

NIAGARA FALLS POLICE DEPARTMENT GENERAL ORDER

EFFECTIVE DATE: 09/25/2013	SUBJECT: CONSTITUTIONAL REQUIREMENTS	Number 326.00 (NYSLEAP O-50-2)
RESCINDS: 04/15/2003		Number of pages 2

I. Policy:

- A. All officers of the Niagara Falls Police Department shall interview, interrogate or otherwise question persons in accordance with Constitutional requirements and all other State and Federal Laws.

II. Procedure:

- A. When an officer has not arrested an individual or otherwise taken the individual into custody in a manner which restricts the individual's freedom or ability to discontinue the conversation, then the officer may ask questions that are necessary and pertinent without giving the Miranda warning.
- B. At the beginning of any custodial interrogation "questioning initiated by police officer after a person has been taken into custody or deprived of his freedom or action in any way, the person to be interviewed **MUST** be read his rights exactly as printed on the Miranda Warning and Waiver Card.
- C. After the notification, the person to be interviewed may waive his rights but he must do so voluntarily, knowingly and intelligently.
1. The burden of proof that a waiver was made within the meaning of the law rests with the enforcement agency and the officer.
 2. Whenever possible, a Rights Waiver Form will be signed by the Defendant and witnessed by the officers present. If he/she refused to sign the Rights Waiver Form, it should be noted on the form and submitted with the paperwork.
- D. Written Statements by Subjects:
1. A suspect or arrested subject shall be notified of his Miranda warnings before any such statement shall begin.

2. A Niagara Falls Police Department custody waiver form will be signed and witnessed prior to questioning.

E. DWI Arrests:

1. The DWI warning will be given to any motorist in custody for Felony or Misdemeanor DWI.