

MODEL POLICIES FOR LAW ENFORCEMENT IN MARYLAND



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INTERVIEWS AND INTERROGATIONS

I. Purpose:

The purpose of this policy is to provide standards and general guidelines for law enforcement interviews and interrogations that are accurate, credible and professionally accomplished.

II. Policy:

- A. It is the policy of _____ that, the conduct of police interviews and interrogations should be fair, competent, and totally objective. It is extremely important that this practice should also be perceived as non-coercive and unbiased by the courts and the general public.
- B. It is the policy of _____ that, interviews and interrogations comply with all constitutional requirements, applicable state and local laws and strictly adhere to agency investigative procedures.
- C. It is the policy of _____ to accurately and completely record or otherwise document the conditions, content, and conclusions of any interview or interrogations. This agency acknowledges the advantages of electronic recording whenever investigative and environmental conditions allow.

III. Definitions:

- A. Interview: A purposeful and non-accusatory conversation with a victim, a complainant, a witness, or even a possible criminal suspect. The atmosphere is non-custodial and the interviewee should feel that he/she is free to end or terminate the interview and leave at any time.
- B. Interrogation: During an interrogation, the person being questioned by the police is not free to leave, and police questioning or conduct is specifically designed to elicit incriminating responses implicating the person in criminal activity. All custodial interrogations shall be preceded by issuance of the *Miranda* warning.
- C. Electronic Recording: The practice of audio recording and/or videotaping an interview or interrogation. It is a violation of Maryland law to audio-tape any conversation without the consent of all parties.
- D. Custody: A suspect is considered to be in custody if, under similar circumstances, a reasonable person in the suspect's position would feel that his/her liberty to move

about freely or leave was being restrained in any way.

IV. Guiding Principles - Interviews:

- A. Interviews are critical components of a police investigation. Most police interviews are conducted with victims, complainants and witnesses to a criminal act. Interviews may be conducted in the field, in police facilities, in vehicles, or in any other convenient location.
- B. Officers should give clear notification, followed by acknowledgment by the person being interviewed that the questioning is non-custodial and that the person being questioned is free to discontinue and leave at any time.
- C. A fact-finding interview of a possible criminal suspect is not an interrogation. Thus the *Miranda* warnings are not required.
- D. If, at any time during an interview, a person's responses incriminate, or tend to incriminate him/her in the commission of a crime, the questioning officer shall give the *Miranda* warnings before continuing the interrogation, regardless of whether the person has been arrested. The warnings indicate that the person is now a suspect and that he/she is not at liberty to leave.
- E. Whenever possible and practical, officers should prepare a typed (or written) statement of an interview and have it reviewed, acknowledged as accurate and signed by the interviewee.
- F. While electronic recording may be appropriate for interrogation of criminal suspects, non-custodial interviews of crime victims, witnesses and associated individuals may also be electronically recorded.
- G. Any interview that is electronically recorded must have the express consent of all parties. Persons being interviewed should sign a consent form.

V. Guiding Principles – Interrogations:

- A. Custodial interrogations of criminal suspects shall always be preceded by *Miranda* warnings, using the agency pre-printed form. If at any stage of the custodial questioning, the suspect indicates that s/he wants to stop talking or to consult with an attorney before continuing, the questioning shall stop.
- B. Interrogations should be pre-planned and investigating officers should have a clear understanding of the issues to be covered. This ordinarily includes an understanding of the evidence available, victim/witness accounts, offense elements, possible alibis and defenses, and applicable laws.

- C. Interrogations should, whenever possible, be conducted by two officers. Prior to the interrogation each officer should have a clear understanding of the respective roles each will perform.
- D. If a confession to a criminal act is obtained, officers should prepare a written statement to that effect and endeavor to have it reviewed, acknowledged as accurate, and signed by the suspect.
- E. Where practical and when available, consideration should be given to recording the entire interrogation on videotape. This consideration should be given regardless of whether the interrogation is conducted in the field or in a police facility.
- F. If the interrogation is to be electronically recorded, the suspect should first sign a consent form. Covert or surreptitious electronic audio recordings of interviews and interrogations are prohibited by Maryland law.
- G. Under no circumstances are interrogating officers allowed to utilize physical force or any physically inhumane or abusive coercion against a suspect to make him or her provide incriminating information. The use of physical force or employment of torture techniques or psychological coercion during an interrogation is unconstitutional.
- H. Officers have no authority to offer promises of leniency or special consideration as inducements for admissions or cooperation. This subtle form of coercion is prohibited.
- I. Information developed through interrogations and/or confessions should be corroborated to the fullest extent possible by information and evidence available through other investigative means.
- J. If there is more than one suspect, any incriminating statements or information supplied by one suspect against another must be independently substantiated.

VI. Special Cases – Juveniles:

- A. Juveniles have the same *Miranda* rights as adults. A juvenile suspect may waive *Miranda* and make a voluntary statement during a custodial interrogation, but whether the statement is voluntary depends on factors such as: age; experience; education; background; intelligence; capacity to understand his or her rights and the consequences of waiving them; and presence of a parent during the interrogation.
- B. Although police are not specifically required to tell a juvenile that he or she has a right to speak to his or her parents, it is advisable to do so. Parents' absence from the interrogation does not automatically invalidate the statement, but at least one

Maryland court has held that a 10-year old is entitled to parental guidance, unless the State could demonstrate he had the mental capacity to understand the significance of his *Miranda* rights and the consequences of waiving them.

- C. Interrogation of juveniles should be limited to a reasonable time-duration with opportunities for periodic rest breaks. The number of officers participating in the interrogation of a juvenile should be limited.

VII. Related Cases:

- A. *Fare v. Michael C.*, 442 U.S. 707, *reh'g den.*, 444 U.S. 887 (1979)
- B. *Johnson v. Zerbst*, 304 U.S. 458 (1938)
- C. *Lodowski v. State*, 307 Md. 233 (1986)
- D. *In re Lucas F.*, 68 Md.App. 97 (1986), *cert. den.* 307 Md. 433 (1986)
- E. *Miranda v. Arizona*, 384 U.S. 436 (1966)
- F. *Winder v. State*, 362 Md. 275 (2001)
- G. *Baynor v. State*, 355 Md. 726, 738 (1999)

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