
	<b>GAITHERSBURG POLICE DEPARTMENT</b>		
	<b>Interviews, Interrogations and Access to Counsel</b>		
	<b>GENERAL ORDER</b>	<b>801.1</b>	
<b>Effective Date</b>		<b>04/24/2024</b>	
<b>Authorized by:</b>		<b>Mark P. Sroka</b> CHIEF OF POLICE	SIGNATURE
			DATE <b>04/24/2024</b>

**1. PURPOSE**

1.1. The purpose of this directive is to establish Department policy and procedure that guards against the curtailment or reduction of the civil rights of the accused and those believed to be involved in criminal activity or other violations. Clear guidelines are established for the appropriate and lawful use of Department facilities for interviews, interrogations, and other related investigative activities.

**2. POLICY**

2.1. Members of the Gaithersburg Police Department will conduct all interviews and interrogations, regardless of location or setting, in a manner that preserves rights guaranteed by the United States Constitution and the laws of the State of Maryland. When, in the course of investigations and other information gathering activities, an interview becomes an interrogation, advisement of rights and access to counsel will be afforded, consistent with any change in the custody status of the individual(s) being interviewed.

**3. DEFINITIONS**

**3.1. Officer**

3.1.1. Within the context of this directive, the term “officer” is used interchangeably with investigator, detective, or any other term that refers to a sworn police officer, and applies to both uniformed and plain clothes personnel.

**3.2. Interviewee**

3.2.1. Within the context of this directive, the term “interviewee” is used to refer to any person who is being subjected to an interview, interrogation, or truth verification examination, regardless of the custody status.

**4. PROCEDURE**

**4.1. General Provisions**

4.1.1. Interviews and interrogations may be conducted by sworn

personnel in the field, or utilizing appropriate police facilities.

4.1.1.1. Interviews and interrogations at the Gaithersburg Police station shall be conducted using the designated interview room (s). If an individual is in custody all interviews will occur in either room 134 or 135 or the temporary detention area. All other interviews will be conducted in room 203B or 203C.

4.1.1.2. Interviews and interrogations that are conducted in another agency's facility will be in accordance with the policy of this Department and follow the procedures established by the agency in control of that facility.

4.1.1.3. Officers must consider the needs of persons who require special accommodation because of illness, injury or disability.

4.1.1.3.1. Officers will utilize their training, best judgment and discretion while assessing whether a person requires special accommodation.

4.1.1.3.2. Officers should recognize that a person's injury or disability may not allow for the use of conventional restraints.

4.1.1.3. Facilities and techniques used will ensure that the person does not suffer greater injury or indignity than any other person would under similar circumstances.

4.1.1.4. Additional procedures and considerations are mandated by law in matters that involve juveniles. In addition to any provisions of this directive, interactions involving juveniles will be handled in accordance with General Orders 900.1 – Juvenile Matters & Delinquency Prevention, 900.2 – Investigations Involving Juveniles, and 901.1 – Charging Juveniles.

4.1.1.4.1. For all legal considerations and procedures for interviewing and/or interrogating juveniles, see General Order 900.2 – Investigations Involving Juveniles.

4.1.1.5. Interviews conducted in the Temporary Detention Area will be audibly and visually recorded which is controlled from the monitor room, located in the

prisoner processing area.

4.1.1.6 Interviews conducted in room 203B or 203C will be audibly and visually recorded which is controlled from the touch pad on the wall outside each interview room.

4.1.2. When, in the course of an interview, sufficient information is developed to charge the interviewee with a crime, the interview does not need to stop for advisement of rights, as long as it is clear that the interviewee is free to end the encounter, or leave the station and/or presence of the officer(s) at any time.

4.1.3. Officers should remain cognizant that circumstances such as the number of officers present, positions taken by officers, environmental conditions and setting, can significantly impact an interviewee's perception concerning his or her freedom to end the encounter.

4.1.4. If, at any time, the interviewing officer or the totality of the circumstances gives reason for the interviewee to believe that he or she is no longer free to leave, the interviewee must be advised of his or her rights before questioning may continue.

4.1.5. When a person is advised of his or her rights, every effort should be made to do so using the Advice of Rights form (MCP 50).

4.2. **Use of Interview Rooms**

4.2.1. The Department maintains rooms in the City Police facility that is specifically designed for conducting interviews, interrogations, and truth verification examinations.

4.2.2. Prior to utilizing designated interview rooms or related monitoring equipment, sworn personnel will be provided with training in the use of the room, safety measures and monitoring equipment; retraining of personnel will take place at least once every three years.

4.2.3. Sworn personnel shall notify the on duty patrol supervisor prior to, and at the conclusion of, any use of the designated interview rooms for investigative purposes of any kind.

4.2.4. Sworn personnel shall secure all firearms and weapons on their person utilizing the designated gun lockers located in an adjacent and secure area of the police facility, prior to entering the interview rooms; absolutely no firearms will be permitted inside the

interview rooms.

- 4.2.5. The designated interview rooms are equipped with the following fixtures and devices, which shall be inspected for proper functioning and serviceability prior to any use of the rooms for investigative purposes:
  - 4.2.5.1. Audio and video devices for the recording and/or observation of activities and persons within the interview rooms; use of these devices is governed by law and Department policy.
  - 4.2.5.2. An indicator above the entrance to the interview rooms, designed to be illuminated as a signal that the rooms are in use; this indicator shall be illuminated any time the rooms are in use.
  - 4.2.5.3. A panic/duress alarm activation button within the rooms for triggering the building's alarm system and/or audible alarm, to summon emergency aid.
  - 4.2.5.4. Fixed and anchored table and seating designed to secure a subject in custody when authorized.
- 4.2.6. Sworn personnel utilizing the designated interview rooms shall be in possession of a pair of issued handcuffs and a properly functioning police radio to assist in summoning emergency aid; the unit assigned such radio shall be logged in to the CAD system and held at the City Police station, in order that the radio's emergency identifier can be properly recognized.
- 4.2.7. A log shall be maintained documenting the reason, date and time in and out of the interview rooms, and any meals, comfort breaks, or other activities involving the interviewee (including custody status of juveniles). These details will also be captured in the narrative portion of the event report.
- 4.2.8. An Interview Room Detention Record (GPD 810) will be completed and placed on the designated clipboard for any interview room use that involves persons in police custody.
- 4.2.9. For the purposes of safety, proper supervision of the interviewee, and escape prevention, at least one officer shall be present to monitor the use of the interview rooms, in addition to the officer(s) participating in the interview (one officer interviewing requires a second officer monitoring from outside of the room; two officers

interviewing requires a third officer monitoring from outside of the room).

- 4.2.10. All individuals are subject to and may be searched by the interviewing officer, in the presence of another officer, for weapons and contraband prior to the interview. All subjects of custodial interrogations shall be searched before use of the interview rooms.
- 4.2.11. If, during the course of any interview, the interviewee is to be taken into custody, an additional officer shall enter the room to assist. Unless required by emergency or safety concerns, a maximum of two officers will be permitted inside the room during its use for investigative purposes.
- 4.2.12. The designated interview rooms are to be used for interviews, interrogations and truth verification examinations only. Persons in police custody shall not be left unattended unless all of the following conditions are met:
  - 4.2.12.1. The detainee has been thoroughly searched;
  - 4.2.12.2. The detainee is handcuffed and secured in appropriate restraints;
  - 4.2.12.3. The interview room door is closed and locked;
  - 4.2.12.4. The audio/video monitoring equipment is activated and recording and an officer is actively monitoring the detainee using this system;
  - 4.2.12.5. The detainee's welfare is checked every 30 minutes, through face to face contact, by an officer participating in the investigation, and each check is logged in the previously referenced record.
- 4.2.13. In the course of any use of the interview rooms for investigative purposes, breaks will be provided as appropriate for restroom use, water or drink and consultation with counsel.
- 4.2.14. A thorough inspection of the designated interview rooms and all related equipment shall be conducted by the Special Operations Bureau Commander, or designee, on at least a monthly basis and recorded in the log. Any deficiencies shall be reported to the Administrative Bureau Commander, and no further use of the room will be authorized until approved by same.

4.2.15. A fire prevention, evacuation and suppression plan is in place for the interview rooms.

4.2.15.1. Smoking, or the use of any burning material, is not permitted in the interview room or any other location within the police facility;

4.2.15.2. The building is equipped with a fire alarm, sprinkler system and fire extinguishers;

4.2.15.3. Evacuation routes are posted outside of the interview rooms and are in accordance with the Department's Emergency Evacuation Plan, which is available to all employees.

4.2.16. Administrative review of these procedures will be conducted on a triennial basis, in conjunction with the Department's staff inspection.

4.2.17. Use of the designated interview rooms by any other agency shall be in accordance with this Department's policy and procedures.

#### 4.3. **Interviews**

4.3.1. Interviews are non-custodial and consensual in nature. The person being interviewed must reasonably believe that the interview may end, or be walked away from, at a time of his or her choosing.

4.3.2. When an interview is being conducted, officers will not be present in such a number that would communicate that the interviewee is not free to leave.

4.3.3. When an interview is being conducted in a room, officers will ensure that the door is unlocked and not blocked by other officer(s).

#### 4.4. **Interrogations**

4.4.1. Interrogations are custodial encounters. Any questioning concerning a crime or suspected crime for which the subject is in custody, must be preceded by an advice of rights (Miranda warning), as established by *Miranda v. Arizona*.

4.4.1.1. This applies to any questioning that may lead the person in custody to give evidence of any kind against himself or herself.

- 4.4.1.2. If a person has been advised, but questioning was significantly interrupted, a second advisement is required.
  - 4.4.1.3. Advice of rights also applies to questioning of a subject arrested for DWI/DUI that follows a chemical test for blood alcohol content.
  - 4.4.1.4. Miranda does not apply to general questions concerning the subject's identity, e.g. name, date of birth, address, etc.
  - 4.4.2. Custodial interrogations of juveniles shall be conducted in accordance to General Order 900.2 – Investigations Involving Juveniles and the Child Interrogation Protection Act.
  - 4.4.3. When an arrest is made for a crime that will involve investigation by detectives, the arresting/transporting officer will not advise the suspect of his or her rights, or initiate any questioning.
  - 4.4.4. State legislation (HB 46 [2005] and HB 6 [2008]) establishes that a criminal defendant's statement during custodial interrogation for a crime of violence is presumed involuntary unless an electronic recording is made of the interrogation.
    - 4.4.4.1. As such, custodial interrogations will be recorded, in accordance with these provisions. All interviewees shall be advised that the interview is being recorded, and a verbal advisement shall be present at the start of each recording, prior to questioning.
    - 4.4.4.2. All recordings will be maintained in secure digital storage as property of the Department, until the State is barred from prosecution of an offense relating to the interrogation, or the habeas corpus appeals have been exhausted.
- 4.5. **Access to Counsel**
- 4.5.1. If a subject elects to exercise his or her right to counsel in a custodial interrogation, the subject will not be questioned further about any offense, until he or she could consult with an attorney.
  - 4.5.2. If there is intent to continue with questioning, the subject will be provided with a telephone, phone book and an area where the subject may confer with counsel in private.

- 4.5.3. If there will be no further questioning, provisions to contact counsel need not be provided.
- 4.5.4. Conversations between a suspect and his or her attorney are privileged. These conversations shall not be monitored. The investigating officer will ensure the audible recording feature of the Interview Room recording device is turned off during any attorney/suspect conversation.
- 4.5.5. A defendant is entitled to an attorney at any police conducted line up that is held after the person has been formally charged.
- 4.5.6. Any suspect/defendant who speaks with an attorney, and subsequently communicates the intent to waive his or her rights and answer questions, will be re-advised on the advice of rights form before any further questioning. The circumstances surrounding the person's waiver will be fully documented in the event report narrative.
- 4.5.7. Access to counsel for juveniles in custody shall be conducted in accordance to General Order 900.2 – Investigations Involving Juveniles and the Child Interrogation Protection Act.