

	<b>MASSACHUSETTS CHIEFS OF POLICE ASSOCIATION</b>	<b>POLICY NO. 1.13</b>
Subject: <div style="text-align: center; color: red; font-weight: bold; font-size: 1.2em;"> <b>INTERROGATING SUSPECTS &amp; ARRESTEES</b> </div>		
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.3 (a); 1.2.3 (b); 1.2.3 (c); 42.2.2 (b); 42.2.2 (e); 42.2.2 (f); 42.2.10 (a); 42.2.10 (b); 42.2.10 (c); 42.2.10 (d); 42.2.10 (e); 42.2.10 (f)		DATE OF ISSUE: March 4, 2019  EFFECTIVE DATE: April 4, 2019  REVISION DATE:
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## GENERAL CONSIDERATIONS & GUIDELINES

Interrogations of persons who are in police custody must conform to the standards set forth in the *Miranda* decision and to Due Process. Police interrogation techniques include any words or actions, which are designed to elicit incriminating statements. It is important to understand that Miranda procedures only apply when a person is in custody and subjected to interrogation.

The ultimate goal of a police interrogation should be to obtain the truth - not just to produce a confession or an admission of guilt.

In order to obtain results, every police investigator should recognize the objectives of an interrogation, which should include the following:

1. Learning the truth;
2. Ascertaining the identity of criminal participants and accessories;
3. Obtaining an admission or a confession of guilt;
4. Acquiring all the facts, circumstances and method of operation of the crime under investigation;
5. Gathering information which may corroborate or disprove information obtained from other sources;
6. Eliminating suspects;

7. Uncovering information of any other crimes in which the suspect being questioned is, or has been involved; [42.2.2 (f)]
8. Recovering evidence or property; and
9. Recording and reporting all information obtained for subsequent court action.

## POLICY

It is the policy of the Police Department to:

- A. Provide officers and detainees with a safe and secure environment to conduct interviews and interrogations. [42.2.10]
- B. Provide persons in custody with their **Miranda** rights prior to any custodial interrogation; and
- C. Respect the Due Process rights of persons in custody. [1.2.3 (b)]

## PROCEDURES

### I. DEFINITIONS

- A. **Custody:** Legal or physical control of a person in an area, or facility or while being transported to a facility, legal; supervisory, or physical responsibility for a person. When a person is under arrest, or deprived of his/her freedom in a significant manner.<sup>1</sup> Factors that may be considered in determining custody include:<sup>2</sup>
  1. The place of interrogation: a police station or police vehicle is more indicative of custody than other locations.
  2. The persons present: large numbers of officers support a contention of custody.
  3. Indications of formal arrest:
    - a. Physical restraint
    - b. Use of weapons (unless suspect him/herself is armed)
    - c. Searches
    - d. Booking procedures
  4. The length and form of questions:

<sup>1</sup> Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966).

<sup>2</sup> Commonwealth v. Groome, 435 Mass. 201 (2001).

- a. Short, neutral (non-accusatory) inquiries do not suggest custody (for example: “Who are you? Where do you live? Why are you here?” etc.).
  - b. Brief routine questions to clarify questionable situations do not suggest custody.
  - c. Lengthy interrogations and the use of accusatory and leading questions are indicative of custody.
- 5. Summoning of police and initiation of interview: if the suspect summons the police and/or initiates the interview, there is a strong indication of non-custody.
  - 6. Focus: if the officers communicate to the suspect, in any way, that he/she has become a focus of the criminal investigation, this is an indication of custody.
  - 7. Freedom to leave: if the suspect is free to end the interview by leaving the place of interrogation or by asking officers to leave, this is an indication of non-custody.
- B. **Interrogation**: Express questioning of a suspect about a crime or suspected crime as well as any words or actions on the part of the police that the officers should know are reasonably likely to elicit an incriminating response.<sup>3</sup>

## II. INTERVIEW & INTERROGATION ROOM

- A. An interrogation is a controlled process, controlled by the officer conducting the interrogation. It should be conducted in a setting that provides a degree of privacy as well as safety and security for the officer and the suspect, as well.
- B. All rooms used for conducting interrogations shall be designated for such purposes by the Department, and shall be inspected for security issues prior to bringing the suspect into the room and conducting the interview. Writing materials, department forms, recording equipment and media will be maintained in the storage area in the immediate vicinity of the interrogation/interview room. [42.2.10 (b)]
- C. Prior to conducting an interrogation in the room(s) designated for such purposes, officers shall secure their weapons in gun lockers and conduct a pat-frisk of the individual being interrogated for firearms and other weapons, which shall be removed, prior to being admitted into the interview room. [42.2.10 (a)]
- D. Officers shall be responsible for the supervision of the person being interrogated. [42.2.10 (b)]
- E. Generally, not more than two officers should be in the interview/interrogation room at one time. Interrogations should not be conducted by a single officer without a back-up

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<sup>3</sup> Commonwealth v. Morse, 427 Mass. 117, 691 N.E.2d 566 (1998).

officer readily available in the event that the interrogating officer needs assistance. [42.2.10 (c)]

- F. Officers in the interview/interrogation room may use department radios, intercoms, telephones, alarms, or any available means of communication to obtain assistance. [42.2.10 (d)]
- G. Tables, chairs and suitable note taking utensils, a tape recorder or audio and video imaging equipment are items allowed in the interview/interrogation room. [42.2.10 (e)]
- H. Individuals being interrogated shall be allowed reasonable access to a restroom, drinking water, medication, and other needs, as appropriate, while continuing to provide for the safety and security of all parties involved. [42.2.10 (f)]

### III. PROVIDING *MIRANDA* WARNINGS

- A. Officers shall give *Miranda* warnings as soon as practical whenever a person is placed in custody, or deprived of his/her freedom in a significant manner, and is subject to interrogation.
  - a. The *Miranda* warnings shall be read from a pre-printed card or Miranda Form in a clear and unhurried manner prior to questioning.
  - b. Persons who do not speak English must be given these warnings in a language that they understand.
  - c. Sample *Miranda* Warning Language:

*You have the right to remain silent.*

*If you choose to speak, anything you say can be used against you in court.*

*You have the right to consult with an attorney before answering any questions, and you may have him or her with you during questioning.*

*If you cannot afford a lawyer and want one, a lawyer will be provided, at no cost to you, by the Commonwealth.*

*You may answer questions now and waive (that means, give up) your right to counsel and your right to remain silent.*

*If you decide to talk to me, you still have the right to stop at any time and for any reason.*

*Do you understand what I have told you? Will you talk to me now?*

- B. All arrested persons to be interrogated shall have the *Miranda* warnings read to them when they are booked, whether the warnings were previously given or not. The suspect shall then be asked to sign a *Miranda* Form acknowledging that the warnings were given. The officer giving the warnings shall sign the form as a witness, giving the date and time the suspect was advised.
- C. If there is any substantial delay between the *Miranda* warnings and the police questioning, the suspect shall be advised of these rights again before the questioning begins.
- D. Whenever an officer has any doubt as to the applicability of the *Miranda* warnings in any particular case, it is advisable that these warnings be given to the suspect to avoid any subsequent legal barrier to the admissibility of any statements obtained.
- E. If, at any time, a suspect requests to read his/her rights or to be informed of his/her rights, these requests shall be granted.
- F. **Juveniles:** See department policy on *Interactions with Juveniles*.

## IV. NON-MIRANDA SITUATIONS

### A. SPONTANEOUS STATEMENTS

1. Officers may note any spontaneous and volunteered statements. When a suspect voluntarily makes a statement, officers do not have to prevent him/her from continuing to talk and the *Miranda* warnings are not a prerequisite for admissibility.
2. Spontaneous and volunteered statements are statements made by a suspect of his/her own free will and not made in response to police questioning.
3. A person who voluntarily enters a police station and makes incriminating statements need not be given the *Miranda* warnings.<sup>4</sup>
4. Spontaneous and volunteered statements may be taken after the suspect is in custody and before, during, or after actual interrogation so long as the statements are clearly voluntary.

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<sup>4</sup> Oregon v. Mathiason, 429 U.S. 492, 97 S.Ct. 711 (1977).

- B. INVESTIGATORY STOP AND FRISKS: Non-custodial preliminary or investigative questioning need not be preceded by *Miranda* warnings.<sup>5</sup> See department policy on *Threshold Inquiries*. [1.2.3 (a)]
- C. NON-LAW ENFORCEMENT QUESTIONING: *Miranda* does not apply to statements made in response to questioning by private citizens, unless the private citizen is acting on behalf of the police. For a citizen to constitute an agent of the police, the police must initiate the citizen's help.<sup>6</sup>
- D. TRAFFIC STOPS, ACCIDENTS, AND SOBRIETY TESTS
1. The roadside questioning of a motorist detained pursuant to a routine traffic stop does not require that a *Miranda* warning be given.<sup>7</sup>
  2. An officer's request that a motorist perform field sobriety tests does not require that a *Miranda* warning be given.<sup>8</sup>
- E. TELEPHONE CONVERSATIONS: A telephone conversation between an officer and suspect is never custodial for the purposes of *Miranda*.<sup>9</sup>
- F. UNDERCOVER WORK: Undercover officers do not need to provide *Miranda* warnings since the target is not subjected to a police-dominated atmosphere.<sup>10</sup>
- G. PUBLIC SAFETY EXCEPTION: When public safety is at stake, officers may briefly interrogate a suspect in custody without administering *Miranda* warnings.<sup>11</sup>

## V. WAIVER OF RIGHTS

### A. VALID WAIVERS

1. A valid *Miranda* waiver includes the following elements:
  - a. The police properly communicated the *Miranda* rights to the suspect;

<sup>5</sup> See *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966); *Commonwealth v. Podlaski*, 377 Mass. 339, 398 N.E.2d 1379 (1979).

<sup>6</sup> *Massiah v. U.S.*, 377 U.S. 201, 84 S.Ct. 1199 (1964).

<sup>7</sup> *Berkemere v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138 (1984).

<sup>8</sup> *Commonwealth v. Wholley*, 429 Mass. 1010, 709 N.E.2d 1117 (1999); See also *Vanhouton v. Commonwealth*, 424 Mass. 327, 676 N.E.2d 460 (1999).

<sup>9</sup> *Commonwealth v. Ryan*, 11 Mass.App.Ct. 906 (1981); *Commonwealth v. Clark C., a juvenile*, 59 Mass.App.Ct. 542 (2003).

<sup>10</sup> *Illinois v. Perkins*, 496 U.S. 292 (1990).

<sup>11</sup> *New York v. Quarles*, 467 U.S. 649 (1984).

- b. The suspect voluntarily, knowingly and intelligently decides to waive his/her *Miranda* rights; and
  - c. The suspect indicates a willingness to speak with the police.
- 2. The burden is on the prosecution to prove that the waiver was valid.<sup>12</sup>
- 3. In determining whether a valid waiver was made, the court examines whether in light of the totality of the circumstances surrounding the making of the waiver, the will of the suspect was overborne such that the statement was not a free and voluntary act. The court considers the circumstances of the interrogation and the individual characteristics and conduct of the suspect, such as the length of time which transpired between the giving of the *Miranda* warnings and the waiver, the suspect's age, mental capacity and experience.<sup>13</sup>
- 4. When the suspect waives his/her rights, the interrogating officers shall obtain a written waiver when possible. A waiver may be made orally or in writing, but a written and properly witnessed waiver is more likely to be upheld in court. In all cases, however, officers must document their waiver interaction with the suspect in their incident report.<sup>14</sup>
- 5. Silence on the part of the suspect does not constitute a valid waiver.<sup>15</sup>
- 6. The physical and emotional condition of the person being questioned is an important consideration in determining the validity of a waiver. The police should refrain from questioning if the suspect is clearly not capable of understanding his/her rights.<sup>16</sup>

## B. COMPETENCY

- 1. A suspect must be competent to waive his/her rights prior to police questioning. The question of competency is a question of fact to be determined by the circumstances in each case.
- 2. After the *Miranda* rights have been read and after the suspect has shown an initial willingness to waive those rights, the police may ask the suspect about the following in order to properly assess the suspect's ability to intelligently understand and waive his/her rights:
  - a. His/her age;

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<sup>12</sup> Commonwealth v. Nom, 426 Mass. 152, 686 N.E.2d 1017 (1997).

<sup>13</sup> Commonwealth v. Nom, 426 Mass. 152, 686 N.E.2d 1017 (1997); Commonwealth v. Hooks, 38 Mass. App. Ct. 301, 647 N.E.2d 440 (1995).

<sup>14</sup> Commonwealth v. Alcala, 54 Mass.App.Ct. 49 (2002).

<sup>15</sup> Commonwealth v. Roy, 2 Mass. App. 14, 307 N.E.2d 851 (1974).

<sup>16</sup> Commonwealth v. Hosey, 368 Mass. 571, 334 N.E.2d 44 (1975).

- b. Whether [s]he is under the influence of any drugs or alcohol;
- c. Whether [s]he is suffering from any mental or emotional problem;
- d. His/her education and learning;
- e. His/her employment;
- f. Whether [s]he has ever been given *Miranda* warnings previously; and
- g. Whether [s]he understands the words used by the officer in reciting the *Miranda* warnings or what they mean.

### C. SIX HOUR RULE

- 1. Statements made by an arrestee more than six (6) hours after the arrest (safe harbor period) are inadmissible unless the arrestee has been arraigned or has made a valid written waiver of his/her right to be arraigned without unreasonable delay (Right to Prompt Presentment Form)<sup>17</sup> [1.2.3]
- 2. If the arrestee is incapacitated due to a self-induced disability (such as the use of drugs or alcohol) the six (6) hour safe harbor period does not begin until the disability terminates.<sup>18</sup>
- 3. The six hour period is also tolled when interrogation is not possible or must be suspended for reasons not attributable to the police, such as a natural disaster or emergency.<sup>19</sup>

## VI. INVOCATION OF RIGHTS [1.2.3]

- A. Once a suspect invokes his/her right to silence and/or counsel, officers must immediately terminate any interrogation. A suspect may invoke their rights after initially waiving their rights.
- B. If a suspect has voluntarily waived his/her right to remain silent, [s]he may still invoke this right by refusing to answer any further questions or by requesting an attorney. At this point the police questioning must cease.

### C. RIGHT TO SILENCE

An officer may resume an interrogation after a suspect has invoked his/her right to remain silent provided that the officer:

- 1. Scrupulously honors the suspect's right to remain silent when first invoked;
- 2. A significant period of time has elapsed; and

<sup>17</sup> Commonwealth v. Rosario, 422 Mass. 28, 661 N.E.2d 71 (1996).

<sup>18</sup> Id.

<sup>19</sup> Id.

3. The suspect is provided another *Miranda* warning.

#### D. RIGHT TO COUNSEL [1.2.3 (c)]

1. An officer may resume an interrogation after a suspect has invoked his/her right to counsel provided that the suspect has the opportunity to consult with counsel.<sup>20</sup>
2. If a suspect states that [s]he wishes to consult an attorney, [s]he must **not** be questioned further by police until [s]he has had an opportunity to consult an attorney. However, if the suspect initiates statements or conversation, the police may respond to those statements or conversation.
3. Officers must immediately tell a suspect that his/her attorney is trying to contact him/her and convey any message or recommendation from the attorney to the suspect.<sup>21</sup> Once so informed, the suspect may waive or invoke his/her rights to remain silent or to have counsel present.
  - a. The attorney's call should be recorded, logged, and saved for disclosure in the discovery process.
  - b. Police officers should make a record of their communication of an attorney's message to a suspect.

- E. Once a suspect has been arraigned, [s]he has the right to counsel, whether or not [s]he is in custody, and [s]he shall not be questioned in the absence of counsel unless [s]he specifically waives his/her right.<sup>22</sup>

### VII. DOCUMENTING STATEMENTS & CONFESSIONS [1.2.3 (b); 42.2.2 (b)]

- A. Officers shall electronically record all interrogations conducted in police headquarters or any "place of detention", whenever it is practical to do so.<sup>23</sup>
- B. All interrogations involved an interpreter should be recorded, whenever practical.<sup>24</sup>

<sup>20</sup> Edwards v. Arizona, 451 U.S. 477 (1981).

<sup>21</sup> Commonwealth v. Mavredakis, 430 Mass. 848 (2000); Commonwealth v. McNulty, 458 Mass. 305 (2010).

<sup>22</sup> Massiah v. U.S., 377 U.S. 201, 84 S.Ct. 1199 (1964).

<sup>23</sup> Commonwealth v. DiGiambattista, 442 Mass. 423 (2004).

<sup>24</sup> Commonwealth v. Adonsoto, 475 Mass. 497 (2016).

- C. Before recording an interrogation, the suspect shall be notified that the conversation will be recorded.<sup>25</sup> However, permission is not necessary.<sup>26</sup> See department policy on ***Electronic Recording Interrogations***.
- D. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes:
1. Location, date, time of day and duration of interview;
  2. Identities of officers or others present;
  3. *Miranda* warnings given, suspect responses and waivers provided, if any; and
  4. The nature and duration of breaks in questioning.
- E. The suspect shall be asked to read, sign and date all written statements and confessions.
- F. The interrogating officer(s) shall sign and date all written statements and confessions.
- G. The interrogating officer shall prepare and submit a report in accordance with departmental procedures which shall include the above information and any written or recorded statements or confessions.

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<sup>25</sup> G.L. c. 272, § 99.

<sup>26</sup> Commonwealth v. Alleyne, 474 Mass. 771 (2016).