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			Distribution: All
Title: INTERVIEWS AND INTERROGATIONS		Section: Investigations	
Issued: 4/24/2012	Effective: 5/2/2012	Revised: 5/7/2014	
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Review: Annual	Authority: Chief Michael A. Keller <i>MJK</i>		

I. Purpose

The purpose of this General Order is to assist officers in determining when field interviews, interviews and interrogations are warranted and to establish the proper way to conduct them; as well as to establish guidelines and procedures for recording them.

II. Policy

Field interviews are a part of a comprehensive strategy of crime control. The objectives are to identify and develop information about suspicious persons, develop suspects in conjunction with directed patrol in response to targeted patterns of crime and crime prevention. Custodial interrogations of suspects, and any statements and confessions that are elicited are vitally important in the preparation of criminal cases. However, to be admissible as evidence, statements and confessions must be given freely and voluntarily and with due consideration for the suspect's right to silence and right to counsel. Members of this department should always treat with respect all persons they come into contact with, be they victims, witnesses or suspects; respect the Constitutional Rights of all individuals; maintain the integrity and professional image of the Andover Police Department; and work toward uncovering all truthful facts about each case assigned, to the best of their abilities.

III. Definitions

- A. **Custody:** A custodial situation exists when an officer tells a suspect he is under arrest. A functionally equivalent situation exists when a "reasonable person" in the suspect's position would feel that his freedom of action has been restricted to the same degree as a formal arrest.
- B. **Custodial Interrogation:** Questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.
- C. **Electronic Recording:** An audio or video recording whether using magnetic tape, digital means or other recording media.
- D. **Field Interview (Terry Stop):** The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion, for the purpose of determining the individual's identity and resolving the officer's suspicions concerning criminal activity.



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- E. **Interview:** An interview is a non-accusatory, structured conversation during which specific factual information concerning the case and/or suspects may also be developed during this non-accusatory exchange.
- F. **Interrogation:** An interrogation is a conversation between the interrogator and the suspect during which the suspect is accused of involvement in a particular incident or groups of incidents. The accusatory tone of the exchange is what distinguishes the interrogation from the interview.
- G. **Reasonable Suspicion:** A particularized and objective basis, supported by specific and articulable facts, to suspect a person has committed, is committing or is about to commit a crime. Reasonable suspicion may be based on the officer's observations, knowledge and experience as well as reasonably trustworthy information known to the officer at the time an action is taken.
- H. **Stop:** A seizure occurring when a law enforcement officer, by force or some show of authority, restrains a person's liberty.

IV. Regulations

- A. Miranda warnings are required and shall be administered prior to custodial interrogation [B].
- B. A juvenile less than 14 years of age will not be interrogated while in custody unless the officer has consulted the juvenile's parent or attorney as to whether the juvenile will waive the right to an attorney and the right against self-incrimination [A] (44.2.3).
- C. All interrogations of juveniles will be conducted by no more than two officers, after the juvenile was advised of his or her Constitutional rights, and in a manner that ensures the voluntariness of the interrogation [A] (44.2.3).
- D. Officers shall not use threats, false promises or coercion to induce suspect statements [C].
- E. Recording attorney-client conversations is prohibited where an expectation of privacy would reasonably exist [C].

V. Procedures

A. Field Interviews

1. Field interviews may be divided into two categories;
 - a. Field contact which is a conversation between a citizen and law enforcement officer where the citizen is free to leave. Officers are authorized and encouraged to contact citizens whom the officer believes may have information pertaining to a crime, pattern of crimes and/or criminal suspects.
 - b. Field Interview/Terry Stop (1.2.3a)



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- (i) Without making an arrest an officer may stop any person in a public place whom the officer reasonably suspects is committing, has committed, or is about to commit a crime and may demand the person's name, address and an explanation of the person's actions.
- (ii) Law enforcement officers 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, the officer must be able to point to specific facts that, when taken together with rational inferences, reasonably warrant the stop. Such facts include but are not limited to, the following:
 - (a) The appearance or demeanor of an individual suggests that he or she is part of a criminal enterprise or is engaged in a criminal act.
 - (b) The actions of the suspect suggest that he or she is engaged in a criminal activity.
 - (c) The hour of day or night is inappropriate for the suspect's presence in the area.
 - (d) The suspect's presence in a location is inappropriate.
 - (e) The suspect is carrying a suspicious object.
 - (f) The suspect's clothing bulges in a manner that suggests he or she is carrying a weapon.
 - (g) The suspect is located in proximate time and place to an alleged crime.
 - (h) The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.
 - (i) The individual flees at the sight of a police officer.
- (iii) Procedures for Initiating a Field Interview--Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a suspect if he has reasonable suspicion to do so. The following guidelines shall be followed when making an authorized stop to conduct a field interview:
 - (a) When approaching the suspect, the officer shall clearly identify himself as a law enforcement officer, if not in uniform, by announcing his identity and displaying departmental identification.
 - (b) Officers shall be courteous at all times during the contact but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions.
 - (c) Before approaching more than one suspect, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives.



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- (d) Officers shall confine their questions to those concerning the suspect's identity, place of residence, and other inquiries necessary to resolve the officer's suspicions. However, in no instance shall an officer detain a suspect longer than is reasonably necessary to make these limited inquiries and resolve suspicions.
 - (e) Officers are not required to give suspects Miranda warnings in order to conduct field interviews unless the person is in custody and about to be interrogated.
 - (f) Suspects 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 sufficient justification for additional observation and investigation.
 - (iv) The length of time that a person is stopped should not be any longer than is needed for the officer to resolve the reasonable suspicion the person is committing, has committed, or is about to commit a crime.
 - (v) Any stop of a person should be based upon reasonable, articulable facts, fundamental to sound police procedures, not solely based upon the person's appearance or the officer's feelings or opinions.
2. Officers shall document each field interview in the department's record management system's Field Interview module if no criminal activity has been determined. Documentation shall include the date and time, location of the interview, a narrative documenting the circumstances surrounding the interview and the results of the interview, names and addresses of interviewees at a minimum, preferably with all personal information for which there are boxes, vehicle information if a vehicle is involved, any photos or other attachments as appropriate. If criminal activity is documented a case number shall be obtained and an incident report written and submitted.

B. General Interview/Interrogation Process

1. Victim/Witness Interviews: When interviewing victims/witnesses, officers should consider these important points:
 - a. Filling out a Personal History Sheet while interviewing victims and witnesses is a good practice and may provide an opportunity for developing report, and information for further follow-up or assistance in locating them at a later date.
 - b. Detailed notes and a written report should be made for future reference and court use; providing time, date, location, officer(s) present, etc.
 - c. A written statement from the victim/witness should be obtained.
 - d. The trauma/stress to which the victim/witness has been subjected should be considered and the interview conducted in such a manner as to reduce stress and minimize further problems.

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- e. The age, physical limitation and credibility of the witness should also be considered.
2. Suspect Interviews: When interviewing suspects, officers should consider these important points:
 - a. Filling out a Personal History Sheet while interviewing suspects is a good practice and may provide an opportunity for developing rapport, and information for further follow-up or assistance in locating them at a later date.
 - b. Interviews to obtain investigative leads can be very useful, but all constitutional precautions must be taken and documented.
 - c. Detailed notes and a written report should be made for future reference and court use; providing time, date, locations, officer(s) present, waiver of rights (if applicable), time interview ended and other information needed.
 - d. Statements obtained during an interview must not be based on coercion, promises, delays in arraignments, or deprivations of counsel.
 - e. In order to use a statement in court, a suspect in custody should be advised of the Miranda warning and the officer must be able to demonstrate that the suspect understood those rights and made a knowing and intelligent waiver of those rights. All custodial interrogations shall be electronically recorded to include the Miranda advisement.
 - f. If there is more than one suspect to be interviewed, the suspects should be separated and interviewed individually.
3. Officers should remember that by using innovative, yet proper methods, much valuable evidence could be obtained from victims, witnesses and suspects. A flexible and effective interview technique can obtain valuable evidence that might otherwise be lost.
4. Juvenile victims, witnesses and suspects must be given the same constitutional protection as adults. The following safeguards should be follows:
 - a. Parents or guardians should be notified whenever a juvenile is taken into custody.
 - b. The number of officers engaged in the interview and its duration should be kept to a minimum.

C. Custodial Interrogation (1.2.3b)

1. In *Miranda v. State of Arizona* (384 U.S. 436 [1966]), the United States Supreme Court held that when a person is taken into custody, or otherwise deprived of their freedom of action in a significant way, and when the person is to be questioned for evidence of their own guilt, certain procedural safeguards must be afforded them to protect their Fifth Amendment right against involuntary self-incrimination.



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2. Miranda warnings are required and shall be administered prior to custodial interrogation.
 - a. Police questioning of individuals possibly involved in criminal acts does not always require that the Miranda Warning be given. The two factors which determine whether it is required are custody and interrogation. If either is absent, Miranda is not applicable, and the warning is not necessary.
 - (i) If a person voluntarily makes incriminating statements, and the officer intends to ask them any questions to follow-up on those incriminating statements, then a Miranda Warning must be given.
 - (ii) If there is any doubt about whether custody and/or interrogation is/are present, always resolve the doubt in favor of giving the Miranda Warning and securing a waiver.
 - b. All custodial interrogations shall be electronically recorded to include the Miranda advisement.
3. Miranda warnings shall be read by officers from the Miranda Card (APD Form 43a) provided by the department or by using APD Form 43 Miranda Rights and Waiver to all persons subjected to custodial interrogation. All warnings on the card shall be read verbatim when Miranda is given. The suspect shall be asked to give a verbal affirmation of understanding to each point of the Miranda Warning (rather than by a nod of the head, or other physical gesture). The reverse side of the Miranda Card contains the waiver, the purpose of which is to ensure that it can be later shown that a suspect was aware of their rights [as guaranteed by Miranda] at the time they made a statement to police. The suspect must give a knowing, intelligent and voluntary waiver before a custodial interrogation can begin, and they must do so verbally. If circumstances permit, particularly in felony charges, a written rights and waiver form, signed by the suspect, is preferable to an oral reading of the Miranda Card.
4. Officers shall ensure that suspects understand their right to remain silent and their right to an attorney. Suspects may be interrogated only when they have knowingly and intelligently waived their rights. Threats, false promises or coercion to induce suspect statements is prohibited.
5. Officers arresting deaf suspects, or suspects who speak another language, shall notify their immediate supervisor and make arrangements to procure the assistance of an interpreter in accordance with General Order M2114, Use of Interpreters.
6. Invoking the Right to Silence
 - a. When a suspect invokes his right to remain silent, all interrogation shall terminate immediately.
 - b. Officers may interrogate a suspect who has previously invoked his right to silence, if, after the passage of time, the suspect initiates communication with officers. However, prior to questioning, Miranda warnings shall be re-administered and a waiver obtained.

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7. Invoking the Right to Counsel (1.2.3c)
 - a. If a suspect waives his right to counsel, a waiver shall be obtained prior to questioning. When a suspect makes reference to counsel but his intentions are unclear, officers may question the suspect further to clarify his intentions.
 - b. When a suspect invokes his right to counsel, all interrogation shall cease immediately. The suspect may not again be interrogated about the crime for which he is charged, other crimes, or by other officers (from this or other agencies) unless
 - (i) The suspect's attorney is present at the questioning; or
 - (ii) The suspect initiates new contact with the police. In this later case, Miranda rights must again be administered and a waiver obtained before any questioning may take place. Officers shall also document and, if possible, obtain written verification that the suspect initiated the communication.
 - (iii) Officers shall cooperate in any reasonable way with efforts by counsel to contact or meet with suspects in custody.
 - (iv) A period of 14 days has passed.
8. Documenting Statements and Confessions
 - a. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented in report format. This includes but is not necessarily limited to
 - (i) Location, date, time of day and duration of interrogation;
 - (ii) The identities of officers or others present;
 - (iii) Miranda warnings given, suspect responses and waivers provided, if any; and
 - (iv) The nature and duration of breaks provided the suspect during questioning for food, drink, use of restrooms or for other purposes.

D. Non-Custodial Interrogations

1. In many instances suspects may be interviewed in a non-custodial setting. If this takes place in an interview room, there should be no locking devices for the door or it should be made clear that the door is unlocked. Additionally, the interrogation of a suspect can only be considered non-custodial if the suspect is there of his own free will and has been informed by police personnel that they are free to leave at any time and provided directions as to the way out. If at any time a non-custodial suspect chooses to leave an interview room they must be allowed to do so.
2. The following represent examples of situations that are not "custodial" and do not require issuance of Miranda warnings.
 - a. Investigatory stop and frisk.



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- b. Questioning during a routine traffic stop or for a minor violation; to include driving while intoxicated (DWI) stops until a custodial interrogation begins.
 - c. During routine questioning at the scene of an incident or crime when the questions are not intended to elicit incriminating responses.
 - d. During voluntary appearances at the police facility.
 - e. When information or statements are made spontaneously, voluntarily and without prompting by police. (Note: Follow-up questions that exceed simple requests for clarification of initial statements may require Miranda warnings.)
3. When a non-custodial interview turns into a custodial interrogation and the suspect is not free to leave, the officer will begin electronic recording, if not already being recorded, and advise the suspect of his Miranda rights.

E. Juveniles

1. Custodial interrogations of juveniles by Department employees will adhere to procedural requirements established by legal authority congruent with protection afforded by the juvenile's constitutional rights.
2. Officers will adhere to the following guidelines when interviewing/interrogating juveniles:
 - a. Juveniles 14 Years Old or Older: It is generally preferable to confer with the juvenile and parent(s) or guardian(s), or other interested non-law enforcement adults (lacking either a parent or guardian) to explain applicable procedures. If none of the above individuals are readily available, officers should evaluate the juvenile's age, level of maturity, street savvy, life experiences, and prior interaction with the justice system prior to conducting extensive interviews or interrogations with the juvenile. The purpose of such evaluation is to determine the juvenile's ability to make a knowledgeable and informed waiver of their rights. Parents or guardians may be allowed to observe the interview or interrogation at the discretion of the officer (44.2.3).
 - b. Juveniles Under 14 Years Old: Officers will ensure the juvenile consults with a parent, guardian, or attorney prior to questioning. The parent and juvenile will be advised of the juvenile's right to an attorney and to remain silent. Parents or guardians have the right to invoke the rights of the child on behalf of the child (44.2.3).
 - c. Duration and Number of Officers: These factors will be determined after consideration of the juvenile's age and the nature of the alleged offense. Generally the number of officers engaged in the interview/interrogation should not exceed two at any given time. An interview/interrogation of a juvenile shall not extend over a period of time that could be considered unreasonable or harassing, causing undue stress for the juvenile, breaks will



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normally be provided at least every two hours. The break may be postponed if the juvenile is actively engaged in detailing a crime (44.2.3).

- d. Electronic recording of juvenile interviews: Whenever possible and practical, officers should electronically record interviews involving juveniles. Electronic recordings shall be conducted anytime a juvenile is being interrogated while in police custody.

F. Electronic Recording of Victim, Witness and Suspect Interviews

1. General Requirements
 - a. Officers shall electronically record custodial interrogations.
 - b. Officers are not required to record noncustodial interviews with suspects, witnesses, or victims during the initial interview phase of an investigation but may do so where deemed necessary.
 - c. If electronic recordings cannot be conducted due to equipment failure, lack of suspect cooperation, or for other reasons deemed pertinent to successful interrogation by the investigating officer, the basis for such occurrence shall be documented. This includes, but is not limited to, spontaneous declarations or other statements not elicited by police questioning.
 - d. Transporting officers need not refrain from questioning a suspect who has indicated a willingness to talk either at the scene or en route to the place of detention. However, officers shall not purposefully engage in custodial interrogations in order to avoid this department's requirement for electronic recording. In addition, if a suspect is making statements without being questioned, the officer should record the statements on the in-car camera if available, which may not record the visual portion but could still be recording the audio portion of the statements.
2. Recording Protocol
 - a. Suspects do not have to be informed that they are being recorded. However by law, one person involved in the interview/interrogation must know it is being recorded.
 - b. The primary interrogator shall, where possible, obtain a signed Miranda waiver from the suspect before beginning interrogation. If the suspect declines to engage in the interrogation, that shall be recorded when reasonably possible.
 - c. Interrogations shall be recorded in their entirety starting with the interrogator's entrance into the interview room and concluding upon departure of the interrogator and suspect.
 - d. When commencing the recording, the primary interrogator shall ensure that voice identification is made of officers, suspect, and any others present, and that the date, time, and location of the interrogation is verbally recorded. When beginning a new recording, the interviewer shall announce the date and time that the interrogation is being resumed. At the time of the



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- conclusion of the interview/interrogation the interviewer shall verbally note the time.
- e. The primary interrogator shall be aware of the amount of time available on the recording media and shall ensure the recording does not run out.
 - f. Any lapse in the recording for comfort breaks or other reasons shall be accounted for on the recording. As an alternative, during a short recess, the recording may continue without interruption.
 - g. Recording attorney-client conversations is prohibited where an expectation of privacy would reasonably exist.
 - h. Recordings of Interviews/interrogations are considered evidence and shall be handled as such. In addition, the following shall apply:
 - (i) Unused recording media shall always be used for interrogations.
 - (ii) Both the original and copies of all recording media shall be protected from editing or deleting.
 - (iii) Only one interrogation shall be recorded on each recording media.
 - (iv) Before submitting the original recording to a secure evidence storage area a copy of the recording shall be made. Copies shall be maintained in the case file.
 - (v) The identifying information items supplied on the recording label shall be completed and the recording marked either as an *original* or a *copy*.
 - (vi) The interviewing officer's interview report shall note if and how the interview was recorded.
 - (vii) Recordings shall be retained by the department in evidence according to General Order O2110 Property Management.