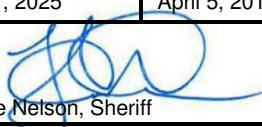




# DESCHUTES COUNTY SHERIFF'S OFFICE

Policy Title: <b>Interviews, Interrogations, and Confessions</b>	Effective Date: June 27, 2022	Policy Number: <b>7.10</b>
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Attachments:	 L. Shane Nelson, Sheriff	

## I. PURPOSE

The purpose of this policy is to provide Deschutes County Sheriff's Office deputies with legally sound procedures for conducting custodial interrogations.

## II. POLICY

Custodial interrogations of suspects and the statements and confessions that are elicited are vitally important in the preparation of criminal cases. However, to be admissible as evidence, statements and confessions shall be given freely and voluntarily and with due consideration for the suspect's right to silence and right to counsel. Therefore, it is the policy of this law enforcement agency that all deputies observe due process, the constitutional rights of suspects and guard against any charges of police coercion or intimidation during interrogation.

## III. DEFINITIONS

*Custodial interview* is an interview in which the person questioned is in custody and is required to be advised of the person's constitutional rights.

*Custody* situation exists when a deputy tells a suspect that he is under arrest or is not free to leave. A functionally equivalent situation exists when a reasonable person in the suspect's position would feel that his freedom of action has been restricted to the same degree as a formal arrest.

*Interrogation* includes direct questioning of a suspect about a crime or suspected crime, as well as any words, statements or actions by deputies that the deputies should know are reasonably likely to elicit an incriminating response from the suspect.

*Law enforcement facility* means a courthouse, building or premise that is a place of operation for a municipal police department, county sheriff's office or other law enforcement agency at which persons may be detained in connection with a juvenile delinquency petition or criminal charge.

## IV. INTERVIEWS AND INTERROGATION, GENERALLY

There are two different methods of obtaining verbal and nonverbal information from victims, witnesses, and suspects: interviews and interrogations.

### A. Interviews

Interviews are usually the main source of information in an investigation. Interviews are usually conducted with victims and witnesses, and are sometimes conducted with suspects, depending upon their level of

cooperation. The purpose of an interview is to determine the facts and to identify people who are being deceptive.

Deputies are able to use interviews to enhance their investigation by observing and interpreting verbal and nonverbal responses to specific questions.

Interviews are conducted in a non-threatening manner. All victims and witnesses should be contacted and interviewed to ensure the deputy is examining all facets of the incident. It may be necessary for the people involved to be interviewed more than once. The deputy will always be courteous and act within Sheriff's Office standards. Interviews may be conducted either at the time of the initial contact on the scene, or may be scheduled at a later time convenient to both parties, if possible.

During the initial investigation the deputy should explain to the victim the procedures involved in the prosecution of their case and the victim's possible role in those proceedings.

## **B. Interrogations**

Interrogations can be a useful tool in the investigation process. Suspects are interrogated when the investigating deputy has obtained information that causes the deputy to believe the person is the suspect or one of the suspects.

Suspects can be interrogated in the field, at the Sheriff's Office or at the Jail. The deputy should have as much control over the location and suspect as possible. There should be minimal distractions.

Coercion, threats, and violence will not be used in any interview or interrogation. Constitutionally guaranteed rights against self-incrimination shall be followed under state and federal laws.

During the investigation process the deputy should compare the suspect's Modus Operandi (M.O.) with other known crimes to check if the suspect may have committed those crimes.

# **V. PROCEDURES**

## **A. Interviewing Juvenile Suspects**

1. If a deputy is conducting an investigation of a juvenile for an act that would be a crime if committed by an adult, the deputy is prohibited from intentionally using information that the deputy knows to be false to try and elicit a statement from the juvenile.
2. Under ORS 133.402, custodial interviews of juveniles in a law enforcement facility and outside law enforcement facilities **shall** be electronically recorded if the custodial interview is conducted with a person under the age of 18 years of age in connection with an investigation into a misdemeanor or felony, or an allegation that the person being interviewed committed an act that, if committed by an adult, would constitute a misdemeanor or felony. However, the interview does not need to be recorded if the youth refused, or expressed an unwillingness, to have the custodial interview electronically recorded.
3. Best Practices:
  - a. Obtain parental consent, preferably with a consent form signed by the parent(s), a copy of which is attached to this policy. If impractical to obtain parental consent, document all facts to support exigent circumstances for warrantless and voluntary interview of minor, or
  - b. Obtain a warrant for interview of the minor in limited circumstances after approval of a supervisor.
4. If it is not possible to document exigent circumstances, obtain parental consent or a warrant, the deputy may have no alternative but to conduct a short interview which does not reach the level of an unreasonable seizure. When conducting such an interview the deputy should:
  - a. Use a recording device or digital recorder;
  - b. Inform the juvenile that he is free to leave;

- c. Have the juvenile sit near an open door. If unable to leave the door open, let the them know that the door is unlocked.
- d. Document start and end times of the interview;
- e. Wear civilian clothes, when possible; and
- f. Consider whether the setting and other people present at the interview are conducive to the child's feeling that he may terminate the interview at any time.

5. ORS 419B.028 (part of Karly's Law), requires the immediate photographing of suspicious physical injuries. Any conversation with the juvenile being photographed should consist of just a few questions or fit within the above listed criteria so as not to become an unreasonable seizure.

**B. Interviewing Child Witnesses**

- 1. "Child witness" means an unmarried person who is under 18 years of age and who is not the victim of, suspect in or related to the suspect in a child welfare, criminal or delinquency investigation.
- 2. A deputy will notify the parents of a child witness prior to interviewing the witness unless the deputy has reasonable grounds to believe that a child is or will be in imminent danger if the interview is not conducted immediately. The deputy will document the facts that led to the belief that the interview needed to be done prior to parental notification for the safety of a child.
- 3. If an immediate interview is not necessary for the safety of a child, the deputy will notify the parent, ask the parent to sign a consent form and allow the parent a reasonable amount of time to attend the child interview.
- 4. If a parent informs the deputy that they do not consent to the child witness being interviewed, the deputy will not interview the child and will contact a supervisor.
- 5. If a child witness is interviewed without first notifying a parent, the deputy will notify a parent as soon as reasonably possible and explain why the child was interviewed before parental notice was provided.

**C. Custodial Statements and Confessions**

- 1. Constitutional Rights (Miranda) warnings are required and shall be administered prior to custodial interview, as defined in III Definitions, page 1.
- 2. The following represent examples of situations that are not custodial and do not require issuance of Miranda:
  - a. Investigatory stop and frisk.
  - b. Questioning during a routine traffic stop or for a minor violation, to include driving while intoxicated (DWI) stops until a custodial interrogation begins.
  - c. During routine questioning at the scene of an incident or crime when the questions are not intended to elicit incriminating responses.
  - d. During voluntary appearances at the Sheriff's Office.
  - e. When information or statements are made spontaneously, voluntarily and without prompting by deputies. (Note: Follow-up questions that exceed simple requests for clarification of initial statements may require Miranda warnings.)

**D. Administering Miranda Warnings**

1. Miranda warnings shall be read by deputies from the card containing this information, if practical, to all persons subjected to custodial interrogation.
2. Deputies shall ensure that suspects understand their right to remain silent and their right to an attorney. Suspects may be interrogated only when they have knowingly and intelligently waived their rights. Threats, false promises or coercion to induce suspect statements is prohibited.
3. Deputies arresting hearing impaired (see Policy 3.55 Communication with the Hearing Impaired) or non-English speaking suspects shall notify their immediate supervisor and make arrangements to procure the assistance of an interpreter in accordance with state and federal law (see attached Language Line guide).

**E. Invoking the Right to Silence**

1. When a suspect invokes his right to remain silent, all interrogation shall terminate immediately.
2. Suspects who are not represented by an attorney may not be interrogated after invoking their right to silence unless the suspect indicates a desire to talk to deputies and the desire is in no way coerced. The deputy should then re-administer the Constitutional Rights, Miranda Warnings, and ensure that the suspect has affirmatively waived his rights. The deputy should ask clarifying questions such as "Are you willing to speak with me without your attorney present?"
3. Case law has established that following a substantial break a suspect who previously invoked his right to remain silent may be re-contacted and another interview attempted. Deputies should consult their supervisor and/or a deputy district attorney prior to taking this action. Deputies must ask clarifying questions about the suspect's willingness to be interviewed.

**F. Invoking the Right to Counsel**

1. When a suspect makes reference to counsel but his intentions are unclear, deputies must question the suspect further to clarify his intentions and willingness to speak without an attorney present.
2. When a suspect invokes his right to counsel, all interrogation shall cease immediately. The suspect may not again be interrogated about the crime for which he is charged unless his attorney is present at the questioning or the suspect initiates new contact with a deputy.

In this latter case, the Constitutional Rights, Miranda Warning, shall again be administered and a waiver obtained before any questioning may take place. Deputies shall also document and, if possible, obtain written verification that the suspect initiated the communication and is willing to speak about the case without an attorney present.

3. Deputies shall cooperate in any reasonable way with efforts by defense counsel to contact or meet with suspects in custody.

**G. Documenting Statements and Confessions**

1. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes but is not necessarily limited to:
  - a. Location, date, time of day and duration of interrogation;
  - b. The identities of deputies or others present;
  - c. Constitutional Rights, Miranda Warnings given, suspect responses and waivers provided, if any; and
  - d. The nature and duration of breaks in questioning and whether the suspect was provided food, drink, use of lavatories or for other purposes.

2. Recording of custodial interviews required under ORS 133.400 and ORS 133.402. A custodial interview conducted by a deputy in a law enforcement facility **shall** be electronically recorded if the interview is conducted in connection with an investigation into aggravated murder or a Ballot Measure 11 crime. Custodial interviews of juveniles in a law enforcement facility and outside law enforcement facilities **shall** be electronically recorded if the custodial interview is conducted with a person under the age of 18 years of age in connection with an investigation into a misdemeanor or felony, or an allegation that the person being interviewed committed an act that, if committed by an adult, would constitute a misdemeanor or felony.
  - a. Aggravated murder is defined in ORS 163.095
  - b. Ballot Measure 11 crimes are listed in ORS 137.700 or 137.707