoxicated, under the influence of drugs or mentally disabled to the point where a waiver might later be determined to be invalid, officers shall confer with the tour supervisor and/or the duty assistant prosecutor for advice prior to initiating custodial interrogation.
- E. If the subject of the interrogation does not speak English, then the Miranda warnings should be given in a language the suspect understands. Officers should obtain a translator. No interrogation shall take place until it is certain that the suspect understands his/her translated Miranda rights.
- F. A *National Registry of Interpreters for the Deaf* interpreter must be utilized when advising the deaf/hard of hearing of their rights and prior to the initiation of any questioning. Officers are allowed to establish communication with people who are hard of hearing or deaf for purposes of obtaining basic information only. The circumstances when an interpreter must be provided for deaf or hard of hearing people include but, are not limited to the following:
1. Prior to the reading of a Miranda warning, the interrogating, interviewing or the taking of a statement from a deaf or hard of hearing person.
 2. When a deaf or hard of hearing parent/guardian of and unimpaired juvenile is involved.
 3. When the deaf or hard of hearing person indicates that they do not understand what is happening and requests an interpreter.
 4. Use of relatives, friends, the passing of handwritten notes, and non-certified interpreters cannot be utilized for the purpose of making the notification of rights. Such persons may only be utilized for the taking of basic information.
- G. If a person being interrogated indicates that he/she does not want to talk or answer questions then all questioning must cease. Otherwise, any subsequent statements by the person will not be used in court.
1. If questioning proceeds after a valid waiver is made and the person being questioned changes their mind about the waiver or in any other way indicates he/she no longer wants to talk, interrogation shall cease.

2. If the person who invoked their right to silence changes their mind and now wishes to initiate a conversation with officers, officers shall restate the Miranda warnings and complete another *Advisement of Constitutional Rights Waiver Form* or *Juvenile Rights Form*. The burden rests with the State to prove that Miranda warnings were voluntarily waived.
 3. If a subject declined to speak after receiving Miranda warnings, officers should seek clarification from the subject whether he/she is invoking his/her right to silence. If the subject does invoke his/her right to silence, all questioning shall cease.
- H. Once an individual has invoked his/her right to legal counsel, he/she is not to be questioned further unless authorized by counsel or unless the individual initiates further dialogue. Prior to resuming an interview so initiated, Miranda warnings should be restated and another *Advisement of Constitutional Rights Form* completed. The burden rests with the state to prove that Miranda warnings were voluntarily waived. Subjects will be permitted to contact an attorney at any time.
1. The request for legal counsel need not be articulate, clear, or explicit. Any indication of a desire for counsel, however ambiguous, will trigger entitlement to counsel and require that interrogation cease. Thereafter an officer cannot do anything that constitutes interrogation.
 2. An exception is granted where an officer may attempt to clarify an ambiguous request for counsel. Only if the request is clarified so as to justify the conclusion that the suspect waived his or her right to counsel can the interrogation continue.
 3. Subjects being interrogated shall have full access to counsel when requested.
- I. If any agency personnel become aware at any point prior to commencing or during a custodial interview that an attorney has been retained on behalf of the individual being interviewed, and is present or otherwise readily available, and has expressed a desire to confer with the individual, the individual must be so advised before the interview can begin or continue. Failure to advise the interviewee will render the waiving of the right to counsel invalid. Further, if any department personnel are made aware of an attorney contacting this department on behalf of an individual in custody, they are to immediately notify the attending officer/detective.
- J. Officers/detectives shall not interrogate any defendant after he/she has been indicted unless permission is obtained from the Union County Prosecutor's Office. Only an assistant prosecutor can grant permission in such cases.
- K. At no time will coercion, intimidation, or other unlawful means be used to obtain involuntary confessions from individuals suspected of criminal activity. These prohibited tactics include but, are not limited to:
1. Physical violence, the threat of physical violence, or depriving the defendant of food or sleep;
 2. Threat of harm to the defendant, or his/her family;

3. A suggestion that silence will be punished;
 4. A suggestion that the sentencing judge will be informed that the subject did not cooperate.
 5. The longer the period of interrogation before a confession or incriminating statement was obtained, the less likely it will be found to be voluntary.
- L. The custodial interview or interrogation of a juvenile requires a specific level of advisement to guarantee the rights of the juvenile and the rights of the parent.
1. The State has the burden of establishing that the juvenile's will was not overborne and that the confession was the product of a free choice.
 2. Officers shall advise juveniles in custody of their Miranda rights while in the presence of a parent or legal guardian before questioning. If the parent or guardian is not present, officers shall allow the juvenile to speak with the parent or guardian by telephone.
 3. Officers should then give parents or guardians a meaningful opportunity to consult with the juvenile in private about those rights.
 4. If legitimate security concerns require officers to observe a private consultation, officers can monitor the interaction without listening to the words spoken between parent and child.
 5. At no time can officers refuse to allow a parent or guardian the opportunity to speak to the juvenile while he/she is in police custody.
 6. Officers may interrogate a juvenile without the parents or guardians present only if the juvenile has withheld their names and addresses, a good faith effort to locate them is unsuccessful, parental consent is given, or they simply refuse to attend the interrogation.
 7. When a juvenile is under the age of 14, an adult's absence will render the statement inadmissible as a matter of law unless the parent or guardian is truly unavailable.
 8. All attempts to notify a parent/guardian/custodian shall be memorialized in the *Incident Report*.
 9. When the prosecutor's office initiates a juvenile complaint and obtains a judicially approved arrest warrant, the juvenile may only waive their Miranda rights in the presence of and after consultation with his/her attorney. This requirement applies to adults as well if they were juveniles at the time of the offense or when the arrest warrant was obtained (*State in the Interest of PMP*, 404 N.J. Supra 69 (App. Div. 2008)).
 10. Situations involving school interviews or other third-party interviews when a school official or other non-law enforcement officer conducts the interview and the officer stands by in silence are prohibited. This type of interrogation should only be conducted after the juvenile and his/her

parents have been notified of their rights and where the parents or guardians are present.

VI. INTERVIEW / INTERROGATION ROOMS

- A. Officers and detectives shall utilize a designated interview/interrogation room when conducting custodial interrogations.
 - 1. Interview Room #1 – Detective Bureau;
 - 2. Interview Room #2 – Detective Bureau;
 - 3. Interview Room #3 – Narcotics Bureau;
 - 4. Interview Room #4 - Juvenile Bureau.
- B. Handguns shall be secured in the gun lockers provided when conducting custodial interrogations/custodial interviews. No such restriction exists for conducting victim and witness interviews
- C. A thorough search of anyone in custody shall be conducted at the time of the arrest. In instances of a custodial interview/interrogation prior to an arrest, the detective/officer may conduct a frisk for weapons. **At no time shall a subject be left unmonitored in an interview room.**
- D. No more than two detectives/officers shall be allowed in the interview/interrogation room. In extraordinary circumstances (e.g., need for an interpreter, multiple agency involvement, etc.), it may be necessary to have three detectives/officers in the interview/interrogation room but, in no circumstances more than three (to mitigate a possible defense of a coercive atmosphere). There is no limit to the number of personnel who can observe from a remote location.
- E. If assistance is needed by the interviewer(s), the observing detective(s)/officer(s) shall summon immediate assistance by pressing the panic button on a portable radio or simply shouting for assistance. The observing detective/officer shall alert other personnel that assistance is needed in the interview/interrogation room prior to entering to render assistance.
- F. Audio/video recording equipment is available to all personnel in the interview/interrogation room for the purpose of recording interview/interrogations. The interview/interrogation room is equipped with furniture and supplies needed to conduct interview/interrogations. No other equipment or items shall be stored in the room.
- G. If the suspect needs to use the restroom, asks for water or needs to take a break, the interviewer should have adequate assistance to fulfill these requests. Beverages can only be served in containers posing no threat of safety, e.g., Styrofoam, soft plastic, paper, etc.

VII. RETENTION OF FIELD NOTES

- A. In accordance with *New Jersey Attorney General Directive 2011-2*, officers/detectives shall not destroy contemporaneous notes of interviews and/or observations at the scene of a 1st, 2nd, 3rd, or 4th degree crime, even after incorporating those items into their final reports.
- B. All original notes of crime scenes and/or witness interviews made by an officer or detective of the Elizabeth Police Department in the course of an investigation of an indictable crime shall be retained with the applicable case file.
 - 1. For ease of identification, place the case number and date on each page of the contemporaneous notes of the matter.
 - 2. Whenever feasible, avoid memorializing what transpired during the course of the interview on the same page that may include notations that do not pertain to what transpired during the witness interview, such as any additional follow-up investigative tasks to be performed.
 - 3. Notes of crime scene observations should be kept separate and apart (not on the same pages) from the notes of witness interviews.
 - 4. The notes should then be maintained in the case file.
- C. Detectives shall ensure that a photocopy or electronic copy of all original notes is provided to the Union County Prosecutor's Office as part of a criminal investigation of an indictable crime. Whenever copies of contemporaneous notes are provided to the Prosecutor's Office, the officer/detective providing these notes shall alert the Prosecutor's Office if it is believed that the contemporaneous notes may include or otherwise reveal confidential or privileged information, or where the officer/detective believes that further disclosure of the contemporaneous notes or any portion thereof may endanger any person or interfere with an investigation. The Prosecutor's office shall determine which parts will be redacted upon satisfying or denying a discovery request.
- D. All notes shall be maintained with the original reports in the appropriate case file in accordance with applicable New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules.

VIII. ELECTRONIC RECORDING

- A. The requirements for electronically recording custodial interrogations in a place of detention shall apply to adults and juveniles alike.
- B. This general order explicitly authorizes personnel to use any legitimate established interview/interrogation technique deemed appropriate in the context of a specific investigation.
- C. Custodial interrogations must be electronically recorded when the person being interrogated is suspected of committing a 1st, 2nd, or 3rd degree crime. Detectives can electronically record interrogations for 4th degree crimes and disorderly person offenses at their discretion.

- D. Electronically recorded statements are not required if/when:
1. Not feasible (examples: malfunctioning equipment, at a hospital, etc.)
 2. A spontaneous statement/admission is made outside the course of the interrogation
 3. A statement/admission is made in response to questioning that is routinely asked during arrest processing
 4. A statement/admission is made during a custodial interrogation by a subject who indicated prior to making the statement, that he/she would participate in the interrogation only if it were not recorded; provided, however, that the subject's agreement to participate under that condition is recorded
 5. A statement/admission is made during a custodial interrogation that is conducted out of the State of New Jersey
 6. The statement is given at a time when the subject is not in custody
 7. At the time when the statement is made, the interrogators have no knowledge that a crime has been committed requiring electronic recording
- E. When conducting interrogations in other jurisdictions (including hospitals and/or crime scenes using digital recorders or smart phones), officers/detectives shall make a best effort to adhere to the rules and regulations of the Union County Prosecutor's Office so long as such rules and regulations do not violate the laws applicable in such jurisdiction. Officers should utilize a portable audio/digital recorder from this department (or a smart phone) to supplement any recording made by that jurisdiction unless that agency is able to immediately provide a copy of its electronic recording.
- F. Although not specifically required, victim/witness statements may be electronically recorded if the investigator feels that it may have investigative value.
- G. Interviewer's responsibilities include:
1. Determining if an interview/interrogation requires electronic recording;
 2. Being familiar with the facts as they relate to the case at hand;
 3. When practicable, ensuring that the surrounding hallways/rooms are clear of distracting noise;
 4. Prior to the interview/interrogation, verifying that the recording equipment is functioning;
 5. Ensuring that the subject is not left alone in the interview room when the recording system is in the record mode;
 6. Ensuring that cell phones and other electronic devices are secured prior to the interview process;

7. Ensure that the subject is positioned correctly in the interview room so his/her image is captured on the camera;
 8. Introduce all personnel present in the interrogation room to the subject at the outset of the interview/interrogation;
 9. Ensure that the subject reads and signs the *Advisement of Constitutional Rights Form* or *Juvenile Constitutional Rights Form* (whichever is applicable) prior to any questioning;
 10. Ensuring that a written summary of the subject's statement/confession is completed.
 11. Forward copies of suspect recordings to the Union County Prosecutor's Office in a standard UCP-9 packet for transcription. (Note: recordings of victim/witness statements may require transcription by this agency if a case proceeds to a superior court trial.)
- H. Recording shall begin prior to the subject entering the room. If Miranda warnings were given prior to the recorded interview the subject should be asked during the recorded interview to confirm both the prior warnings and the prior responses.
- I. The Miranda warning process must be captured on the recording. If a subject declines to speak with the interviewer after receiving Miranda warnings, all questioning shall cease.
1. Personnel have no obligation to affirmatively disclose to the subject that an interview/interrogation will be recorded. However, personnel shall not misrepresent whether the interview/interrogation is being recorded.
 2. If the subject inquires at any time as to whether the interview/interrogation is recorded, personnel shall respond truthfully.
 3. A subject need not articulate a clear or explicit request for counsel; if the subject's meaning is unclear, the interviewer shall seek clarification. Once the subject indicates that he/she wants to confer with counsel, all questioning must cease.
- J. Ordinarily, subjects should not appear in restraints during the custodial interview/interrogation except under the most extraordinary of circumstances. Any extraordinary circumstances must be memorialized at the beginning of the recording.
- K. Visible injuries should be photographed prior to the recorded statement process. Upon commencing the recorded interview, the subject should be asked to explain how the injuries occurred as part of the recording.
- L. Once the interview begins, the **recording device shall not be turned off**. If the subject requests a break (e.g., restroom, beverage, cigarette) the equipment shall remain activated even if the empty room is being recorded. The nature of the break shall be discussed and recorded. If the subject makes any admission(s) or relevant statement(s) during the break, it shall be acknowledged and memorialized by the subject once the recorded interview continues.

- M. Recording juvenile interrogations require the following additional procedures:
1. Juvenile subjects may wish to communicate privately with their parent or guardian, or the parents or guardian may wish to communicate privately with the juvenile.
 - a. If the interrogation had already begun, the **audio portion of the recorder must be turned off**, personnel must leave the room and the room cannot be otherwise audio recorded; or the recorder can remain on, but the parent and juvenile must be permitted to confer outside of the room.
 - b. Once the interrogation reconvenes, the cause for the break shall be discussed and recorded, if applicable. If the juvenile subject makes any admission(s) or relevant statement(s) during the parental consultation known to the interviewer, the subject shall memorialize such once the recorded interview continues.
 2. A parent/guardian should be present whenever possible during an interrogation unless the parent/guardian is unwilling to be present or is truly unavailable.
 - a. If personnel are unable to locate a parent/guardian and the decision is made to commence an interview/interrogation with a juvenile subject, continuing efforts to locate a responsible adult should be made by personnel not involved in the interview.
 - b. All such efforts made to locate a parent/guardian shall be memorialized on the incident report and when the recorded interview commences with the juvenile and recorded.
 3. The interviewer shall ensure that all parties in the interview room including a juvenile's parent/guardian appear on the recording during the entire process.
 - a. If a juvenile feels uncomfortable discussing certain aspects of a crime in front of a parent/guardian, the parent/guardian may choose to leave the interrogation room. The suggestion that the adult leave the interrogation room shall not originate by the interviewer.
 - b. Even after a parent/guardian chooses to leave the interrogation room, he or she may intervene and stop the interrogation at any time. Parents must be provided access to the interview process in the event they choose to intervene or stop the interview.
- N. At the conclusion of the interview/interrogation or at a reasonable time following the interview/interrogation, the session shall be transferred to a CD-R(s) or DVD-R(s), which is then finalized and secured as evidence.
1. A second CD-R or DVD-R should also be made and stored in the case file. This secondary media is considered the working copy and all other copies shall be replicated from this secondary media in order to preserve the original.

2. The media along with its case must be marked with the following information:
 - a. Case or incident number;
 - b. Any related case numbers;
 - c. Date the recording was made;
 - d. Subject's name;
 - e. The interviewer's name;
 - f. Original recording or copy.
- O. If an audiotape is used, the tabs on the tape housing are to be broken immediately to prevent the audiotape from being accidentally recorded over.
- P. The primary CD-R or DVD-R media shall be preserved and maintained in accordance with evidence retention schedules established by law.
- Q. **Original recordings shall not be released (copies only)**, unless specifically authorized by the Union County Prosecutor or Attorney General. If authorized for release, the normal chain of custody procedure applies and a copy shall be maintained.