

**NIAGARA FALLS POLICE DEPARTMENT**  
**GENERAL ORDER**

EFFECTIVE DATE: 09/25/2013	SUBJECT: <b>CONSTITUTIONAL REQUIREMENTS</b>	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.