

Cleveland Community Police Commission
Recommendations for Miranda Warning GPO

Version filed 01/17/2020	Recommended Modifications	Comments
<p>Custody: A person is in custody when one of two circumstances occurs: 1) they are verbally told that they are under arrest; or 2) when based on the totality of circumstances a person would reasonably believe there is a significant restraint on their freedom of movement and ability to end the interaction. Factors that may be relevant in determining whether a person would reasonably believe they are in custody include the factors set forth in GPO 2.02.02, Investigatory Stops, Section IV. B.</p> <p>Questioning incident to a routine traffic stop is considered custodial.</p>	<p>Custody: A person is in custody when one of two circumstances occurs: 1) they are verbally told that they are under arrest; or 2) when based on the totality of circumstances a person would reasonably believe there is a significant restraint on their freedom of movement or ability to end the interaction. Factors that may be relevant in determining whether a person would reasonably believe they are in custody include the factors set forth in GPO 2.02.02, Investigatory Stops, Section IV. B.</p> <p>Questioning incident to a routine traffic stop is not considered custodial.</p>	<p>Definitions</p>
<p>Interrogation: Any direct questioning or any words or actions (other than those normally attendant to arrest and custody) that the officer knows or reasonably should know would elicit an incriminating response.</p>	<p>Interrogation: Any direct questioning or any words or actions (other than those normally attendant to booking and custody) that the officer knows or reasonably should know would elicit an incriminating response.</p>	<p>Definitions</p>
<p>Juvenile: An individual under the age of 18.</p>	<p>Juvenile/Youth: An individual under the age of 18.</p>	<p>Definitions</p>
<p>B. Officers shall provide the Miranda Warning when both of the following criteria are met:</p> <ol style="list-style-type: none"> 1. A suspect is in custody; AND 2. The officer is to question or interrogate the suspect about any crime. 	<p>B. Officers shall provide the Miranda Warning when both of the following criteria are met:</p> <ol style="list-style-type: none"> 1. A subject is in custody; AND 2. The officer is to question or interrogate the subject. 	<p>Procedure I</p>
<p>C. The officer shall provide the Miranda Warning before any related questioning begins.</p>	<p>C. The officer shall provide the Miranda Warning before any questioning begins.</p>	<p>Procedure I Removed "related"</p>

<p>D. Miranda Warnings are not required prior to any incriminating, spontaneous statement. If an individual makes a spontaneous statement, the officer shall provide the Miranda Warning before clarifying the statement or asking any questions related to the statement.</p>	<p>D. Miranda Warnings are not required prior to any spontaneous statement. If an individual makes a spontaneous statement, the officer shall provide the Miranda Warning before clarifying the statement or asking any questions related to the statement.</p>	<p>Procedure I Removed “incriminating”</p>
<p>C. Officers shall stop questioning an individual when they have requested an attorney and may resume questioning once the attorney is present.</p>	<p>C. Officers shall stop questioning an individual when they have requested an attorney and may not resume questioning until an attorney is present. Officers shall stop questioning when an individual indicates they do not want to answer questions</p>	<p>Procedure II</p>
<p>A. Deaf and Hard of Hearing Individuals and Individuals with Limited English Proficiency (LEP)</p>	<p>A. Deaf or Hard of Hearing Individuals or Individuals with Limited English Proficiency (LEP)</p>	<p>Procedure III Changed “and” to “or”</p>
<p>1. When questioning a juvenile, officers shall consider the juvenile’s age when determining whether the juvenile would not feel free to leave. A juvenile may be in custody for purposes of the Miranda rule when an adult in the same circumstances would not.</p>	<p>1. When questioning a juvenile, officers shall conduct questioning consistent with guidance contained in GPO 5.12.01 and consider the juvenile’s age, intelligence, mental capacity, disability status, and physical condition when determining whether the juvenile would not feel free to leave. A juvenile may be in custody for purposes of the Miranda rule when an adult in the same circumstances would not.</p>	<p>Procedure III B Brings policy in line with best practices from the International Association of Chiefs of Police</p>
<p>3. An example of the Miranda Warning given in an age appropriate manner is as follows:</p> <p>a. “You have the right to remain silent. That means you do not have to talk to me.”</p>	<p>3. An example of the Miranda Warning given in an age appropriate manner is as follows:</p> <p>a. “You have the right to remain silent. That means you do not have to talk to me.”</p>	<p>Procedure III B Brings policy in line with best practices from the International Association of Chiefs of Police</p>

<p>b. "Anything you say can be used against you in court."</p> <p>c. "You have the right to get help from a lawyer before you talk to me."</p> <p>d. "You may also have your parent, or legal guardian present."</p> <p>e. "If you or your family cannot pay a lawyer, the court will get you one for free."</p> <p>f. "You have the right to stop this interview at any time."</p> <p>g. "Do you understand these rights that I have explained to you?"</p> <p>h. "Do you want to have a lawyer present if you choose to talk to me?"</p> <p>i. "Do you want your mother, father, or legal guardian present if you choose to talk to me?"</p> <p>j. "Do you want to talk to me?"</p>	<p>b. "Anything you say can be used against you in court. This could be in juvenile court and adult court."</p> <p>c. "You have the right to get help from a lawyer before you talk to me."</p> <p>d. "You may also have your parent, or legal guardian present."</p> <p>e. "If you or your family cannot pay a lawyer, the court we will get you one here for free."</p> <p>f. "You have the right to stop this interview at any time."</p> <p>g. "Do you understand these rights that I have explained to you?"</p> <p>h. "Do you want to have a lawyer present if you choose to talk to me?"</p> <p>i. "Do you want your mother, father, or legal guardian present if you choose to talk to me?"</p> <p>j. "Do you want to talk to me?"</p>	
<p>5. Officers shall stop questioning when the juvenile has requested an attorney, parent, or guardian. Officers may resume questioning when the attorney, parent, or guardian is present; however no parent or guardian may waive the juvenile's right to counsel.</p>	<p>5. Officers shall stop questioning when the juvenile has requested an attorney, parent, or guardian. Officers may resume questioning when the attorney is present. However no parent or guardian may waive the juvenile's right to counsel.</p>	<p>Procedure III B Brings policy in line with best practices from the International Association of Chiefs of Police</p>
<p>1. "Having these rights in mind, and having stated that you understand these rights, do you wish to talk to me (or us) now?"</p>	<p>1. "Having these rights in mind, and having stated that you understand these rights, do you wish to give up these rights and talk to me (or us) now?"</p>	<p>Procedure IV C</p>

<p>D. Officers shall consider the totality of the circumstances when determining whether a juvenile has knowingly and voluntarily waived Miranda including:</p> <ol style="list-style-type: none"> 1. The youth's age, mentality, and prior criminal experience; 2. The length, intensity, and frequency of the interrogation; and 3. Whether or not a parent was present at the time of the waiver. 	<p>D. In order to preserve the evidentiary value of a juvenile's confession, the officer taking that confession must act with great caution. Officers shall consider the totality of the circumstances when determining whether a juvenile has knowingly and voluntarily waived Miranda including:</p> <ol style="list-style-type: none"> 1. The youth's age, mentality, and prior criminal experience; <ol style="list-style-type: none"> a. All children are highly suggestible and significantly more likely than adults to falsely confess to a crime. b. Children often innocently display behaviors that, in adults, are thought to indicate deception, such as lack of eye contact, fidgeting and slouching. 2. The length, intensity, and frequency of the interrogation; and <ol style="list-style-type: none"> a. When possible, officers should avoid questioning a child in the middle of the night, and when the child had even a few hours of sleep deprivation. b. Officers should not use the child's status as a juvenile to persuade him or her to cooperate, communicate that the child may avert or face reduced charges if the child cooperates, or use deception in any way to facilitate cooperation. c. Officers shall follow the procedures described in GPO 	<p>Procedure IV Brings policy in line with best practices from the International Association of Chiefs of Police</p>
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	<p>5.12.01, Interactions with Youth. Section III.</p> <p>3. Whether or not the child had a meaningful opportunity to consult with an attorney or other trusted adult who does not have a conflict of interest and whether that attorney or trusted adult was present at the time of the waiver.</p>	
1. Invokes his/her right to remain silent; or	1. Indicates he/she does not want to answer questions.	Procedure V A
3. Indicates he/she wants to have counsel, or if a juvenile indicates he or she wants to have counsel, a parent, or guardian present before answering questions, or anytime during the interrogation; or	3. Indicates he/she wants to have counsel, or if a juvenile indicates he/she wants to have counsel, a parent, or guardian present before answering questions, or anytime during the interrogation; or	Procedure V A
Added	D. Juveniles may not be re-questioned without an attorney present.	Procedure VI Brings policy in line with best practices from the International Association of Chiefs of Police
A. Officers may temporarily forgo the Miranda Warning when necessary if they or the public are in immediate danger.	A. Officers may temporarily forgo the Miranda Warning when necessary if they or the public are in immediate danger of physical harm.	Procedure VIII
Added	IX. The Division shall provide officers with annual in-service training on Miranda Warnings that is adequate in quality, quantity, type, and scope. Training on the policies shall be given in-person by a J.D., representing both the defense and prosecution, with subject matter expertise, given the policies' importance and complex nature (per Cleveland City Ordinance § 135.37).	Procedure IX