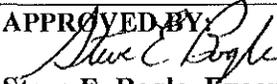


 <input checked="" type="checkbox"/> General Order <input type="checkbox"/> Division Order <input type="checkbox"/> Bureau Order <input type="checkbox"/> Special Order Order No.: 09-44 <input checked="" type="checkbox"/> Procedure <input type="checkbox"/> Plan <input type="checkbox"/> Rule	Iowa Department of Public Safety	
	TITLE/SUBJECT: Interviews and Interrogations	IDENTIFIER: 01-02.06
	TO: All Sworn	CC:
	RELATED DIRECTIVES/FORMS: <u>DOM 23-02.15, Electronic Recording of Custodial Interrogations;</u> <u>DOM 01-02.05, Search and Seizure;</u> <u>DOM 32-01.01, Victim/Witness Assistance and Rights</u>	
	APPLICABLE CALEA STANDARD(S): 1.2.3, 42.2.10	
	EFFECTIVE DATE: 4-15-2009	REVISION #:
	INSTRUCTIONS:	
	APPROVED BY:  Steve E. Bogle, Executive Officer to the Commissioner	DATE: April 13, 2009

I. Purpose

The purpose of this policy is to provide guidelines for interviews, field interviews and interrogations conducted during criminal investigations. It is understood and recognized that judicial decisions may serve to expand or limit law enforcement authority to conduct interviews and interrogations.

II. Policy

It is the policy of the Department to conduct interviews, field interviews and interrogations in compliance with the federal and state constitutions and state law. Members of the Department must balance the constitutionally protected rights of individuals, evidentiary requirements of any given criminal case, and public safety concerns. Stated guidelines can facilitate the balancing of all interests.

III. Definitions

- A. *Custody* – When a person is under formal arrest or is significantly restricted in his or her freedom of action.
- B. *Interrogation* – When an officer is attempting to obtain information about a case from someone who is a suspect in a crime, and through the officer’s questions, words, or actions, the officer is attempting to elicit an incriminating response from the suspect. Interrogation does not include volunteered statements, or questions regarding basic identifying information, or nontestimonial evidence. Interrogation does not include questions that are asked in exigent circumstances when the public safety might be endangered.
- C. *Interview* – When an officer seeks information from persons who may have personal knowledge of an incident, or who may have information relevant to a criminal investigation.
- D. *Investigative Field Interview* - The questioning of person(s) by an officer of the department because the officer has reasonable suspicion that the person may have committed, may be committing, or may be about to commit a crime; or believes that the subject may be a hazard to himself or others.

- E. *Level II Holster* – A firearms holster given a Level II retention rating by the manufacturer. (The higher the retention level rating, the more difficult it is for a suspect to snatch a holstered handgun away from an officer.)
- F. *Reasonable Suspicion* – Articulable facts that, when viewed in the totality of the circumstances, lead an officer to conclude that criminal activity has been, is being or may be committed; also may be referred to as reasonable grounds or reasonable cause.
- G. *Stop* – When a police officer, by means of physical force or show of authority, has in some way restrained the person's liberty

IV. Procedures

- A. The procedures used in interviews, field interviews and interrogations will comply with controlling statutes, case law, state and federal constitutional law, and Departmental policies.
- B. The officer assigned to a case will be responsible for conducting case-related interviews or interrogations. The assigned officer or supervisor may delegate the responsibility to another officer if necessary.
- C. **Interviews and Interrogations – General**
 - 1. Successful interviews and interrogations are critical to a successful resolution of most cases. However, officers should be aware that an interview could quickly turn into an interrogation and arrest, and an apparently cooperative suspect could become combative. Officer safety concerns should be considered and precautions taken, consistent with DPS policy and established law.
 - 2. Officers should attempt to interview arrested persons and suspects in any offense under investigation where the person will consent to the interview. There are a number of basic procedures that should be followed when conducting an interview with victims and witnesses, or when conducting an interrogation of a criminal suspect.
 - a) Witnesses, victims, and suspects should be interviewed separately.
 - b) Interpreters should be provided to persons who are unable to understand the officers.
 - c) Officers will always identify themselves before conducting the interrogation.
 - d) After arrival at the place of detention, an officer shall, without unnecessary delay, allow a subject to call, consult or see a member of the person's family or an attorney of the person's choice, or both. It is not necessary to inform the subject of that right, but a subject's request must be honored.
 - e) Officers of the Department will not speculate as to the course of action a court may take in sentencing or a prosecutor may take in charging a suspect in exchange for information, unless those actions have been predetermined by the prosecutor or the court and are known to the officer.
 - f) No member of the Department has the authority, absent a written agreement from a prosecutor or magistrate, to offer any suspect:
 - 1) immunity from prosecution;
 - 2) the reduction of any charges or sentence;
 - 3) the dismissal of any charges previously filed.

- g) Officers will video or audio record custodial interrogations as defined in DOM 23-02.15. **Exceptions will be articulated** in the officer's narrative report.
- h) The custodial interrogation of a hearing impaired person shall be handled in accordance with Section 804.31 of the Code of Iowa.
- i) When a designated interview room is utilized:
 - 1) Uniformed officers will secure their weapons upon their person in at least a Level II holster or within a locked storage area.
 - 2) Weapons not secured in at least a Level II holster shall be worn on an officer's person and concealed from view, or secured in a locked storage area.
 - 3) When interviewing suspects, a second officer will normally be available and situated in such a way as to provide security for the interviewing officer.
 - 4) Officers will notify a second officer when conducting interviews of victims and witnesses.
 - 5) A means of summoning assistance must be available. Acceptable methods include but are not limited to: audio and/or video monitoring systems; cellular phone; two-way radio; radio emergency button; interview room audible alarm or panic alarm.
 - 6) **Normally**, no more than two officers will be in the room while actively interviewing or interrogating subjects.
 - 7) Desk, chairs, garbage can, paper, and writing instruments will be the only items routinely kept in designated interview rooms.
 - 8) Officers will provide suspects, victims, and witnesses reasonable access to the restroom; and will provide water if requested. Suspects requesting to use the restroom will be accompanied by an officer.
 - 9) Interviews and interrogations will be conducted **for a reasonable amount of time; breaks will be given as needed.**
- j) The results of an interview will be summarized in a report prepared by the officer.
- k) The number of sensitive and anxiety-producing interviews with crime victims, particularly in sex-related offenses, should be kept to a minimum. The victim of a sex-related offense has the right to have a victim's advocate present during an interview, and any polygraph of victims and witnesses will be conducted consistent with Iowa Code, Chapter 915.
- l) The interviewing officer will consider the length of the interview when dealing with subjects who may have mental and/or physical conditions affecting their ability to comprehend what is happening.
- m) Officers will **not use coercion, threats, or any physical force to obtain a statement.**
- n) Officers will comply with statutory provisions regarding the interrogation of juvenile subjects.

What governs an officer's discretion in recording or not? If he intends on violating "m)" below or not?

What governs such 'norms', the officer's discretion?

Notice the absence of deceit?

D. Field Interviews

Officers may conduct field interviews in many circumstances, and the procedures will vary, depending on the circumstances.

1. Citizen Encounter

- a) Not every police encounter triggers constitutional protection for the person encountered. **It is only when a person is "stopped" that constitutional protections are triggered.** If an individual's freedom of movement is restricted by a factor independent of police conduct, such as when he is staying in a motel room in which he would desire to remain even if the police were not present, in such circumstances, "the appropriate inquiry is whether a reasonable person would feel free to decline the officer's requests or otherwise terminate the encounter."¹ **Simply asking for identification does not constitute a stop.**²
- b) A citizen encounter may be documented using a Field Intelligence Report, unless the interview results in an arrest.

2. Investigative Field Interview

- a) Different standards apply when a person is "stopped." A stop occurs when "a police officer, by means of physical force or show of authority, has in some way restrained the person's liberty."³ The United States Supreme Court has set out several circumstances to consider⁴ **in determining whether a citizen has been stopped:**
 - 1) threatening presence of several officers
 - 2) display of weapon by officer
 - 3) physical touching of the person
 - 4) use of **language or tone of voice that indicates that compliance with the officer's request must be compelled**
 - 5) **whether the subject was told they could decline to cooperate**
- b) **If the person's liberty has been restrained based on reasonable suspicion alone, absent other factors, officers should bear in mind they have no power to compel the person stopped to answer any questions.**
- c) Consideration should be given to the following:
 - 1) a plan of action,
 - 2) watching a suspect's hands,
 - 3) possible escape routes,
 - 4) suspect associates,
 - 5) lighting, footing, and terrain.
- d) If the person has been stopped, ~~the officer may conduct an investigative field interview.~~ Officers should use the "interview stance" with their weapon away from the suspect. An officer who has stopped a person for questioning and **reasonably suspects the officer's personal safety may be in jeopardy, may conduct a pat-down search for weapons in accordance with DOM 01-02.05.**
- e) An investigative field interview may be documented using a Field Intelligence Report, unless the interview results in an arrest.

What they rely on for false stops is, that the citizen never asked if he was free to go. SO ALWAYS ASK!

Can an irrational fear of death born of any officer's non-belief in the Triune God, and thus the lack of his eternal security, be sufficient to establish "reasonableness"?

¹ *U.S. v. Jefferson*, ___ F. Supp. ___ (S.D. Iowa 2007).

² *State v. Reinders*, 690 N.W.2d 78 (Iowa 2004); *State v. Smith*, 683 N.W.2d 542, 543 (Iowa 2004).

³ *State v. Stevens*, 394 N.W.2d 388 (Iowa 1986).

⁴ *United States v. Mendenhall*, 446 N.W.2d 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497, 509 (1980).

E. Interrogations

1. In order to assure compliance with constitutional requirements during criminal investigations, it will be the policy of the Department for all officers to advise suspects of their constitutional rights pursuant to *Miranda v. Arizona* if :
 - a) the person **has been arrested or otherwise is in custody** or has his or her freedom of movement significantly restricted
and
 - b) the person is subjected to interrogation
2. Officers may use laminated cards or other approved forms provided by the Department in order to provide a full and complete Miranda warning, but recitation of the card or forms is not required, so long as an adequate Miranda warning is provided to the subject. DPS Form 25, Rights Advisory (English/Spanish), is one form available for this purpose.
3. Officers should ask the subject whether he or she is willing to talk with officers, and officers should document the waiver of the Miranda warning.
4. In addition:
 - a) When appropriate, a second officer should be present as a witness, either in the room or in a nearby area;
 - b) Suspects will be advised of the names and official identity of the interrogating officer(s), and the nature of the inquiry;
 - c) **Custodial interrogations should be audio or video taped**, including documentation of the Miranda warning and waiver of rights, consistent with DOM 23-02.15, Electronic Recording of Custodial Interrogations;
 - d) **If the suspect makes an unequivocal request for counsel, that right will not be deprived**;
 - e) The advisement of rights and waiver or non-waiver of rights will be documented.
5. **Officers may not interrogate a person – whether in custody or not – who has been previously invoked the right to counsel, unless the suspect requests to speak with officers.**
6. A suspect who has been charged with a crime and invokes the right to counsel regarding that charge **can, nonetheless, be interrogated regarding an unrelated offense.**