



CITY OF AKRON, OHIO
POLICE DIVISION
KENNETH R. BALL II, CHIEF OF POLICE

NUMBER P-2020-053	EFFECTIVE DATE September 29, 2020	RESCINDS
SUBJECT Custodial Interrogation		ISSUING AUTHORITY Chief Kenneth R. Ball II

I. POLICY

Custodial interrogations of suspects and the statements that are elicited are vitally important in the preparation of criminal cases. However, to be admissible as evidence, statements must be given freely and voluntarily and with due consideration for the suspect's right to silence and right to counsel. Therefore, all officers must understand and follow this agency policy in order to observe due process rights of suspects and to guard against any charges of police coercion or intimidation during interrogation. It is understood that judicial decisions may serve to expand or limit law enforcement authority to conduct interviews and interrogations. Questions regarding the current state of *Miranda* should be directed to a Police Legal Advisor.

II. DEFINITIONS

- A. Custody - A custodial situation exists when an officer tells a suspect that he 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 officers should know are reasonably likely to elicit an incriminating response from the suspect.
- C. Electronic Recording - An audio and/or video recording whether using magnetic tape, digital means, or other recording media.
- D. Place of Detention - A jail, police or sheriff's station, holding cell, state correctional institution, local correctional facility, detention facility, or department of youth services facility. "Place of detention" does not include a law enforcement vehicle.

III. PROCEDURE

- A. Custodial Statements

1. *Miranda* warnings are required and shall be administered prior to a custodial interrogation.
2. The following represent examples of situations that are not custodial and do not require *Miranda* warnings.
 - a. Investigatory Stop and Frisk
 - b. Questioning during a traffic stop or for a minor violation; to include OVI stops until a custodial interrogation begins.
 - c. During questioning at a scene or incident when questions are not intended to elicit incriminating responses.
 - d. During voluntary appearances at the police department.
 - e. When statements are made spontaneously, voluntarily, and without prompting. Follow up questions that exceed simple clarification requests may require a *Miranda* warning.

B. Administering *Miranda*

1. *Miranda* warnings shall convey the following rights to suspects:
 - 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 talk to a lawyer and have him or her present with you while you are being questioned.
 - d. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish.
 - e. You can decide at any time to exercise these rights and not answer any questions or make any statements.
2. Officers shall ensure that suspects understand their *Miranda* rights and want to speak to the officers before questioning. Suspects may be interrogated only when they have knowingly and intelligently waived their rights. Threats, false promises, or coercion to induce statements or confessions is prohibited.
3. Officers arresting deaf or limited English proficiency suspects shall follow department procedures to procure an interpreter if needed for questioning.
4. There is no requirement for the parent or guardian of a juvenile suspect to be present during their interrogation as long as the juvenile is able to understand their *Miranda* warnings and knowingly and voluntarily waive their rights. The age and maturity

level of the juvenile should be considered when making this determination. If the officer determines that the juvenile is not able to understand their Miranda warnings, then a parent or guardian must be present during the interrogation.

B. Invoking the Right to Silence

1. When a suspect has invoked their right to remain silent, all interrogation shall stop immediately.
2. Officers may interrogate a suspect who previously invoked the right to silence if the suspect freely initiates communication with officers regarding their case. Prior to questioning the *Miranda* warning shall be re-administered if the suspect is in custody.
3. Officers may re-approach a suspect who has previously invoked their right to silence after a significant period of time, not less than 2 hours. *Note: This does not apply to suspects who have invoked their right to counsel.* If the suspect has changed their mind, the *Miranda* warning shall be re-administered if the suspect is in custody. Officers shall not encourage or pressure a suspect to change their mind.

C. Invoking the Right To Counsel

1. When a suspect invokes their right to counsel, all interrogation shall cease immediately. The suspect may not again be interrogated about the crime for which they are charged, other crimes, or by other officers unless:
 - a. The suspect's attorney is present, or
 - b. The suspect freely initiates new contact with officers regarding their case. In this case, the *Miranda* warning shall be re-administered and a clear waiver obtained before questioning. Officers shall document that the suspect initiated communication.

D. Documenting Statements

1. The circumstances regarding the conduct of interrogations and recording of statements shall be documented. This includes but is not limited to:
 - a. Location, date, time of day, and duration;
 - b. The identities of officers or others present;
 - c. The nature and duration of breaks in questioning provided the suspect.
2. Custodial interrogations shall be electronically recorded whenever possible. In the event recording is not possible the investigating officer shall document the reason in their investigative report.

3. All custodial interrogations that occur in a place of detention with a suspect or possible suspect in regard to Aggravated Murder, Murder, Voluntary Manslaughter, Involuntary Manslaughter, Aggravated Vehicular Homicide, Vehicular Homicide, Vehicular Manslaughter, Rape, or Sexual Battery shall be electronically recorded including both video and audio.

By Order Of,



Kenneth R. Ball II
Chief of Police

Date SEPT 29, 2020