

Geneva Police Department <b>GENERAL ORDERS</b>		<b>SUSPECT INTERVIEW AND STATEMENT PROCEDURES</b>	
<input type="checkbox"/> new: <input checked="" type="checkbox"/> rescinds: Policy & Procedure 50.2 <input type="checkbox"/> amends:		<b>cross-reference:</b> G.O. 712  <b>Accreditation/Recognition standards:</b> C.A.L.E.A.: 1.2.3 NYS L.E.A.P.: 50.2	
<b>effective date:</b> 5.26.04	<b>issue/amend date:</b> 5.26.04 / 8.31.09 / 2.19.15 / 8.21.20		

<b>I. PURPOSE</b>	The purpose of this General Order is to establish and describe policies and procedures for interviewing and taking statements from adult (eighteen (18) years of age or older) suspects.
<b>II. POLICY</b>	It is the policy of the Geneva Police Department to comply with all legal mandates and constitutional requirements governing both custodial and non-custodial interviews of suspects and the taking of statements from suspects.
<b>III. DEFINITIONS</b>	<p><b>A. <u>Custodial Interview</u></b>- The questioning of a subject conducted by police officers after the subject has been arrested or deprived of his/her freedom. An interview should be considered as custodial when a reasonable person, innocent of any crime, would feel that he/she were detained for more than a brief period of time. This includes questioning of an individual after an arrest even though an appearance ticket may have been issued.</p> <p style="text-align: center;"><i><b>Note:</b></i> This does not include questioning during a brief investigative stop based on reasonable suspicion or questioning during the course of issuing a ticket for a traffic violation.</p> <p><b>B. <u>Non-Custodial Interview</u></b>- For purposes of this Order, the questioning of a subject who is not under arrest or deprived of his/her freedom in any significant way.</p>
<b>IV. PROCEDURE</b>	<p><b>A. <u>Non-Custodial Interviews</u></b></p> <p>1. It is not necessary to give <i>Miranda Warnings</i> or receive a waiver of same for non-custodial interviews. Therefore, <i>Miranda Warnings</i> are <b>not required when:</b></p> <p>a. An Officer questions a motorist during a vehicle stop for a traffic infraction.</p> <p style="padding-left: 40px;"><i><b>Note:</b></i> If the motorist is in <b>custody</b> for a traffic <b>misdemeanor or felony</b> (e.g., DWI), <b><i>Miranda Warnings</i></b> and a <b>waiver</b> are <b>required</b> prior to questioning.</p> <p>b. When an Officer conducts a brief interview of a person temporarily detained during an investigative detention (<b>stop &amp; frisk</b>) based on reasonable suspicion pursuant to NY CPL §140.50. <b><i>See G.O. 712 Warrantless Search and Seizures §IV(C)(2)</i></b></p> <p>i. In 1968, the Supreme Court ruled in <u>Terry v. Ohio</u>, 392 U.S.1,21, that law enforcement officers are constitutionally justified in detaining a person against his/her will for a short period of time in order to investigate and resolve suspicious circumstances indicating that a crime has been or is about to be committed.</p>

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2. Officers may request a suspect come to the Police Department (Public Safety Building) to be interviewed on a non-custodial basis. In such cases, it is not necessary to advise the suspect of the *Miranda Warnings*. However, Officers must keep in mind that in such cases the prosecution has the burden of proving that the interview was **voluntary and non-custodial** in order to ensure the admissibility of any statement made by the suspect in the absence of *Miranda Warnings*. Officers should clearly inform the suspect that the interview is voluntary and that he/she is free to leave at any time during the interview, and it should be fully documented in the Officer's report.

**Note:** If, during a non-custodial interview, for any reason a decision is made to arrest the suspect, or the suspect is no longer free to leave, the interview process must stop immediately and *Miranda Warnings* must be given and a waiver obtained to continue the interview.

**B. *Miranda Warnings* in Custodial Interviews**

1. Prior to the commencement of any custodial interview, the subject to be interviewed **must** first be read *Miranda Warnings* as written on issued Geneva Police Department (GPD) *Miranda Warnings* Card.

**Note:** GPD officers will have in their possession an issued or approved *Miranda Warning* form at all times when on duty.

2. The *Miranda Warning* is as follows:

- You have the right to remain silent and refuse to answer any question.
- Anything you say can and will be used against you in a court of law.
- As we discuss this matter you have the right to stop answering my questions at any time that you desire.
- You have the right to talk to a lawyer before speaking to me, to remain silent until you can talk to a lawyer, and to have that lawyer present with you while you are being questioned.
- If you desire a lawyer but you cannot afford one, one will be provided to you before questioning without cost to you.

**Waiver**

- Do you understand each of these rights I have explained to you?
- Now that I have advised you of your rights, are you willing to answer my questions?

3. After the notification of the *Miranda Warnings*, the subject may waive his/her rights and consent to be interviewed. Any waiver of rights and consent to be interviewed must both be **voluntary and knowing** in nature.

- a. Officers will not engage in any coercive conduct or statements that may impair the voluntary waiver of rights or consent to be interviewed.

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4. Upon completion of the issuance of the *Miranda Warnings* and waiver, will ensure that the following information is documented and written on the Miranda Card:
  - a. Date, time, and location of the *Miranda Warnings*;
  - b. Name of the person & place interviewed;
  - c. Name of the Officer giving the *Miranda Warnings* and any other Officer(s) who witness them;
  - d. The level of education of the person interviewed.
  - e. The subject's answers and the CR#.
5. A verbal waiver of rights and consent to interview or give a statement is valid. A signed waiver of consent is not required by law or Department Policy. However, the interviewing Officer may request a signature of the person interviewed affirming waiver and/or consent.
6. A person need only be given the *Miranda Warnings* once during an interview. It is not necessary for each Officer having contact with the person being interviewed to repeat the Warnings.
7. If a language barrier exists (e.g., Spanish-speaking), between the person to be interviewed and the Officer, an interpreter for the Department will be notified and respond. In such a case, the Officer will use the issued Geneva Police Department (GPD) Notification & Waiver Form containing the *Miranda Warning* and both the interpreter and Officer will witness same.
8. Officers may at times encounter a person who is hearing impaired or deaf. In such cases, special consideration will be given to that person to assist with their disability and if necessary a sign-language interpreter contacted for assistance.
9. Officers may question arrested subjects to obtain necessary pedigree information to identify the subject and process the arrest, (e.g., name, address, DOB, etc.) without *Miranda Warnings*, or if the subject has declined to waive the Warnings or has requested counsel.
10. The completed issued Geneva Police Department (GPD) *Notification & Waiver Form containing the Miranda Warning* will be forwarded to the District Attorney's Office with the entire arrest package.

**C. Public Safety Exception to *Miranda Warning***

1. Officers should be aware of the "public safety" exception to the *Miranda* rule. When an Officer urgently needs information from a suspect because lives are in imminent danger, Officers may delay giving *Miranda warnings* until the Officer(s) have received information sufficient to dispel the emergency. Officers who rely on this exception must later be able to articulate specific facts and circumstances surrounding a need for the questioning in order to protect themselves, fellow Officers, or the public. Once the emergency has been dispelled, further custodial questioning must be preceded by the issued Geneva Police Department (GPD) *Notification & Waiver Form containing the Miranda Warning*.

**D. Voluntary Statement Form**

1. Written statements taken by officers will be prepared using the GPD Voluntary Statement Form or other approved Department approved computer-based form.

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2. When using the GPD Voluntary Statement Form, the subject should acknowledge and initial his/her name below the *Miranda* Rights portion of the form.
3. The statement will include a transcription of the person's account of the crime in his/her own words. Officers must ensure that they do not substitute their terminology or words for those of the subject being interviewed. Use the diction and vocabulary of the person giving the statement.
4. Upon completion of the statement, the Officer will have the subject read the statement, or the Officer may read it aloud to the subject. The Officer will give the subject the opportunity to correct any mistakes, make any additions or deletions, and/or other changes. The Officer will request the person to initial any corrections or changes made in the statement.
5. Once the reading and correction process is completed, the Officer will request the person to sign the statement at the end and also sign each individual page at the bottom. The Officer will request that the person draw a line from the end of the last sentence on the statement to the bottom of the page.
6. In the event that the person refuses to sign the statement, the Officer will write "Refused to sign" on the line which is to be signed by the person making the statement and note the date and time of refusal, and any witness to the refusal.
7. The completed statement will be forwarded to the District Attorney's Office with the entire arrest package.
8. If the person gives a verbal statement but refuses to reduce it to writing, the Officer will include a detailed synopsis of the verbal statement in his/her report.
9. Any notes made by an Officer during the interview and/or statement process must be saved and provided to the District Attorney's Office.

**E. 710.30 Notice- GPD #117**

1. Pursuant to NYCPL § 710.30, "Whenever the people intend to offer at any trial...evidence of a statement made by a defendant to a public servant, which statement if involuntarily made, would render the evidence thereof suppressible they must serve upon the defendant a notice of such intention, specifying the evidence intended to be offered....Such notice must be served within fifteen days after arraignment...."
2. Accordingly, the prosecutor is required to serve on the defendant advance notice of any verbal or written statement by the defendant. In order to ensure that the prosecutor is informed of such verbal or written statement made by the defendant, the following will be adhered to:
  - a. On violation and misdemeanor cases, a 710.30 Notice shall be served setting forth any oral or written admissions or any identification procedures. This will be done by the arresting Officer at time of the arrest. Any oral admissions should be written in the 710.30 Notice and served. The same is true for any identification procedures.
  - b. On felony cases, the 710.30 Notice will be served by the District Attorney's Office. In order for the District Attorney's Office to serve the 710.30, it must be completed setting forth the substance of any oral admissions or statements and the original written statement, if there is one. Officers will then forward the completed 710.30 Notice to the DA's office.

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**F. Access to Counsel**

1. If at any time during the *Miranda Warning* process, or during any subsequent questioning, a subject requests an attorney, interrogation must cease. In such cases, the subject must consult with an attorney in person before any further interrogation.
2. Under New York law, there are circumstances under which a subject's right to counsel attaches even though the subject does not request counsel and is willing to speak with police. Officers should consult with the District Attorney's Office if there is a question about this.

**G. Procedure for Video/Audio Recording of Interviews**

1. All interviews of individuals considered as targets of any felony offenses shall be video recorded in accordance with the following guidelines. *See NYS CPL 60.45*

**NOTE:** Non-felonious interviews may be video/audio recorded at the Officer's discretion.

All felony interviews will be video/audio recorded.

- a. All interviews will occur in the interview room containing the video equipment. This interview room will have a wall clock clearly visible at all times during the recording. Prior to starting the recorded interview, Officers are reminded to check the clock to ensure that it reflects the correct time and that it is operating properly.
- b. Recording shall begin as soon as the suspect is taken into the interview room and shall include the advisement of *Miranda Warnings*, when such warnings are given in the interview room. Where *Miranda Warnings* have been given, and a valid waiver obtained, prior to the suspect being brought into the station, Officers are strongly encouraged to have the suspect reiterate the waiver on video at some point during or at the conclusion of the interview.
- c. Recordings must continue without interruption for the entirety of the interview. If a suspect asks to leave the room and the interview is expected to continue once the suspect returns, the recording must continue throughout the period of the suspect's absence.
- d. The suspect does not need to be advised of the fact that the interview is being recorded, even if the suspect asks whether the interview is being recorded. If the suspect refused to be interviewed on video, the recording may be suspended or continued covertly.
- e. At some time during the interview, the Officer conducting the interview must state on video, his/her name; the name of the person being interviewed and any Officer(s) who are present during the interview as well as the time that the interview concluded.
- f. This policy does recognize that video recording may not always be practicable or possible. There are situations in which interviews are conducted such as field interviews, questioning at hospitals, jails, inside police vehicles and other locations where video recording is not possible or practicable. This policy also recognizes that video recording may not be possible due to malfunction of recording equipment. Officers shall document in their report the reason for not video recording the interview.
- g. At the conclusion of the video recording, a DVD copy of the recording must be made. The copy must be made on a non-rewritable DVD. The DVD will be labeled with the case number and placed in evidence per evidence procedures. It is recommended that the investigating Officer make a work copy for reference.

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- h. Officers conducting the interview are responsible for knowing how to operate the recording device. If not familiar, they must make sure that an Officer who is capable is available to assist with this aspect of the interview process.
  - i. Officers must note the existence of a recorded interview in a report and reference any significant parts of the interview that are relevant to the investigation.
  - j. A C.P.L. 710.30 must be prepared noting all oral, recorded and written statement made by the suspect regardless of the nature of the statement and submitted to the D A's Office.
2. Equipment:
- a. The interview is recorded by a digital video recorder (DVR) onto a hard drive. From the DVR hard drive the recorded statement can be replicated onto a portable storage media (CD).
  - b. No unauthorized access to any recording equipment is permissible. Only authorized law enforcement personnel shall use recording equipment. There shall be a log kept of each use of recording equipment; maintenance and upkeep to include periodic inspections, testing and maintenance of the video recording equipment. Such shall be the responsibility of the LT/DB or his designee.
  - c. Any malfunction, damage or theft of equipment shall be immediately reported to a Supervisor who shall immediately report the same to the LT/DB or his designee. The Supervisor receiving such report must insure that a detailed written report is prepared immediately and forwarded to LT/DB.
3. Duplication/Dissemination/Destruction of Recorded Media:
- a. Duplication:
    - 1. To prevent damage or alteration of original recorded media, it shall not be copied, viewed or otherwise inserted into any device not approved by the Department.
    - 2. A copy of the original shall be used for all investigative, Court or training purposes. Unless directed by the Court, the original shall be preserved and not changed, altered or tampered with in any way.
  - b. Dissemination:
    - 1. Unofficial or unauthorized dissemination of any recording is strictly prohibited.
    - 2. Recordings shall not be copied or released to any public media outlet or to the defendant or defendant's attorney without proper authorization from the District Attorney.

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c. Destruction:

1. After the interview is recorded by digital video recorder (DVR) onto a hard drive, the interview must be replicated onto a portable storage media (CD). The DVR hard drive will become full and automatically overwrite prior interviews. This is a technical inevitability and out of the control of human intervention. This is a technical inevitability and out of the control of human intervention. The hard drive space and recording duration is determined by the size of the drive, quality of the recording and quantity of recordings made. The automatic over write of previous interviews are NOT avoidable.
2. No one shall erase, destroy, alter, reuse, modify, change or tamper with any recordings regardless of whether they are on the DVR hard drive or other portable storage media.
3. Only the LT/DB or his designee may erase previously captured recordings in accordance with the laws, rules and procedures applicable to the handling of evidence in al criminal cases.

Approved By

**MICHAEL J. PASSALACQUA**  
*CHIEF OF POLICE*

**ATTACHMENTS:**

A. Video Interview Log