

## MIRANDA WARNING - LAW OF INTERROGATION

### POLICY:

It is the policy of the Omaha Police Department (OPD) to advise all suspects of crimes (whether felony or misdemeanor) of their rights according to Miranda v. Arizona, prior to any custodial interrogation. OPD employees shall refer to the "Juveniles - Identification of Juveniles, Rights Advisory, and Interrogation" policy for policies and procedures regarding the advisement of juveniles of their Miranda Rights.

### PROCEDURE:

#### I. Miranda v. Arizona (5th Amendment)

- A. According to the Supreme Court, whenever a law enforcement officer takes a person into "custody" or otherwise deprives them of their "freedom of action in any significant way," they are required to give the accused, "prior to any questioning," with the exception of biographical information, the following five warnings encompassed under the constitutional privilege against self-incrimination:
  - 1. You have the right to remain silent.
  - 2. Any statement you make can and will be used against you in a court of law.
  - 3. You have the right to consult with an attorney before answering any questions.
  - 4. You have the right to have an attorney present with you during the interrogation.
  - 5. If you cannot afford an attorney, one will be appointed for you without cost, prior to the questioning, if you so desire.
- B. The giving of these warnings is an absolute prerequisite to any police custodial interrogation.
- C. These warnings must be given in clear and unequivocal terms in order for any statement made by the accused during the period of in-custody interrogation to be admissible as evidence.
- D. Officers will only initiate their interrogation when the accused makes a voluntary, knowing, and intelligent waiver of their rights.
- E. Miranda only applies where the accused is in custody and is questioned by law enforcement officials.

#### II. Administering Miranda Rights

- A. Miranda warnings will be given prior to questioning (State v. Juranek).
  - 1. Miranda warnings are not required when obtaining biographical information or building rapport.
  - 2. Miranda warnings shall be given prior to questioning that could be legally construed to be intended to elicit, or that would be likely to elicit, an incriminating response.
- B. The accused shall be Mirandized once for each interview.
- C. The Miranda warnings shall be given in the following manner:
  - 1. Clearly and deliberately.



2. In such a way that the accused feels free to claim their rights without fear.
  3. In a manner that the accused can comprehend and knowingly act on the information.
- D. When possible, a Miranda Rights Advisory Form (OPD form 17) will be used during interrogations.
- E. Officers will adhere to the following procedures when giving the Miranda Rights to the following individuals:
1. Limited English Proficiency (LEP) Individuals:
    - a. Officers will adhere to the procedures in the OPD “Limited English Proficiency (LEP)” policy when giving the Miranda Rights to LEP individuals.
    - b. The reverse side of the Miranda Rights Advisory Form (OPD Form 17) is written in Spanish.
      - (1) Officers may read the Spanish Miranda Rights Advisory Form to the accused if:
        - (a) The officer believes the accused person cannot comprehend the reading of their Miranda Rights in English.
        - (b) The accused has indicated, or the officer knows that the accused is Hispanic or any derivative thereof.
      - AND -
      - (c) The officer can read the rights advisory effectively in Spanish.
    - (2) The English rights advisory may be read to a Spanish-speaking person if they demonstrate a clear understanding of the English language.
  2. Deaf and Hard of Hearing Individuals:
    - a. Officers shall adhere to the procedures in the OPD “[Deaf and Hard of Hearing Persons](#)” policy when giving the Miranda warnings to deaf and hard of hearing individuals.
  3. Juveniles:
    - a. Officers shall adhere to the procedures in the “Juveniles – Identification of Juveniles, Rights Advisory, and Interrogation” policy when giving the Miranda warnings to juveniles.
- F. Every effort shall be made to document the entire interview and/or interrogation using video and/or audio recordings.
- G. If an electronic translation method is used (such as the Google translation tool), written questions and responses relating to the interrogation or interview deemed as evidence will be booked into the OPD Evidence and Property Unit as evidence.
- H. Reports shall document the exact procedure, including the date, start time and end time of the Miranda warnings.



### III. Accused Persons' Response

- A. To invoke the right to stop questioning, the suspect must articulate the desire with sufficient clarity, such that a reasonable police officer under the circumstances would understand the statement as an invocation of the right to remain silent.

**NOTE:** The accused may invoke their Miranda Rights at any time during questioning.

- B. The accused must acknowledge that they understand the warnings.
  - 1. If the accused person refuses to talk, or remains totally silent the questioning will cease.
  - 2. A nod of the head in an affirmative manner of yes is acceptable as long as it is clearly understood that this is an affirmative response.
- C. In some situations, officers may attempt to question the accused after an initial refusal.
  - 1. A complete second advisory shall be made by the interviewing officer.
  - 2. The accused may waive their rights on the second occasion.

**NOTE:** Officers will be cautious in questioning the accused after an initial refusal. There are particular requirements about when and how officers may attempt to question a person after they have invoked their Miranda Rights. If these requirements are not met there is a high risk that the statement may be suppressed.

### IV. Circumstances that Do Not Require Miranda Warnings

- A. Voluntary Statements
  - 1. Voluntary statements by the suspect to the officer are acceptable.
  - 2. The officer has no duty to silence voluntary statements made before questioning.
- B. Field Interviews
  - 1. The officer may make inquiries of persons on public or private property under suspicious circumstances without advising them of their Miranda rights if the suspicious circumstances could be resolved with an explanation from the person questioned.
    - a. The absence of custodial atmosphere is required.
- C. Crime Scene Questioning
  - 1. Miranda v. Arizona was not intended to hamper the traditional function of police officers in investigating crime. General on-the-scene questioning as to the facts surrounding the crime or other general questioning of citizens in the fact-finding process is not affected by this ruling.

**EXAMPLE:** Police being summoned to the scene of a shooting, entered the house and were confronted by the defendant. An officer asked the defendant what happened, and the defendant answered that "I killed my wife." The court later held that this statement was the result of on-the-scene questioning prior to the arrest and was not open to challenge by the defendant.



2. If the officer takes the suspect into custody or denies them freedom of movement within the crime scene, then Miranda Warnings shall be given before specific questioning.

**NOTE:** The moment that custody begins, no questioning shall be acceptable without advising the suspect of their Miranda Rights.

## V. Court References

### A. Orozco v. Texas

1. An accused person was questioned at 4:00 a.m. in his bedroom by four officers, one of whom testified that the accused was under arrest.
  - a. The Court held that the accused was the subject of custodial interrogation even though the questioning was brief and took place in his bedroom.
    - (1) The key factors were time of the interrogation, number of officers and evidence of a formal arrest.

### B. Griffin v. U.S.

1. Griffin was accused of a bank robbery and was interviewed for two hours at his residence by two FBI agents. During the interview the agents did not allow him freedom of movement out of their presence. The Court used the following factors to determine indication of custody:
  - a. Advice given by the agents that the questioning was voluntary, that the accused could ask the agents to leave and that the accused was not considered to be under arrest.
  - b. Restraint - whether the accused possessed unrestrained movement during the questioning.
  - c. Who initiated the contact.

**NOTE:** The court held these first three factors to be “mitigating factors.”
  - d. Tactics used - whether strong arm or deceptive strategies were employed during the questioning.
  - e. Domination of interview - whether the atmosphere of questioning was police dominated.
  - f. Arrest - whether the accused was placed under arrest at the termination of the questioning.

**NOTE:** The court held these second three factors to be “coercive factors”

- C. The 8th Circuit analyzes the totality of the circumstances surrounding an interview to determine whether an accused person is in custody for Miranda purposes.

## VI. Right to Counsel (6<sup>th</sup> Amendment)

### A. The Right to Counsel applies:

1. Once a formal charge (initial appearance, indictment, information) has been made.



2. Whether the accused is in custody or not.
- B. If the right to counsel is invoked during custodial interrogation, no interview can take place without having an attorney present except in the following situations:
    1. The accused seeks out the officer and insists on communicating without the knowledge of a representing attorney.
    2. Contact is necessary to secure information critical to the safety of life or limb.
  - C. If the accused invokes their right to counsel during a hearing and not during custodial interrogation, they can be interviewed regarding crimes they have not been charged with.
    1. If in custody, Miranda warnings shall be given.
    2. If not in custody, no Miranda warnings are necessary.
  - D. Officers shall not use an informant, cooperating witness, or undercover officer to obtain a statement from an accused person once the 6th Amendment right to counsel has been invoked.

## **REFERENCES:**

### **I. Laws**

- A. Griffin v. U.S.: (CA 8), 12-28-90; Miranda v. Arizona, 384 U.S. 436 (1966); Orozco v. Texas, 394 U.S. 324 (1969); State v. Juranek, 287 Neb. 846, 844 N.W.2d 791 (2014).

### **II. Nebraska Revised Statutes (NRS)**

- A. Nebraska Revised Statutes §20-150 through §20-158.

### **III. Previous OPD Orders**

- A. Previous General Orders: #125-89, 24-90, and 56-16.

### **IV. CALEA Accreditation Standards**

- A. Relevant CALEA Accreditations Standards: 1.2.3.