




Clayton County Police Department

PROCEDURES

Subject INTERVIEWS & INTERROGATIONS		Procedure # D36	
Authorizing Signature 	Effective 06-01-2022	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Rescinds	Total Pages 8

I. PURPOSE

To provide clear and concise standards and procedures for conducting interviews and/or interrogations by sworn personnel of the Clayton County Police Department and to safeguard the constitutional rights of all individuals while ensuring the correct suspects are identified, arrested and prosecuted.

II. POLICY

It shall be the policy of this Department to protect the constitutional rights (e.g., due process, right to counsel, etc.) of all individuals during interviews and/or interrogations. Officers are prohibited from using unlawful coercion to obtain admissions or confessions during interviews and/or interrogations.

III. DEFINITIONS

Administrative Questions: Questions asked by a law enforcement officer that do not inherently inquire about the elements and/or evidence of an alleged crime and are posed to persons engaged in communication with the officer, regardless of the Tier of Contact level. Such questions include, but are not limited to, asking for a person's identification card or document, name, address, contact information, date of birth, physical traits (i.e., height, weight, etc.), and social security number.

Admission: This is not a confession; it is a statement acknowledging all or some of the elements of the crime alleged, but may include an affirmative defense or excuse for the commission of the crime (i.e., self defense; etc.).

Confession: A statement in which all of the elements of the crime alleged are admitted without offering any affirmative defense or excuse.

Field Interview: Contact between a law enforcement officer and a person that may be more than consensual conversation, but is not an interrogation.

Interrogation: The formal questioning by a law enforcement officer of a person who is in lawful custody and is suspected of committing a crime.

Interview: A voluntary conversation between a law enforcement officer and a person regarding a matter of police interest.

Reasonable Suspicion: A law enforcement officer's determination, based on his/her observation of facts and circumstances, while taking into account his/her training and experience, to reasonably believe that the person to be detained is, was, or is about to be, involved in criminal activity.

Unlawful Coercion: The use or threat of force, or unreasonable tactics, to persuade or compel a person to admit or confess to the elements of an alleged crime, or cooperate with a law enforcement officer. Unreasonable tactics include, but are not limited to, extended periods of interrogation without break; deprivation of food, sleep and/or medication; promises of leniency, incentives or other inducement; etc.

IV. PROCEDURES

A. Tiers of Contact & Field Interviews

1. Tier 1 Contact

- a. Law enforcement officers can talk to any person(s) who is/are willing to talk to them and is/are not in lawful custody. Officers can talk to the person about anything when it is consensual contact. This consensual contact does not require the use and/or waiver of the Miranda Rights Warning. Officers can ask questions, ask for identification, and conduct background checks (i.e., NCIC/GCIC checks; local files; etc.) using information voluntarily provided by persons without violating the 5th Amendment. The person(s) voluntarily engaged in contact with an officer can refuse to show their identification and/or end the conversation at any time.
- b. In the event that incriminating evidence is discovered by a law enforcement officer, the Tier 1 Contact can elevate the contact to Tier 2, or even Tier 3.

2. Tier 2 Contact

- a. A Tier 2 Contact is different from a consensual (Tier 1 Contact) because the person (now considered a suspect) cannot walk away

until the officer has completed his/her investigation. A Tier 2 Contact field interview is focused on the behavior or facts that gave the officer the reasonable suspicion that a crime has occurred, is occurring or will occur. The officer can explore other areas with the suspect, but the focus of the stop must be resolving the alarm that created the reasonable suspicion.

- b. A law enforcement officer is authorized by the Supreme Court case of Terry v. Ohio, 392 U.S. 1 (1968), to stop and detain a person based on the officer's reasonable suspicion that the person has committed, is committing, or is about to commit a crime. An officer can frisk the person if the officer has a reasonable belief that the person "may be armed and presently dangerous."
- c. This is a detention, but not an arrest. Officers have the authority to detain a suspect for the length of time needed to dispel their alarm that a crime has occurred, is occurring, or will occur. The duration of the detention is not indefinite; it is limited by the amount of time a reasonable officer would require to investigate the facts to either dispel the alarm or effect an arrest.
- d. The search authorized during a Tier 2 Contact is a frisk for weapons, specifically for officer safety. If during the frisk an officer feels a suspected weapon or contraband, the officer can retrieve the item to determine if it is a weapon or contraband. However, once the officer determines that probable cause exists for an arrest or search, the contact can elevate to a Tier 3 Contact and conduct any search authorized by the facts.
- e. The courts generally hold that traffic stops, for the purpose of issuing a citation, neither imply nor apply the use of the Miranda Rights Warning; such traffic stops are analogous to a Tier 2 Contact. However, in driving under the influence (DUI) cases, or other physical arrests resulting from traffic stops, the level of contact automatically elevates to a Tier 3 Contact upon the effect of an arrest.

3. Tier 3 Contact

- a. This is a lawful, custodial arrest. Law enforcement officers have the authority to ask any administrative questions of a suspect who is in custody.
- b. Officers have the authority to listen to and record voluntary statements made by a suspect who is in custody. However, without a Miranda Rights Warning and subsequent waiver, officers cannot ask questions while the suspect is voluntarily giving a statement. Officers shall allow the suspect to talk freely while recording and/or documenting the suspect's statements.

- c. When a suspect is in custody, officers must administer the Miranda Rights Warning and obtain a waiver of those rights from the suspect before an interrogation can occur.

B. Miranda Rights Warning & the Waiver

1. If a suspect is in the custody of a law enforcement officer, prior to an interrogation, the officer must administer the Miranda Rights Warning and obtain a waiver from the suspect.
2. Officers shall make every effort to record the administration of the Miranda Rights Warning and the suspect's waiver using a recording device and/or utilizing the Department's *Statement of Miranda Rights Form*. If no recording device is available, officers must have a law enforcement witness present for the administration of the Miranda Rights Warning and the suspect's subsequent waiver, if applicable. The *Statement of Miranda Rights Form* is available on the Department's intranet site (<http://ccpd/>).
3. The Miranda Rights Warning (shown below) should, whenever reasonably possible, be read verbatim from the approved *Clayton County Police Department Statement of Miranda Rights Form*.
 - 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 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.
4. The officer must ask the suspect if he/she understands these rights, and upon an affirmative response, ask the suspect if he/she wishes to speak with the officer at that time.
5. A suspect can invoke his/her Miranda Rights at any time during questioning. Once invoked, the questioning must stop.
6. Public Safety Exception to the Miranda Rights Warning
 - a. In the case of New York v. Quarles, 467 U.S. 649 (1984), the Supreme Court recognized that when police are confronted with an armed suspect, they are prompted by a concern for public safety to locate and secure the weapon. Accordingly, police can ask the suspect: "Where's the [weapon]?" The court reasoned that police are motivated by their concern for public safety and are not on a quest for incriminating responses. The information the suspect provides an officer to locate the weapon can be used against him/her in court.

Miranda Rights are not applicable or implicated for the explicit reason that the questions are asked for the purpose of locating and securing a weapon before it could cause harm to the public.

- b. Although the Quarles case applied to a gun, this exception has been applied to other weapons as well.

C. Admissions & Confessions

1. The State of Georgia will not convict any person of a crime based upon a confession alone. There must be evidence to corroborate the confession.
2. The need to investigate and document is the reason for understanding the difference between an admission and a confession. The law enforcement officer must obtain corroborating evidence to complete an investigation. Refer to the definitions (i.e., Section III.) that are listed in this procedure.
3. All admissions and confessions must be documented in detail, noting and describing the specific elements corroborated, and explaining how any affirmative defense or excuse provided by the suspect has been proven or disproven.
4. It is the responsibility of the officer to further investigate and seek evidence that will fill in the missing elements of a suspect's admission.
5. Officers are prohibited from promising a hope of benefit to a suspect for cooperating. However, officers can inform the suspect that the prosecutor (i.e., Solicitor General's Office, District Attorney's Office, etc.) will be notified and/or briefed that the suspect was cooperative and forthcoming.
6. Jackson-Denno Hearing
 - a. As with any criminal evidence, admissions and confessions may be challenged by the defense. The purpose of a Jackson-Denno Hearing is for the defense to argue that an admission or confession was in violation of the Miranda Rights Warning, was not voluntarily provided, was coerced by police, etc.
 - b. Jackson-Denno Hearings occur prior to the criminal trial, but before the trial judge. Officers are likely to be the only witness(es) before the Court and should be prepared to answer questions about the methods used to interrogate the suspect (defendant).

Testimonial topics may include, but are not limited to, recording and documentation methods, other witnesses or officers present, administration and waiver of the Miranda Rights Warning, whether or not the officer(s) promised a hope of benefit for cooperating, etc.

D. Juvenile Suspects

1. Juvenile suspects are unique in that the courts will conduct a more thorough inquiry to determine the voluntariness of any statement made by a juvenile.

2. The admissibility of statements by juveniles depends upon whether or not, under the totality of the circumstances, there was a knowing and intelligent waiver of his/her constitutional rights, Riley v. State, 237 Ga. 124, 128 (1976).
3. The burden is demonstrating that the juvenile understood and waived those rights. The analysis involves the application of a nine (9) part test. The factors considered by the court include: "The age of the accused; the education of the accused; the knowledge of the accused as to the substance of the charge and nature of his rights to consult with an attorney; whether the accused was held incommunicado or allowed to consult with relatives or an attorney; whether the accused was interrogated before or after formal charges had been filed; methods used in interrogation; length of interrogation; whether the accused refused to voluntarily give statements on prior occasions; and whether the accused repudiated an extrajudicial statement at a later date," Henry v. State, 264 Ga. 861, 862 (1995), applying Riley v. State.

The officers' incident report and/or documentation of the interrogation must address and answer the nine (9) questions the court will use to determine if the juvenile knowingly waived his rights.

E. Other Legal Considerations

1. Right to Remain Silent

- a. The suspect has the right to remain silent. If he invokes this right, all questioning must stop. However, law enforcement officers do have the authority to contact the suspect after a cooling-off period of at least two (2) hours, per Michigan v. Mosely, 423 U.S. 96 (1975). If contact is re-established with the suspect after the cooling-off period, officers shall re-administer the Miranda Rights Warning and obtain a waiver before resuming questioning.

Note: The two (2) hour cooling-off period only applies to the right to remain silent.

- b. Once invoked, the right to remain silent bars officers from talking with the suspect while he is in custody, about any crime(s), until the cooling-off period expires.

2. Right to Counsel

- a. The suspect has the right to counsel during questioning. Once the right to counsel is invoked, ALL law enforcement officers are barred from interrogating the suspect about ANY crimes while he/she is in custody without his/her attorney present.
- b. After a suspect invokes his/her right to counsel, officers are prohibited from re-initiating contact with the suspect while he/she is still in custody.

- c. After a suspect invokes his/her right to counsel, the suspect can contact law enforcement officers and/or re-initiate contact. If this occurs, officers shall document in detail the facts and circumstances of the suspect's initiated and/or re-initiated contact. Officers should utilize a recording device, if possible.
- d. After a suspect invokes his/her right to counsel, the suspect has been released from custody (i.e., jail or confinement, etc.), and a fourteen (14) day cooling-off period has passed, officers can re-initiate contact with the suspect, per Maryland v. Shatzer 559 U.S. 98 (2010).
- e. 6th Amendment Right to Counsel
 - 1) Once a suspect has been formally charged with a criminal offense (e.g., arrest warrant; indictment; accusation filed; etc.), the suspect (defendant) is arrested and brought before a Magistrate, beginning the formal criminal justice process. If under any of those circumstances, the defendant invokes his/her right to counsel, ALL law enforcement officers are barred from talking with him/her about the formally-charged case without his/her attorney present.
 - 2) The 6th Amendment right to counsel attaches once the formal criminal process begins and the right to counsel is invoked by the defendant. Once invoked, the 6th Amendment right to counsel continues for the duration of the prosecution of that specific case, regardless of whether or not the defendant makes bond or is released from custody.
 - 3) In the event of a 6th Amendment right to counsel situation, the Miranda Rights Warning will be administered to, and a waiver obtained from, any defendant who is willing be interrogated.
 - 4) The 6th Amendment right to counsel does not bar law enforcement officers from initiating contact with the suspect to discuss other alleged criminal activity that is not related to the formally-charged case.

V. AUDIO & VIDEO RECORDINGS OF INTERVIEWS & INTERROGATIONS

A. Interview Rooms

The Department's interview rooms may be utilized by officers for both custodial interrogations of detainees and non-custodial interviews with witnesses, victims, suspects, applicants and other individuals. For the purpose of this policy, interview rooms include polygraph examination rooms. Note: The polygraph examination rooms may only be used by a Polygraph Examiner for an interview/interrogation or examination.

Interview Rooms: The Interview Rooms (#'s 180, 181 and 183) are located on the second floor of Headquarters; the rooms shall contain a minimal amount of furniture (usually a table and three chairs). The rooms are equipped with a camera system to record sound/video for interviews and interrogations.

Polygraph Examination Rooms: The Polygraph Examination Rooms (#'s 124 and 126) are located on the second floor of Headquarters; the rooms shall contain a minimal amount of furniture (usually two office chairs, examination chair, desk, and file cabinet). The rooms are equipped with the polygraph instrument and components, computer and accessories, and a camera system to record sound/video for interviews and interrogations, and examinations.

1. Interviews and interrogations of suspects in interview rooms should be recorded via audio and/or video recording systems, whenever possible.
2. Cameras and/or Audio Recording System/Devices
 - a. Only employees who have been properly trained will operate or use the cameras and/or audio recording system/devices for an interview room.
 - b. The camera and/or audio recording system/device for an interview room will be checked before and after use to ensure the equipment is in proper working order. Any malfunction of the equipment that occurs during an interview must be documented in the interviewing officer's report.
 - c. Any failure of cameras and/or audio recording system/devices for an interview room shall be immediately reported to a supervisor assigned to the Criminal Investigation Division (CID) supervisor.
3. When the interview rooms are utilized, personnel shall adhere to Department procedures.

Refer to standard operating procedure: *B20: Interview Rooms*.

B. Locations other than Interview Rooms

Whenever possible, audio and/or video recordings will be made of all interviews and interrogations of suspects conducted away from Department facilities. When such interviews are necessary due to the nature and/or expediency of the case at hand, the officer's primary concern will be the safety of all parties involved in the interview process.

VI. CANCELLATION

This procedure amends and supersedes the following standard operating procedure: *D36: Interviews & Interrogations*, dated October 10, 2014.