

CITY OF ANDERSON POLICE DEPARTMENT

Anderson, South Carolina

DIRECTIVE TYPE General Order	EFFECTIVE DATE March 20, 2006	NUMBER 104
SUBJECT INTERVIEW and INTERROGATION (Constitutional Requirements)		
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104 **COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS OF: INTERVIEW AND INTERROGATIONS and ACCESS TO COUNSEL.**

The purpose of this policy is to establish written guidelines to safeguard the rights of individuals who are under investigation for a criminal offense.

Individual rights are provided for and protected by the U.S. Constitution and the Bill of Rights. The court system, including the U.S. Supreme Court, South Carolina Supreme Court, Appeals courts and lesser municipal courts interpret specific cases which outline the basic ground rules which must be followed and universally applied by police. Since court decisions are made frequently which change the course of law enforcement, officers must continually be aware through a review of literature, legal updates and training of these changing sets of rules. These policies will be reviewed and updated as often as possible to reflect the state of the art, however; whenever procedures are in conflict with any court having jurisdiction over criminal cases presented by this agency, the applicable court guidelines will be followed.

- A. **Constitutional Rights in Custodial Interrogations:** The government has the burden of demonstrating that a defendant knowingly and intelligently waived his privilege against self-incrimination. When the U.S. Supreme Court ruled that the warning of rights be given in *Miranda v. Arizona*, it affirmed the right of an in-custody suspect to remain silent in the face of police questioning or to seek the advice of an attorney before submitting to police interrogation.

However, the Supreme Court never intended to preclude law enforcement officers

from obtaining a voluntary confession by interrogating an in-custody suspect. In the *Miranda* decision, the court stated: "Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course admissible in evidence... Volunteered statements of any kind are not barred by the Fifth amendment and their admissibility is not affected by our holding today".

- B. **Miranda Warning:** Although *Miranda* warnings are a necessary predicate for a knowing and intelligent waiver, there is no rigid formulation of those warnings. The Supreme court said that nothing in the *Miranda* decision requires a "precise formulation of the warnings given a criminal defendant" and that "*Miranda* itself indicated that no talismanic incantation was required to satisfy its strictures." The real requirement is whether or not an accused is "adequately informed" and understands his rights. To ensure this, officers should give *Miranda* warnings in every custodial interrogation and should make a contemporaneous recording (i.e., initialed or signed warning & waiver, videotape, etc.) of the warnings provided.

The *Miranda* warning may be given orally or written, but should be documented at the time a suspect is advised on a written form, audiotape, videotape, or recorded on an arrest/booking form or supplemental report made contemporaneously with the arrest and interview.

The basic *Miranda* warning followed by the City of Anderson Police Department, to be read to all individuals being interviewed in custody, is as follows (also see section 175):

MIRANDA WARNING

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can and will be used against you in a court of law.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him present with you during questioning.

If you have no money to pay a lawyer's fee, the court will appoint one to represent you without cost if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

I have read this statement of my right and I understand what my rights are.

- C. **Waiver of Rights:** In order to obtain statements, which are admissible in court, the suspect must **knowingly, intelligently and voluntarily** waive his rights. Advising a suspect of his complete *Miranda* warnings constitutes the foundation for assuring these conditions. The Supreme Court, also in *Miranda*, gave examples of what would **not** constitute a waiver; for instance: "a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply by the fact that a confession was eventually obtained"; "there is no room for contention that the privilege is waived if the individual answers some questions and gives some information on his own prior to invoking his right to remain silent when interrogated"; and, "the fact of a lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights."
- D. **Police Conduct:** Police officers must permit the decision to waive one's rights to be made by that person: free of police threats or intimidation; free of moral or psychological pressure; free of trickery or deception. Officers must avoid any type of "police overreaching." They must merely provide a suspect with the "knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them", and then allow the suspect to decide what course of action he should follow.
- E. **Providing Information to Suspects:** The interrogating officer need not necessarily give any elements of the case under investigation, nor provide the suspect with any information other than that which is necessary to protect the fundamental privilege against self-incrimination. An officer **may** give the suspect additional information, but is not mandated to do so. An officer may be questioning an individual about a specific offense, and receive information about a second one.
- F. **Promises, Lies or Threats:** The courts on a case-by-case basis examine whether or not a suspect made a free and voluntary statement. Police interrogation tactics that suggest overreaching, intimidation or coercion may taint a confession and render a violation of due process. However, police misinformation or trickery that simply inflates the strength of the evidence against a defendant, without interfering with the defendant's "free and deliberate" choice to confess, does not necessarily taint the confession. Therefore, lies such as stating that a witness saw the defendant, the victim identified him, or that his fingerprints had been found does not necessarily render the confession as involuntary. Promises of leniency may render a confession as involuntary when the promise induces the confession, but promises simply to make the defendant's cooperation known with no promise of leniency or threat of punishment may be acceptable. Promises to protect the accused, to protect the accused's family, or to not arrest the defendant have been ruled to make a confession involuntary and inadmissible. In almost all cases, threats are viewed as coercive and fruits of a confession are inadmissible.

- G. **Right to Counsel:** Under certain circumstances, even proof of a knowing, intelligent and voluntary waiver of a suspect's Miranda rights will not be sufficient to guarantee the admissibility of that suspect's confession into evidence.
1. **Prior to criminal charges:** Once a custodial suspect asks to consult with an attorney, **no further interrogation is permitted**, until the suspect has had the opportunity to do so, or the suspect initiates the conversation with the police.
 2. **After charges have been filed:** From the time that an offender is brought into a court to begin the adversarial judicial process, the right to counsel under the sixth amendment has attached. Thereafter, the defendant has the right to legal representation in police interrogations.
- H. **Right of Discovery of Evidence:** In *Brady v. Maryland*, the Supreme Court made a landmark decision that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or innocence". This does **not** mean that all police investigatory work is subject to disclosure to the defendant. It **does** put a burden upon the investigator or officer to recognize evidence which is potentially exculpable to the defense (may tend to prove the innocence of the defendant), and to bring that evidence to the attention of the prosecutor.

By order of:



Martin D. Brown, Chief of Police

3-6-2006
Date