



Newport News Police Department - Operational Manual

OPS-403 - CONSTITUTIONAL REQUIREMENTS & JUDICIAL GUIDELINES FOR INVESTIGATIONS

Amends/Supersedes: OPS-403 (09/20/2007)

Date of Issue: 02/07/2022

I. GENERAL

- A. It is the responsibility of the Police Department to conduct investigations of crimes committed in its jurisdiction. It is crucial that those investigations be appropriately conducted within the guidelines and requirements set forth by the Constitution and the legislative and judicial branches of the U.S. government.
- B. During criminal investigations, department personnel will follow all constitutional requirements pertaining to interrogations of individuals suspected of criminal offenses.
- C. When conducting a criminal investigation, police officers shall be cognizant of Supreme Court rulings, including those listed below. The test employed by state and federal courts for the admissibility of a confession is, "A confession must be voluntary and trustworthy, and it must have been obtained by civilized police practices."

1. *Miranda v. Arizona*: Inform the accused of their rights.

- a. The suspect has the right to remain silent.
- b. Anything the suspect says can and will be used against them in a court of law.
- c. The suspect has the right to talk to a lawyer and have the lawyer present while the suspect is being questioned. [1.2.3(c)]
- d. If the suspect cannot afford to hire a lawyer, one will be appointed to represent the suspect before any questioning if the suspect wishes one. [1.2.3(c)]

NOTE: For "Miranda" to apply, both elements of custody and interrogation must be present.

2. *In Re Gault*: Rights of juveniles.

[44.2.2(c)]

- a. Juveniles are entitled to due process under the 14th amendment.
- b. The suspect juvenile has the right to have his parents or legal guardian present before making any statement. [44.2.3(a)]

3. *Escobedo v. Illinois*: Continuous interrogation after accused request counsel.

The critical question, in this case, is whether, under the circumstances, the refusal by the police to honor the petitioner's request to consult with his lawyer during the course of an interrogation constitutes a denial of "the assistance of counsel" in violation of the Sixth Amendment to the Constitution as made obligatory upon the States by the Fourteenth Amendment and thereby renders inadmissible in a state criminal trial any incriminating statement elicited by the police during the interrogation.

4. *Westover v. U.S.*: Waiver of rights.

Once an individual is in police custody, they must knowingly and intelligently waive their right to remain silent and their right to consult with an attorney prior to questioning.

5. *Bram v. U.S.*: Confession must not be extracted by implied promises.

For a confession to be admissible, it must be given freely and voluntarily; that is, any threats or violence must not extract it, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence.

- D. Police officers, when conducting investigations, regardless of the severity of the case, should be conscious that the courts will scrutinize their procedures. It is incumbent upon each police officer to stay abreast of court decisions related to police investigative conduct.

II. PROCEDURE

[1.2.3(a,b); 26.1.1; 42.2.2(b)]

The following general procedures should be followed during an investigation when interrogating a person suspected of criminal activities.

- A. Before any custodial interrogations, all persons should be advised of their rights under *Miranda v. Arizona*, or *In Re Gault*, depending on which applies to the suspect. Whenever possible, the Adult Rights Waiver Form (NNPD [Form #18](#)) or the Juvenile Rights Waiver Form (NNPD [Form #18J](#)) will be used to document this action. The incident report will also document that they were advised of their rights and whether they waived or invoked them.

NOTE: In *Gates v. Commonwealth*, the Court ruled that Miranda Warnings were not required if new arrest warrants are executed on a defendant while in custody, and no interrogation occurs. (30 Va. App. 352) (1999)

- B. The advising of a person's rights under *Miranda v. Arizona* or *In Re Gault* should be documented (see [ADM-278 Interview Room Protocol](#), [ADM-570 Body-worn Cameras](#)) and submitted into evidence, per [OPS-485 Property & Evidence](#), Section III. F. When recording an interview at a place of detention in accordance with [§19.2-390.04](#) of the Code of Virginia, the advising of a person's rights will be recorded.
- C. When conducting a custodial interrogation of a juvenile, officers/detectives will follow the procedures outlined [OPS-435 Handling of Juveniles](#) and [§16.1-247.1](#) of the Code of Virginia.
- D. When conducting a custodial interrogation of non-English speaking or hearing impaired suspects, the officer will make arrangements to procure an interpreter to advise them of their rights. The use of an interpreter must be documented.
- E. If an officer or detective becomes involved in a complex incident and requests that the Major Crimes Division assume responsibility for the investigation, it is strongly recommended that the officer/detective not question the suspect, thus eliminating the need for Miranda advisements.

NOTE: If a suspect makes a spontaneous utterance, it is recommended that the officer/detective not ask the suspect any direct questions and allow the individual to continue. The officer should not stop the suspect to issue Miranda Warnings.

- F. Department employees are prohibited from obtaining or attempting to obtain a confession or admission through coercion, duress, or threats.
- G. No police officer will refuse a suspect the right of counsel during any investigation or interrogation. [1.2.3(c)]
- H. If an accused person elects to waive their rights, it is the responsibility of the investigator to ensure that any waiver is made "voluntarily, knowingly, and intelligently."


Steven R. Drew
Chief of Police