

BRICK TOWNSHIP POLICE DEPARTMENT GENERAL ORDER			
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SUBJECT: INTERVIEW, INTERROGATION & ACCESS TO COUNSEL			
BY THE ORDER OF: Chief Nils R. Bergquist		ACCREDITATION STANDARDS: 1.2.3	
EFFECTIVE DATE: July 1, 2011		SUPERSEDES ORDER #:	

PURPOSE The purpose of this directive is to establish policies and procedures for assuring the constitutional rights of individuals subjected to field and custodial interviews or interrogations, their access to counsel, and their right to bail when appropriate.

POLICY It is the policy of the Brick 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, Ocean 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. **Custodial Interrogation** is questioning initiated by an officer 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 and the surrounding circumstances, fairly construed, would lead a detainee to believe he or she is not free to leave.
 - 1. Custodial interrogation of a subject in custody must always be preceded by a recitation of the Miranda Warnings. In response to the warning a suspect must make a knowing, intelligent and voluntary waiver of the right to remain silent and the right to counsel. Preferably, this waiver should be noted in writing.
- B. **Field Interview** are the actions of an officer in interviewing a subject who is acting suspiciously and may have committed or appears to be about to commit a crime or offense. This includes obtaining identification and possible incident information from the interview. A field interview 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.
- C. **Interrogation** is questioning designed to match acquired information to a particular subject. Interrogation shall include express questioning and also any words or actions on the part of the officer, that the officer should know are reasonably likely to elicit an incriminating response from a subject. Documenting an interrogation may consist of note taking, formal written statements, and video or audio recording.
- D. **Interview** is a face to face conversation for the purpose of obtaining information from individuals who possess knowledge of an incident. Interviews may either be verbal, written, and video or audio recorded. Interviewing is generally considered questioning of those not suspected of a crime. However, information revealed during an interview may cause the individual to become a suspect. Once an individual becomes the suspect in an investigation, legal requirements attendant to interrogations must be followed.
- E. **Place of detention** is defined as a building or police station or barracks that is a place of operation for a municipal or state police department, county prosecutor, sheriff or other law enforcement agency, that is owned or operated by a law enforcement agency at which persons are or may be detained in connection with criminal charges against those persons. Place of detention shall also include a county jail, county workhouse, county penitentiary, state prison or institution of involuntary confinement where a custodial interrogation may occur. (R. 3:17)

II. General

- A. Personnel shall remain familiar with current criminal procedure regarding interviews, interrogation, and access to counsel.
- B. Personnel 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 their right to counsel or their 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 will be in compliance with NJSA 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. Personnel 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. Personnel 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. Types of interviews that may be conducted include, but are not limited to:
 - 1. Investigative detention field interviews;
 - 2. Victim/complainant interviews;
 - 3. Witness interviews;
 - 4. Suspect interviews.
- D. Personnel shall conduct all interviews with due respect for the person being interviewed.
- E. In all cases involving indictable crimes, all statements by witnesses and victims must be transcribed and sent to the Ocean County Prosecutor's Office (OCPO) within 3 weeks of the date of the complaint.
- F. In all cases, police 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 will constitute the only record memorializing the statement.

IV. Investigative Detention Field Interviews

- A. Personnel may stop anyone at anytime not based solely upon the person's protected class 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 field interviews for reporting/documentation purposes.
- B. Personnel may stop individuals for the purpose of conducting a field interview 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, personnel 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 Search & Seizure Directive 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. 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 their story, unless information is obtained that establishes probable cause to make an arrest.
- E. A pat-down search (stop & frisk) is a frisk or external feeling of the outer garments of an individual for weapons only, see Search and Seizure Directive.
- F. The following guidelines should be followed when conducting a field interview.
 1. Notify communications of the stop.
 2. When approaching the person, personnel should clearly identify themselves as police officers; if not in uniform, by announcing their identity and displaying agency badge and identification.
 - a. Personnel should not stand directly in front of a subject. Instead, personnel should stand at a right angle to the subject with their

strong side (sidearm side) away from the subject(s), unless impracticable.

3. Personnel should announce the purpose of the inquiry and begin with exploratory questions regarding the subjects' 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.)
 4. Personnel 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.
 5. Before approaching more than one person, personnel should determine whether the circumstances justify a request for backup assistance and whether the contact can and should be delayed until such assistance arrives.
 6. Personnel should confine their questions to those necessary to resolve their suspicions. However, personnel shall not detain persons longer than is reasonably necessary to make these limited inquiries.
 7. Personnel are not required to give suspects Miranda warnings unless the person is in custody and about to be interrogated.
 8. 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.
 9. Personnel should conduct the necessary warrant/records checks for stopped persons and act upon positive hits as appropriate.
- G. Field interviews resulting from investigative detentions shall be documented on a Field Interview Report, or on the report of the corresponding event/investigation, or directly into the field interview module on the mobile data terminal 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 a Miranda Rights Form. 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. 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. 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.
- D. 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 may the police 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. All attempts to notify a parent/guardian/custodian shall be memorialized in the Investigation Report.
 7. 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 their attorney. This requirement applies to adults as well if they were a juvenile at the time of the offense or when the arrest warrant was obtained (reference State of New Jersey In the Interest of P.M.P. Docket No. a-63-08).
- E. If a subject declines 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 their right to silence, all questioning shall cease.
- F. 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, Miranda warnings should be restated and another Miranda Waiver card completed. The burden rests with the State to prove that Miranda warnings were voluntarily waived.
- G. Once an individual has invoked their right to legal counsel, they are not to be questioned further unless authorized by counsel or unless further dialogue is initiated by the individual. Prior to resuming an interview so initiated, Miranda warnings should be restated and another Miranda Waiver card completed. The burden rests with the State to prove that Miranda warnings were voluntarily waived.
- H. If 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 investigator.
- I. At no time will coercion, intimidation, or other unlawful means be used to obtain involuntary confessions from individuals suspected of criminal activity.
- J. Officers shall not interrogate any defendant about an offense after he/she has been indicted for that offense or any other offense closely related, unless permission is obtained from the Ocean County Prosecutor's Office. Only an Assistant Prosecutor can grant permission.
- K. In all cases, police 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 will constitute the only record memorializing the statement.

VI. Electronic Recording

- A. The requirements for electronically recording custodial interrogations in a place of detention shall apply to adults and juveniles alike.
- B. This directive 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 digital. 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.

1. Personnel may electronically record custodial interrogations for any crime of offense not meeting the above criteria.
- E. 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
- F. When conducting interviews/interrogations in other jurisdictions, personnel shall adhere to the rules and regulations of that facility as they pertain to electronically recorded statements. Personnel 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.
- G. Although not specifically required, victim/witness statements may be electronically recorded if the investigator feels that it may have probative value.
- H. Interviewers' 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 necessary, ensure that weapons are secured prior to the interview process;
 4. When practicable, ensuring that the surrounding hallways/rooms are clear of distracting noise;
 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 their 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 Miranda Rights Form or Youth Rights Form (whatever is applicable) prior to any questioning;
 10. Ensuring that a written summary of the subject's statement/confession is completed.
 11. Electronically recorded statements of defendants need not be transcribed unless or until there is a hearing scheduled in court concerning that statement.
- 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 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.
- 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 handcuffed.
- 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 (i.e., 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.

N. 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 monitored; 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, 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 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 memorized on the Youth Rights Form 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.

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(s) and secured as evidence.

1. A second DVD-R shall 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. If the interview/interrogation yields a confession, a third DVD-R shall also be made and forwarded to the OCPO along with the police report.

- P. The media along with its case must be marked with a black permanent marker or evidence label 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 audio tape is used, the tabs on the tape housing are to be broken immediately to prevent the audio tape from being accidentally recorded over.
- R. The primary DVD-R media shall be packaged in accordance with this department's Property & Evidence directive and shall be preserved and maintained in accordance with evidence retention schedules established by law.
- S. **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.
1. Copies of media should **not** be forwarded by electronic mail.
- T. Property officers' responsibilities include:
1. Ensure that the media is properly stored away from magnetic fields (speakers, etc.) or other areas that may facilitate corruption in the property vault.
 2. Ensure that the ORIGINAL media is not released without the express consent of the Prosecutor's Office or Attorney General's Office.

VII. Retention of Field Notes

- A. In accordance with Attorney General Directive 2011-2, officers may 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. For purposes of this subsection (VII), 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's 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 (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.).

- 2. **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.
 - 3. **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.
- C. All original notes of crime scenes and/or witness interviews made by an officer or detective of the Brick Township Police Department in the course of an investigation of an indictable crime shall be scanned and retained with the applicable case file. All notes shall be clearly marked with the applicable case number.
 - D. The Records Bureau shall ensure that a photocopy or electronic copy of all original notes is provided to the Ocean County Prosecutor's Office as part of a criminal investigation of an indictable crime.
 - 1. Whenever copies of contemporaneous notes are provided to the Prosecutor's Office, the officer/detective providing these notes shall notify the Records Bureau to 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.
 - E. All scanned notes shall be maintained with the original reports in the appropriate case file in accordance with applicable New Jersey Division of Archives and Records Management records retention schedules. The original notes shall be retained in property/evidence for the same time period.