

PLANNING AND DEPLOYMENT
TRANSMITTAL OF WRITTEN DIRECTIVE

FOR SIGNATURE OF: James E. Craig, Chief of Police

TYPE OF DIRECTIVE: Manual Directive 203.9

SUBJECT: CUSTODIAL QUESTIONING

ORIGINATED OR REQUESTED BY: Planning and Deployment

APPROVALS OR COMMENTS:

The above referenced manual directive was reviewed by Major Crimes. Revisions are marked in strikethroughs, bold, and italics.

The recommended changes reflected in this policy are as follows:

1. "Officer" was changed to "member" throughout the directive to eliminate any possible misunderstandings of rank.
2. Verbiage and grammatical changes were made to provide a clear read for all members of this Department.
3. 203.9 – 4.2 – Grounds for Citizen Contacts (2) – This sentence was deleted because it is not accurate.
4. 203.9 – 5.1 – Interviews (General) (3) – This sentence was deleted because it is not accurate.
5. 203.9 – 6.1 – Custodial Statements (General) (5&6) – These sentences were deleted because the Michigan Supreme Court Overruled People v. Bender in 2014 in People v. Tanner.
6. 203.9 – 6.2 – Juveniles (2) – Verbiage was changed to reflect best practices of including parents in the interview process.
7. 203.9 – 6.2 – Juveniles (5) – This sentence was deleted because it is not part of Department policy.

A P P R O V E D
AUG 31 2018
[Signature]
SECOND DEPUTY CHIEF
POLICE LEGAL ADVISOR

A P P R O V E D
JUL 31 2018
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ASSISTANT CHIEF
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**AFTER THE DIRECTIVE IS APPROVED AND SIGNED, PLEASE RETURN TO
PLANNING AND DEPLOYMENT.**

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JW 5-345
7/12/18



Series 200 Operations	Effective Date	Review Date <i>Three Years</i>	Directive Number 203.9
Chapter 203 – Criminal Investigations			
Reviewing Office <i>Major Crimes</i>			<input type="checkbox"/> New Directive <input checked="" type="checkbox"/> Revised <i>Revisions in italics</i>
References			

CUSTODIAL QUESTIONING

203.9 - 1 PURPOSE

The purpose of this directive is to provide Detroit Police Department (DPD) members with guidelines and procedures and to define the limitations of authority for conducting custodial questioning.

203.9 - 2 POLICY

It is the policy of the DPD to ensure all Department members adhere to the following when participating in custodial questioning:

- a. The conduct of *members* during citizen contacts and custodial questioning shall be objective and comply with all constitutional requirements, applicable federal and state law, court opinions, and strictly adhere to this Department’s investigative procedures; and
- b. All custodial and/or non-custodial questioning shall be documented to reflect the content and circumstances.

203.9 - 3 Definitions

203.9 - 3.1 Citizen Contact

A face-to-face communication between a *Department member* and a citizen for purposes of asking questions or gathering information of an official nature under circumstances in which there is a lack of reasonable suspicion to detain or probable cause to arrest. Contacts differ from detentions or arrests in that “citizen contacts” do not involve the “seizure of persons” within the meaning of the 4th Amendment and, therefore, the person contacted has a legal right not to produce identification or answer any questions and is free to leave at any time.

203.9 - 3.2 Conveyance

Any instance when *the* DPD transports a non DPD employee for any purpose.

203.9 - 3.3 Custody

For the purpose of this directive, a custodial situation exists when a *Department member* tells a suspect that they are under arrest. A functionally equivalent situation

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exists when a "reasonable person" in the suspect's situation would feel that their freedom of action has been restricted to the same degree as a formal arrest.

203.9 - 3.4 Interrogation

An interrogation includes direct questioning, as well as any words or conduct by the police or on behalf of the police that may elicit an incriminating response from the suspect about a crime, as well as any words or actions by the *law enforcement* officers that the *law enforcement* officers should know is reasonably likely to elicit an incriminating response from the suspect.

203.9 - 3.5 Interview

An interview, as opposed to an interrogation, is any consensual conversation with a witness, victim, or citizen, for the purpose of gathering information about a matter under investigation. In the absence of reasonable suspicion or probable cause, interviews are consensual encounters and the person is free to leave at any time and is not required to produce identification or answer any questions.

203.9 - 3.6 Material Witness

A witness subpoenaed to testify in a criminal case.

203.9 - 3.7 Seizure or Detention

Any restriction on the liberty interest of an individual. A seizure occurs when a *law enforcement* officer's words or actions convey to a reasonable person that they are not free to leave.

203.9 - 4 Procedures

203.9 - 4.1 Citizen Contacts – General

1. It is important to distinguish between a "citizen contact" and a "Terry Stop" which is also referred to as an "investigative stop" or an "investigative detention." A *law enforcement* officer may only conduct a "Terry Stop" based on reasonable suspicion to detain a person. Even when there has been an investigative detention based on reasonable suspicion of criminal activity, the right to frisk does not automatically follow. Because the terms "stop and frisk" are so often used together in the single phrase "stop-and-frisk," it is often assumed that a legal "stop" automatically justifies a "frisk." This is not the law. Only if the person stopped is reasonably believed to be "armed and presently dangerous to the *law enforcement* officer or others" may a frisk be conducted and this must be based on articulable facts that justify that belief. Not only must there be reasonable cause to stop, there must be separate, articulable reason to frisk. (Refer to Directive 202.2 [Search and Seizure])
2. In the absence of reasonable suspicion which is necessary to detain a person, or probable cause which is necessary to arrest a person, "citizen contacts" are consensual encounters, and the person is free to leave at any time and is not required

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to produce identification, answer any questions, or to cooperate with a *law enforcement officer*.

203.9 - 4.2 Grounds for Citizen Contacts

1. Citizen contacts may be initiated by a *Department member* when the *member* believes that it may serve the interests of a police investigation, inquiry, or legitimate police business. *Members* may initiate a citizen contact in any place the *member* has a legal right to be (e.g. public places).
2. *Members* shall not use contacts as a pretextual basis so as to intimidate, harass, or coerce citizens.
3. *Members* must keep in mind that citizen contacts are based on the assumption that the citizen is not under any reasonable suspicion of criminal activity. *Members* shall not use force or coercion to require a citizen to stop or respond to questions absent any other legal reason.
4. Refusal of a citizen to cooperate (e.g. not answering questions) cannot be used as the basis for turning the "contact" into an "investigative stop" or an "investigative detention."

203.9 - 5 Interviews

203.9 - 5.1 General

1. Interviews are consensual citizen contacts and are a critical component of a police investigation. Most interviews are conducted with victims, complainants, and witnesses to a criminal act. Whenever practicable and appropriate, interviews of complainants and witnesses shall be conducted at sites and times convenient for them, including at their residences or places of business. *In the case of a minor, consent can only be provided by a parent, legal guardian, or upon an order from a court.*
2. When a person has not been arrested or otherwise taken into custody in a manner that restricts the person's freedom or ability to leave or to discontinue the conversation, *members* may ask whatever questions are necessary and pertinent. Such interviews are non-custodial and the person being interviewed is free to discontinue the conversation and may leave at any time.

203.9 - 5.2 Material Witnesses

Under Michigan law, only a court has the authority to decide whether an individual is a material witness, and whether that material witness should be committed to a holding facility pending their testimony (Refer to Training Directive #04-01 - Confinement of Material Witness).

203.9 - 5.3 Conveyances

1. No individual shall be conveyed by any DPD member without probable cause to arrest, *unless extenuating circumstances exist (e.g. the individual has an injury and EMS is not available, the individual and/or Department members are in a hostile environment, etc.), or the individual consents.*

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2. A citizen may only be conveyed (e.g. police facility) for the purpose of an interview if the citizen consents to the conveyance.

203.9 - 6 Custodial Statements**203.9 - 6.1 General**

1. *Members shall administer Miranda Warnings whenever a person is in custody and the member intends to question (interrogate) the person about incidents, actions, or conduct which is criminal in nature.*
2. *If the Department member engages in any conduct that is the "functional equivalent" of questioning, even if no direct questions are asked of a person in custody, Miranda Warnings shall be administered. For example, a statement made from one member to another, in the presence of the suspect, for the purpose of eliciting an incriminating statement from the suspect, constitutes interrogation.*
3. *In deciding whether Miranda Warnings are required, the fact that the police investigation has (or has not) "focused" on that suspect is irrelevant.*
4. *A person may waive Miranda Warnings and make a voluntary statement. Such waiver must be documented per section 203.9 – 7.1 (4)(c), Member's Responsibilities, of this directive.*

203.9 - 6.2 Juveniles

1. *Juveniles have the same Miranda rights as adults.*
2. *As with adults, juvenile confessions must be voluntarily made and Miranda waivers must be made freely and intelligently. However, juvenile confessions are viewed with a somewhat higher standard, with an emphasis on parent involvement. The best practice is to include parents in the interview process. Members should consult with the APA, if possible, prior to questioning a juvenile if the juvenile's parent/legal guardian is not present.*
3. *The juvenile and parent or guardian, if present, shall be advised of the juvenile's Miranda rights prior to interrogation. If prior to, or during questioning, the juvenile or their parent(s) or guardian expresses the desire to speak with an attorney, all questioning shall cease.*
4. *Any custodial interrogation of juveniles about offenses that they may have committed will normally be done by only one (1) member. Two (2) members may question the juvenile in the event of special circumstances, extremely serious offenses, or at the direction of a command officer.*

203.9 - 6.3 Contacts not Requiring Miranda

1. Courts have found the following situations do not require Miranda Warnings:
 - a. Investigatory stop or a stop and frisk ("Terry Stop");
 - b. Routine traffic stops;
 - c. During routine questioning at the scene of an accident or crime when the questions are not intended to elicit incriminating responses;

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- d. Identification procedures during detainee booking or conducting a line-up;
- e. During voluntary appearances at a police facility (as long as the person is free to leave); and
- f. When statements are made spontaneously, voluntarily, and without prompting by members (note: Follow-up questions that exceed simple requests for clarification of initial statements may require Miranda Warnings *if the person is being detained or is under arrest*).

203.9 - 6.4 Public Safety Exception

When a *Department member* urgently needs information from a suspect because lives are in imminent danger, *members* may delay giving Miranda Warnings until the *members* have received information sufficient to dispel the emergency. A genuine, life-threatening emergency must exist.

203.9 - 6.5 Misdemeanor Crimes

There is no misdemeanor crime exception to the Miranda requirement. Miranda Warnings are required, no matter how minor the crime.

203.9 - 7 Documentation

203.9 - 7.1 Member's Responsibilities

1. All *Department members* shall notate on their Activity Log (DPD250) the circumstances of all citizen contacts, interviews, interrogations, and conveyances during their shift.
2. When applicable, *members* shall document the content of interviews and interrogations on a Statement Form (DPD103, or *supplemental report*), during the shift in which the interview or interrogation occurred.
3. All witness conveyances shall be documented on the Witness Conveyance Consent Form (DPD668).
4. The circumstances surrounding the conduct of interrogations and recording of confessions shall also be documented. This includes, but is not limited to:
 - a. Location, date, time of day;
 - b. The identities of *members* or others present; and
 - c. Questions asked, suspect responses, and waivers provided *relevant to the case being investigated*, if any.
5. All Internal Affairs (IA), Office of the Chief Investigator (OCI), and Category one (1) use of force/detainee injury investigations, shall include in-person video or audiotape recorded interviews of all complainants, witnesses, and involved DPD *members*. In all other cases, *Department members* are encouraged to use DPD video and audio recording capabilities for purposes of recording statements and confessions.

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1. A supervisor shall review all Activity Logs upon submission by members of their command. The supervisor's acknowledgment on the member's Activity Log indicates that they have reviewed all instances where a member under their command has interviewed, interrogated, or has made a conveyance during the member's tour of duty.
2. The reviewing supervisor shall ensure that the Statement Form (DPD103) is completed for each written interview or interrogation (not all interviews are reduced to a written statement. In some cases, citizens are interviewed and have no pertinent information and therefore it is not reduced to writing). The reviewing supervisor shall sign and record the date and time of their review of the Statement Form (DPD103). The review of the Statement Form (DPD103) shall be within twenty-four (24) hours of the written interview or interrogation.
3. The reviewing supervisor shall ensure that when an individual is conveyed for purposes related to an investigation by a DPD member, the Witness Conveyance Consent Form (DPD668) is completed. The supervisor shall review the Witness Conveyance Consent Form (DPD668) within twenty-four (24) hours of the conveyance.
4. The reviewing supervisor shall review the form upon submission and ensure that all pertinent information relating to the interview is documented on the Statement Form (DPD103) and the Witness Conveyance Consent Form (DPD668) to include the following:

Statement Form (DPD103)

- a. Witness contact information (Walk into police facility, In Field/At Scene interview, Conveyed by a DPD member);
- b. Whenever a witness is conveyed by a DPD member, ensure that the conveying member completes the Witness Conveyance Consent Form (DPD668). See Reviewing Supervisor Responsibilities of the Witness Conveyance Consent Form (DPD668) below;
- c. The appropriate Witness or Interrogation box is checked;
- d. Command handling the investigation;
- e. Date, start, and ending time (interview/interrogation);
- f. Location of interview/interrogation;
- g. Name and badge of member taking statement;
- h. Witness information (name, sex, age, D.O.B., address, phone number);
- i. Signature of witness or defendant at the end of interview/interrogation, *if able*. (Note: if the person refuses to sign the form, the member shall note the time and date and write in the word "refused" in the signature field.); and
- j. Date and time of signature by witness or defendant at the end of the interview/interrogation.

Witness Conveyance Consent Form (DPD668)

- a. Name, badge, and command of member requesting conveyance;

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- b. Name, badge, command and assignment of the member conveying the witness;
 - c. Vehicle information used for transport(s) (code number, odometer);
 - d. Witness information (name, address, DOB, phone);
 - e. Conveyance information (departure address, date and time of departure, odometer reading);
 - f. Arrival information (arrival address, date and time of arrival, odometer reading);
 - g. Signature of witness;
 - h. Date and time of signature by witness;
 - i. Signature of witness at the end of conveyance; and
 - j. Date and time of signature by witness at the end of conveyance.
5. When any of the above listed information is missing from the forms, or if it is determined through any means that the interview, interrogation, or conveyance was performed inconsistent with the Department's arrest and detention policies and procedures, the violation shall be documented by the reviewing supervisor on the Exceptions to Interview, Interrogations, and Conveyances Form (UF-005) in the Management Awareness System (MAS), within twenty-four (24) hours. The completed form shall be forwarded to the *commanding officer* for review.

203.9 - 7.3 Commander's Review Report

The officer in charge of the precinct and, if applicable, of the specialized command shall review in writing all reported EXCEPTIONS to this Department's witness identification and questioning policies. The Commander's Review Report shall be completed within seven (7) days of receiving the Exceptions to Interview, Interrogations, and Conveyances Form (UF-005)

. The Commander's Review Report shall include an evaluation of the actions taken to correct the EXCEPTION and whether any corrective or non-disciplinary action was taken.

Related Procedures:

- Directive 202.1 – Arrests
- Directive 202.2 – Search and Seizure
- Training Directive #04-1 – Material Witnesses
- Guidelines for Exception to Interviews, Interrogations and Conveyances (UF-005)

Form and Reports:

- Statement Form (DPD103)
- Witness Conveyance Consent Form (DPD668)
- Activity Log (DPD250)
- Exceptions to Interview, Interrogations, and Conveyances Form (UF-005)