



DEPARTMENT OF PUBLIC SAFETY OPERATING PROCEDURES MANUAL		
CHAPTER 222	INTERVIEWS	
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	Special Instructions: Click here to enter text.	

222.100 INTRODUCTION

The law regarding the admission of statements, admissions, and confessions is complex and evolves over time. The sections of this chapter that discuss law and technique are intended to provide general guidance only. Officers must consult the Department of Law for advice on the legal admissibility of particular statements, and on the advisability of using certain interview techniques.

The Department recognizes the benefits of mobile audio and video recording equipment (MAVR) that includes hand-held devices, body-worn cameras, and vehicle equipped video devices used to document officer's interactions with the public. The proper use of recording devices allows for accurate documentation of statements made during officer-public contacts, arrests, formal interviews, and other incidents. They also serve to enhance the accuracy of reports and court testimony.

The use of recording devices can also be used to provide an accurate and un-biased record of an incident for investigative purposes, risk management, civil liability defense and enhancement of officer safety.

This policy does not change or alter other required recordings or recording prohibitions mandated in the OPM, including but not limited to OPM chapters [101.360, 118, 203, 212, 222, 235, 236, and 241.](#)

222.200 DEVICES AND MAINTENANCE

Equipment. Officers will carry and use department-issued MAVR devices. Officers may elect to carry personally owned digital audio recording devices; however, the use of personally owned devices will not exempt the member from following this and all related policies regarding any recordings that are captured.

222.300 NON-CUSTODIAL INTERVIEWS

The interview of a suspect of an offense, when feasible, shall be scheduled in a non-custodial atmosphere thereby dispensing with the requirements of Miranda. To accomplish this, officers shall take every step to assure that interviews are conducted under circumstances that are clearly non-custodial.

The factors that determine if an interview is non-custodial include the location, date, time of interview, use of restraints, numbers of troopers present; surroundings; and transportation means, if provided. However the principal factor is whether the person considers himself or

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herself free to break off the interview and leave at any time. The best manner of assuring that an interview is non-custodial is a clear notification and acknowledgment by the person(s) being interviewed that the interview is non-custodial and that the person(s) is free to break off the interview and leave at any time. In the end, the determination whether an interview is custodial or not will be made by the court, therefore as with all suspect interviews, officers shall make every effort to digitally record their interactions during a non-custodial interview. The recording can be made with or without the knowledge of the person being interviewed if the interviewer makes their identify known as a peace officer.

222.310 CUSTODIAL INTERVIEWS

A. *Cases prosecuted in State courts.* Custodial interviews must be recorded in their entirety, including the recitation of the Miranda Warnings and the time the interview starts and ends in those situations where the person(s) is interrogated in a place of detention such as a police station or jail or any other place the person being interviewed is not free to leave. (The court may consider police vehicles as a place of detention.)

The only exceptions to recording are for an equipment failure or the defendant's refusal to answer questions while being recorded.

1. In the event of an equipment failure, detailed documentation must be prepared to substantiate the failure and must be noted in the report. (Damaged recorders and any recording will be retained in evidence in order to substantiate a malfunction.)
2. If the defendant does not want to be recorded, or refuses to be recorded, record the defendant's refusal before ending the recording. In such a situation, the officer shall take contemporaneous notes or request to have a witness to the interview. If at all possible, the officer shall attempt to gain the cooperation of the defendant to record the interview. Note, however, that a surreptitious recording is still acceptable as outlined in OPM 222.320 B.
3. Each individual situation will be reviewed by the trial court to address whether it was feasible to record under the circumstances of the case. The Supreme Court has held that failure to record "should be reviewed with distrust, and if this rule is violated there will be automatic suppression of the statute unless the above exceptions are present."

B. *Cases prosecuted in Federal courts.* If it is known that a case is going to be prosecuted federally, officers may elect not to record an in-custody interview / interrogation. The decision to not record an in-custody interview/interrogation should be discussed in advance with the officer's chain of command, and consideration should be given that if the federal prosecution is declined, the statements of the suspect/defendant may no longer be admissible in any subsequent state prosecution.

222.320 RECORDING SUSPECT INTERVIEWS

A. *Record the entire conversation and interview with suspect.* An officer shall begin recording when entering the interview area and keep recording until the defendant has left the

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interview area regardless of the defendant's choice of having counsel present or remaining silent. (The defendant may initiate a conversation or make comments before leaving the room and the recording will prove that it was the defendant who initiated the conversation.)

B. *Surreptitious recording may be allowed.* Usually the defendant knows that the conversation is being recorded; however, surreptitious (without the person's knowledge) recordings are legal as long as the defendant knows that they are speaking with a police officer.

C. *Avoid unexplained gaps in recordings.* Ensure the recording contains no unexplained gaps. Confirm the recorder is working correctly, the date/time setting is accurate, and the batteries are good before starting any interview.

Explain any unavoidable gap in the recording when resuming recording and state what, if anything, occurred during the gap and have the interviewee concur. Additionally, state the time when going off record and when back on record. It may also be necessary to reiterate, on the record, that during the break no promises were made to the interviewee and have the interviewee acknowledge this fact. Officers are encouraged to ask the suspect prior to going off record, if they were treated fairly, if all the involved officers acted professionally, or if any promises were made.

D. *Information that should appear on the recording:*

1. The time and the date the interview commenced;
2. The location of the interview;
3. The name of the person being interviewed and any other persons present;
4. The case number;
5. Any readings of Miranda rights and the interviewee's verbal acknowledgment of those rights (make sure the acknowledgment is clear and unambiguous);
6. The interviewee's acknowledgment that, while in a place of detention, no prior unrecorded custodial interview statements was obtained;
7. The reason for any breaks in the tape; and
8. The time and date the interview ends.

222.330 RETENTION OF INTERVIEW RECORDINGS

A. *Recordings of all interviews with suspects or defendants are to be retained.*

Surreptitious, non-consensual, and consensual recordings of all suspect conversations shall be retained as items of evidence.

B. *Recordings will be processed as evidence items.* All original recordings of interviews shall be processed as evidence and secured per acceptable standards as outlined in OPM Chapter 202.

C. *Transcription.* Transcriptions may be made if approved by the Detachment Commander.

222.340 CUSTODIAL INTERVIEWS WITH JUVENILES

A. *Recordings must be made of juvenile in-custody interviews.* When a juvenile is in custody all interviews must be recorded and a good faith effort, following all leads, must be made to contact and notify the parents, prior to beginning the interview.

Recordings shall be made of the juvenile being advised of their right to have a parent (or other adult) present during the interview and the responses, including any waivers, made by the juvenile.

B. *Juveniles have the right to have a parent/adult present during any questioning.* An in-custody juvenile has the right to have a parent or adult present during any questioning. The juvenile can waive this right. Unless the juvenile waives this right, the interview shall not proceed until the parent or guardian arrives. If a parent/adult is requested during the interview but cannot be located after a good faith effort, the juvenile must still waive the presence of the parent/adult before the interview may continue.

The efforts to locate parents of in-custody juveniles must be documented in the case report and in the officer's notebook. The report must document the name(s) of the parent, or other adult sought or contacted; the methods of contact and number of attempts; the times of day that attempts were made; and the results of these attempts.

A parent/adult has no right to prevent a child from making a statement. If a parent/adult becomes disruptive during the interview, and reasonable efforts to modify that person's behavior fails, that person may be asked to leave without ending the interview as long as the juvenile agrees to continue the interview without the parent or adult present.

C. *In-custody juveniles have the same Miranda rights as adults.* An officer shall read and explain the Miranda Warning to the juvenile and ensure that these rights are understood. Only after assuring that juvenile understands the rights and voluntarily waives them can the officer proceed with the interview. In cases where it is known the juvenile will be waived to an adult, the officer will advise the juvenile that any statement can be used against them in ADULT COURT.

D. *Factors examined by Courts in evaluating juvenile waivers and statements.* Courts look closely at juvenile waivers and judge them according to the age, intelligence, education, prior experience with law enforcement, and mental state of the juvenile; the length of questioning; and the opportunity to consult a parent, guardian, or attorney. Because of the complexity of these issues it is advisable to contact the on-call District Attorney before proceeding with critical interviews of juveniles.

222.350 GENERAL QUESTIONING OF WITNESSES AT OR NEAR A CRIME SCENE

A. *Responding officers may ask questions without advisement of rights.* Responding officers may ask questions of those present without advising them of their rights for the limited purpose of determining the nature of the incident, assuring that remaining dangers are identified, and to locate the persons directly involved.

This type of questioning is normally a brief discussion of urgent matters and is necessary, permissible, and encouraged. However, the officer needs to be mindful that if the circumstances become custodial in nature, regardless of whether an arrest has been made, then the Miranda rights may need to be read to the interviewee.

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Since custody is a state of mind, a person is considered to be in custody if, under similar circumstances, a person of reasonable mind, placed in the suspect's position, could reasonably feel that their liberty is being restrained in some significant way.

To avoid a conflict with Miranda requirements, questioning shall be brief and limited to obtaining information regarding: an assessment of what occurred; confirming the person as a suspect and/or developing any other suspects; detecting any remaining dangers to the officer or others; locating the victim, and/or ascertaining if any other victims exists; or locating any weapons or other easily lost evidence.

B. *Miranda not recommended for general questioning of persons not in custody.* During general, non-custodial questioning, an officer is not required to advise an individual questioned of their Miranda rights. However, care must be taken to immediately document any admissions made during this general questioning (for instance notation in notebook, obtain the name, identification, and any other officer who may have heard the admission, etc.) If at any time during the interview the situation changes from non-custodial to custodial, the person must be advised of their Miranda rights to ensure that any further statements will be admissible.