





POLICIES AND PROCEDURES MANUAL

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|  | INTERROGATIONS | |
| | POLICY NUMBER: 1-3 | ISSUING AUTHORITY  |
| | EFFECTIVE DATE: January 1, 2025 | Christine A. Elow Police Commissioner |

I. GENERAL CONSIDERATIONS AND GUIDELINES

The successful interrogation of a suspect can greatly influence the possibility of a successful resolution of an investigation. To this end, all constitutional and case law requirements must be carefully met for any findings to be admissible as evidence in subsequent court proceedings.

The purpose of an interrogation is to seek the truth. At times this will prove to be difficult. However, Cambridge police officers shall seek the truth to the best of their abilities, mindful of the department's guiding principles of fairness, impartiality, and transparency. In the end, it is just as important to clear or exonerate an innocent person as it is to identify and prosecute a guilty one.

II. POLICY

It is the policy of the Cambridge Police Department to:

- A. afford all persons in custody the due process rights guaranteed to them by the Constitution;
- B. provide training to all qualified department investigators such that they have a meaningful understanding of the laws and court decisions impacting the way police interrogate suspects; and
- C. conduct all custodial interrogations in accordance with the principles of due process and procedural justice including fairness, impartiality, and transparency.

III. DEFINITIONS

- A. *Commonwealth v. DiGiambattista, 442 Mass. 423 (2004)*: The case requiring that when the police do not electronically record a custodial interrogation or interrogation conducted in a place of detention, and evidence of the defendant's confession or statement is introduced into evidence, the defendant is entitled, on request, to a cautionary jury instruction concerning the use of such evidence.

- B. *Commonwealth v. McNulty*, 458 Mass. 305 (2010): The case requiring the police to notify immediately a suspect who is being interrogated when an attorney calls or appears in person and asks to speak with the suspect.
- C. *Commonwealth v. Rosario*, 422 Mass. 28 (1996): Commonly referred to as the safe harbor rule requiring that investigators not hold a suspect for the purpose of interrogation for more than six hours.
- D. *Custody*: When a detainee is under arrest, deprived of freedom in a significant manner, or reasonably believes that he/she is not free to leave.
- E. *Due Process*: The principle that an individual cannot be deprived of life, liberty, or property without appropriate legal procedures and safeguards. The Bill of Rights and the Fourteenth Amendment to the Constitution guarantee that any person accused of a crime must be informed of the charges, be provided with legal counsel, be given a speedy and public trial, enjoy equal protection of the laws, and not be subjected to cruel and unusual punishment, unreasonable searches and seizures, double jeopardy, or self-incrimination.
- F. *Interrogation*: The express questioning, or its functional equivalent, of a suspect in custody about a crime or suspected crime, as well as any words or actions on the part of the police that the officer should know are reasonably likely to elicit an incriminating response. *Commonwealth v. Morse*, 427 Mass. 117 (1998)
- G. *Miranda v. Arizona*, 384 U.S. 436 (1966): The landmark case requiring that police advise suspects of their constitutional rights before being interrogated. These rights include the right to remain silent and the right to counsel. In this case the Court held that "...there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves." Therefore, "...the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."
- H. *Spontaneous Utterances*: Statements made to the police by a person in custody before, during, or after an arrest that are admissible in evidence, even though the arrested person was not given warning regarding constitutional rights, provided that such statements, which are reasonably likely to elicit an incriminating response, are voluntary and not made in response to police questioning or other actions.

IV. PROCEDURES

- A. *Miranda* Warnings and Rights

1. The *Miranda* Warnings shall be given at the beginning of a custodial interrogation prior to questioning. If there is a delay between the *Miranda* Warnings and the questioning, officers shall re-advise the suspect. Questioning may begin only after the *Miranda* Warnings have been given and the suspect has waived his/her rights.
2. *Miranda* Warnings shall be read from a preprinted card or form in a clear and unhurried manner prior to questioning. Persons who do not speak English shall be given the Warnings in the native language or a language that the person easily understands.
3. The *Miranda* Warnings used by the department are as follows.
 - a. You have the right to remain silent.
 - b. If you choose to speak, anything you say may be used against you in court.
 - c. You have the right to consult with a lawyer before answering any questions, and you may have him or her with you during questioning.
 - d. If you cannot afford a lawyer and want one, a lawyer will be provided, at no cost to you, by the Commonwealth.
 - e. You may answer questions now and waive your right to counsel and your right to remain silent.
 - f. If you decide to talk to me, you still have the right to stop at any time and for any reason.
 - g. Do you understand what I have told you? Will you talk to me now?
4. Suspects interrogated in the police station shall be asked to sign a *Notice of Rights* form acknowledging that the *Miranda* Warnings were given. The officer shall also sign the form noting the date and time the warnings were given and if the suspect refused to sign the form. This does not apply to officers in the field.
5. If at any time the suspect requests to read the *Miranda* Warnings or have them read aloud by the officer, such requests shall be granted immediately.
6. Before a juvenile between the ages of twelve (12) and eighteen (18) is questioned regarding an incident that they may be involved in, the *Miranda* Warnings shall be given in the presence of both the juvenile and a parent, guardian, or other interested adult. The adult must acknowledge that they understand the rights given and that the juvenile must be afforded the genuine opportunity to have meaningful consultation with the interested adult before a valid waiver of right to counsel can be rendered. In the case of a juvenile under fourteen (14), the juvenile must actually consult with an interested adult before they can waive their constitutional rights.

B. Public Safety Exception

1. When public safety is at stake, officers may briefly interrogate a suspect in custody without administering the *Miranda* Warning. The Public Safety exception applies with equal force to juveniles.

C. *Commonwealth v. McNulty* Rights Regarding Messages from an Attorney

1. If during an interrogation an attorney calls or appears in person and asks to speak with the suspect, the Cambridge Police Department member receiving the call or greeting the attorney shall record the attorney's name and phone number and immediately relay the message to the investigating officer. That officer shall suspend the interrogation and contact the attorney even if the suspect has waived *Miranda* rights.
 - a. If the attorney requests that a message be passed on to the suspect, the investigating officer must comply.
 - b. The attorney's call or appearance shall be recorded, logged, and saved.
 - c. Officers shall not delay relaying messages for the purpose of consulting with the District Attorney or a Superior Officer.
 - d. If after receiving the message the suspect invokes the right to silence or to counsel, the investigator must stop the interrogation. If the suspect chooses to continue with the interrogation, the investigator shall re-issue the *Miranda* Warnings. The interrogation will be recorded before and after any interruptions.
 - e. If the suspect has declined to allow the interview to be recorded, the investigator shall make a written record of all proceedings regarding the attorney contact.

D. *Commonwealth v. Rosario*, The Safe Harbor Rule

1. Statements made by the arrestee more than six hours after the arrest are inadmissible unless the arrestee has been arraigned or has made a valid written waiver of their right to be arraigned without unreasonable delay.
 - a. If the arrestee is incapacitated due to a self-induced disability, such as the use of drugs or alcohol, the six-hour safe harbor period does not begin until the disability terminates.
 - b. The six-hour period is tolled (extended or suspended) when interrogation is not possible or must be suspended for reasons not attributable to the police, such as a natural disaster or other emergency.
2. Investigators shall abide by the Six-Hour Safe Harbor Rule and shall not hold a suspect for the purpose of interrogation for more than six hours. The time starts from the moment that the suspect reasonably believes they are no longer free to leave. After six hours the interrogation must be suspended unless the suspect knowingly waives the right to a prompt arraignment.
3. Arraignment shall not be delayed expressly for the purpose of interrogating a suspect.
4. If a suspect is to be interrogated a second time, *Miranda* Warnings shall be re-issued.

E. Non-*Miranda* Situations

1. Spontaneous Statements or Utterances

- a. Officers may note any spontaneous and volunteered statements and do not have to prevent them by giving the *Miranda* Warnings as a prerequisite for admissibility of such statements as evidence in court.
- b. Spontaneous statements are made by a suspect of their free will and not in response to police questioning.
- c. Spontaneous statements and volunteered statements may be made after a suspect is in custody and before, during, or after actual interrogation so long as the statements are clearly voluntary.
- d. A person who enters a police station and voluntarily makes incriminating statements need not be given *Miranda* Warnings regarding those statements.

2. Investigatory Stop and Frisk

- a. Non-custodial preliminary or investigative questioning need not be preceded by *Miranda* Warnings.

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 be considered an agent of the police, the police must have requested the citizen's help. *Massiah v. U.S.*, 377 U.S. 201 (1964)
- b. Where a fellow prisoner initiates questioning about a crime in the hopes of trading information for a lighter sentence, any statements made are admissible if the police neither encouraged nor sought the prisoner's assistance. *Commonwealth v. Gakja*, 425 Mass. 751 (1997)

4. Traffic Violations or Traffic Collisions

- a. The police do not have to give *Miranda* Warnings to a person who has been stopped for a motor vehicle violation. *Berkemere v. McCarty*, 468 U.S. 429 (1984)
- b. The police do not have to give *Miranda* Warnings to a person who has been stopped and requested to perform field sobriety tests. *Commonwealth v. Wholley*, 429 Mass. 1010 (1999)

- F. Waiver of Rights

1. Interrogating officers should be certain that the suspect understands the rights that have been read as the burden will be on the prosecution to prove that the waiver was valid. *Commonwealth v. Nom*, 426 Mass. 152 (1997); *Commonwealth v. Hooks*, 38 Mass. App. 301 (1995)
2. The waiver must be made voluntarily, knowingly, and intelligently to meet the conditions of *Miranda*.

3. In determining whether a valid waiver was made, the court examines whether in the light of the totality of the circumstances surrounding the making of the waiver, the will of the suspect was overborne such that the statement made 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 that has transpired between giving the *Miranda* Warnings and the waiver, the suspect's age, mental capacity, and experience.
4. When the suspect waives their 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.
5. Silence on the part of the suspect does not constitute a valid waiver. *Commonwealth v. Roy*, 2 Mass. App. 14 (1974)
6. The physical and emotional condition of the person being interrogated is an important consideration in determining the validity of the waiver. The police should refrain from questioning if the suspect is clearly not capable of understanding their rights. *Commonwealth v. Hosey*, 368 Mass. 571 (1975)

G. Competency

1. A suspect must be competent to waive their rights prior to police questioning. The issue of *competency* is one of fact to be determined by the circumstances in each case. The *competency* issue is more likely to be raised under the following circumstances.
 - a. If the suspect is distraught or disturbed because of any mental or emotional condition.
 - b. If the suspect has been wounded or is the victim of shock or other physical impairment.
 - c. If the suspect is so intoxicated or influenced by alcohol or drugs that they cannot think rationally or act sensibly.
 - d. If the suspect's intelligence level is so low, or the learning and educational level so minimal, that they do not comprehend their rights.
2. In all the circumstances listed above, any waiver obtained will be carefully scrutinized by the court.

H. Assessing Competency

1. After the *Miranda* Warnings have been read and after the suspect has shown an initial willingness to waive those rights, to properly assess the suspect's ability to intelligently understand and waive his/her rights, the police may ask the suspect about the following.
 - a. Age.
 - b. Whether or not they are under the influence of any drugs or alcohol.
 - c. Whether or not they are suffering from any mental or emotional disturbances.
 - d. Education and learning.

- e. Employment status.
 - f. Whether or not they at any time previously have been given *Miranda* Warnings.
 - g. Whether or not they understand the words used by the officer in reciting the *Miranda* Warnings and/or what they mean.
- I. Presence of an Attorney
- 1. If a suspect states that they wish to consult an attorney, they must not be questioned further by police until an opportunity to consult with an attorney has been offered. However, if the suspect initiates statements or conversation, the police may respond to those statements or conversations.
 - 2. Although a suspect has voluntarily waived their rights to remain silent, they 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 questioning by police must cease.
 - 3. 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 the client during questioning, the police must inform the suspect of such.
 - 4. A suspect may answer some questions and refuse to answer others. The officer is not required to discontinue questioning unless the suspect indicates that they wish to remain totally silent, to stop the questioning, or to consult with an attorney.
 - 5. Once the suspect has been arraigned, they have the right to counsel, whether or not they are in custody, and shall not be questioned in the absence of counsel.
- J. Documenting Statements and Confessions
- 1. All officers should, whenever practical, electronically record in its entirety all custodial interrogations. Before recording an interrogation, the suspect shall be notified that the conversation is being recording and once the interrogation begins the officer should:
 - a. remind the suspect of the recording;
 - b. state the location, date, time of day, and the identities of the suspect and others present;
 - c. execute appropriate and applicable departmental forms including but not limited to *Miranda* and the waiver of prompt arraignment;
 - d. record the time and reason for any suspension of the recording, such as any meal breaks, and the time of proceeding;
 - e. reference and describe any documents or other items used during the interrogation; and
 - f. conclude the recording by stating the date and time the interrogation was completed.
 - 2. If the suspect refuses to make a recorded statement, the officer shall record the refusal and note such in a written report.

3. Officers may use discretion and decide not to record an interrogation if doing so would jeopardize safety in any way. The officer shall document such in a written report.
4. All recordings shall be preserved in a manner consistent with department policy.
- K. When a written statement is provided by the suspect or dictated to the officer with permission and such permission is clearly indicated in the statement, the suspect shall be asked to read, sign, and date the statement or confession. The officer shall also sign and date all written statements and confessions. The officer shall prepare and submit a written report including all pertinent information and any written or recorded statements.
- L. Setting of the Interrogation: The following procedures shall inform and direct both uniformed and non-uniformed personnel utilizing designated rooms for interviews and interrogations.
 1. Weapons shall not be allowed inside the interview room and shall be secured in a designated area outside of the room.
 2. Interrogations should be conducted by the officer in a setting that provides reasonable privacy and safety. All rooms used for conducting interrogations, including rooms designated for this purpose shall be inspected prior to bringing a suspect into it.
 3. Two officers, and no more than two officers, shall be present during an interrogation.
 4. A back-up officer shall be located in the immediate vicinity of the interrogation; a duress device may be installed.
 5. Rooms used for interrogations should be sparsely furnished. The designated interview room will be equipped only with a desk and chairs. Any writing or additional recording equipment will be brought to the interview by the assigned officer and removed when the interview is completed.
 6. Subjects shall be afforded access to restrooms, water, and comfort breaks. During any comfort break, arrangements shall be made for the safety and security of all parties, whether involved in the interrogation or not.
 7. Live audio and video may be made available for other officers to observe or record the interrogation.