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Purpose

Interrogations of persons who are in police custody must conform to the standards set forth in the Miranda decision and to due process. Police interrogation techniques include any words or actions which are designed to elicit incriminating statements. Officers shall comply with all applicable constitutional and Massachusetts Article 14 requirements. [42.2.0]

If a police interrogation does not conform to legal standards, it can result in evidence being declared inadmissible in court. If the suspect "knowingly and intelligently" waives his/her rights to this constitutional protection, the interrogation can begin. The critical elements to be considered are whether there is a coercive environment and whether the person being questioned is free to leave.

It is important to understand that Miranda procedures only apply if both of the following situations are present:

- A.** A person is in police custody or is otherwise deprived of his/her freedom of movement in a significant manner.
- B.** There is police questioning or its functional equivalent, including any words or actions that are reasonably likely to elicit an incriminating response.

A suspect can stop any police questioning at any time by invoking his/her right to silence or by requesting the services of an attorney.

The ultimate goal of a police interrogation should be to obtain the truth - not just to produce a confession or an admission of guilt.

"Spontaneous" statements made to the police before, during, or after the arrest by a person in custody are admissible in evidence even though the arrested person was not warned of his/her rights, provided that these statements are voluntary and are not made in response to police questioning or other actions.

In order to obtain results, every police investigator should recognize the objectives of an interrogation, which should include the following:

- A. Learning the truth.
- B. Ascertaining the identity of criminal participants and accessories.
- C. Obtaining an admission or a confession of guilt.
- D. Acquiring all the facts, circumstances, and method of operation of the crime under investigation.
- E. Gathering information which may corroborate or disprove information obtained from other sources.
- F. Eliminating suspects.
- G. Uncovering information of any other crimes in which the suspect being questioned is, or has been, involved.
- H. Recovering evidence or property.
- I. Recording and reporting all information obtained for subsequent court action.

Policy

It is the policy of the Somerville Police Department that:

- A. Officers and detainees shall be provided a safe and secure environment to conduct interviews and interrogations.
- B. Persons in custody shall be given their Miranda rights prior to any police interrogation.
- C. The due process rights of persons in custody will be respected. [42.2.0]

Definitions

Custody: When a person is under arrest or deprived of his/her freedom in a significant manner.

Interrogation: Express questioning of a suspect about a crime or suspected crime, as well as any words or actions on the part of the police that the officers should know are reasonably likely to elicit an incriminating response. [42.2.0]

Interview: Interviewing is the method used to obtain information from those persons, not in custody, that are willing to provide it. An interview is a conversation with a purpose. For police objectives, an interview is a conversation between an officer and any person, who may or may not have information relevant to the investigation. The interviewing of witnesses enables the investigator to collect pertinent facts, and to substantiate additional information. Information gathered from field interviews involving suspicious activity or persons should be documented. [42.2.0]

Procedures

A. Interview and Interrogation Room

1. The intent of this procedure is to establish safe conditions for various situations that officers (uniformed and non-uniformed) may encounter when conducting interviews and interrogations at police headquarters. Occasionally, however, serious conditions unexpectedly develop such as an apparently cooperative suspect becoming combative. This procedure will establish clear direction for the use of the Criminal Investigation Division (CID) interview/interrogation room to ensure safety and the admissibility of any statements made there. [42.2.10]
 - a. No officer shall take control of a detainee without prior consent of the Shift Commander. The officer taking control of the detainee should be of the same gender, or have a second officer present, and shall notify the Shift Commander before removing the detainee from the holding cell area with the assistance of a station officer. [72.8.3]
 - b. Before entering the holding facility cell block area, officers shall secure their weapons in gun lockers. If the detainee is escorted to the CID interview/interrogation room, the same procedure shall be followed using the gun lockers located in the CID Unit. Somerville officers and armed officers from outside agencies shall adhere to this requirement. [42.2.10(a)]
 - c. Officers taking custody of a detainee shall search the detainee for weapons or contraband before entering the interview/interrogation room. Officers shall be responsible for the supervision of the detainee. The detainee shall be physically observed at all times to prevent escape or to intervene, if the situation warrants. [42.2.10(b)]
 - d. Access to the interview/interrogation room and detainee shall be limited to the arresting officers(s), supervisors, and investigating officers. Generally, not more than two (2) officers should be in the interview/interrogation room at one time. [42.2.10(c)]

- e. Officers entering the interview/interrogation room may use any available means of communication to obtain assistance, including but not limited to a portable radio, telephone, or any means necessary. [42.2.10(d)]
- f. Tables, chairs and suitable note taking utensils, a tape recorder, or audio and video imaging equipment are items allowed in the interview/interrogation room. All interview/interrogation rooms in the CID Unit are pre-equipped to record audio and video communication. [42.2.10(e)] [42.2.10g]
- g. Detainees shall be allowed access to a restroom, water, or comfort breaks as needed. [42.2.10(f)]
- h. A detainee escorted to the CID interview/interrogation room shall pass through the metal detector before being returned to a cell.

B. Providing Miranda Warnings

1. Officers shall give Miranda warnings as soon as practicable whenever a person is placed in custody or deprived of his/her freedom in a significant manner and is subject to interrogation.
 - a. Before questioning, the Miranda warnings shall be read from a pre-printed card or Miranda Form in a clear and unhurried manner.
 - b. Persons who do not speak English must be given these warnings in a language that they understand.
 - c. Sample Miranda Warning Language:
 - (1). You have the right to remain silent
 - (2). Anything that you say can be used against you in a court of law
 - (3). You have the right to consult with an attorney before being questioned and to have the lawyer present during the interrogation [42.2.0]
 - (4). If you cannot afford a lawyer, one will be appointed for you at government expense and you can consult with the appointed lawyer prior to the interrogation and have the appointed lawyer present during the interrogation
 - (5). If you decide to answer questions, you may stop at any time
2. The suspect shall then be asked the following questions:

- a. Do you understand each of these rights that have been explained to you?
 - b. Having these rights in mind, do you wish to answer questions now?
3. When the Booking Officer has knowledge that an interrogation is to be conducted on a person being booked, the person to be interrogated shall have the Miranda warnings read to them as part of the booking process. The suspect shall then be asked to sign a Miranda Form acknowledging that the warnings were given. The officer giving the warnings shall sign the form as a witness, giving the date and time the suspect was advised.
 4. If there is any substantial delay between the Miranda warnings and the police questioning, the suspect shall be advised of these rights again before the questioning begins.
 5. Whenever an officer has any doubt as to the applicability of the Miranda warnings in any particular case, it is advisable that these warnings be given to the suspect to avoid any subsequent legal barrier to the admissibility of any statements obtained.
 6. If at any time a suspect requests to read his/her rights, or to be informed of his/her rights, these requests shall be granted.
 7. Juveniles: Before a juvenile between the ages of seven (7) and eighteen (18) is questioned, the Miranda warnings shall be given in the presence of the juvenile and his/her parent, guardian, or other interested adult. The adult must acknowledge that he/she understands the rights, and the juvenile must be given the opportunity to have a meaningful consultation with the adult. See department policy on Handling Juveniles.

C. Non-Miranda Situations

1. Spontaneous Statements

- a. Officers may note any spontaneous and volunteered statements. When a suspect or prisoner voluntarily makes a statement, officers do not have to prevent him/her from continuing to talk, and the Miranda warnings are not a prerequisite for admissibility.
 - (1). Spontaneous and volunteered statements are statements made by a suspect of his/her own free will and not made in response to police questioning.
 - (2). A person who voluntarily enters a police station and makes incriminating statements need not be given the Miranda warnings.
 - (3). Spontaneous and volunteered statements are admissible after the suspect is in custody, and before, during, or after actual interrogation so long as the statements are clearly voluntary.

2. Investigatory Stop and Frisks [42.2.0]

- a. Non-custodial preliminary or investigative questioning need not be preceded by Miranda warnings. See department policy 111 Stop and Frisk.

3. Non-Law Enforcement Questioning

- a. Miranda does not apply to statements made in response to questioning by private citizens, unless the private citizen is acting on behalf of the police. For a citizen to constitute an agent of the police, the police must initiate the citizen's help. Thus, where a fellow detainee initiates questioning about a crime in hopes of trading information for a lighter sentence, any statements made are admissible if the police neither encouraged nor sought the detainee's assistance.

4. Traffic Violations or Traffic Accidents

- a. A person need not be given Miranda warnings if he/she has been stopped for violating motor vehicle laws.
- b. An officer's request that a motorist perform field sobriety tests does not require that Miranda warnings be given.

D. Waiver of Rights

1. Valid Waivers

- a. Statements made by an arrestee more than six (6) hours after the arrest (safe harbor period) are inadmissible unless the arrestee has been arraigned or has made a valid written waiver of his/her right to be arraigned without unreasonable delay. [42.2.0]
 - (1). If the arrestee is incapacitated due to a self-induced disability (such as the use of drugs or alcohol) the six (6) hour safe harbor period does not begin until the disability terminates.
 - (2). The six (6) hour period is tolled when interrogation is not possible or must be suspended for reasons not attributable to the police, such as a natural disaster or emergency.
- b. The interrogating officers should be certain that the suspect understands the rights which have been read to him/her, as the burden will be on the prosecution to prove that the waiver was valid.
- c. The waiver must be made voluntarily, knowingly, and intelligently to meet the conditions of the Miranda decision.

- d. In determining whether a valid waiver was made, the court examines whether in light of the totality of the circumstances surrounding the making of the waiver, the will of the suspect was overborne such that the statement was not a free and voluntary act. The court considers the circumstances of the interrogation and the individual characteristics and conduct of the suspect, such as the length of time which transpired between the giving of the Miranda warnings and the waiver, the suspect's age, mental capacity, and experience.
- e. When the suspect waives his/her rights, the interrogating officers shall obtain a written waiver when possible. A waiver may be made orally or in writing, but a written and properly-witnessed waiver is more likely to be upheld in court.
- f. Silence on the part of the suspect does not constitute a valid waiver.
- g. The physical and emotional condition of the person being questioned is an important consideration in determining the validity of a waiver. The police should refrain from questioning if the suspect is clearly not capable of understanding his/her rights.

2. Competency

- a. A suspect must be competent to waive his/her rights before police questioning. The question of competency is a question of fact to be determined by the circumstances in each case.
- b. The competency issue is more likely to be raised under the following circumstances:
 - (1). If the suspect is distraught or very disturbed because of any mental or emotional condition.
 - (2). If the suspect has been wounded or is the victim of shock or other physical impairment.
 - (3). If the suspect is so intoxicated or influenced by alcohol or drugs that he/she cannot think rationally or act sensibly.
 - (4). If the suspect's intelligence level is so low, or his/her learning and education are so minimal, that he/she does not comprehend his/her rights.
- c. In any of the circumstances enumerated above, any waiver obtained will be carefully scrutinized by the court.

3. Assessing Competency

- a. After the Miranda rights have been read and after the suspect has shown an initial willingness to waive those rights, the police may ask the suspect about the following in order to properly assess the suspect's ability to intelligently understand and waive his/her rights:

- (1). His/her age
- (2). Whether he/she is under the influence of any drugs or alcohol
- (3). Whether he/she is suffering from any mental or emotional problem
- (4). His/her education and learning
- (5). His/her employment
- (6). Whether he/she has ever been given Miranda warnings previously
- (7). Whether he/she understands the words used by the officer in reciting the Miranda warnings

E. Access to Counsel [42.2.0]

1. If a suspect states that he/she wishes to consult an attorney, the suspect must not be questioned further by police until he/she has had an opportunity to consult an attorney. However, if the suspect initiates statements or conversation, the police may respond to those statements or conversation in accordance to Massachusetts law standards relating to interrogation.
2. In accordance with the Supreme Judicial Court Decision Commonwealth v McNulty, 458 Mass. 305 (2010), when a suspect is in custody and is being interviewed (or is about to be interviewed), and an attorney calls to inform investigators that he or she represents the suspect and wants to speak with the suspect, police have an obligation to transmit that message including a message advising the suspect not to talk to investigators. The attorney should be connected immediately with someone who has access to those conducting the interrogation or interview. In addition:
 - a. If possible, the attorney's call should be recorded, logged, and saved for disclosure in the discovery process.
 - b. This obligation exists even where the suspect has been informed of his Miranda rights and agreed to talk to police without an attorney present, and where the suspect does not know that an attorney has been appointed or retained on his behalf.
 - c. If the attorney asks that a message be passed on to the suspect, police must stop questioning and comply with the attorney's request. The message need not be transmitted verbatim, but the substance must be transmitted to the suspect.
 - d. If, after receiving the message, the suspect invokes his right to silence, or to counsel, police must stop the interrogation. If, on the other hand, the suspect chooses to continue the interview, it may proceed.

- e. Police officers should make a record of their communication of an attorney's message to a suspect. Where the interview is being recorded, the officers' relaying of the message and the suspect's decision to continue or terminate the interview should be captured on the tape.
 - f. If the suspect has declined to allow the interview to be recorded, a written record should be made, reflecting the time the questioning was suspended and what information was relayed to the suspect. It must also show whether the suspect decided to invoke his right to silence or to counsel, or whether he affirmed that he wished to continue the interview without counsel.
3. Although a suspect has voluntarily waived his/her right to remain silent, the suspect may still invoke this right by refusing to answer any further questions or by requesting the services of an attorney, and at this point the police questioning **must stop**.
 4. If the police are aware that the suspect is represented by an attorney, even on other matters, and that the attorney desires to be present with his/her client during any questioning, the police must inform the suspect that their attorney wishes to be present during questioning. However, once informed, the suspect may waive his/her right to have an attorney present.
 5. A suspect may answer some questions and refuse to answer others. The officer is not required to discontinue questioning unless the suspect indicates that he/she wishes to remain totally silent, to stop the questioning, or to consult with an attorney.
 6. Once a suspect has been arraigned, he/she has the right to counsel, whether or not he/she is in custody, and the suspect shall not be questioned in the absence of counsel unless the suspect specifically waives his/her right.

F. Documenting Confessions and/or Admissions [42.2.0]

1. Officers shall electronically audio and video record all interrogations **conducted in police headquarters or any place of detention** whenever it is practicable. Before recording an interrogation, the suspect shall be notified that the conversation will be recorded.
2. The circumstances surrounding the conduct of interrogations and recording of confessions and/or admissions shall be fully documented. This includes:
 - a. Location, date, time of day, and duration of interview
 - b. Identities of officers or others present
 - c. Miranda warnings given, suspect responses, and waivers provided

- d. The nature and duration of breaks in questioning to provide the suspect food, drink, use of the restroom, or for other purposes
3. The suspect shall be asked to read, sign, and date all written statements and confessions.
4. The interrogating officer(s) shall sign and date all written statements and confessions.
5. The interrogating officer(s) shall prepare and submit a report in accordance with departmental procedures which shall include the above information and any written or recorded statements or confessions.