

DEPARTMENT GENERAL ORDER 09-23

OFFICE of the CHIEF OF POLICE
REPLACES: General Order 99-08/99-08A
SOP 501.50.00

DATE: June 02, 2009

**CONSTITUTIONAL REQUIREMENTS: IN-CUSTODY INTERVIEW AND
INTERROGATION PROCESSES**

I. PURPOSE.

To establish guidelines to ensure that sworn members of the department abide by constitutional and statutory requirements in conjunction with the interrogation and interview processes of in-custody suspects.

II. GENERAL.

Officers will conduct interview and interrogation sessions in a professional manner and render the same degree of respect as they themselves would like to receive. Officers shall not make false promises, nor utilize physical abuse as a means to coerce a suspect into making an incriminating admission or statement.

In addition, members of the department shall utilize all responsible means available to communicate to the public that the law enforcement techniques employed by the department, particularly as they pertain to interview and interrogation, are administered in a fair and impartial manner.

III. MIRANDA WARNINGS.

The Miranda Decision, rendered by the U.S. Supreme Court in *Miranda V Arizona*, 384 US 436 (1966), requires that certain warnings be given by law enforcement personnel prior to any attempt to question a criminal suspect in regard to the events, facts, circumstances, etc. surrounding the offense for which the suspect is in custody, or for any other offense in which the suspect is believed to have been involved. Once the warnings have been given, either orally or in written form, and the suspect consents to waive his constitutional protections, the suspect may be freely questioned and any incriminating statements can be lawfully used against them. Failure to comply with the provisions of the supreme court decision shall render any statements made by a suspect inadmissible in a court of law.

An exception to the admissibility of incriminating statements falls under the classification of “spontaneous utterance,” in which a criminal suspect spontaneously, and without prompting, renders an incriminating statement or statements of their own volition. The fact that such statements may have occurred prior to an officer being able to administer a warning per the Miranda Decision renders them no less admissible in court. Should such a “spontaneous utterance” occur, the arresting officer shall verbally convey the appropriate warnings to the suspect before proceeding with any further questioning.

The warnings required by the Miranda Decision are as follows:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to an attorney and have him present with you during questioning.
4. If you cannot afford to hire an attorney, one will appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

At the time an arrest is initiated, an oral version of the Miranda Warning need not be automatically issued to coincide with the arrest process; however, should an attempt be made to question the suspect while still at the scene, Miranda Warnings shall be administered prior to any questioning, regardless of whether an individual has been arrested for a felony or misdemeanor. Yet, despite the preceding, Miranda Warnings need not be given under the following circumstances:

- A. When an individual has been taken into custody where the arresting officer witnessed the criminal violation and thus, no need for questioning exists.
- B. When the individual being questioned is not in custody nor has been deprived of his freedom of movement in any manner whatsoever. Such interviews are generally of an investigatory nature and should be documented in accordance with established protocol.

- C. When a traffic violator has been issued a Uniform Complaint and summons or been booked for any state or city traffic violation, with the exception of a felony and/or alcohol-related offense.
- D. When a suspect is arrested for a city or state court bench warrant related to a traffic offense.
- E. When a suspect is arrested and booked as a fugitive from another jurisdiction.
- F. When a suspect is questioned as to personal identifiers (ex. name, address, marital status, DOB, etc.).
- G. When fingerprints and photographs are taken during the booking process.
- H. When a suspect is requested to submit a handwriting analysis.
- I. When a suspect is required to submit to a test designed to determine the alcohol content of his blood.

In those instances where a suspect has been taken into custody and subsequently conveyed to this headquarters, the arresting officer should utilize the standard printed departmental rights form (Refer attachment) to apprise the suspect of his constitutional rights per the Miranda Decision. The suspect should then be requested to initial each specific right listed on the form and to sign the form in the appropriate space to indicate that they have been apprised of their constitutional rights and understand same.

Should the suspect be willing to waive their constitutional protection and make a statement, following the acknowledgment of their rights, they should additionally be requested to sign the waiver portion of the form. The suspect may then be questioned freely until such time as he/she indicates that they no longer wish to answer questions, or request an attorney. At that point, questioning of the suspect must cease.

Should a suspect refuse to sign the form acknowledging receipt of their constitutional rights, but verbally indicate that they understand their rights per the Miranda Decision and would be willing to answer questions or make a statement, the suspect signature line on the rights form should be marked "Refused to Sign." However, the suspect may then be questioned in regard to the offense.

In those instances where a suspect indicates that he or she is agreeable to making a written statement, the arresting officer should have the suspect write out the statement, in the suspect's own words, on a Voluntary Statement Form (Refer attachment). The suspect should also sign and date the statement, and initial all mistakes.

If the suspect refuses to waive their rights, they may not be questioned in regard to the offense for which they have been taken into custody.

Suspects who do not speak English will be apprised of their rights via interpreter in a language they understand.

Irrespective of the circumstances, the arresting officer and a witnessing officer will sign and date the rights form. The Miranda Rights Form shall then be packaged in a Rights Form envelope and attached to the original incident report. Upon completion of processing, same will subsequently be entered in the appropriate report folder. Should a written statement be prepared, same shall also be properly packaged and entered into the incident report folder.

IV. ACCESS TO COUNSEL.

Suspects shall be afforded ready access to legal counsel. On those occasions when a suspect requests to have an attorney present during questioning, the suspect shall be permitted to initiate contact with a lawyer of their choice. Should a court appointed attorney be requested, the suspect shall be permitted to contact the St. Louis County Public Defender's Office. In either case, the suspect shall not be interrogated until such time as his/her legal representative is present. However, it should be noted that a suspect has no legal right to have an attorney present when the suspect is not being questioned.

V. RECORDING OF CUSTODIAL INTERROGATIONS.

All custodial interrogations of persons suspected of committing or attempting to commit murder in the first degree, murder in the second degree, assault in the first degree, assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, arson in the first degree, forcible rape, forcible sodomy, kidnapping, statutory rape in the first degree, statutory sodomy in the first degree, child abuse, or child kidnapping shall be recorded when feasible.

As used in this section, "Custodial Interrogation" shall mean the questioning of a person under arrest, who is no longer at the scene of a crime, by a member of a law enforcement agency along with the answers and statements of the person being questioned. Custodial interrogation shall not include: (a) a situation in which a person voluntarily agrees to meet with a member of a law enforcement agency; (b) a detention by a law enforcement agency that has not risen to the level of an arrest; (c) questioning that is routinely asked during the processing of the arrest of a suspect; (d) questioning pursuant to an Alcohol Influence Report; (e) questioning during the transportation of a suspect.

Law enforcement agencies may record an interrogation in any circumstance with or without the knowledge or consent of a suspect, but they shall not be required to record an interrogation under the following circumstances: (a) if the suspect requests the interrogation not be recorded; (b) the interrogation occurs outside the state of Missouri; (c) if exigent public safety circumstances prevent recording; (d) to the extent the suspect makes spontaneous statements; (e) if the

recording equipment fails, or (F) if recording equipment is not available at the location where the interrogation takes place.

VI. TWENTY – FOUR HOUR HOLD.

Suspects arrested for a criminal offense may be held for a maximum of twenty-four (24) hours for investigative purposes. At the conclusion of that time, they shall be formally charged via a judicial authority or released from custody. Officers shall not attempt to transfer a suspect to another law enforcement agency or devise other delays with the intent to circumvent the legal twenty hour holding period.

VII. PRETRIAL PUBLICITY.

Press releases relative to the arrest or detention of a criminal suspect shall be made in accordance with the guidelines established in the directive covering “Public Information and Media Relations.” Department spokesmen shall guard against inordinate pretrial publicity so as not to prejudice a fair trial, and will initiate such internal steps as necessary to curtail unauthorized or excessive releases of information.

VIII. COMPLIANCE WITH REQUIREMENTS.

In accordance with their oath of office, wherein sworn members of the department pledge to support the constitution and the laws of the United States, the State of Missouri, and the charter and ordinances of the City, sworn officers shall comply with all constitutional and statutory requirements during the interrogation and interview of suspects and/or witnesses. As such, no statements or admissions shall be coerced. Failure to abide by legal and policy dictates may result in the dismissal of criminal prosecution, civil litigation, and/or internal disciplinary action.

BY ORDER OF:

THOMAS J. BYRNE
Chief of Police

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