

HARRISON TOWNSHIP POLICE DEPARTMENT STANDARD OPERATING PROCEDURE



SUBJECT: INTERVIEW, INTERROGATION, ACCESS TO COUNSEL

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BY THE ORDER OF:
Chief of Police Thomas Mills

PURPOSE The purpose of this standard operating procedure is to maintain procedures for protecting 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 Harrison Township 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](#), Gloucester 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 field interviews with due respect for the public and in accordance with applicable law, guidelines, and current criminal procedure.

PROCEDURES

I. DEFINITIONS

- A. Custody – is defined as an actual arrest or any conduct on the part of law enforcement, 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 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.
- B. 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 is merely attempting to gather general background information and facts concerning an incident. It is important for officers 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.
- C. 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.
- D. 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.
- E. Statement is 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.

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 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 his/her right to counsel or his/her right to silence, further interviewing would be fruitless, or the purpose of the interview 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 Prosecutor guideline or directive, and other written directives 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 officers 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 except when the person being questioned is subjected to custodial interrogation.
- C. Reasons to conduct interviews include but, are not limited to:
 - 1. 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.

IV. INVESTIGATIVE DETENTION FIELD INTERVIEWS

- A. The investigative detention/field interview is a legitimate tool for preventing and investigating criminal activity. Even when conducted with respect and in strict conformance with the law, it can be perceived by some as a means of police harassment or intimidation against groups or individuals.
- B. Officers may stop individuals for the purpose of conducting a field interview only when 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's presence in a neighborhood or location is inappropriate;
 - d. The person is carrying a suspicious object that warrants attention;
 - e. The person's clothing bulges in a manner that suggests he/she is carrying a weapon;
 - f. The person is located in proximate time and place to the alleged crime;
 - g. The officer has knowledge of the person's prior criminal record or involvement in criminal activity.
- C. Personnel 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 his/her story, unless information is obtained that establishes probable cause to make an arrest.
- E. A frisk is external feeling of the outer garments of an individual for weapons only; see *Search Procedures SOP*.
- F. The following guidelines should be followed when conducting a field interview.
 - 1. Notify Gloucester County Communications of the stop.
 - 2. When approaching the person, clearly identify yourself as a police officer; if not in uniform, by announcing your identity and displaying agency badge and identification.
 - 3. Officers should not stand directly in front of a subject. Instead, officers should stand with their weapon side away from the subject(s).
 - 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 him/her 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. Such detained persons are not required, nor can they be compelled, to answer any questions posed during field interviews. 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.
- 11. When feasible, the field interview process should be captured on the vehicle's MVR or the officer's BWC, if equipped.
- G. Field interviews shall be documented in CAD or included in the investigation 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.
- B. Unless impracticable, warnings should be given using *Miranda Waiver Forms*. Officers should read the warning statements directly from the form to avoid confusion and/or omissions, affixing their initials to each point. The subject, the advising officers, and whenever possible, a witness should then sign the form, where indicated. Further:
 - 1. Miranda Waiver forms are available in both English and Spanish. Use the appropriate form where indicated.

2. When electronically recording statements, ensure that the Miranda Warnings are memorialized on the medium used.
- C. 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. NOTE: a deaf person may or may not be able to read. Do not presume that printed materials can take the place of an interpreter.
 5. Use of relatives, friends, the passing of hand written notes, and non-certified interpreters cannot be utilized for the purpose of making the notification of rights. Such persons can only be utilized for the taking of basic information.
- D. Miranda waivers must be knowingly, intelligently, and voluntarily given. Investigators should clarify ambiguous responses when necessary to differentiate between the person's right to counsel and the right to silence.
- E. 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 his/her 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 his/her mind and now wishes to initiate a conversation with officers, Miranda warnings should be restated, and another *Miranda Waiver Form* should be completed. The burden rests with officers to prove that Miranda warnings were voluntarily waived.
- F. 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 *Miranda Waiver Form* should be completed. The burden rests with the officers to prove that Miranda warnings were voluntarily waived.

- G. If officers 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 interrogator/interviewer.
- H. Officers shall not interrogate any defendant after he/she has been indicted unless permission is obtained from the Gloucester County Prosecutor's Office.
- I. 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. Whenever possible and especially in the case of juveniles under the age of 14, no juvenile should be interviewed except in the presence of his/her parents or guardian.
 - 3. At no time can police officers refuse to allow a parent or guardian the opportunity to speak to the juvenile while he/she is in police custody.
 - 4. Police 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, or they simply refuse to attend the interrogation.
 - 5. 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.
 - 6. When the prosecutor's office initiates a juvenile complaint and obtains a judicially approved arrest warrant, the juvenile can only waive his/her 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 (reference *State in the Interest of P.M.P.* 404 N.J. Supra 69 (App. Div. 2008)).
- J. At no time will coercion, intimidation, or other unlawful means be used to obtain any confessions from individuals suspected of criminal activity. Officers shall not employ any of the following tactics in obtaining a confession or statement:
 - 1. Physical violence, the threat of physical violence, or depriving the person of food or sleep;
 - 2. Threat of harm to the person or his/her family;
 - 3. A suggestion that silence will be punished;
 - 4. A suggestion that the sentencing judge will be informed that the defendant 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.

VI. INTERVIEW / INTERROGATION ROOMS

- A. Detectives shall utilize either Interview Room #1 (juveniles) or Interview Room #2 (adult suspects) when conducting custodial interrogations or custodial interviews.
 1. Firearms shall be secured in gun lockers when conducting custodial interrogations/interviews.
 2. No such restriction applies when conducting victim or witness interviews.
- B. A thorough search of anyone in custody should be conducted at the time of the arrest. In instances of a suspect interview/interrogation prior to an arrest, the detective/officer may conduct a frisk for weapons. **At no time shall a suspect be left unmonitored in an interview room.**
- C. No more than two officers/detectives are permitted in an interview room during a custodial interview or custodial interrogation. If a Gloucester County Prosecutor's Office detective is in attendance or if an interpreter is required, the maximum number of law enforcement personnel shall not exceed three.
- D. If the interviewer(s) need assistance, he/she shall summon immediate assistance by pressing the panic button or by using a portable radio. Any observing detective/officer shall alert other personnel that assistance is needed in the interview room prior to entering to render assistance.
- E. Furniture and office supplies needed to conduct the interview/interrogation shall be maintained in the interview rooms. No other equipment or items shall be stored in these rooms.
- F. If the suspect needs to use the restroom, asks for water, or needs to take a break, the interviewer should fulfill these requests. Beverages can only be served in a soft cup (e.g., paper, Styrofoam, etc.).

VII. RETENTION OF FIELD NOTES

- A. In accordance with *Attorney General Directive 2011-2*, officers cannot 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. For purposes of this subsection (VI), the following terms are defined:
 1. Notes 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.

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 or crime scene (e.g., information learned outside the witness interview; 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.).

- 2. Witness interview means any interview, whether custodial or non-custodial, of a person 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.
 - 3. Witness includes all persons interviewed during the course of an indictable crime investigation and is not limited to a suspect or target of the investigation.
- C. All original notes of crime scenes and/or witness interviews made by an officer or detective of the Harrison Township Police Department in the course of an investigation of an indictable crime shall be retained with the applicable case file.
 - D. Detectives shall ensure that a photocopy of all original notes is provided to the Gloucester County Prosecutor's Office as part of a criminal investigation of an indictable crime.
 - E. 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 what parts will be redacted upon satisfying or denying a discovery request.
 - F. 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 SOP explicitly authorizes personnel to use any legitimate established interview/interrogation technique deemed appropriate in the context of a specific investigation.
- C. Electronic recording includes both audio and/or video. Under most circumstances the digital recording system shall be the preferred method. If this system is not available or inoperable, audio recording will be acceptable.
- D. Custodial interrogations must be electronically recorded when the person being interrogated is suspected of committing a 1st, 2nd, 3rd or 4th degree crime. Officers may electronically record custodial interrogations for lesser offenses.
- E. Although not specifically required, victim/witness statements can be electronically recorded if the investigator feels that it may have investigative value.
- F. 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
- G. When conducting interviews/interrogations in other jurisdictions, officers shall adhere to the rules and regulations of that facility as they pertain to electronically recorded statements. Officers should utilize a portable audio recorder from this department to supplement any recording made by that jurisdiction unless that agency is able to immediately provide a copy of their electronic recording.
- H. The interviewer's responsibilities include:
 - 1. Being familiar with the facts as they relate to the case;
 - 2. Ensure that weapons and cell phones are secured prior to the interview process;
 - 3. Ensure that the subject is positioned correctly in the room, so his/her image is captured on the recording;

4. Introduce all personnel present in the interrogation room to the subject at the outset of the interview/interrogation;
 5. Ensure that the subject reads and signs the Miranda Waiver form prior to any questioning;
 6. Complete a written summary documenting of the subject's statement;
 7. When required, ensure that a transcription of any statement is completed.
 8. Submit the DVD(s) into evidence in conformance with this department's *Property and Evidence SOP*.
- I. Recording shall begin at the point Miranda warnings are required. The warnings and the subject's responses shall be included in the recording. 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.
- J. The Miranda warning process must be captured on the recording. If the subject declines to speak with the interviewer after receiving Miranda warnings, all questioning shall cease.
1. Officers have no obligation to affirmatively disclose to the subject that an interview/interrogation will be recorded. However, officers 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, officers 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.
- K. Subjects should not appear in restraints during the interview/interrogation except under the most extraordinary of circumstances. Any extraordinary circumstances must be memorialized at the beginning of the recording by having the defendant agree to the interview/interrogation process while being restraints.
- L. 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.
- M. 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, the subject shall memorialize such once the recorded interview continues.
- N. Recording juvenile interrogations require the following additional procedures:

1. Juvenile subjects may wish to communicate privately with their parents or guardians, or the parents or guardians may wish to communicate privately with the juvenile.
 - a. If the interrogation had already begun, the recorder can remain on but, the parent and juvenile must be permitted to confer outside of the room or the interviewing officer/detective shall disable the audio recording feature.
 - b. Once the interrogation reconvenes, the cause for the break shall be discussed and recorded. If the juvenile subject makes any admission(s) or relevant statement(s) during the parental consultation known to the interviewer, it shall be memorialized by the subject 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 officers 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 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.
- O. At the conclusion of the interview/interrogation or at a reasonable time following the interview/interrogation, the session shall be transferred to a DVD-R and secured as evidence.
1. This transfer is necessary to protect the integrity of the interview/interrogation and minimize defense challenges on the grounds of transfer of custody or tampering and to protect against catastrophic equipment failure.
 2. A second DVD-R may also be made and stored in the case file. This secondary media is considered the working copy to minimize access to the master recording.

3. In instances involving a 1st, 2nd, 3rd, or 4th degree crime investigation, make a third copy of the recording for the Gloucester County Prosecutor's Office.
- P. DVD-R media along with its case must be marked with the following information:
1. Case or incident number;
 2. Any related case numbers;
 3. Date the recording was made;
 4. Subject's name;
 5. The interviewer's name.
- Q. 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.
- R. Original recordings shall not be released, unless specifically authorized by the Prosecutor or Attorney General. If authorized for release, the normal chain of custody procedure applies. Copies of media should **not** be forwarded by mail or electronic mail except at the specific direction of the prosecutor's office.
- S. Property officers' responsibilities include:
1. Ensure that the DVD-R media is properly stored away from magnetic fields (speakers, etc.) or other areas that may facilitate corruption in the property room.
 2. Ensure that the ORIGINAL media is not released without the expressed consent of the Prosecutor's Office or Attorney General's Office.