

INTERROGATIONS AND CONFESSIONS

<i>Effective Date:</i> April 15, 2013	<i>Directive Number:</i> 10-2-13	
<i>Special Instructions:</i>		
<i>Distribution:</i> All Sworn & Civilian Personnel	<i>Last Re-Evaluation Date:</i>	<i>Total Pages:</i> 3

I. PURPOSE

The purpose of this policy is to provide officers with legally sound procedures for conducting custodial interrogations.

II. POLICY

Custodial interrogations of suspects and the statements and confessions that are elicited are vitally important in the preparation of criminal cases. However, to be admissible as evidence, statements and confessions must be given freely and voluntarily and with due consideration for the suspect's right to silence and right to counsel. Therefore, it is the policy of this law enforcement agency that all others understand and follow this agency policy in order to observe due process rights of suspects and to guard against any changes of police coercion or intimidation during interrogation.

III. DEFINITIONS

- A. Custody:** A custodial situation exists when an officer tells a suspect that he/she is under arrest. A functionally equivalent situation exists when a "reasonable person" in the suspect's position would feel that his freedom of action has been restricted to the same degree as a formal arrest.
- B. Interrogation:** Interrogation includes direct questioning of a suspect about a crime or suspected crime, as well as any words, statements or actions by officers that the officer should know are reasonably likely to elicit an incriminating response from the suspect.

III. PROCEDURES

A. Custodial Statements and Confessions

1. *Miranda* warnings are required and shall be administered prior to "custodial interrogation", as defined above.
2. The following represent examples of situations that are not "custodial" and do not require issuance of *Miranda* warnings:
 - a. Investigatory stop and frisk;
 - b. Questioning during a routine traffic stop for a minor violation; to include driving while intoxicated (DUI) stops until a custodial interrogation begins;

- c. During routine questioning at the scene of an incident or crime when the questions are not intended to illicit incriminating responses;
- d. During voluntary appearances at the police facility;
- e. When information or statements are made spontaneously, voluntarily and without prompting by police. (Note: Follow up questions that exceed simple requests for clarification of initial statements may require *Miranda* warnings.)

B. Administering Miranda Warnings

- 1. *Miranda* warnings shall be read by officers from the card containing the information to all persons subjected to custodial interrogation. Freelancing, recitation from memory or paraphrasing the warnings is prohibited as it precludes officers from testifying in court as to the precise wording used.
- 2. Officers shall ensure that suspects understand their right to remain silent and their right to an attorney. Suspects may be interrogated only when they have knowingly and intelligently waived their rights. Threats, false promises or coercion to induce suspect statements is prohibited.
 - a. Waivers of one or both of the *Miranda* rights must be performed affirmatively.
 - b. Oral waivers are often sufficient, but written waivers, particularly in felony charges, are preferred and should be obtained whenever possible on the appropriate agency form.
- 3. Officers arresting deaf suspects shall notify their immediate supervisor and make arrangement to procure the assistance of an interpreter in accordance with this agency's policy and state and federal law.

C. Invoking the Right to Silence

- 1. When a suspect invokes his right to remain silent, all interrogation shall terminate IMMEDIATELY.
- 2. Suspects who are not represented by an attorney may not be interrogated for at least ninety (90) minutes after invoking their right to silence and then, only after officers have re-administered *Miranda* warnings and obtained a waiver.
- 3. Officers may interrogate a suspect who has previously invoked his right to silence, if, after the passage of time, the suspect initiates communication with officers. However, prior to questioning *Miranda* warnings shall be re-administered and a waiver obtained.

D. Invoking the right to Counsel

- 1. If a suspect waives his right to counsel, a waiver shall be obtained prior to questioning. When a suspect makes reference to counsel but his intentions are unclear, officers may question the suspect further to clarify his intentions.

2. When a suspect invokes his right to counsel, all interrogation shall cease IMMEDIATELY. The suspect may not again be interrogated about the crime for which he is charged, other crimes, or by other officers (from this or other agencies) unless:
 - a. The suspect's attorney is present at the questioning; or
 - b. the suspect initiates new contact with the police. In this later case, Miranda rights must again be administered and a waiver obtained before any questioning may take place. Officers shall also document and, if possible, obtain written verification that the suspect initiated the communication.
3. Officers shall cooperate in any reasonable way with efforts by counsel to contact or meet with suspects in custody.

E. Documenting Statements and Confessions

1. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes, but is not necessarily limited to:
 - a. location, date, time of day and duration of interrogation;
 - b. the identities of officers and/or other present;
 - c. Miranda warnings given, suspect responses and waivers provided, if any; and
 - d. the nature and duration of breaks in questioning provided the suspect for food, drink, use of lavatories or for other purposes.
2. Investigative officers are encouraged to use this agency's video and audio taping capabilities for purposes of recording statements and confessions in an overt or covert manner consistent with state law.
3. The lead investigative officer may decide in which cases audio and/or video tape recordings may be appropriate and whether covert or overt procedures may be used. Tape recordings designated as evidence shall be handled in the following manner:
 - a. Original tape recordings shall be duplicated and each copy stored separately;
 - b. The tab on the tape housing of both the original and duplicate copies shall be removed to preclude the possibility of erasure or tampering.
 - c. Tape recordings shall be stored in a secure location under controlled access as designated by the officer-in-charge of criminal investigations.
 - d. All tape recordings shall be inventoried on a routine basis.

ORDER EXECUTED and ISSUED this 15th day of APRIL, 2013

Christopher Workman
Chief of Police