



**Las Cruces Police Department**  
**GENERAL ORDERS**  
**FIELD OPERATIONS VOLUME 2**  
**GO-295 NON-CUSTODIAL & CUSTODIAL INTERVIEWS**  
**(MOST CRITICAL)**  
**Revised 4/22/2013**

**295 NON-CUSTODIAL AND CUSTODIAL INTERVIEWS**

**PURPOSE**

The purpose of this General Order is to establish procedures and guidelines for interviews and interrogations.

**POLICY**

The Las Cruces Police Department (LCPD) shall conduct non-custodial and custodial interviews in compliance with the United States and New Mexico Constitutions, the law, and best police practices.

**APPLICABILITY**

This General Order applies to all commissioned employees. This General Order supersedes all previous versions.

**REFERENCES**

- CALEA 1.2.3, 41.2.2, 42.2.2, 42.2.6, 42.2.7, 44.2.3
- NMML OPR.02.01, OPR.02.03
- 32A-2-14 NMSA 1978, Basic rights
- 29-1-16 NMSA 1978, Electronic recordings of custodial interrogations
- General Order 243 Juveniles

**295.01 NON-CUSTODIAL INTERVIEWS**

Non-custodial interviews occur between the police and a person who is not in custody or under arrest. Non-custodial interviews are conversations designed to elicit information, facts, and circumstances about a crime or incident under investigation by the department. Non-custodial interviews are typically voluntary contacts and involve witnesses, victims, and suspects. Miranda rights are not required to be read to a person participating in a non-custodial interview.

**295.02 CUSTODIAL INTERVIEWS**

A. Custodial interviews occur between the police and a person who is in custody, under arrest, or reasonably believes they are in custody or under arrest. Custodial interviews involve direct questioning about a crime that is believed to have been committed by the



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person in custody and designed to elicit an incriminating response or confession. Miranda rights shall be read to the suspect as required by law.

- B. When reasonably able to do so, an officer conducting a custodial interview shall electronically record the advice of Miranda rights and the custodial interview in its entirety. Officers must have good cause not to electronically record the entire custodial interview and shall document the reason why an electronic recording was not made. Good cause for not recording a custodial interview includes:
1. The recording equipment was not reasonably available.
  2. The recording equipment failed and obtaining replacement equipment was not feasible.
  3. The person being interviewed refused to be recorded.
  4. The statement was made in a court or grand jury proceeding.
- C. Statements that are spontaneously volunteered and not the result of a custodial interview are not required to be recorded. The circumstances surrounding such statements shall be documented in the officer's report.
- D. Special rules for interviewing juveniles have been established by the NM Children's Code, 32A-2-14. Information about interviewing juveniles is found in General Order 243.04 Juvenile Interviews and Statements.

**295.03 RIGHT TO AN ATTORNEY**

- A. There are two instances when a suspect has a right to have an attorney present during questioning:
1. When the suspect is in custody and is being interviewed about a specific crime and/or incident the suspect is believed to be involved in. This right is derived from the Fifth Amendment to the U.S. Constitution (the right against self-incrimination). This right applies to custodial questioning about any and all crimes but applies only when the suspect invokes the right to an attorney. The invocation cannot be made by a third party, to include the suspect's attorney.
  2. When a person has been formally charged (*i.e.*, has had an initial appearance in court, been indicted or arraigned), there is a constitutional right to have an attorney present during any contacts with police or prosecutors regarding the crime with



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which the person has been charged. The sixth amendment right to counsel is offense specific. This means that officers may question the defendant regarding other unrelated offenses, so long as the defendant is given and waives the Miranda rights with regard to those offenses.

**295.04 FIFTH AMENDMENT: RIGHTS UNDER MIRANDA**

- A. A person must be advised of his/her Miranda rights when he/she is in custody and is being interviewed about a crime he/she is believed to have committed.
- B. The Fifth Amendment provides an in custody criminal suspect with two distinct rights: the right to remain silent (refuse to answer any questions) and the right to an attorney during questioning. There are a few exceptions to this general rule with regard to when it is necessary to read a suspect's his or her Miranda rights. Miranda rights **do not** need to be read to a person:
  - 1. During traffic stops
  - 2. When asking questions about a person's identity for booking
  - 3. When public safety makes it imperative that the officer act as quickly as possible. Known as the "public safety exception" to Miranda, this rule allows an officer to question a person without Miranda warnings when an issue of public safety or other emergency makes it imperative to obtain information from the suspect immediately. In such a situation, immediate questioning pertaining to eliminating the danger is permitted. This exception will generally occur only at crime scenes when the officers first arrive, the scene has not been secured, and there is an immediate danger to the public or the officers. Questions may be asked of the suspect in such a situation in order to eliminate the immediate danger. Questions not directly related to eliminating the danger are typically not admissible prior to reading the person Miranda.
  - 4. Spontaneous statements. If a suspect makes an unsolicited statement, the statement may be admissible even though the officer has not read Miranda rights, as long as the statement is not in response to an interview or provocation.
  - 5. Miranda rights need not be read prior to obtaining non-testimonial evidence, such as samples of handwriting, blood, urine, fingerprints or hair.



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- C. Officers shall advise Miranda rights to a person suspected of a crime prior to any questions specific to the crime being investigated. When practical, Miranda rights should be read from the Miranda card. The Miranda rights are:

**You have the right to remain silent.**

**Anything you say can and will be used against you in a court of law. You have the right to the presence of an attorney to assist you prior to and during questioning, if you so desire. If you cannot afford an attorney, you have the right to have an attorney appointed for you prior to questioning.**

- D. Officers shall document in their report, all information concerning when, where, and who advised the suspect of his/her Miranda rights. If a Miranda card was used it shall be submitted to evidence. The officer shall include in the report the exact words the suspect used when waiving his/her rights. If the suspect invokes his/her rights, the officer shall immediately cease questioning and document in the report whether the suspect invoked the right to remain silent or the right to an attorney. This is necessary so that detectives conducting any follow-up investigation know whether or not they may later attempt an interrogation.

**295.05 VOLUNTARINESS OF STATEMENTS**

- A. The burden of proof that a suspect has understood the Miranda rights and has made a voluntary waiver of those rights is on the officer. In order to ensure that the court finds the waiver to be voluntary, officers shall:
1. Ask the suspect if the rights were understood and whether the suspect will voluntarily answer questions.
  2. Not physically abuse or threaten suspects.
  3. Not make any promises or deals with the suspect in order to solicit any information from him/her during an interview.
  4. Cease all questioning immediately upon the suspect's request to remain silent or to consult with an attorney. Officers shall be careful in explaining the Miranda rights to suspects who may have trouble understanding them, such as juveniles, persons with low IQ, and persons for whom English is not their first language. If necessary, Miranda rights and interviews shall be conducted in the appropriate language other than English. If necessary, an interpreter certified in the language spoken by the suspect shall be used to assist in conducting the interview.



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**295.06 QUESTIONING AFTER INVOCATION OF FIFTH AMENDMENT RIGHTS**

- A. If a suspect invokes the right to remain silent or for counsel to be present during questioning, then questioning must stop until either:
1. The suspect initiates further discussion and the suspect is given Miranda rights again and waives his or her rights; or
  2. There has been a sufficient break in time (at least several hours) and the suspect is given Miranda rights again and waives his or her rights. If the suspect invokes the right to counsel, then questioning must stop until the suspect is provided with an attorney and is given an opportunity to have the attorney present during questioning. An officer may not reinitiate questioning. The suspect may reinitiate the conversation, but before any questioning by the officer, the officer must obtain a waiver of the right to counsel.

**295.07 NON-ENGLISH SPEAKING AND/OR HEARING-IMPAIRED INTERVIEWS**

All constitutional safeguards shall be provided to non-English speaking persons and/or persons with impaired hearing. A translator shall be provided to ensure that communication is clearly understood.