

Oakland County Sheriff's Office
General Order # 3.8



SUBJECT: Interview and Interrogation / Interview Room Use and Security		NUMBER: 3.8
EFFECTIVE DATE: 4/26/2023 REVIEW DATE: Annually		MACP Standard Impact: 3.2.1 and 3.2.2
REPLACES AND RESCINDS: GO 3.8 Dated 4/24/2023	DISTRIBUTION: All Personnel	NUMBER OF PAGES: 10

This order replaces and rescinds all previously issued orders, procedures, rules and regulations, notices and/or practices in conflict with this General Order.

I. PURPOSE

The purpose of this order is to establish guidelines and procedures for the electronic recording of custodial interrogations. This order governs interviews and interrogations. This order is for internal use only and does not enlarge the employee's civil and criminal liability in any way.

II. POLICY

It is the policy of the Oakland County Sheriff's Office to comply with all State and Federal laws when conducting interrogations, specifically MCL 763.8 and *Miranda v. Arizona*.

It is the policy of the Oakland County Sheriff's Office to electronically record custodial interrogations of individuals made during investigations of major felonies. Such electronic recordings can help protect both the suspect(s) and interviewers against potential assertions of police coercion or related interrogation misconduct and may increase the likelihood of successful prosecution.

III. DEFINITIONS

- A. Major Felony: A felony punishable by imprisonment for life, for life or any other term of years, or for a statutory maximum of 20 years or more, or a violation of criminal sexual conduct third degree.
- B. Place of Detention/Confinement: A substation of the Oakland County Sheriff's Office, the Oakland County Jail or any other similar facility in which suspects may be detained, either temporarily during an investigation or through an order of the court in connection with criminal charges. A Sheriff's Office vehicle is a custodial environment and transporting deputies shall observe applicable procedures defined in this order.
- C. Electronic Recording: An audio or video recording created by law enforcement for any law enforcement purpose.

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- D. Custodial Detention: An individual's being in a place of detention because a law enforcement official has told the individual that he or she is under arrest or because the individual, under the totality of the circumstances, reasonably believes that he or she is under a law enforcement official's control and is not free to leave. A person subject to custodial detention will be referred to as a detainee below. A person subject to an arrest based on probable cause will be referred to as an arrestee below.
- E. Non-custody: A non-custody situation exists when the person being questioned is not under arrest. A functionally equivalent situation exists when a "reasonable person" in such a situation would feel that his or her freedom of action has not been restricted and they are free to leave at any time.
- F. Interrogation: Questioning in a criminal investigation that may elicit a self-incriminating response from that individual and includes a deputy's words or actions that they should know are reasonably likely to elicit a self-incriminating response from the individual.
- G. Interview: Direct questioning of any person about a crime or suspected crime generally conducted for the purpose of furthering the investigation.

IV. PROCEDURES

- A. Investigative Detentions (MACP Standard 3.2.1 b)
 - 1. Deputies shall conduct an investigative detention based upon reasonable suspicion that the person detained has committed, is committing or is about to commit a crime. When a person is being detained, this fact should be clearly communicated to the detainee.
 - 2. Deputies shall not prolong the investigative detention beyond the period necessary to accomplish the purpose of the detention. Deputies shall be aware that prolonging an investigative detention unnecessarily may cause a court to view the detention as an unlawful seizure if probable cause does not exist for an arrest.
 - 3. Deputies shall take precautionary measures for their own safety during an investigative detention, which may include a display of firearms or handcuffing the detainee. Deputies shall be aware that unnecessary or prolonged display of firearms, handcuffing, and so on during the investigative detention may cause a court to view the detention as an actual arrest.
 - 4. Deputies who reasonably believe that a person under investigative detention may be armed with a weapon and pose a threat to their safety shall conduct a pat-down search of the detainee's clothing for weapons. Deputies shall not conduct any further search of a detainee unless and until it appears that there is probable cause for the arrest of them.
 - 5. If, during the investigative detention, it becomes apparent that there is probable cause to believe that the detainee has committed a criminal offense, the detainee shall then be placed under arrest. The procedures for interrogating an arrestee set forth in this order shall then be followed by the arresting deputies.

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B. Adult Interviews (MACP Standard 3.2.1 a)

1. When a suspect is arrested the arresting deputies shall identify themselves, inform the suspect of his or her arrest, and verbally specify the crime for which the arrest is being made. The exact stated crime of arrest has no bearing on the lawfulness of the arrest, so long as there is probable cause to arrest for any crime. Deputies not in uniform shall display their badges and/or credentials when making the arrest to ensure proper identification.
2. Miranda Rights shall be read to anyone who is arrested (Arrestee) or detained (Detainee) before any questioning rising to the level of an interrogation begins. Those rights should, whenever reasonably possible, be read verbatim from a standardized department-approved form (attached).
3. Deputies may question an individual who is arrested or detained about a situation posing an immediate threat to public safety if necessary to protect law enforcement or the public from an immediate danger without implicating the need for Miranda Rights. The questions must be narrowly directed at neutralizing the imminent threat. For example, a weapon discarded in an area open to the public is an immediate threat to public safety.
4. Miranda Rights are not required for routine booking questions or routine sobriety tests of an individual suspected of operating under the influence. However, a person detained for the investigation of any other misdemeanor traffic offense is entitled to the requirement of Miranda Rights.
5. A waiver of an arrestee or detainee's Miranda Rights must be obtained before questioning can begin. To establish a valid waiver of Miranda Rights, the arrestee or detainee must voluntarily, knowingly and intelligently acknowledge they understand the right not to speak, the right to presence of counsel and that the State could use their statements in a subsequent trial. That acknowledgement should always be verbally stated or conveyed in writing to interrogating deputies. Failure to make an explicit, affirmative acknowledgement of these rights remaining silent or through other ambiguous means, does not constitute a waiver of Miranda Rights.
6. If the arrestee has not waived his or her Miranda rights, no questioning shall be conducted beyond that necessary to accomplish the booking procedure.
7. If the arrestee or detainee waives their Miranda Rights, they should be requested to sign the Sheriff's Office Waiver Form (attached). A refusal to sign the waiver form can be documented on the mobile or other agency video recording system. Failure to sign shall be noted on the form by the interrogating deputy. A signed waiver form is not required to proceed with an interrogation.
8. After a knowing and voluntary waiver of Miranda Rights, deputies may continue questioning unless and until the arrestee or detainee makes a clear and unambiguous request for counsel. An ambiguous or equivocal statement about an attorney is not sufficient to cut off questionings.
9. If the arrestee clearly and unambiguously states they want an attorney, questioning

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must cease IMMEDIATELY. No further questioning may be conducted regarding the crime for which the arrest was made, for any other crime or by any other law enforcement agency unless:

- a. an attorney representing the arrestee is present during questioning,
- b. the arrestee voluntarily initiates a further interview, or
- c. the arrestee has been subject to a break in custody of 14 days or more.

10. If the arrestee has not waived his or her Miranda rights, deputies in the presence of the arrestee shall refrain from engaging in conversation that is calculated to elicit incriminating statements or admissions. **(MACP Standard 3.2.1 c,d)**

11. Juvenile suspects are entitled to the same constitutional rights as adults, including the right against self-incrimination. They are entitled to the Miranda warnings. The form currently authorized by the Sheriff's Office shall be used. The parent or guardian must be present during the reading of the rights. Both the juvenile and his/her parent or guardian must waive the juvenile's rights for the juvenile to be legally questioned. **(MACP Standard 3.2.1 e)**

C. Sheriff's Office Interview Rooms (MACP Standard 3.2.2 a)

1. The Oakland County Sheriff's Office has interview rooms located in each of the substations maintained by the Sheriff's Office and within the Oakland County Jail.
 - a. Rooms in areas of Sheriff's Office facilities that would otherwise be accessible to the general public and not within secured areas of the facility are generally to be used for conducting interviews with persons who are not in custody, not a danger to themselves or others or not being interviewed in connection with investigations that require privacy from the general public.
 - b. Rooms used for interviews in areas of Sheriff's Office facilities that are not otherwise accessible to the general public and/or are within secured areas of the facility are defined as being within a place of confinement for the purposes of this order.

D. Weapon Security (MACP Standard 3.2.2 b)

1. Oakland County Sheriff's Office personnel are not required, although it is preferred, to secure weapons while utilizing interview rooms that are not located within a secured confinement area.
2. Oakland County Sheriff's Office personnel shall secure all weapons when utilizing an interview room within a confinement area as defined in this order.
 - a. Weapons are defined as firearms, chemical agents, batons, electronic weapons and knives.

E. Interview Room Safety

1. Interview safety should be practiced for the benefit of both the deputy leading the investigation and the interviewee.
2. The deputy leading the interview should take additional precautions if the interview is a high risk for potential assault.
3. If the deputy leading the investigation needs to summon assistance during an interview, they can request assistance by use of police radio or cellular phone **(MACP Standard 3.2.2 d)**.

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4. The following steps should be taken to ensure the safety of the deputy leading the interview and the interviewee:
 - a. The deputy leading the interview shall notify another on-site member of the Sheriff's Office if conducting an interview alone in an area of confinement.
 - b. All interviews or interrogations conducted in a place of confinement shall be recorded.
 - c. All in-custody subjects who are being interrogated shall be searched prior to the interview.
 - d. Depending on staffing levels and the type of interview, it is recommended that two (2) interviewers are present.
 - i. The maximum number of interviewers allowed in an interview or interrogation should be two (2) unless circumstances exist for additional law enforcement personnel to be present (**MACP Standard 3.2.2 c**).
 - e. The deputy leading the interview may request to have a 'spotter' monitor the interview or interrogation remotely.
 - i. The 'spotter' will monitor the safety of the deputy leading the interview and summon assistance if needed (**MACP Standard 3.2.2 d**).
 5. If the interviewee is combative or believed to be high-risk, the deputy leading the investigation may do the following:
 - a. Request additional assistance from other personnel.
 - b. Interview or interrogate while the interviewee is handcuffed.
 - c. Terminate the interview or interrogation for safety reasons.
- F. Deputy Responsibilities (**MACP Standard 3.2.1 f**)
1. An electronic recording shall be made of any interrogation that occurs in a place of detention under circumstances that equate to a custodial detention when the interrogation is related to a major felony.
 2. Deputies are required to record noncustodial interviews with suspects, witnesses, or victims during the initial interview phase of an investigation, in accordance with law and the 'Sheriff's Office Mobile Video Recording & Body-Worn Cameras' order. Interviews shall be conducted in a room equipped with a fixed recording system. However, if the deputy is in the field where an interview room is unavailable, the interview will be recorded with a body worn camera.
 3. If electronic recordings were not created due to equipment failure, lack of suspect cooperation or for other reasons deemed pertinent to successful interrogation by the deputy in charge, the basis for such occurrences shall be documented. This includes but is not limited to spontaneous declarations or other statements not elicited by law enforcement questioning. This written documentation should be as detailed as possible and include as much of the person's statement as the deputy can recall from memory.
 4. Transporting deputies need not refrain from questioning a suspect who has indicated a willingness to talk either at the scene or enroute to the place of detention. However, the requirements of this order must be followed by those transporting deputies.
 5. Interrogating deputies should understand that intoxication from alcohol or other substances can affect the validity of the interrogation.

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6. Interrogation of an intoxicated person is discouraged but may be necessary under certain circumstances, such as to protect the safety of others, the need to continue investigation close in time to the events in question or the need to prevent the destruction or loss of evidence.
7. If a person is intoxicated to a point where they are substantially impaired, not rational and not understanding their current circumstances, interrogating deputies shall wait until the apparent effects of the intoxication have worn off to initiate questioning. However, if the intoxicated person is acting in a manner that is rational, they are not confused and the intoxication does not interfere with their ability to understand and to answer the questions posed to them, deputies may continue with interrogation when necessary.
8. If a person being interviewed or interrogated indicates that they are intoxicated or exhibits any signs or symptoms of intoxication, the questioning deputy shall inquire further. The deputy shall ask what substances were consumed, when they were consumed and in what amount.

G. Recording Protocol

1. Suspects may be informed that they are being recorded but this is not a requirement.
2. The Office of the Prosecutor or other authorized Sheriff's Office officials may direct that specific interrogations be recorded that do not meet the criteria of major crimes as defined by this Order.
3. Interrogations shall be recorded in their entirety starting with the interrogator's entrance into the interview room and concluding when all parties have left the interrogation room.
4. The recording media shall contain the date, time and length of the interview, as well as identifying the interviewer(s) and the interviewee.
5. Any lapse in the recording for comfort breaks or other reasons shall be accounted for in the recording. As an alternative, during a short recess the recording may continue without interruption.
6. At the conclusion of the interrogation, the interrogator shall state that the interrogation is concluded and note the date and time of termination. The recording shall continue until all parties have left the interrogation room.
7. Recordings of interviews are evidence and part of the original case file and shall be handled as such. In addition, the following shall apply:
 - a. Following the interview/interrogation of a subject the recording shall be stopped, thus separating individual interviews.
 - b. When interviews/interrogations are completed, deputies shall copy to an unused DVD data disk, USB or external storage device the complete interview. This DVD/USB shall be marked with the Call for Service number and last name of the interviewee, entered as an item of property in the CLEAR Records System and retained by the investigating deputy in charge as part of the original case file. In

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addition, a copy of the interview will be uploaded to the Evidence Library.

- c. Should a deputy need to take a copy of the interview(s) to court, the deputy shall make a copy of the original DVD/USB. The original DVD/USB shall not be used for review or court unless ordered by the court. Should a court require the original DVD/USB, a copy will be made and retained by the investigating deputy in charge before releasing the original.
- d. The reporting detective's follow-up report shall note if and how the interview was recorded.
- e. The following are exceptions to the recording procedure. Should one of these exceptions occur during an investigation, a notation should be made in the report as to why the recordings were not made:
 - i. Equipment fails and replacement video recording equipment is not readily available.
 - ii. Joint agency investigations in which the Oakland County Sheriff's Office is not the lead entity.
- f. In case of a malfunction of the video recording equipment, portable audio recording or a body camera should be used.
 - i. The interviewing deputy, detective or command member shall indicate in the report that the recording system was malfunctioning and note how the interview or interrogation was recorded.
 - ii. The interviewing deputy, detective or command member shall notify his/her supervisor in person, via telephone or by electronic mail as soon as possible, advising of the equipment failure.
 - iii. The interviewing deputy or detective shall take appropriate measures to notify other potentially affected deputies, detectives or command members that the recording equipment is out of service.

H. Access to Comfort Breaks (MACP Standard 3.2.2 e)

1. Access to comfort breaks for those under interview or interrogation will not be unreasonably denied. Interviewees requesting comfort breaks (restroom, water) shall be given the opportunity as soon as possible with limited delay. Comfort breaks requested during an interview or interrogation in a place of confinement will occur within the place of confinement.

I. Limited English, Deaf, or Hearing Impaired

1. If a person to be interviewed or interrogated does not speak English or is deaf or hearing impaired, an interpreter may be contacted to aid in interview or interrogation. See Sheriff's Office Orders, 'Language Interpretation Service' and 'Communicating with People who are Deaf or Hard or Hard of Hearing', or other local resources as needed.

J. Recording Equipment Maintenance and Training

1. The recording equipment shall be maintained by the Sheriff's Office Technology, Information and Innovation Division.
2. A designated representative of the Sheriff's Office Technology, Information and Innovation Division shall be notified in person, via telephone or electronically if the system is malfunctioning.
3. The Sheriff's Office Technology, Information and Innovation Division will monitor functionality of equipment and storage space.

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4. Substation Commanders will assign deputies to training in the use of the recording system as required based on their individual duty assignments.
5. If the equipment is malfunctioning at substations or other Sheriff Office facilities which have recording equipment purchased and owned by a local municipality, the Commander of the Station will contact the proper party for service.

K. Prohibited Recordings

1. Recording of attorney-client conversations is prohibited where an expectation of privacy would reasonably exist.
 - a. If the attorney-client consultation occurs in a place of detention, the incident should be monitored by video alone excluding audio to ensure the safety of both parties.

L. Use and/or Release of Audio-Visual Recordings (Copying of Recordings)

1. The Oakland County Sheriff's Office retains all property rights, including copyright, to all images recorded by or on behalf of the Sheriff's Office, including released copies.
2. Duplication or release of audiovisual recordings is prohibited without court order, Freedom of Information Act (FOIA) requests or the authorization of the Office of the Sheriff or his/her designee.
3. Use of audiovisual recordings is intended only for official business. Any other use is expressly prohibited without the authorization of the Sheriff or his/her designee.
4. All recordings while in the performance of an employee's duties or on Sheriff's Office audiovisual equipment shall remain the property of the Sheriff's Office in their original state and shall not be duplicated, altered or erased except as otherwise covered by this order.
5. The preview of recordings is intended for official business. Deputies shall not allow anyone other than authorized employees of the Oakland County Sheriff's Office to view recordings produced in the performance of their duties or by a Sheriff's Office recorder except when authorized by the Office of the Sheriff or his/her designee.
6. Original recordings will not be released. The exception to this practice is an original recording that is evidence and is being released to the court. In those cases, a duplicate recording will be labeled as duplicate and securely maintained.
7. Any original media and/or segment released outside of the Sheriff's Office shall be appropriately identified as property of the Oakland County Sheriff's Office. The original recording and/or segment shall be labeled as to its contents, including date and time of recording. These recordings shall remain the property of the Sheriff's Office and shall be treated and handled as evidence. The original shall be returned to the Sheriff's Office as soon as it is practical after the completion of the official business.

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8. Procedures for retention and/or destruction of recordings:
 - a. The original recording shall be flagged after a duplicate copy is made to avoid deletion after the retention period has lapsed. Recordings shall be retained until the case is adjudicated and the period of time for an appeal has passed, or until the prosecutor has denied a warrant request on a case, or as otherwise required by law or another Directive of this agency. In most cases, the prosecutor (local or state, depending on the type of case) should be consulted as to whether they wish the recording to be retained prior to destruction.
9. Recordings shall be retained by the Sheriff's Office as part of the case file.
10. No personnel shall make copies of video/audio for any non-law enforcement purpose. No Sheriff's Office video/audio will be used for demonstration, presentation or release to third parties, including other enforcement agencies, without specific permission of the Office of the Sheriff.

M. Requirements for Compliance

1. Recordings are considered an official Sheriff's Office record and subject to general orders and Michigan law. Any theft, intentional misplacement, alteration, sabotage, editing or distribution of any recording device or recording without the consent of the Office of the Sheriff will be considered a falsification of an official police record, evidence tampering or other applicable violation that will result in disciplinary action, up to and including dismissal and/or criminal prosecution.
2. Any recording made, no matter what the method or electronic device used, by an employee of the Oakland County Sheriff's Office while in the performance of their duties or when acting in the capacity of their employment, is considered as an official record of the Sheriff's Office. Any theft, misuse, intentional misplacement or destruction, alteration, sabotage of any recording device or recording is prohibited and will result in disciplinary action. The distribution or editing of any media recording device or a recording assigned to a deputy without the consent of the Office of the Sheriff or his/her designee will be considered a falsification of an official police record, evidence tampering or other rule violation that will result in disciplinary action, up to and including dismissal.
3. Recording equipment used shall comply with the requirements of law and the standards set by the Michigan Commission on Law Enforcement Standards (MCOLES) <https://www.michigan.gov/mcoles/standard-training/audio-visual>

N. Deputies Assigned to other Agencies

1. Deputies of Oakland County Sheriff's Office assigned to or assisting other law enforcement agencies will be guided by this order. Original recordings made by other agencies do not apply to this general order.



ISSUED BY: Sheriff Michael J. Bouchard

COUNTY OF OAKLAND
OFFICE OF THE SHERIFF

MICHAEL J. BOUCHARD



MIRANDA WARNING

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer before answering any questions and you have the right to have a lawyer present with you while you are answering any questions.
4. If you cannot afford a lawyer, one will be appointed to represent you before any questioning, if you wish one.
5. You have the right to decide at any time before or during questioning to use your right to remain silent and your right to talk with a lawyer while you are being questioned.

WAIVER

1. Do you understand each of these rights I have explained to you? _____
Answer Initials
2. Do you waive your right to talk to a lawyer before answering any questions?

Answer Initials
3. Will you waive the right to remain silent and answer any questions we may ask you?

Answer Initials

Signature

Date and Time: _____

Location: _____

Witness: _____

OCSO Incident # _____