



## Cover Memorandum

### Custodial Interrogation, JHPD Directive #461

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#### **Purpose of the Directive**

The purpose of this Directive is to ensure that Johns Hopkins Police Department (JHPD) members properly advise all persons of their constitutional rights prior to custodial interrogation.

#### **Summary of Directive Requirements**

This Directive explains that incriminating statements made by persons suspected of crimes are only lawfully obtained by JHPD members if they are knowingly and voluntarily made. This Directive reinforces that the JHPD is dedicated to preserving all persons' constitutional right to silence and right to counsel.

Consistent with *Miranda v. Arizona*, before questioning a person in police custody, JHPD members must inform the person in custody of their Fifth Amendment right not to make any self-incriminating statements, including the right to remain silent and the right to an attorney and that anything they say can be held against them. The person must then be asked and confirm that they voluntarily waive these rights. The manner in which a person is interrogated must respect the need to ensure that only voluntary statements are obtained and must conform to guidelines established under state and federal law and this Directive.

This Directive requires that all persons shall be advised of their constitutional rights prior to custodial interrogation. This Directive defines person in custody and interrogation and provides members with the appropriate methods for providing *Miranda* rights prior to any questioning. The Directive mandates that members use the Explanation and Waiver of Rights to advise persons of their constitutional rights and obtain the waiver of those rights, in writing, whenever possible.

Importantly, this Directive goes beyond the basic legal standard and strictly prohibits the use of deception in any form by JHPD members during custodial interrogations.

#### **Blueprint for the Policy Development Process**

The draft JHPD policies (hereinafter referred to as "directives") shared for community feedback are based on examples of 21st century best practices in public safety policy, identified through extensive benchmarking of university and municipal law enforcement agencies across the nation. Taken together, they represent a comprehensively progressive approach to policing that prioritizes equity, transparency, accountability, and community-based public safety strategies.

The JHPD's draft directives embody approaches that community advocates and leading experts have championed locally and in law enforcement reform efforts across the nation. The draft directives have also been developed based on input received through robust community engagement in prior phases of

JHPD development, including suggestions received in the legislative process as well as last fall's Memorandum of Understanding (MOU) public comment period and feedback opportunities.

In addition, the directives were drafted to exceed the minimum requirements of the Constitution and laws of the United States and the State of Maryland, to align with the Community Safety and Strengthening Act (CSSA) and to fulfill the requirements of the MOU between the Johns Hopkins University and the Baltimore Police Department. The Hopkins community and our neighbors throughout Baltimore can help improve and strengthen these directives further through their feedback and input.

Material that was considered in the drafting of the Directive and Procedure Manual, include:

**a. Publicly available policies from municipal police departments that have undergone substantial reform efforts**, including: the New Orleans Police Department; Seattle Police Department; Portland Police Department; Detroit Police Department; Ferguson Police Department; and Baltimore Police Department;

**b. National guidance on best practices and model policies from criminal justice reform efforts, social science research centers, and civil rights organizations**, including: the Leadership Conference on Civil and Human Rights; American Civil Liberties Union (ACLU), including the ACLU of Massachusetts's "Racially Just Policing: Model Policies for Colleges and Universities"; the International Association of Chiefs of Police (IACP); the Police Executive Research Forum (PERF); U.S. Department of Justice Office of Community Oriented Policing Services (COPS Office); The Justice Collaboratory (The JC) at Yale University Law School; and The Center for Innovation in Community Safety (CICS) at Georgetown Law School.

**c. National and local higher education institutions that are based in comparable environments and make policies publicly available**, including: Carnegie Mellon University; Morgan State University; Towson University; University of Chicago; University of Cincinnati; University of Maryland, Baltimore County; University of Pennsylvania; and Yale University.

To ensure that the proposed directives captured national best practices in community-focused public safety services, the development team collaborated with independent experts from two organizations: National Policing Institute (the Institute), a non-profit dedicated to advancing excellence in policing through research and innovation, and 21CP Solutions, an expert consulting team of former law enforcement personnel, academics, civil rights lawyers, and community leaders dedicated to advancing safe, fair, equitable, and inclusive public safety solutions. Each directive was reviewed by experts selected by both organizations, who provided feedback, suggestions, and edits that were fully incorporated into the current draft.

Finally, individuals and organizations representing the diversity of the Johns Hopkins University community provided feedback to ensure the policies and procedures reflect and respond to the values of our institution and to our community's public safety service needs.

Now they are available for your review. Johns Hopkins is committed to adopting, incorporating, or otherwise reflecting recommended changes and feedback in the final version of policies so long as feedback is aligned with our values and commitments, permissible within legal parameters, and supported by national best practices for community policing and public safety.



POLICE DEPARTMENT  
CUSTODIAL INTERROGATIONS

OPERATIONAL PROCEDURE #461

Responsible Executive:  
Chief of Police  
Responsible Office:  
Vice President for Public Safety  
Approved by:  
Dr. Branville G. Bard, Jr.  
Issued: [full date]  
Revised: [full date]

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Policy Statement

It is the policy of the Johns Hopkins Police Department (JHPD) to safeguard and ensure respect for the constitutional rights of all persons. All persons shall be advised of their constitutional rights prior to Custodial Interrogation. Whenever practical, officers shall use the Explanation and Waiver of Rights Form to advise persons of their constitutional rights.

Who is Governed by this Policy

All sworn police officers, as defined by MD Code, Public Safety, § 3-201, in service with the JHPD are governed by this Directive.

Purpose

The purpose of this Directive is to ensure that all persons are properly advised of their constitutional rights prior to Custodial Interrogation.

## Definitions

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<b>In Custody:</b>	<p>A person who is either under formal arrest or would reasonably believe they are.</p> <ul style="list-style-type: none"><li>• Circumstances that may make it more likely that a reasonable person would think that they are under arrest include: being handcuffed, being confronted with evidence of criminal activity, hearing an officer express belief in the person’s guilt, being held in a police facility or vehicle, being transported against their will, being Interrogated for an extended period of time, and not being allowed to leave at any time during the encounter.</li><li>• Circumstances that may make it less likely that a reasonable person would think that they were under arrest include: being told that they are not under arrest, being told that they are free to leave, being interviewed in an open or clearly unlocked space, not being guarded during pauses in Interrogation, having transported themselves to the Interrogation, and being allowed to leave at the conclusion of the Interrogation.</li></ul>
<b>Custodial Interrogation:</b>	Interrogation of a person in custody.
<b>Interrogation:</b>	Words or actions on the part of an officer that are reasonably likely to result in an incriminating statement by a person. Interrogation includes direct questioning about a crime as well as indirect questioning involving anything where the officer knows or should know that their words or actions are reasonably likely to result in an incriminating response by the person being interrogated. Routine booking questions and informing the person of charges against them generally are not considered to be interrogation.
<b>Member:</b>	All members of the JHPD, including employees, officers, and volunteers, unless the term is otherwise qualified (e.g., member of the public, member of the Baltimore Police Department, etc.).
<b>Officer:</b>	All sworn police officers, at any rank, as defined by MD Code, Public Safety, § 3-201, in service with the JHPD.

## Core Principles

- I. Constitutional,** statements by persons suspected of crimes and witnesses are only lawful if they are knowingly and voluntarily made. The JHPD is dedicated to preserving all persons’ constitutional right to silence and right to counsel. As people in custody are not free to leave on their own, protecting these rights requires additional precautions when conducting Custodial Interrogations. Consistent with *Miranda v. Arizona*, a person in police custody must be told of the Fifth Amendment right not to make any self-incriminating statements, including the right to remain silent and the right to an attorney and that anything they say can be held against them, before they are questioned by

officers. The person must then be asked to confirm that they understand and voluntarily waive these rights. The manner in which a person is interrogated must respect the need to ensure that only voluntary statements are obtained and must conform to guidelines established under state and federal law.

**II. Courtesy and Professionalism.** All Interrogations shall be conducted with courtesy and professionalism, keeping in mind that an Interrogation is a search for the truth and not an exercise in hostility against the person. Suspects being interrogated are not to be made intentionally uncomfortable, shall be provided a chair, be unhandcuffed if possible, and be provided water if requested and bathroom access, as necessary.

**III. Integrity and Transparency.** Custodial Interrogations (including advisements and completion of waiver forms) shall be video- and/or audio-recorded and carefully documented.

**IV. Duty to Provide Medical Attention.** Prior to, during, or after a Custodial Interrogation, when there is an obvious injury, complaint of injury, signs of medical distress, withdrawal, or overdose, or when any person requests medical attention, officers shall immediately render aid consistent with their training and notify their supervisor and the Communications Section. The officer shall then request a medic to the scene or transport the person directly to the nearest hospital emergency room.

## Procedures

**I. General** (Commission on Accreditation for Law Enforcement Agencies (CALEA) 1.2.3)

**A.** To ensure that questioning is conducted in a constitutional and professional manner, it is essential that persons Interrogated understand their rights and it is made clear that these rights will be respected.

**B.** When conducting a field interview, pursuant to JHPD Directive #409 Field Interviews, Investigative Stops & Pat-Downs, (1) if reasonable articulable suspicion (RAS) develops as to the person's own criminal conduct, (2) and the person is no longer free to leave \ (3) if the officer is questioning the person about their own potential criminal conduct, the officer shall immediately provide the person with the warnings required by *Miranda v. Arizona* and procure a written or verbal waiver recorded on a Body-Worn Camera (BWC) prior to continuing to question or interview them.

**C.** Unless the exigent circumstances described in the last bullet point are applicable, a Custodial Interrogation shall occur in a controlled environment that contains audio/video recording equipment to memorialize the Interrogation. Officers shall make all efforts to make an audio and visual recording of all Custodial Interrogations (including advisements and completion of waiver forms). Recording preferences are as follows:

- The preferred method is to record the interview in a controlled

environment with audio/video equipment.

- The second preference is to use a higher quality video and audio recording device than the BWC.
- Third preference is recording via BWC.
- Fourth preference is to utilize an audio recorder, either one provided by the JHPD or the officer's Departmental cell phone.
- An officer's BWC should be activated throughout their interactions with a person in custody, unless they are in a controlled environment with other audio/video equipment activated. In the rare circumstance when an officer is with a person subject to Custodial Interrogation without or prior any recording, upon the occurrence of an excited utterance by the person that prompts the officer to desire to ask follow-up questions, the officer must turn on their BWC or other audio/video equipment prior to asking any follow-up questions and document in the written report the circumstances of the excited utterance. If the officer did not activate their BWC, they must also document in their written report the reason their BWC or other audio/video equipment was not activated<sup>(b)(7)(C)</sup>.
- Under exigent circumstances where none of the above recording capabilities are available, the officer must notify their supervisor as soon as practical, either before or after the unrecorded Custodial Interrogation. Following that notification, officers must also document in their written report that 1) the Interrogation was not recorded; 2) when they notified their supervisor; 3) the reason the Interrogation was not recorded; 4) the efforts taken to obtain recording capabilities; and 5) the substance of the Interrogation. Once the emergency is abated, the interrogation shall be repeated in a calm and recorded environment, if possible.

**D.** Prior to Interrogating a person who displays signs that their ability to understand is made vulnerable by a behavioral health condition (including the use of alcohol or other drugs, suicidal ideation, mental illness, or a developmental disability), language barriers, deafness/hearing impairment, illiteracy (in the case of a written advisement) or age, the officer shall refer to the section below entitled **Special Circumstances**, before proceeding with the Explanation and Waiver of Rights.

- If the officer has reason to believe that one of these categories applies, but is uncertain whether it affects the person's ability to understand, the officer should inquire about whether the person is under the influence of any substance, has a behavioral health condition, language barrier, or physical disability that may affect their ability to understand or engage in this process.
- Interrogations of youth must always follow special guidance for youth,

regardless of perceived maturity or comprehension of the youth. See JHPD Directive #426, Interactions with Youth.

## **II. Explanation and Waiver of Rights Form**

- A.** The officer shall complete the Explanation and Waiver of Rights to provide a written record of the explanation of constitutional rights and a waiver of counsel for each person subject to Custodial Interrogation, unless it is unpractical to do so.
- The officer shall determine whether the person can read the Explanation and Waiver of Rights Form. If not, see Special Circumstances below.
  - The officer shall read each sentence (numbers 1-5) aloud to the person.
  - The officer shall ask the person if they understand each right and have them initial after each statement, unless not practicable to do so, such as when a person is physically unable to initial, unable to read or write, or where unsafe to obtain the person's initials (i.e., a physically combative person or a person who may try to harm themselves).
  - The officer shall read the waiver statement (in bold) to the person.
  - The officer shall ask if the person is willing to sign the waiver statement. If the person refuses to sign the waiver, anything they do or say may be recorded and used against them but the officer cannot ask probative questions.
  - The officer shall fill out all requested information in the appropriate lines.
  - The officer shall complete the Suspect Activity Sheet, if appropriate.
- B.** The Explanation and Waiver of Rights should be used whenever possible. The limited circumstances when it may not be practical are when the person has a visual impairment, faces a language barrier (and the form is not available in their primary language), is illiterate, or has a physical disability that prevents them from signing the form.
- C.** If it is not practical to use the Explanation and Waiver of Rights:
- Prior to Custodial Interrogation, officers must ensure that the person to be interrogated has been advised of the following (or its equivalent):
    - They have the right to remain silent,
    - Any statement that they make can be used against them in court,
    - They have the right to speak to an attorney before and during questioning,
    - They have the right to be appointed an attorney if they cannot

afford one, and to speak with that attorney before and during questioning. If they agree to answer questions, they can stop answering at any time and request an attorney, and no more questions will be asked of them.

- D. The person must understand and waive these rights prior to giving a statement, so the officer shall ask the following questions (or their equivalent):
- Do you understand the rights that I have just read to you?
  - Do you want to waive these rights and talk to me?
- E. The officer shall complete the Suspect Activity Sheet if appropriate and fully document (1) the basis for not using the Explanation and Waiver of Rights, and (2) the questions asked and the responses elicited pertaining to any waiver given.

### III. Conducting the Interrogation (CALEA 1.2.3 b)

- A. When conducting a Custodial Interrogation:
- All statements to the police must be knowingly and voluntarily given. Officers shall consider the age, education, and behavioral health/physical condition of the person in custody in determining whether they understand what is happening and whether or not they are capable of making a choice to speak with police. For youth, officers shall follow JHPD Directive #426, Interactions with Youth.
  - Persons in custody must fully understand their constitutional rights as explained and unambiguously waive those rights prior to giving a statement. Officers doubting whether a person has waived their constitutional rights shall confirm that waiver pursuant to this policy.
  - Officers shall ensure the safety and security of custodial person during Interrogations. See JHPD Directive #411, Custody & Transport.
  - **Officers shall immediately stop an Interrogation if a person clearly expresses a desire to exercise their constitutional rights to silence and/or an attorney.**
- B. Officers shall immediately terminate an Interrogation if the person makes any statement, or their conduct clearly conveys that they are invoking their right to remain silent and do not wish to answer questions.
- No specific statement is required, but examples of how the right to silence may be invoked include (but are not limited to), “I want to remain silent,” “I want to stop at this point,” “I don’t want to talk to you, and I am not signing anything,” “I want to use my 5<sup>th</sup> Amendment Rights,” “I don’t want to say anything,” “I want to speak with a lawyer,”



or any similar statement.

- A person is free to end a Custodial Interrogation and refuse to answer the officer's questions. Once a person refuses to answer a question, the officer should interpret that refusal to answer a question as an invocation of their right to remain silent.
  - NOTE: A person who is the subject of a field interview can end the interview, refuse to answer any question, and leave at any time without any negative consequences or inferences drawn by the officer. See JHPD Directive #409 Field Interviews, Investigative Stops & Pat-Downs.
  
- If a person refers to counsel or silence, including by refusing to respond to questions, but their intentions are unclear, officers shall specifically determine whether the person wishes to have counsel present or wishes to remain silent. To make this determination, the officer shall ask the person a "yes" or "no" question, such as:
  - *Are you invoking the right to remain silent, yes or no? or*
  - *Are you invoking the right to an attorney, yes or no?*
  
- Where the person does not answer with a clear "yes" or "no," the officer shall ask again.
  - The officer shall not continue with the Interrogation until they receive a clear "yes" or "no" from the person.
  
- Invocation of the right to silence during a single Interrogation session is not offense-specific. The right to silence, once invoked, applies to questioning about all crimes during that Interrogation session, not just the crime the person has been charged with committing.
  
- If the person later initiates communication, officers shall re-administer the *Miranda* advisement before resuming any additional questioning. If a person has invoked their *Miranda* rights, an officer may not make any attempt to influence or encourage a person to re-initiate Interrogation.
  
- If a person requests an attorney, the officer must cease the Interrogation immediately. Once the person has stated that they would like an attorney, the only question the officer may ask is whether the person has their own attorney and, if so, the contact information for that attorney. No further Interrogation may take place until counsel is physically present unless the person initiates further communication related to the Interrogation. (CALEA 1.23 c)
  
- If the person provides the name and contact for a private attorney, the officer should promptly contact that attorney and continue to make efforts to contact the attorney until they are reached. If the person only provides the name of an attorney, the officer shall locate contact information and

make the same efforts to contact the attorney.

- If the person does not provide the name of an attorney, the officer should contact the Public Defender's Office.
- If the attorney or a voicemail is reached, convey that the person has been arrested, has been *Mirandized*, and has requested an attorney. If the attorney's presence is requested so that the interrogation may occur, coordinate the location to meet. If an attorney is not available in a reasonable amount of time, the interrogation shall be canceled, and the person processed as normal.
- If an attorney for the person shows up or calls about a person, regardless of whether they have waived their rights and an interrogation has begun, the person should be immediately notified and the attorney should be given an opportunity to speak with the person. Officers shall suspend any Interrogation until after the person has been given an opportunity to speak with the attorney.
- All threats of harm, threats of improper conduct, threats to violate the constitution, or other improper forms of coercion to induce a confession or incriminating statements are prohibited. An officer shall not state or imply that in exchange for a statement, the person may get a benefit from the criminal justice system such as: being released from custody, not being charged with a crime, being charged with a lesser crime, getting a lower bail, or getting special treatment such as drug court.
- No more than two (2) officers should participate in an interview or Interrogation. (CALEA 42.2.8c)
- The duration of a continuous Interrogation should consider the seriousness of the crime, the person's age and maturity level, their previous experience with law enforcement, and their physical and behavioral health condition. The officer should not prolong the Interrogation to use withdrawal, post-partum condition, or post-witnessing traumatic event to induce a statement.
- A person in custody shall have access to a restroom, water, breaks, or other such amenities as needed. (CALEA 42.2.8.e)
- Officers shall maintain the original forms in the case folder or electronic case file, if applicable.

#### **IV. Prohibited Actions**

- A. The use of deception, in any form, during an interrogation is prohibited.
- B. Officers shall not delay a person in custody's arraignment solely to re-initiate Interrogation after a person in custody has invoked their right to silence.

- C. Officers shall not give legal advice or attempt to answer any legal questions (e.g., “Do you think I need an attorney?” or “What kind of deal can I get if I cooperate?”). If asked, the officer should inform the person that they cannot give legal advice and if the person has questions, they can speak with an attorney. This does not conflict with the duty to advise persons in custody of their constitutional rights, or of the circumstances for which they have been arrested or detained.
- D. Officers shall not lock an interview room door to detain the person, even for a few minutes.
- E. Officers shall not handcuff the person to any fixed or movable object (wall, chair, table, etc.). Handcuffs should be removed for the interrogation provided it is safe to do so.

**V. Interrogations Conducted in an Interview Room** (CALEA 42.2.8)

- A. A person in custody shall not be left unmonitored in an interview room. An officer shall always remain inside the interview room with the person in custody.
- B. People in custody shall be searched prior to interview or Interrogation and all items found shall be documented on the Supplement Report, Form 7.
  - NOTE: The person shall be searched by an officer of the same gender, based on the gender identity stated by the person in custody, or the person’s stated preference for the gender of the officer conducting the search. See JHPD Directive #409, Field Interviews, Investigative Stops & Pat-Downs; JHPD Directive#411, Search & Seizure, and JHPD Directive #107, Interactions with LGBTQ+ Individuals for further guidance.
- C. The interview room/temporary detention area shall be searched before and after each Interrogation. (CALEA 42.2.8 b)
- D. Officers shall secure their firearms and any other such item(s) that may be used as a weapon (e.g., baton, Oleoresin Capsicum (O.C.) spray Conducted Electrical Weapon (CEW), etc.) in designated areas before entering an occupied interview room/temporary detention room. (CALEA 42.2.8.a)
- E. Officers shall notify a supervisor that they will be conducting an Interrogation and the room they are using.
- F. The supervisor or another officer shall live monitor, via audio/video stream, all interrogations to ensure the safety of the officers and the person.

- G. Officers shall not Interrogate a person in custody of the opposite gender identity/sex alone in the interview room/temporary detention room unless another officer is in the room, there is visibility into the room through a window or open door, or the Interrogation is being videotaped.
- H. Panic or duress alarms shall be used in occupied interview rooms/temporary detention rooms, if available. If no panic or duress alarms are available, officers shall use portable radios to notify communications in the event of distress in the occupied interview room/temporary detention room. Live streaming video, if constantly monitored, may be used instead of portable radios. (CALEA 42.2.8.d.f.)

## **VI. Special Circumstances**

Officers must keep in mind that all of these special circumstances are crucial factors to consider when deciding whether a person is knowingly and voluntarily waiving their rights and giving a statement.

### **A. Language Barriers**

If there is a language barrier, the officer shall request a Qualified Bilingual Officer to help provide language access. If a Qualified Bilingual Officer is unavailable, the officer can request an in-person interpreter from an outside vendor or can use the Language Line when the need is immediate. JHPD officers are prohibited from serving as translators for Custodial Interrogations.

- NOTE: The Explanation and Waiver of Rights Form is available in PowerDMS in the following languages: Spanish, French, Korean, Chinese, Russian, and Arabic.

### **B. Deaf/Hard of Hearing Persons**

If the person requires an American Sign Language interpreter, the officer shall request an interpreter through the Communications Center.

### **C. Illiterate Persons**

If a written Explanation and Waiver of Rights form is used and the person indicates that they cannot read or write, or if upon presenting the person with the form, that person is struggling to understand the text or to sign the document, the officer shall ask the person if they require the officer to read the forms aloud.

- When the circumstances require a verbal reading of the Explanation and Waiver of Rights, the officer must record the exchange either on their BWC or via other recording equipment.
- The officer must ensure that both their reading of the form is properly recorded as well as the person's verbal response of whether they understand and agree to the forms read to them.

- D.** Interrogations of Persons with Behavioral Health conditions or impairments will be in conformance with this directive and JHPD Directive #415, Persons with Behavioral Health Conditions. (CALEA 41.2.7.c)
- Persons experiencing the symptoms of a behavioral health condition may have limited reasoning or ability to effectively communicate their thoughts.
  - In addition, people in crisis and all persons encountered in the field who exhibit unusual behaviors commonly referred to as irrational, bizarre, or unpredictable may have diminished capacity to reason and communicate.
  - These outward observable symptoms could be the result of intoxication, drug use, suicidal indication, behavioral health conditions, developmental disability, or medical complications. Officers shall follow the procedures outlined JHPD #415, Individuals with Behavioral Health Conditions for all persons who appear to have a diminished capacity to reason and communicate.
- E.** Interrogations of Youth shall be in accordance with the custodial interrogation of Youth requirements of JHPD Directive #426, Interactions with Youth. (CALEA 44.2.3)

**VII. Supervisory Responsibilities**

- A.** The supervisor or their designee will maintain contact or conduct periodic safety checks with the interviewing officer.
- B.** The supervisor shall be available for consultation with the interviewing officer, if needed.
- C.** The supervisor will review reports of Interrogations that were not recorded to ensure that the explanations are sufficient, prior to signing/approving them.
- D.** The supervisor will review all reports required by this policy related to Interrogations to ensure compliance with this policy.

**Policy Enforcement**

<b>Enforcement</b>	Police Department managers and supervisors are responsible for enforcing this Directive.
<b>Reporting Violations</b>	Suspected violations of this Policy should be reported to the Public Safety Accountability Unit or using <a href="#">the online form</a> .

## Related Resources

<b>University Policies and Documents</b>
Conduct & Responsibility #107, Interactions with LGBTQ+ Individuals Operational Procedure # 409, Field Interviews, Investigative Stops, Pat- Downs & Searches Operational Procedure #411, Search & Seizure Operational Procedure #412, Custody, Transport & Processing Operational Procedure #415, Individuals with Behavioral Health Conditions Operational Procedure #426, Interactions with Youth Operational Procedure #435, Communicating with Hearing Impaired Persons
<b>External Documentation</b>
<b>University Forms and Systems</b>

## Contacts

<b>Subject Matter</b>	<b>Office Name</b>	<b>Telephone Number</b>	<b>E-mail/Web Address</b>
Policy Clarification and Interpretation			