

**BETHLEHEM POLICE DEPARTMENT GENERAL ORDERS**

**SUBJECT: INTERVIEWS AND INTERROGATIONS; CUSTODY AND  
ARRAIGNMENT OF PRISONERS**

CALEA STD. REF. 1.2.2

AMENDS/SUPERSEDES:

REVISED:

EFFECTIVE DATE: 9/2007

APPROVED: 9/2007

**NOTE:** In any civil action against any individual, agency or governmental entity, including the State of New Hampshire, arising out of the conduct of a law enforcement officer having the powers of a peace officer, standards of conduct embodied in policies, procedures, rules, regulations, codes of conduct, orders or other directives of a State, County or local law enforcement agency shall not be admissible to establish negligence when such standards of conduct are higher than the standard of care which would otherwise have been applicable in such action under State law. (RSA. 516:36).

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**INDEX WORDS:** Miranda warning; Benoit warning; interrogations; arrests; prisoners; custody; counsel; arraignments; Gerstein affidavits

**I. POLICY:**

It is the policy of this department to scrupulously observed the constitutional rights of all persons taken into custody.

**II. PURPOSE:**

The purpose of this general order is to establish guidelines, responsibilities, and procedures for compliance with applicable constitutional requirements regarding interviews and interrogations, and access to legal counsel.

**III. PROCEDURES:**

- A.** Whenever a citizen is taken into custody by an officer of the department, or otherwise deprived of their freedom of movement in a manner similar to an arrest, so that a reasonable person would not feel free to leave, that person shall be given the warning provided for in Miranda v. Arizona, by being informed that they have the right to remain silent, that anything they say can and will be used against them in court, that they are entitled to an attorney if they so desire, and that if they cannot afford an attorney, one can be provided for them, and that if they do decide to answer questions, they can stop and request a lawyer at any time. They will be asked whether they understand the rights that have just been explained to them, and if they answer in the affirmative, will be asked if they are willing to waive

these rights for the purpose of speaking with the officer. Only if they indicate a willingness to waive these rights, will any questioning take place in order to elicit potentially incriminating information. Whenever practicable, the advisement of rights, warning and waiver shall be secured in writing.

- B.** Whenever a juvenile is taken into custody as in A above, they shall be given the juvenile Miranda form specified by the NH Supreme Court in the case of State v. Benoit, which appears in Chapter XXIV of the New Hampshire Attorney General's Law Enforcement Manual, and presents the warning in language suitable for understanding by a child.
- C.** Whenever the department is holding a prisoner, no member of the department shall prevent legal counsel from consulting with the prisoner at reasonable times considering the legitimate concerns of prisoner processing and security facility, and shall be entitled during normal business hours to consult with friends and relatives (RSA. 594:16).
- D.** Whenever the department is holding a prisoner, the person in charge of the police station shall obtain from the arrested person and immediately notify the person's nearest relative, parent, friend, or attorney. If the person is being held at the County Jail, this is the obligation of the person in charge at the Jail (RSA. 594:15).
- E.** Any person arrested by the department shall, unless admitted to bail, be brought before the District Court within 24 hours, Sundays and Holidays excepted, for arraignment. After booking the prisoner and prior to arraignment, the arresting officer shall prepare the affidavit required by the U.S. Supreme Court case of Gerstein v. Pugh, listing the facts and circumstances which support a finding of probable cause to believe the individual committed the offense set forth in the criminal complaint. This affidavit shall be available for the judge to review at the arraignment. It shall be the responsibility of the arresting officer to arraign the prisoner, or to make arrangements with a supervisor to have the prisoner arraigned on a timely basis.