

229. POLICE INTERROGATION



RICHFIELD POLICE DEPARTMENT POLICY

Effective Date: 05/01/95
No. of Pages: 4
Serial Number: 10-129
Authority: Chief Jay Henthorne

NOTE: This policy is for internal use only and does not enlarge an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

I. PURPOSE

The purpose of this Policy is to establish guidelines for conducting criminal interrogations.

II. POLICY

The Department will conduct criminal interrogations in accordance with established constitutional and state laws which police officers may lawfully question individuals suspected of criminal activity.

III. PROCEDURE

Asking questions of those suspected of criminal behavior can be an effective way of solving crimes. The importance of interrogation has often been recognized by the courts. The United States Supreme Court recently observed that "admissions of guilt by wrongdoers, if not coerced, are inherently desirable." A confession can mean the difference between the conviction and acquittal of a guilty person. Even the suspect who denies involvement may inadvertently provide useful information to the detective. Moreover, innocent suspects should always have the opportunity to give their side of the story.

Although interrogation is an important law enforcement tool, it can be misused. To guard against this, interrogation is closely regulated by law. The landmark Supreme Court decision regulating police interrogation is *Miranda v. Arizona*. The *Miranda* rules are designed to protect the Constitutional rights of the accused. Following the rules will ensure that statements of the accused are admitted into court. Interrogation is in the public interest only when conducted in compliance with law. A confession obtained in violation of law is inadmissible in court and impairs the integrity of law enforcement.

MIRANDA RIGHTS

If the suspect is not in custody, or is not interrogated, *Miranda* is inapplicable. Officers should carry the *Miranda* rights card with them at all times. Officers must read the suspect the *Miranda* Warning before subjecting the person to custodial interrogation.

1) Custody Defined

A suspect is in custody whenever a reasonable person in the suspect's position would believe that he is not free to leave. When a suspect is placed under arrest or physically restrained, he is in custody. When a suspect is questioned at the station-house or in a police vehicle, or is confronted by more than two officers, he is probably in custody. When the suspect is questioned in his home or other familiar environment, or when family or friends are present, or when the suspect initiates the encounter, the suspect is less likely to be in custody.

2) Interrogation Defined

Interrogation occurs whenever an officer engages in conduct which they should know is likely to elicit an incriminating response from the suspect.

3) **When Miranda Does NOT Apply**

The following situations do not involve "custodial interrogation," and Miranda is therefore inapplicable:

- a) Brief on-the-scene questioning.
- b) Identification procedures, such as fingerprinting, taking voice or handwriting exemplars, or conducting a lineup or sobriety test.
- c) Volunteered, spontaneous statements by the suspect.
- d) Brief, investigatory questioning during a temporary detention, such as a Terry stop.
- e) Roadside questioning following a routine traffic stop or other minor violation for which custody is not ordinarily imposed.
- f) Routine booking questions attendant to arrest.
- g) Questioning by a private citizen who is not an agent of the police.

NOTIFYING THE SUSPECT OF HIS RIGHTS

Before any custodial interrogation, officers must notify the suspect of the following:

- The suspect has a right to remain silent.
- If the suspect chooses to speak, his statements can be used as evidence against him.
- The suspect has a right to consult with an attorney and have the attorney present during questioning; if he cannot afford an attorney and wishes to have one, an attorney will be provided before any interrogation.
- If the suspect chooses to waive his rights and answer questions, and later changes his mind, he has the right to cut off the interrogation at any time

1) **Administering the Warning**

Officers should read the warnings from the Miranda card rather than recite them from memory. If the officer is in doubt as to whether the suspect understands the warnings, he should repeat them, or explain them in simple terms, or invite the suspect to explain the meaning of the warnings in his own words.

2) **Waiver of Miranda Rights: Adults**

After informing the suspect of his rights, officers may not interrogate the suspect unless he indicates that he understands his rights and freely relinquishes them. If the suspect is temporarily impaired due to alcohol, shock or some similar cause, officers should wait until this condition is diminished before advising the suspect of his rights and soliciting a waiver.

3) **Waiver From a Juvenile Suspect**

If the suspect is a juvenile, officers should take extra care to explain the meaning of the warnings before soliciting a waiver. After reading the suspect his rights from the Miranda card, officer's should explain the warnings slowly and in simple terms, or should invite the suspect to explain the warnings in his own words. Officers should honor a juvenile suspect's request to speak to a parent or guardian before waiving his rights. However, parental presence is not required by Minnesota law. It is not imperative to forego interviewing a juvenile until a parent or guardian can be contacted. However, if the juvenile requests the presence of a parent, guardian or other interested adult, and that child does not have an attorney, the interview should not continue until the parent or other adult is present. Parents should be informed as to what the questioning covers and that the parent may be present during custodial questioning.

4) **When the Suspect Asserts His Rights**

If the suspect indicates at any time that he wishes to remain silent or that he would like the assistance of counsel, officers must cease any interrogation. The suspects' mere silence or refusal to express their wishes is not an acceptable indication they have invoked their right to remain silent. If the officer is uncertain as to whether the suspect has asserted his rights, the

officer should suspend the interrogation and ask clarifying questions. Unless the officer concludes that the suspect has in fact waived, he should not resume the interrogation.

5) Waiver After the Suspect Has Asserted His Right To Counsel

After the suspect has asserted his Right to Counsel, officers may not attempt to solicit a waiver and conduct an interrogation unless the suspect, without any encouragement from officers, initiates further communication about the charges against him.

If the suspect initiates further communication about the charges against him, officers must repeat the Miranda warnings and secure a valid waiver before interrogation may begin. The officer should note on the waiver form used that the suspect had earlier asserted his right to counsel, but now has initiated communication and wishes to answer questions.

6) Waiver After the Suspect Has Asserted His Right to Silence

After the suspect has asserted his Right to Silence, officers may not attempt to solicit a waiver and conduct an interrogation unless:

- a) The second interrogation was initiated by the suspect; or
- b) The second interrogation concerns a separate, unrelated offense; or
- c) A substantial period of time has elapsed since the initial assertion of rights. Before any interrogation may begin, officers must repeat the Miranda warnings and secure a valid waiver.

7) The Emergency Exception to Miranda

When officers urgently need information from a suspect because lives are in imminent danger, officers may dispense with the preceding Miranda procedures, and interrogate the suspect until information sufficient to dispel the emergency has been obtained. Then Miranda warnings must be given and a valid waiver obtained.

Example: Officers apprehend a man whom they have reasonable cause to believe has placed a bomb in a public building. Officers may immediately question the man about the location of the alleged bomb without informing him of his Miranda rights and securing a waiver. Once officers have learned of the location of the bomb and other information necessary to eliminate the threat, any further questioning must be preceded by Miranda warnings and waiver.

8) After the Suspect Has Been Charged

Once the suspect has been formally charged, such as by indictment or arraignment, officers may not attempt to elicit incriminating evidence from him unless he waives his right to counsel.

9) Request for Counsel After the Charges Have Been Placed

Once the suspect has been formally charged and has requested council officers may not attempt to secure a waiver unless the suspect initiates the communication.

RECORDING CUSTODIAL INTERROGATIONS

In the decision of *State v. Scales, Finance and Commerce*, July 8, 1994, the Minnesota Supreme Court created a new procedural rule that requires custodial interrogations to be electronically recorded. The new ruling mandates that all custodial interrogations that take place inside a place of detention be recorded and custodial interrogations that take place outside a place of detention be recorded if it is feasible to do so.

The *Scales* decision held as follows:

All custodial interrogations including any information about rights, and waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention. If law enforcement officers fail to comply with this recording requirement, any statements the suspect makes in response to the interrogation may be suppressed at trial.

- 1) **Custody**. For the purpose of interpreting this rule, custody should be considered any situation in which objective circumstances indicate the suspect is not free to leave and is restrained to a

degree associated with formal arrest. The suspect does not have to be told he/she is under arrest to be in custody. A routine traffic stop or brief Terry stop are generally not custodial if they are temporary (general rule--less than 20 minutes) and public.

- 2) **Interrogation.** Can be any direct questioning or other words or acts reasonably likely to elicit an incriminating response. Requesting booking information is not an interrogation, and volunteer statements are not products of interrogations.
- 3) **Place of detention** is a vague concept that could include a squad, a detective's office or any other place regularly used to interrogate suspects.

All custodial interrogations should be recorded (audio and video if possible). If there is any doubt as to whether the subject is in custody or whether the setting constitutes a place of detention, the interrogation should be recorded. Not only are unrecorded statements made during a custodial interrogation subject to suppression, any subsequent statements made by the suspect--even if recorded--may be tainted by the fact that the previous interrogation was not recorded. Recording can be done without the suspect's knowledge. If a situation occurs where it is not feasible to record a custodial interrogation outside a place of detention, the circumstances should be explained in the police report (e.g. recording device not available, inoperative, etc.). The recordings should be treated as evidence.

By Order Of:



Chief of Police