

CITY OF ANDERSON POLICE DEPARTMENT

Anderson, South Carolina

DIRECTIVE TYPE General Order	EFFECTIVE DATE September 11, 2020	NUMBER 104.2
SUBJECT Interview and Interrogation (Constitutional Requirements)		
REVISED September 11, 2020		
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this agency for non-judicial administrative action in accordance with the laws governing employee discipline		
REFERENCE SCLEA 2 nd Edition 1.4	AMENDS/SUPERSEDES 104; 104.1	
DISTRIBUTION All Personnel	RE-EVALUATION DATE Annual	NO. PAGES 5

- I. **Purpose:** The purpose of this policy is to guide officers in the tasks of interview and interrogation while protecting the constitutional rights of persons who are subjected to custodial interrogation and non-custodial interviews by officers of this Department.
- II. **Policy:** The policy of the Department is to safeguard all constitutional rights afforded citizens who are subject to custodial interrogation by the members of this department who are tasked with conducting criminal investigations, interviews and interrogations. All statements must be obtained voluntarily.
- III. **Definitions:**
 - A. **“Custodial Interrogation”** “Questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of their freedom of action in any significant way.”¹
 - B. **Interview:** A non-custodial conversation between persons who may have knowledge of the incident being investigated and the officer posing the questions.
- IV. **Procedure:**
 - A. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established certain procedural safeguards designed to protect the rights of an accused, under the Fifth and Fourteenth Amendments, to be free from compelled self-incrimination during custodial interrogation. The Court specified,

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

among other things, that if the accused indicates in any manner that he wishes to remain silent or to consult an attorney, interrogation must cease, and any statement obtained from him during interrogation thereafter may not be admitted against him at his trial. The Court declared that whenever a person is taken into police custody, before being questioned he or she must be told of the Fifth Amendment right not to make any self-incriminating statements. When a person is subjected to “**Custodial Interrogation**” as defined in **section III. A.** of this policy, the person must be advised of the following:

- a. **You have the right to remain silent.**
- b. **Anything you say can and will be used against you in a court of law**
- c. **You have the right to an attorney**
- d. **If you cannot afford a lawyer, one will be appointed to you.**
- e. **Do you understand the rights I have just read to you?**

B. Giving the Warnings: Miranda applies: no matter the seriousness of the offense – whether the custody is for an arrestable violation, a misdemeanor or for a felony.

- a. When an interrogation is done at a police station or detention facility the **Miranda Warnings** should be read from a Miranda Warnings form containing a signature line indicating the person understood their rights and a second signature line indicating the persons chooses to waive or invoke their rights. Ideally, a waiver should be written, signed and witnessed, but that is not always possible.
- b. When the interrogation is conducted in a place other than a police station or detention facility the officer should read the Miranda Warnings from a pre-printed card.
- c. Where written warnings are not available (printed forms or card) to the officer he may recite the warnings from memory that adequately convey the four warnings.²
- d. When the person invokes their right to counsel by written signature or spoken word, no questioning will take place.
- e. When a person indicates by signature or spoken word that they understand their rights and waive their right to silence and waive their right to counsel, by signature or spoken word, the questioning of the person may begin. The person must voluntarily, knowingly and intelligently waive their rights. All statements must be obtained voluntarily.
- f. If at any time during questioning the person invokes their right to counsel or their right to silence, the questioning will stop.
- g. When a person indicates through signature or spoken word that they understand their rights, but refuses to indicate through signature or spoken word to either invoke their rights to silence &

² Powell v. Florida, 130 S.Ct. 1195 (2010).

- counsel to waive their rights to silence & counsel the officer may initiate questioning. 3 An invocation of the right to remain silent under Miranda must be clear and unambiguous.
- h. Invocation of Right to Counsel:** The interrogating officer or any other officer may not reinitiate interrogation of a suspect once the suspect has invoked his or her right to counsel. No interrogation may take place unless counsel is present at the interrogation even if the suspect has had an opportunity to speak with counsel.⁴
 - i. Police Re-Initiating Contact: Fourteen Days (14)** after a break in Miranda-based custody, investigators may re-initiate questioning of a subject who had previously invoked his right to counsel for the same investigation.⁵
 - j. Police Re-Initiating Contact:** Interrogation following an invocation of the “**right to remain silent**” is permissible under certain circumstances⁶. An officer may reinitiate discussion, at least to the extent of asking if a suspect is willing to continue an interrogation when:
 - i.** The suspect did not invoke the right to counsel but did invoke the right to remain silent.
 - ii.** The suspect’s right to remain silent was clearly honored in the first interrogation.
 - iii.** A significant amount of time has passed between the first and second interrogation.
 - iv.** The suspect was given a fresh set of warnings before the second interrogation and waived their rights.
 - v.** No pressure tactics or illegal tactics were used to get the suspect to relent.
 - k. Suspect Re-Initiating Contact:** Police may question a suspect who has previously invoked his right to counsel in cases where the suspect has reinitiated the conversation with officers. Officers must prove that, in addition to re-initiation by the suspect, there was also a valid and knowing waiver of rights prior to the second interrogation therefore, fresh Miranda warnings and a valid waiver must be obtained before questioning begins. ⁷
 - l. Public Safety Exception:** In certain circumstances, a failure to give Miranda warnings or a continuation of interrogation after Miranda had been given and rights invoked may be excused by a concern for public safety. This type of interrogation may be allowed if the law enforcement officers can show that the “paramount reason that the information is being sought is to save a life. In 1984, the Supreme Court carved out an exception to the Miranda rule in its decision *New York v. Quarles* which determined that if there’s an imminent threat to public safety, suspects can be questioned about the threat before they are read their rights and their statements can still be used against them.⁸ Where is the bomb? Where is the kidnapped girl hidden?

3 *Berghuis v. Thompkins*, 130 S.Ct. 2250 (2010). A suspect’s silence during interrogation is not an invocation of their right to remain silent. An invocation of the right to remain silent under Miranda must be clear and unambiguous.

4 *Edwards v. Arizona*, 451 U.S. 477 (1981).

5 *Maryland v. Shatzer*, 130 S.Ct. 1213 (2010).

6 *Michigan v. Mosley*, 423 U.S. 96 (1975).

7 *Oregon v. Bradshaw*, 462 U.S. 1039 (1983).

8 *New York v. Quarles*, 467 U.S. 649 (1984).

- m. **Non-Custodial Interviews:** A suspect who voluntarily comes to the police station at the invitation of an officer and is told prior to questioning that he is not under arrest and free to go, need not be given warnings since he or she is not in "custody."⁹ The person being interviewed should not be placed in a locked interrogation room and restraints cannot be applied.
- n. In order for the requirements of Miranda to be met, the suspect must be able to understand their rights. Possible barriers to understanding include:
 - i. subnormal intelligence,
 - ii. extreme intoxication,
 - iii. hearing difficulty,
 - iv. language difficulties.

Officers must ensure the person about to be interrogated understands their rights. Using an interpreter, a sign language expert, waiting for the person to sober up or slowing explaining in detail and answering questions can help to ensure the person understands their Miranda rights.

C. Interview Room – see also GO 114 Interview/Interrogation Rooms

- a. Where audio and video equipment are available officers should utilize it. The entire interrogation to include the reading of Miranda warnings and the persons waiver or invocation of rights shall be recorded.
- b. Items in the interview rooms should be limited to a table and enough chairs to accommodate the individuals in the room. Any other items brought into the room shall be at the discretion of the officer/investigator conducting the interview.
- c. The number of people present while conducting an interview/interrogation should be kept to a minimum. Typically, this should be no more than two officers/investigators and the person being interviewed. Special circumstances may require a parent, guardian, or legal representative. Ultimately, it will be up to the primary officer/investigator on a case-by-case basis to make up the decision as to who may be present.
- d. All individuals are afforded an opportunity to address their personal needs during an interview/interrogation. It will be at the officer/investigator's discretion when a break is conducted. All individuals being interviewed who wish to utilize the facilities (restrooms, water, etc.) shall always be escorted by an officer/investigator within any secured area of the building. Officers should document what transpired while out of view of the camera.
- e. Prior to usage of the interview room, officers/investigators shall search the room for weapons and/or contraband that may pose a threat to not only the officer/interviewer but also the subject being interviewed.

⁹ Oregon v. Mathiason, 429 U.S. 492 (1977).

f. Once the interview has been completed, the officer/investigator will again search the room prior to exiting.

D. Juveniles-Discussion: The courts have stated children generally are less mature and responsible than adults, they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them. They are more vulnerable or susceptible to outside pressures than adults. In determining whether or not a juvenile is capable of waiving their rights under Miranda, a totality of circumstances approach will be taken,¹⁰ which considers the:

- a. **Age of the person:** In determining whether a juvenile is “in-custody” for purposes of requiring Miranda warnings, an officer must take into account the juvenile’s age. In making this determination the officer should consider: whether a person of the suspect’s age faced with the circumstances the suspect is facing, would believe they were formally arrested or that their freedom of movement was restrained to the degree normally associated with formal arrest.¹¹
- b. **Educational level:** Including last grade completed
- c. **Experience:** Prior contacts and arrests with the police and interaction with the courts
- d. **Background**
- e. **Intelligence**
- f. A juvenile’s request for someone other than an attorney is not an invocation of Miranda but may be considered as part of the totality of circumstances approach.

By order of:



Jim Stewart, Chief of Police

9-11-20

Date

¹⁰ Fare v. Michael C. , 442 U.S. 707 (1979).

¹¹ J.D.B. v. North Carolina, 131 S. Ct. 502 (2010).