

CATEGORY	DATE ADOPTED	LAST REVIEW	NEXT REVIEW
3	01/7/2016	12/15/2024	12/15/2027

## BUENA PARK POLICE DEPARTMENT STANDARD OPERATING PROCEDURES

### SP106 MIRANDA ADVISEMENT PROCESS

#### SP106.1 PURPOSE AND SCOPE

This procedure outlines the process for administering and documenting Miranda advisements.

##### SP106.1.1 ACCREDITATION STANDARDS

This procedure pertains to the following CALEA Standards: 1.2.3

#### SP106.2 MIRANDA ADVISEMENT PROCESS

Any person who is arrested, or who is subjected to a contact with law enforcement that has the formal attributes of an arrest and is questioned, must first be advised of, acknowledge his/her understanding of, and freely and voluntarily waive, his/her Fifth Amendment right against self-incrimination, pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2<sup>nd</sup>694].)

##### SP106.2.1 MIRANDA ADVISEMENT

Officers should comply with the *Miranda v. Arizona* decision guidelines by giving the following four advisements before interrogation:

1. You have the right to remain silent. Do you understand?
2. Anything you say may be used against you in court. Do you understand?
3. You have the right to an attorney before and during questioning. Do you understand?
4. If you cannot afford an attorney, one will be appointed for you, before questioning, if you wish. Do you understand?

Whenever possible, officers should read the suspect his/her advisement rather than recite it from memory. Reading the suspect his/her rights guarantees the officer will not forget anything. Officers may read from the *Miranda* advisement card, from their Department-issued field notepad, or have the suspect read and sign a *Miranda* advisement form.

After advising the suspect of his/her rights as stated above, the officer should establish that the suspect understands his/her *Miranda* rights and is willing to waive them. If the officer desires an express waiver, s/he should ask the suspect a yes-or-no question such as, "Do you want to talk to me now?"

Taking a statement from a suspect will be admissible only if the suspect understands and waives his/her rights. The suspect must clearly understand and waive the admonition.

All questioning must immediately cease when a suspect invokes his/her right by unequivocally asking for an attorney. Under certain circumstances, prior to arraignment or the hiring of an attorney, officers may re-contact the suspect to determine whether the suspect has changed his/her mind about talking to the officer. If the suspect is willing to talk, he/she must be re-advised

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of *Miranda* and a knowing and intelligent waiver must be obtained.

If the suspect invokes the right to have an attorney present, all police-initiated questioning must cease and cannot be reinitiated on the crime charged. If the suspect remains in continuous custody, there can be no police-initiated questioning about any crime, charged or uncharged, unless otherwise allowed by law.

Once officers obtain a waiver, they may question the suspect. However, a waiver may be withdrawn at any time during the questioning, and questioning must cease if a suspect invokes his/her right by unequivocally asking for an attorney.

### **SP106.2.2 DOCUMENT THE ADMONITION**

If the suspect is admonished, the narrative section of the report should indicate that the suspect was admonished per the *Miranda* advisement card, the Buena Park Police Department field notebook, or the *Miranda* advisement form.

Officers should attempt to obtain a verbal waiver on an audio or video recording or in the presence of another officer if the recording capability is not available.

### **SP106.2.3 INVESTIGATIVE ASSISTANCE**

Prior to interviewing any suspects accused in cases requiring the assistance of the Buena Park Police Department Detective Bureau, employees should contact the Field Supervisor and provide him/her with details surrounding the investigation. The Field Supervisor will determine if the Detective Bureau will be contacted and a request made to assist.

### **SP106.2.4 ADMONISHMENT OF JUVENILES**

Welfare & Institutions Code (WIC) § 625 states when a minor is taken into temporary custody under WIC § 601 or § 602, the minor must be advised of his/her right to remain silent per BPPD Policy § 324, Juveniles.

If the juvenile is 17 years of age or younger, WIC 625.6(a) mandates that a youth shall consult with legal counsel in person, by telephone, or by video conference prior to a custodial interrogation and before the waiver of any *Miranda* rights. The consultation may not be waived.

### **SP106.2.5 SPONTANEOUS STATEMENTS**

If a suspect in custody makes a spontaneous statement to an officer, the officer may respond as allowed by law.

### **SP106.3 OTHER INTERVIEW ADMONISHMENTS**

Circumstances sometimes arise where the custody component required for *Miranda* admonishments is unclear. In an effort to clarify those instances where a suspect is being

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interviewed and is not in custody for the purpose of Miranda, officers may consider a *Beheler* admonition (***California v. Beheler***, 463 U.S. 1121 (1983).) The *Beheler* admonition can be: “You are not under arrest. You are free to leave anytime you want.”