

# INTERROGATING SUSPECTS AND ARRESTEES

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## I. GENERAL CONSIDERATIONS AND GUIDELINES

Interrogations of persons who are in police custody must conform to the standards set forth in the *Miranda* decision and to Due Process. Police interrogation techniques include any words or actions which are designed to elicit incriminating statements.

If a police interrogation does not conform to legal standards, it can result in otherwise good evidence being declared inadmissible in court. If the suspect "knowingly and intelligently" waives his/her rights to this constitutional protection, the interrogation can begin. The critical elements to be considered are whether there is a coercive environment and whether the person being questioned is free to leave.

It is important to understand that Miranda procedures only apply if both of the following situations are present:

- A person is in police custody or is otherwise deprived of his/her freedom of movement in a significant manner and

- There is police questioning or its functional equivalent, including any words or actions that are reasonably likely to elicit an incriminating response.

A suspect can stop any police questioning at any time by invoking his/her right of silence or by requesting the services of an attorney.

The ultimate goal of a police interrogation should be to obtain the truth - not just to produce a confession or an admission of guilt.

"Spontaneous" statements made to the police before, during or after the arrest by a person in custody are admissible in evidence even though the arrested person was not warned of his/her rights, provided that such statements are voluntary and are not made in response to police questioning or other actions.

In order to obtain results, every police investigator should recognize the objectives of an interrogation, which should include the following:

1. Learning the truth;
2. Ascertaining the identity of criminal participants and accessories;
3. Obtaining an admission or a confession of guilt;
4. Acquiring all the facts, circumstances and method of operation of the crime under investigation;
5. Gathering information which may corroborate or disprove information obtained from other sources;
6. Eliminating suspects;
7. Uncovering information of any other crimes in which the suspect being questioned is, or has been involved;
8. Recovering evidence or property; and
9. Recording and reporting all information obtained for subsequent court action.

## II. **POLICY**

- A. It is the policy of this department that:
1. Persons in custody shall be given their *Miranda* rights prior to any police interrogation; and
  2. The Due Process rights of persons in custody will be respected.

## III. **DEFINITIONS**

- A. *Custody*: When a person is under arrest, or deprived of his/her freedom in a significant manner.<sup>1</sup>
- B. *Interrogation*: Express questioning of a suspect about a crime or suspected crime as well as any words or actions on the part of the police that the officers should know are reasonably likely to elicit an incriminating response.<sup>2</sup>

## IV. **PROCEDURE**

### A. **Providing Miranda Warnings**

1. Officers shall give Miranda warnings as soon as practical whenever a person is placed in custody or deprived of his/her freedom in a significant manner and is subject to interrogation.
  - a. The Miranda warnings shall be read from a preprinted card or form in a clear and unhurried manner prior to questioning.
  - b. Persons who do not speak English must be given these warnings in a language that they understand.
  - c. Sample Miranda Warning Language:

*You have the right to remain silent;*

*Anything that you say can be used against you in a court of law;*

*You have the right to consult with an attorney before being questioned and to have the lawyer present during the interrogation; and*

*If you cannot afford a lawyer, one will be appointed for you at government expense and you can consult with the appointed lawyer prior to the interrogation and have the appointed lawyer present during the interrogation.*

2. The suspect shall then be asked the following questions:
  - a. Do you understand each of these rights that have been explained to you?
  - b. Having these rights in mind, do you wish to answer questions now?
3. All arrested persons to be interrogated shall have the Miranda warnings read to them when they are booked, whether the warnings were previously given or not. The suspect shall then be asked to sign a form acknowledging that the warnings were given. The officer giving the warnings shall sign the form as a witness, giving the date and time the suspect was advised.
4. If there is any substantial delay between the Miranda warnings and the police questioning, the suspect shall be advised of these rights again before the questioning begins.
5. Whenever an officer has any doubt as to the applicability of the Miranda warnings in any particular case, it is advisable that these warnings be given to the suspect to avoid any subsequent legal barrier to the admissibility of any statements obtained.
6. If, at any time, a suspect requests to read his/her rights or to be informed of his/her rights, these requests shall be granted.
7. JUVENILES: Before a juvenile between the ages of 7 and 17 is questioned, the Miranda warnings shall be given in the presence of both the juvenile and his parent, guardian or other interested adult. The adult must acknowledge that he understands the rights and the juvenile must be given the opportunity to have a meaningful consultation with the adult. See department policy on **Handling Juveniles**.

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## B. **Non-Miranda Situations**

### 1. ***Spontaneous Statements***

- a. Officers may note any spontaneous and volunteered statements. When a suspect or prisoner voluntarily makes a statement, officers do not have to prevent him/her from continuing to talk and the Miranda warnings are not a prerequisite for admissibility.
  - i. Spontaneous and volunteered statements are statements made by a suspect of his/her own free will and not made in response to police questioning.
  - ii. A person who voluntarily enters a police station and makes incriminating statements need not be given the Miranda warnings.<sup>3</sup>
  - iii. Spontaneous and volunteered statements may be taken after the suspect is in custody and before, during, or after actual interrogation so long as the statements are clearly voluntary.

### 2. ***Investigatory Stop and Frisks***

- a. Noncustodial preliminary or investigative questioning need not be preceded by Miranda warnings.<sup>4</sup> See department policy on ***Stop and Frisk and Threshold Inquiries***.

### 3. ***Non-Law Enforcement Questioning***

- a. Miranda does not apply to statements made in response to questioning by private citizens, unless the private citizen is acting on behalf of the police. For a citizen to constitute an agent of the police, the police must initiate the citizen's help.<sup>5</sup> Thus, where a fellow prisoner initiates questioning about a crime in hopes of trading information for a lighter sentence, any statements made are admissible if the police neither encouraged or sought the prisoner's assistance.<sup>6</sup>

#### 4. ***Traffic Violations or Traffic Accidents***

- a. A person need not be given Miranda warnings if [s]he has been stopped for violating motor vehicle laws.<sup>7</sup>
- b. An officer's request that a motorist perform field sobriety tests does not require that Miranda warnings be given.<sup>8</sup>

### C. **Waiver of Rights**

#### 1. ***Valid Waivers***

- a. Statements made by an arrestee more than six hours after the arrest (safe harbor period) are inadmissible unless the arrestee has been arraigned or has made a valid written waiver of his/her right to be arraigned without unreasonable delay.<sup>9</sup>
  - i. If the arrestee is incapacitated due to a self-induced disability (such as the use of drugs or alcohol) the six hour safe harbor period does not begin until the disability terminates.<sup>10</sup>
  - ii. The six hour period is also tolled when interrogation is not possible or must be suspended for reasons not attributable to the police, such as a natural disaster or emergency.<sup>11</sup>
- b. The interrogating officers should be certain that the suspect understands the rights which have been read to him/her as the burden will be on the prosecution to prove that the waiver was valid.<sup>12</sup>
- c. The waiver must be made voluntarily, knowingly and intelligently to meet the conditions of the Miranda decision.
- d. In determining whether a valid waiver was made, the court examines whether in light of the totality of the circumstances surrounding the making of the waiver, the will of the suspect was overborne such that the statement was not a free and voluntary act. The court considers the circumstances of the interrogation and

the individual characteristics and conduct of the suspect, such as the length of time which transpired between the giving of the Miranda warnings and the waiver, the suspect's age, mental capacity and experience.<sup>13</sup>

- e. When the suspect waives his/her rights, the interrogating officers shall obtain a written waiver when possible. A waiver may be made orally or in writing, but a written and properly witnessed waiver is more likely to be upheld in court.
- f. Silence on the part of the suspect does not constitute a valid waiver.<sup>14</sup>
- g. The physical and emotional condition of the person being questioned is an important consideration in determining the validity of a waiver. The police should refrain from questioning if the suspect is clearly not capable of understanding his/her rights.<sup>15</sup>

## 2. **Competency**

- a. A suspect must be competent to waive his/her rights prior to police questioning. The question of competency is a question of fact to be determined by the circumstances in each case.
- b. The competency issue is more likely to be raised under the following circumstances:
  - i. If the suspect is distraught or very disturbed because of any mental or emotional condition;
  - ii. If the suspect has been wounded or is the victim of shock or other physical impairment;
  - iii. If the suspect is so intoxicated or influenced by alcohol or drugs that [s]he cannot think rationally or act sensibly; or
  - iv. If the suspect's intelligence level is so low, or his/her learning and education are so minimal, that [s]he does not comprehend his/her rights.

- c. In any of the circumstances enumerated above, any waiver obtained will be carefully scrutinized by the court.

### 3. ***Assessing Competency***

- a. After the Miranda rights have been read and after the suspect has shown an initial willingness to waive those rights, the police may ask the suspect about the following in order to properly assess the suspect's ability to intelligently understand and waive his/her rights:
  - i. His/her age;
  - ii. Whether [s]he is under the influence of any drugs or alcohol;
  - iii. Whether [s]he is suffering from any mental or emotional problem;
  - iv. His/her education and learning;
  - v. His/her employment;
  - vi. Whether [s]he has ever been given Miranda warnings previously; and
  - vii. Whether [s]he understands the words used by the officer in reciting the Miranda warnings or what they mean.

### D. **Presence of Attorney**

- 1. If a suspect states that [s]he wishes to consult an attorney, [s]he must not be questioned further by police until [s]he has had an opportunity to consult an attorney. However, if the suspect initiates statements or conversation, the police may respond to those statements or conversation.
- 2. Although a suspect has voluntarily waived his/her right to remain silent, [s]he may still invoke this right by refusing to answer any further questions or by requesting the services of an attorney, and at this point the police questioning must cease.



3. If the police are aware that the suspect is represented by an attorney, even on other matters, and that the attorney desires to be present with his/her client during any questioning, the police must inform the suspect that his/her attorney wishes to be present during questioning. However, once so informed, the suspect may waive his/her right to have his/her attorney present.
4. A suspect may answer some questions and refuse to answer others. The officer is not required to discontinue questioning unless the suspect indicates that [s]he wishes to remain totally silent, to stop the questioning or to consult with a lawyer.
5. Once a suspect has been arraigned, [s]he has the right to counsel, whether or not [s]he is in custody, and [s]he shall not be questioned in the absence of counsel unless [s]he specifically waives his/her right.<sup>16</sup>

**E. Documenting Statements and Confessions**

1. Officers shall take notes or record interrogations. Before recording an interrogation, the suspect shall be notified that the conversation will be recorded.<sup>17</sup>
2. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes:
  - a. Location, date, time of day and duration of interview;
  - b. Identities of officers or others present;
  - c. Miranda warnings given, suspect responses and waivers provided, if any; and
  - d. The nature and duration of breaks in questioning to provide the suspect food, drink, use of the restroom, or for other purposes.
3. The suspect shall be asked to read, sign and date all written statements and confessions.

4. The interrogating officer(s) shall sign and date all written statements and confessions.
5. The interrogating officer shall prepare and submit a report in accordance with departmental procedures which shall include the above information and any written or recorded statements.

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966)

<sup>2</sup> *Com. v. Morse*, 427 Mass. 117, 691 N.E.2d 566 (1998)

<sup>3</sup> *Oregon v. Mathiason*, 429 U.S. 492, 97 S.Ct. 711 (1977)

<sup>4</sup> *See, Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966); *Com. v. Podlaski*, 377 Mass. 339, 398 N.E.2d 1379 (1979)

<sup>5</sup> *Massiah v. U.S.*, 377 U.S. 201, 84 S.Ct. 1199 (1964)

<sup>6</sup> *Com v. Gajka*, 425 Mass. 751, 682 N.E.2d 1345 (1997)

<sup>7</sup> *Berkemere v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138 (1984)

<sup>8</sup> *Com. v. Wholley*, 429 Mass. 1010, 709 N.E.2d 1117 (1999); *See also, Vanhouton v. Com.*, 424 Mass. 327, 676 N.E.2d 460 (1999)

<sup>9</sup> *Com. v. Rosario*, 422 Mass. 28, 661 N.E.2d 71 (1996)

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Com. v. Nom*, 426 Mass. 152, 686 N.E.2d 1017 (1997)

<sup>13</sup> *Com. v. Nom*, 426 Mass. 152, 686 N.E.2d 1017 (1997); *Com. v. Hooks*, 38 Mass. App. Ct. 301, 647 N.E.2d 440 (1995)

<sup>14</sup> *Com. v. Roy*, 2 Mass. App. 14, 307 N.E.2d 851 (1974)

<sup>15</sup> *Com. v. Hosey*, 368 Mass. 571, 334 N.E.2d 44 (1975)

<sup>16</sup> *Massiah v. U.S.*, 377 U.S. 201, 84 S.Ct. 1199 (1964)

<sup>17</sup> M.G.L. c. 272, s. 99