

SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: MARCH 5, 2018
NUMBER: 4.03 – LEGAL
SUBJECT: ADMONITION PROCEDURES
RELATED POLICY: N/A
ORIGINATING DIVISION: INVESTIGATIONS II
NEW PROCEDURE:
PROCEDURAL CHANGE: **EXTENSIVE CHANGES**
SUPERSEDES: DP 4.03 – MARCH 1, 2013

I. PURPOSE

This Department procedure establishes guidelines regarding admonition procedures.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

The Fifth Amendment to the United States Constitution states that a person "shall not be compelled in any criminal case to be a witness against himself."

- A. The United States and California Supreme Courts have interpreted this to mean that a suspect must be given Miranda warnings and waive Fifth Amendment rights prior to custodial interrogation. In other words, the suspect must first be in custody and, second, about to be interrogated before the warnings are required.
- B. If the suspect is a juvenile, custody alone requires advisement of rights, regardless of whether or not the juvenile is interviewed (Welfare and Institutions Code, Section 625).

NEW

- C. Senate Bill 395, effective January 1, 2018, requires that a juvenile 15 years of age or younger consult with counsel prior to a custodial interrogation and before waiving any specified rights. The juvenile must be allowed to consult with an attorney in person, by telephone or video conference. The only exception is when the officer reasonably believes that the information being sought is necessary to protect life or property and that the officer's questions are limited to those necessary to obtain that information. (Welfare and Institutions Code 625.6).

IV. **CUSTODY**

- A. Miranda applies only when the person being questioned is in custody. For purposes of giving Miranda warnings, "custody" exists when the following two requirements are met:
1. The suspect must in fact be deprived of his or her freedom in a significant way (generally meaning not free to leave); and,
 2. The suspect must personally be aware of this lack of freedom, or reasonably believe that it exists.
- B. Factors in determining custody
1. If a suspect was formally arrested, he or she is normally in custody and must be advised of the Miranda rights prior to questioning.
 2. There can be "custody" without an arrest. If the suspect was not arrested, the courts weigh many factors to determine "custody" during the questioning. The following are some of the factors to consider:
 - a. Where the questioning takes place - an area station or a police car is more custodial than at or near the suspect's home or in his or her car;
 - b. When the questioning takes place - late at night is more custodial than during the day;
 - c. How many officers are present - many officers is more custodial than one officer;
 - d. How many of the suspect's friends and/or relatives are present - no friends or relatives is more custodial than when many friends or relatives are present;
 - e. How long the questioning lasts - lengthy questioning is more custodial than brief questioning;

- f. How accusatory the questioning is - confrontation with evidence in order to get an admission or confession is more custodial than questions intended to simply "clear up" the situation;
- g. What information the officer has - the more probable cause to arrest and the more the investigation has "focused" on the suspect, the more likely the courts are to find "custody"; and,
- h. Objective indications of custody - objective indications of custody include a firearm, handcuffing, moving the suspect significant distances, or locking him or her inside an interview room. Objective conditions reflecting lack of custody include refraining from a show of force, threats, or orders.

V. ADMONITION PROCEDURES

- A. Admonition content:
 - 1. The right to remain silent;
 - 2. Warned that anything the person says can and will be used against him or her in court; and,
 - 3. The right to be represented by an attorney of the person's own choosing and to have the attorney present during questioning; or if unable to afford an attorney, one will be appointed prior to any questioning.
- B. Admonition is not required under the following circumstances:
 - 1. When a person is stopped under suspicious circumstances (detention), no warning need be given unless and until the officer has developed probable cause to arrest or the questioning has ceased to be brief and casual and becomes sustained and coercive;
 - 2. For traffic citations;
 - 3. When statements are made over the telephone;
 - 4. From persons who volunteer statements (e.g., when a person states that he or she wishes to confess to a crime). In this situation, an admonishment need only be given if the officer asks a question to bring out further details or encourages the person in any way to continue talking;

5. When the officer is engaged in general "on-the-scene" questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process; or,
6. If the officer does not intend to interrogate an adult in custody, admonition is not necessary. If following an arrest, the officer feels that interrogation would serve no purpose at such time; the officer should not admonish the subject. A follow-up investigator can then admonish the subject and interrogate him or her.

NEW

C. Admonition of felony suspects in custody:

When a felony suspect in custody is advised of the Miranda rights and waives those rights, interrogation should commence without any significant delay. When interrogation cannot be commenced quickly, consider deferring the Miranda warnings. (See section E below).

In cases where the suspect was not advised of the Miranda rights, or where a waiver was obtained but no interrogation followed, the officer must explain the circumstances in his or her report.

D. Admonition in which the suspect is likely to waive Miranda rights:

Where the suspect appears likely to waive Miranda rights and talk about the case, questioning should begin as soon as possible. Compliance with admonishment rules must precede the interrogation.

E. Deferral when the arresting officer is not familiar with an incident/investigation:

Questioning should be deferred, together with Miranda warnings, when the arresting officer is unfamiliar with the case. For example, it often happens that an officer making an arrest upon a warrant or pursuant to instructions will be unfamiliar with the case.

F. Procedural steps in admonition:

1. Officers shall verbally advise suspects in custody of their rights by reading the admonition form on the officer's notebook (PD-145). Waiver of these rights is normally obtained by asking the following questions listed on the form:
 - a. "Do you understand each of these rights that I have explained to you?"
 - b. "Having in mind and understanding your rights as I have told you, are you willing to talk with us?"

The answers to these questions will be recorded, in the spaces provided, on either the arrest report or the juvenile contact report. The exact words used by the suspect when answering admonition questions should be documented (i.e., if the answer to question one was, "Yeah, sure I do," it must be documented exactly as the suspect stated).

G. Non-Waiver

1. Once the admonition is given and the individual indicates in any manner, prior to or during questioning, that he or she wishes to remain silent, the interrogation must cease.
2. If the individual states that he or she wants an attorney or the individual "consults" with an attorney, the interrogation must cease until an attorney is present or the individual has consulted with an attorney.
3. Beginning on January 1, 2018, a juvenile age 15 or younger may not waive Miranda rights prior to consultation with an attorney, in person, by telephone or via video conference. (Welfare and Institutions Code 625.6). If a juvenile makes a request to see an attorney, a parent, or a guardian at any time prior to or during questioning, the interrogation must cease until the juvenile is given an opportunity to see his or her attorney, parent, or guardian.

NEW

H. Waiver

1. If, after invoking the right to silence or counsel, the individual changes his or her mind and freely indicates a desire to speak, the individual should be re-admonished and allowed to speak and be questioned.
2. After proper admonishment and voluntary willingness to speak, reluctance to answer particular subjects or questions does not constitute the invocation of the right to silence. Questioning may continue until the right is clearly exercised. Officers should avoid coercive questioning practices by which the individual's will is overborne so that he or she is not free to invoke the right to silence or counsel. Questioning must cease when the reluctance to speak is equivalent to a refusal to speak.

3. Spontaneous, voluntary statements in the presence of an officer by an individual who has invoked his or her rights may also constitute a waiver, provided the officer(s) did not directly question or engage by word or action in the functional equivalent of interrogation. The individual should be allowed to continue, without interruption, his or her spontaneous declaration. However, no questions or direction shall be given by the officer(s) until the individual is re-admonished and freely indicates a willingness to continue.