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		Date
		1.4
		10-23-19

## 1.4 Interrogations and Confessions

### 1.4.1 5<sup>th</sup> Amendment

The 5<sup>th</sup> Amendment to the Constitution provides, among other rights, the right of a person not to be a witness against him or herself. This right is known as the right against self-incrimination. The U.S. Supreme Court has determined that the right against self-incrimination means that a person in the custody of the police is to be warned of the right to remain silent and the right to an attorney prior to police questioning. These are known as the *Miranda Rights*.

A person is entitled to make a voluntary choice regarding any discussion with the police, and *may* not be forced to talk to the police or to confess to a crime.

#### 1.4.1.1 *Miranda Warnings*

- A. When *Miranda* warnings are required, they *should* be read directly from the *officer's rights card*, as follows:
1. You have the right to remain silent.
  2. Anything you say may be used against you in a court of law.
  3. You have the right to consult with an attorney, to be represented by an attorney and to have an attorney present before any questions are asked.
  4. If you cannot afford an attorney, one *will* be appointed by the court, free of charge, to represent you before any questioning, if you desire.
  5. Do you understand the rights I have just explained to you?
- B. An *officer shall* read *Miranda* warnings to a person when a person is both in custody and being interrogated.
1. A person is in custody for the purpose of determining whether *Miranda* warnings must be provided when a person has been formally *arrested* or is in circumstances which would lead a



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reasonable person to believe he or she was under arrest. This determination depends on the totality of the circumstances. A person is in custody for *Miranda* purposes when:

- the person has been actually placed under *arrest*, or
- the person's freedom of movement has been restrained to the degree associated with a formal *arrest* (i.e., handcuffs, guns, lockups, etc.).

A person may be seized under the 4<sup>th</sup> Amendment (not free to leave), yet not considered to be in custody for purposes of *Miranda* (arrest or restraint to the degree associated with formal arrest).

2. An interrogation occurs when an *officer*:

- asks direct questions which are likely to elicit an incriminating response, or
- says something or performs some action that is reasonably likely to elicit an incriminating response (known as the functional equivalent of interrogation).

C. There are situations in which a person has been detained for investigation or placed in custody, but *Miranda* warnings are not required prior to asking questions. *Miranda* warnings are not required to be read in the following situations:

1. When public safety is paramount. The *public safety exception* is limited and applies only when public safety is paramount and it is necessary for the *officer* to act as quickly as possible. When an *officer* arrives at the scene of a violent crime, for example, he/she *may* ask those on scene if there is anyone who needs immediate medical assistance without first reading *Miranda*. Similarly, the *officer* who chases a suspect known to be armed through a public area, but finds the person to be unarmed upon *arrest*, *may* immediately ask what happened to the gun. *Officers must* be aware that this *exception* is permitted only when absolutely necessary – once the danger is eliminated, no further questions *may* be asked.



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2. At traffic stops. *Miranda* warnings do not need to be read to persons stopped for traffic violations, unless the stop involves a crime, such as a DUI. *Miranda* is not required for the initial stop and questioning of a DUI suspect, however, the person should be read their *Miranda* warnings if the person is placed in custody and before interrogation.
3. When a person voluntarily enters a police station, or telephones a police officer, and makes a statement or confession. Until the person is taken into police custody, *Miranda* warnings are not required.
4. When a person who is in custody makes voluntary or spontaneous statements. Such statements are admissible as evidence even though *Miranda* warnings have not been read, even when made by a person who is in police custody. Officers may not ask clarifying questions about volunteered or spontaneous statements in the absence of a valid waiver of *Miranda* Rights. If warnings have not been read, or if the person has invoked his or her rights, the officer should simply document the statements made without asking any follow-up questions.
5. During the initial questioning at an investigative detention. Even though a person subject to investigative detention is not free to leave, *Miranda* does not apply until an arrest is made or the person's freedom of movement is limited to a degree commonly associated with an arrest. The initial few questions at an investigative detention, to determine whether criminal activity has occurred or is ongoing, do not require *Miranda*.
6. When asking routine booking questions. *Miranda* warnings are required only when a person is being interrogated about a crime. Routine booking questions are not considered interrogation.
7. When collecting handwriting, voice samples and/or other physical evidence. *Miranda* only applies to testimonial communication; it does not apply to physical evidence. As long as the officer does



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not interrogate the person while collecting the physical *evidence*, *Miranda* warnings are not required.

#### 1.4.1.2 Invocation of *Miranda* Rights

Once a person invokes his/her rights, *officers* are to immediately stop questioning the person.

##### A. Invocation of right to silence.

If a person invokes the right to silence, the interrogation *must* immediately be stopped. No further questioning *may* take place unless the person changes their mind, either on their own or after a later request by the *officer*.

1. A person *may* change their mind about invoking their right to silence. If the person changes his/her mind and seeks to speak with the *officer* again, the *officer may* speak to and question the person but *must* first reread the *Miranda* warnings to the person and have the person waive their rights.

a. An *officer may* seek to reinitiate questioning. If a person invokes their right to silence, an *officer may* approach the person after a reasonable break in questioning (at least two hours), reread *Miranda*, and seek a waiver from the person.

b. The right to silence is not offense specific. The right to silence, once invoked, applies to questioning about all crimes, not just the one the person has been charged with committing.

##### B. Invocation of Right to Counsel.

1. If a person invokes their right to an attorney, the interrogation *must* immediately be stopped.

a. A person *may* change their mind about invoking their right to an attorney. If the person changes his/her mind and



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seeks to speak with the *officer* again, the *officer may* speak to and question the person but *must* first reread the *Miranda* warnings to the person and have the person waive their rights.

b. Once the right to counsel is invoked an *officer may* not approach the person to try to get the person to change their mind. Further questioning is prohibited unless:

- 1) the suspect's attorney is present, or
- 2) the person initiates the conversation and waives the right previously invoked, or
- 3) the person is released from custody (or, if the person remains in jail or prison, is released into the general population) for at least 14 days, the *officer* rereads *Miranda* warnings, and the person waives the right previously invoked, or
- 4) the person has been sentenced on the crime charged.

#### 1.4.1.3 **Miranda Rights Waiver**

A. A person *may* waive their rights with a written waiver, a verbal waiver, or through conduct which indicates a waiver. For example:

1. A person *may* waive their rights by clearly stating that they understand their rights and waive their rights. At that point, an *officer may* begin asking questions.
2. A person *may* waive their rights by simply answering questions once the warnings have been read.
3. A person *may* make a conditional waiver – "Depends on the question," for example. At that point, an *officer may* begin asking questions. If the person indicates they do not wish to answer a question, *officers may* continue with other questions, until the



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person states they do not want to answer any questions or requests an attorney.

4. A person *may* respond by saying something that is unclear or equivocal. Such statements *should* be clarified before questioning begins (or continues). A person might say, for example, "I don't know, do you think I need an attorney?" or "Maybe I *should* just wait and talk to you later," or "Hey, I don't have to answer your questions if I don't want to." These types of statements *should* be clarified by the interrogating *officers*. *Officers should* ask whether the person wishes to answer questions or not.

B. *Officers should* not offer advice or make any other comments about whether an attorney is needed.

C. When an officer becomes aware, during an interview or interrogation that a person may be mentally ill, the officer should proceed cautiously, explaining basic legal principles carefully in an effort to determine whether the person understands the situation. When it is apparent that a person does not understand or cannot communicate effectively, due to apparent mental illness, the officer should proceed to complete the contact or investigation without further interrogation.

#### 1.4.2 Voluntariness/Miranda

Confessions are presumed to be involuntary. Therefore, in addition to meeting *Miranda* requirements, an *officer must* be able to demonstrate that a confession was not coerced, that it was freely given and that it was not the result of duress or confusion. *Officers shall* not use coercion, threats or promises to elicit confessions or admissions. *Officers shall* not engage in excessively long interrogations without breaks for the suspect's personal needs, e.g., food, rest and use of the restroom facilities. Interrogation techniques *should* take into consideration the person's age, mental capacity, drug or alcohol impairment and general health.

#### 1.4.3 Juvenile Interrogations

A. Juveniles have the same rights under *Miranda* as adults. In determining whether a juvenile is in custody for purposes of *Miranda*, the *officer should* consider the fact that the person is a juvenile. If the *officer* believes a juvenile, based on the



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juvenile's age, would believe he/she is in custody, the *officer should* read the *Juvenile Miranda warnings*.

- B. A parent *may* invoke a *juvenile's rights under Miranda*. The law does not require a parent to be present at the interview of a juvenile. However, the presence or absence of a parent may affect whether statements made by the juvenile are considered to be voluntary and admissible. Unless the parent is a suspect or a co-defendant, an *officer shall*:
1. make a reasonable effort to notify parents of the *arrest* of a juvenile.
  2. permit an in-custody juvenile who asks to call a parent to do so.
  3. ask, prior to the start of any questioning, if the juvenile wants a parent, guardian or custodian present during the interview and, unless time is of the essence, delay a reasonable period of time for the person to arrive.
    - a. If a parent refuses or is unable to respond in a reasonable time, inform the juvenile and clarify whether they are willing to answer questions without the parent being present.
    - b. If a parent is being disruptive during the interview, the parent *may* be asked to leave the interview. The *officer must* then clarify with the juvenile whether they are willing to answer questions without the parent being present.
    - c. If the juvenile does not want the parent to be present during questioning, and the juvenile appears to have the maturity and experience to reasonably make such a decision, the parent may be excluded from the interview.
- C. *Officers* have an obligation to ensure that the juvenile understands his or her *Miranda Rights* and waives those rights voluntarily. There is a heightened concern with the voluntariness of confessions by juveniles. An *officer should* not interrogate a juvenile if the *officer* believes the juvenile is incapable of intelligently understanding their rights. *Officers* should consider the age, intelligence, educational background, mental capacity, physical condition, prior experience in the criminal justice system, need for an interpreter and injury (if any) of the juvenile prior to questioning. *Officers shall*:



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1. use or complete the form required by the prosecuting attorney or court for *Juvenile Miranda*, if a specific form is required by the local prosecution office or court; if none, advise a juvenile of *Miranda Rights* following the same guidelines for an adult interview or interrogation.
2. if further explanation of the rights is necessary, thoroughly document the explanation that was provided in the *officer's report*, or electronically record it.
3. advise the juvenile, when applicable, that the juvenile either *may* be, or *will* be, tried as an adult. See *A.R.S. § 13-501*.
4. limit the duration of the interview to a reasonable period of time (not to exceed two hours without *supervisory* approval).
5. limit to two the number of *officers* present during the interview (under normal circumstances).

#### 1.4.4 6<sup>th</sup> Amendment Right to Counsel

- A. The 6<sup>th</sup> Amendment to the *Constitution* provides, among other rights, that a person has the right to the assistance of an attorney whenever a person is charged with an offense that *may* result in jail time (a loss of liberty). This right to an attorney begins when a person is indicted for a crime, a complaint is filed for a criminal offense, or a person has an initial appearance in a criminal case. This right to counsel means, among other things, that the person is entitled to have an attorney present during any dealings with police or prosecutors concerning the pending charges.
- B. In *Arizona*, formal adversary proceedings begin once the person has had an initial appearance or has been indicted. After a person has been indicted or had an initial appearance, *officers may* question the person in any of the following circumstances:
  1. the person's attorney is present.
  2. the questioning relates to a different crime than the one for which the person is facing charges.



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3. the person is in custody, is being interrogated in person, has not invoked the right to counsel, is advised of and waives the person's right to counsel (*Miranda* warnings *should* be read to the person).
4. whether or not in custody, the person initiates the conversation with the *officer*, is advised of and waives their right to have an attorney present.
5. once the person is released from custody (or, if the person remains in jail or prison, is released into the general population) for at least 14 days. The *officer may* approach the person, remind him or her of the right to counsel, and seek to question the person.
6. The charges have been dismissed. Note: this applies only to Sixth Amendment Right to Counsel, not Fifth Amendment Right to Counsel (addressed above).

#### 1.4.5 Documenting Interrogations (see G.O. #41.40)

- A. During any investigation of a violent crime against persons, *officers shall* electronically record (audio and/or video) the complete interrogation of all suspects. In all other criminal investigations, the complete interrogation of a suspect *should* be electronically recorded (audio and/or video) if feasible to do so.
- B. When recording equipment is used, it *should* be activated at the beginning of any interrogation of the person and *should* include the reading of rights and the waiver of those rights. Any break in the recording (to adjust the recording equipment, to take a break, etc.) *should* be explained on the recording. The recording equipment *should* be reactivated immediately upon resuming the interrogation.
- C. All recordings *shall* be preserved as *evidence*, following *Department evidence procedures*, whether or not the recording has been transcribed. The *officer* doing the interrogation *shall* include in a police *report* that the interrogation was recorded and that the record was preserved as required.
- D. Any problem with the recording equipment *will* be fully documented in the *report*.