

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



February 13, 2019

202.747.1904 direct

File Number: 37PA-191555

Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 42.11 - Custodial Interrogations. The OCDM has no objection to the policy as written.

We believe that Chapter 42.11 - Custodial Interrogations, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
2099 PENNSYLVANIA AVE., N.W., SUITE 100
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
JUDE VOLEK, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)
SUNNI LEBEOUF, CITY ATTORNEY (VIA ELECTRONIC MAIL)
SMRH:225829293.7



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 42.11

TITLE: CUSTODIAL INTERROGATIONS

EFFECTIVE:

REVISED:

PURPOSE

This Chapter provides members with legally sound procedures for conducting custodial interrogations.

POLICY STATEMENT

1. Custodial interrogations of suspects and the statements and confessions that may be elicited are vitally important in the investigation 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.
2. This Chapter requires all officers to observe due process rights of suspects and to guard against any charges of coercion or intimidation during interrogation.
3. Suspects who are in custody and subjected to an interrogation shall be read their Miranda rights unless an exception applies (see **Chapter 1.9.1 – Miranda Rights**).
4. Officers shall not use physical violence or make threats to carry out harm to the individual, the individual's family, or anyone else during custodial interrogations.
5. Officers shall not conduct pre-interviews or pre-interrogations off camera. Officers shall not ask a suspect any questions about the incident before or after the recorded interrogation.
6. All portions of any custodial interrogation, including the recitation or advisement of the suspect's Miranda Rights, shall be audio and video recorded in their entirety.

DEFINITIONS

Custody / Custodial situation—A person is in custody when an officer tells the person that he/she is under arrest or when a “reasonable person” in the person's position would feel that his/her freedom of action has been restricted in any significant way. This can include a suspect who is handcuffed, in prison clothing, secured in the rear of a police unit or otherwise not free to leave.

Interrogation—Direct questioning of a suspect about a crime or suspected crime, or any words,

statements, or actions by officers that the officers know or should know are reasonably likely to elicit an incriminating response from the suspect.

NOPD authorized interpreter (NOPDAI)—A bilingual NOPD employee who has been assessed, tested, and demonstrated their competency in English and a second language using the terminology, phrases, vocabulary, and phrases needed. Once an interpreter establishes competence and receives training on ethical and professional conduct as an interpreter, the member will be certified and NOPD may authorize him or her to interpret for others in certain situations, such as interviews, interrogations, or talking and responding to citizen complaints.

Suspect—An individual who is reasonably believed to have a connection to criminal activity.

RECORDING CUSTODIAL INTERROGATIONS

7. Any custodial interrogation shall be video and audio recorded in its entirety, including the advisement of the suspect's Miranda Rights. The video and audio recording shall capture the suspect to be interrogated entering and exiting the interrogation room.
8. Custodial interrogations shall be conducted in one of the Department's authorized Interrogation / Interview Rooms unless articulable exigent circumstances exist. The exigent circumstances shall be documented in the investigative case file and/or incident report.
9. Officers shall not conduct pre-interviews or pre-interrogations off camera. Officers shall not ask a suspect any questions about the incident, or say or do anything that is likely to illicit an incriminating response, before or after the recorded interrogation.
10. At no time shall recording equipment be turned off unless the suspect states that he/she does not want the interrogation to be recorded. Should the suspect request that the interrogation not be recorded, the officer conducting the interrogation shall ensure this request has been audio and video recorded in addition to documenting the request in the investigative report.
11. If the interrogation occurs outside of an NOPD facility, every reasonable effort shall be made to secure audio / video recording of the custodial interrogation.
12. Officers should also consider audio / video recording any investigative interview, for any offense, when the officer reasonably believes it would be appropriate and beneficial to the investigation and is otherwise allowed by law. Should the person being interviewed become a suspect during the course of the interview, the officer must **immediately** follow all procedures for custodial interrogation.

MIRANDA ADVISEMENTS

13. Officers shall read Miranda warnings from **Form 153 – Rights of Arrestee or Suspect** to all persons subjected to custodial interrogation. Freelancing, recitation from memory or paraphrasing the warnings is prohibited as it precludes officers from testifying in court as to the precise wording used.
14. The following are examples of situations that are not "custodial" and do not require the advisement of Miranda warnings:
 - (a) Investigatory stop and frisk (see **Chapter 1.2.4.1 – Terry Stops Investigatory Stops**).
 - (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 a 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).

MIRANDA WAIVERS AND THE RIGHT TO SILENCE AND RIGHT TO AN ATTORNEY

15. When a suspect invokes his/her right to silence, all interrogation shall cease immediately (see **Chapter 1.9.1 – Miranda Rights**). The suspect may not again be interrogated about the crime for which he/she is charged, other crimes, or by other officers (from this or other agencies) unless:
 - (a) The officers wait a significant amount of time to re-approach the suspect; and
 - (b) Miranda Rights are re-administered and a waiver obtained before any questioning may take place. Officers shall also document the significant amount of time that lapsed between the initial invocation of right to silence and the subsequent re-administration of Miranda Rights and waiver.
16. When a suspect invokes his/her right to counsel, all interrogation shall cease immediately (see **Chapter 1.9.1 – Miranda Rights**). The suspect may not again be interrogated about the crime for which he/she is charged, other crimes, or by other officers (from this or other agencies) unless:
 - (a) The suspect has requested an attorney and the attorney is present at the questioning; or
 - (b) The suspect initiates new contact with the police. In this latter 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.
17. Officers shall cooperate in any reasonable way with efforts by a suspect's attorney to contact or meet with the suspect in custody.
18. If a suspect waives his/her, right to counsel, a waiver shall be obtained prior to questioning. When a suspect refers to counsel but his/her intentions are unclear, officers may question the suspect further only to clarify his/her intentions.
19. Oral waivers are often sufficient but written waivers, particularly in felony cases, are preferred and should be obtained whenever possible.

DOCUMENTING CUSTODIAL INTERROGATIONS

20. All custodial interrogations shall be documented in the Custodial Interrogations Log for the officer's district or unit.
21. Officers shall maintain in the case file his/her notes taken during any custodial interrogations involving that case.
22. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented in the related investigative report. This includes but is not necessarily limited to:
 - (a) Location, date, time of day, and duration of interrogation;
 - (b) The identities of officers or others present;
 - (c) Miranda warnings given, suspect responses, and waivers provided, if any; and

- (d) The nature and duration of breaks in questioning, whether for food, drink, use of lavatories, or for other purposes.

CONDUCTING CUSTODIAL INTERROGATIONS WITH LIMITED ENGLISH PROFICIENCY INDIVIDUALS

23. Officers arresting Limited English Proficiency (LEP) suspects shall notify their immediate supervisor and arrange to procure the assistance of an authorized interpreter in accordance with this agency's policy and state and federal law (see **Chapter 55.4 – Limited English Proficiency**).
24. A certified interpreter shall be used for any interrogation or taking of a formal statement when the suspect's or witness's legal rights could be adversely impacted. When possible, consideration should be given to using an independent in-person interpretation service during an interrogation. Because of the dual role, a NOPDAI may have when conducting interrogations and acting as an interpreter, all NOPDAI interrogations shall be video and/or audio recorded (see **Chapter 55.4 – Limited English Proficiency**).
25. NOPDAIs shall identify themselves as members of the Department before conducting an interrogation.
26. The authorized interpreter shall provide Miranda warnings to the individual in the individual's primary language (see **Chapter 55.4 – Limited English Proficiency**).

CONDUCTING CUSTODIAL INTERROGATIONS WITH HEARING IMPAIRED INDIVIDUALS

27. Officers arresting deaf or hearing-impaired suspects shall notify their immediate supervisor and arrange to procure the assistance of an authorized interpreter in accordance with **Chapter 55.5.1 – Communication with Persons Who are Deaf or Hard of Hearing**, state and federal law.

INTERVIEW/INTERROGATION ROOM RECORDING EQUIPMENT FAILURES

28. If the investigating officer encounters recording equipment failures or malfunctions, the investigating officer shall relocate to an NOPD facility with an Interview / Interrogation Room with functioning equipment and conduct the interrogation at that facility. In exigent circumstances, the investigating officer may record the interrogation by means of a Body Worn Camera. The exigent circumstances shall be noted in the case report.
29. Any equipment failure shall be:
- (a) Immediately reported to NOPDTECH@nola.gov.
 - (b) Explained and documented in the incident/supplemental or case report.
 - (c) Documented and forwarded to the investigating officer's Deputy Superintendent via the officer's chain of command in the form of a Form 105 (interoffice Correspondence) or e-mail.