



## Clayton County Police Department

# PROCEDURES

Subject <b>INTERVIEWS &amp; INTERROGATIONS</b>		Procedure # <b>D36</b>	
Authorizing Signature <b>Chief Greg Porter</b>	Effective <b>10-10-2014</b>	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended (See Below) <input type="checkbox"/> Rescinds	Total Pages <b>10</b>

### I. PURPOSE

To establish procedures for ensuring compliance with constitutional requirements regarding the interview(s) and/or interrogation(s) of person(s) by sworn personnel of this Department while conducting criminal investigations.

### II. POLICY

It shall be the policy of this Department to protect the constitutional rights (e.g., due process; right to counsel; etc.) of all persons during interviews and/or interrogations. Officers are prohibited from using unlawful coercion to obtain admissions or confessions during interviews and/or interrogations.

### III. DEFINITIONS

Administrative Questions: Questions asked by a law enforcement officer that do not inherently inquire about the elements and/or evidence of an alleged crime and are posed to persons engaged in communication with the officer, regardless of the Tier of Contact level. Such questions include, but are not limited to, asking for a

person's identification card or document, name, address, contact information, date of birth, physical traits (i.e., height, weight, etc.), social security number.

Admission: This is not a confession; it is a statement acknowledging all or some of the elements of the crime alleged, but may include an affirmative defense or excuse for the commission of the crime (i.e., self defense; etc.).

Confession: A statement in which all of the elements of the crime alleged are admitted without offering any affirmative defense or excuse.

Field Interview: Contact between a law enforcement officer and a person that may be more than consensual conversation, but is not an interrogation.

Interrogation: The formal questioning by a law enforcement officer of a person who is in lawful custody and is suspected of committing a crime.

Interview: A voluntary conversation between a law enforcement officer and a person regarding a matter of police interest.

Reasonable Suspicion: A law enforcement officer's determination, based on his/her observation of facts and circumstances, while taking into account his/her training and experience, to reasonably believe that the person to be detained is, was, or is about to be, involved in criminal activity.

Unlawful Coercion: The use or threat of force, or unreasonable tactics, to persuade or compel a person to admit or confess to the elements of an alleged crime, or cooperate with a law enforcement officer. Unreasonable tactics include, but are not limited to, extended periods of interrogation without break; deprivation of food, sleep and/or medication; promises of leniency, incentives or other inducement; etc.

## **IV. PROCEDURES**

### **A. Tiers of Contact & Field Interviews**

#### **1. Tier 1 Contact**

- a. Law enforcement officers can talk to any person(s) who is/are willing to talk to them and is/are not in lawful custody. Officers can talk to the person about anything when it is consensual contact. This consensual contact does not require the use and/or waiver of the Miranda Rights Warning. Officers can ask questions, ask for identification, and conduct background checks (i.e., NCIC/GCIC checks; local files; etc.) using information voluntarily provided by persons without violating the 5<sup>th</sup> Amendment. The person(s)

voluntarily engaged in contact with an officer can refuse to show their identification and/or end the conversation at any time.

- b. In the event that incriminating evidence is discovered by a law enforcement officer, the Tier 1 Contact can elevate the contact to Tier 2, or even Tier 3.

## 2. Tier 2 Contact

- a. A Tier 2 Contact is different from a consensual (Tier 1 Contact) because the person (now considered a suspect) cannot walk away until the officer has completed his/her investigation. A Tier 2 Contact field interview is focused on the behavior or facts that gave the officer the reasonable suspicion that a crime has occurred, is occurring or will occur. The officer can explore other areas with the suspect, but the focus of the stop must be resolving the alarm that created the reasonable suspicion.
- b. A law enforcement officer is authorized by the Supreme Court case of Terry v. Ohio, 392 U.S. 1 (1968), to stop and detain a person based on the officer's reasonable suspicion that the person has committed, is committing, or is about to commit a crime. An officer can frisk the person if the officer has a reasonable belief that the person "may be armed and presently dangerous."
- c. This is a detention, but not an arrest. Officers have the authority to detain a suspect for the length of time needed to dispel their alarm that a crime has occurred, is occurring, or will occur. The duration of the detention is not indefinite; it is limited by the amount of time a reasonable officer would require to investigate the facts to either dispel the alarm or effect an arrest.
- d. The search authorized during a Tier 2 Contact is a frisk for weapons, specifically for officer safety. If during the frisk an officer feels a suspected weapon or contraband, the officer can retrieve the item to determine if it is a weapon or contraband. However, once the officer determines that probable cause exists for an arrest or search, the contact can elevate to a Tier 3 Contact and conduct any search authorized by the facts.
- e. The courts generally hold that traffic stops, for the purpose of issuing a citation, neither imply nor apply the use of the Miranda Rights Warning; such traffic stops are analogous to a Tier 2 Contact. However, in driving under the influence (DUI) cases, or other physical

arrests resulting from traffic stops, the level of contact automatically elevates to a Tier 3 Contact upon the effect of an arrest.

3. Tier 3 Contact

- a. This is a lawful, custodial arrest. Law enforcement officers have the authority to ask any administrative questions of a suspect who is in custody.
- b. Officers have the authority to listen to and record voluntary statements made by a suspect who is in custody. However, without a Miranda Rights Warning and subsequent waiver, officers cannot ask questions while the suspect is voluntarily giving a statement. Officers shall allow the suspect to talk freely while recording and/or documenting the suspect's statements.
- c. When a suspect is in custody, officers must administer the Miranda Rights Warning and obtain a waiver of those rights from the suspect before an interrogation can occur.

B. Miranda Rights Warning & the Waiver

1. If a suspect is in the custody of a law enforcement officer, prior to an interrogation, the officer must administer the Miranda Rights Warning and obtain a waiver from the suspect.
2. Officers shall make every effort to record the administration of the Miranda Rights Warning and the suspect's waiver using a recording device and/or utilizing the departmental *Statement of Miranda Rights Form*. If no recording device is available, officers must have a law enforcement witness present for the administration of the Miranda Rights Warning and the suspect's subsequent waiver, if applicable.

The *Statement of Miranda Rights Form* is available on the departmental intranet: <http://ccpd/>

3. The Miranda Rights Warning must say:

- a. You have the right to remain silent;
- b. Anything you say can and will be used against you in court;
- c. You have the right to consult with an attorney and have the attorney present during questioning; and

- d. If you cannot afford an attorney, one can be provided to you before questioning at no cost.
4. The officer must ask the suspect if he/she understands these rights, and upon an affirmative response, ask the suspect if he/she wishes to speak with the officer at that time.
5. A suspect can invoke his/her Miranda Rights at any time during questioning. Once invoked, the questioning must stop.
6. Public Safety Exception to the Miranda Rights Warning
  - a. In the case of New York v. Quarles, 467 U.S. 649 (1984), the Supreme Court recognized that when police are confronted with an armed suspect, they are prompted by a concern for public safety to locate and secure the weapon. Accordingly, police can ask the suspect: "Where's the [weapon]?" The court reasoned that police are motivated by their concern for public safety and are not on a quest for incriminating responses. The information the suspect provides an officer to locate the weapon can be used against him/her in court. Miranda Rights are not applicable or implicated for the explicit reason that the questions are asked for the purpose of locating and securing a weapon before it could cause harm to the public.
  - b. Although the Quarles case applied to a gun, this exception has been applied to other weapons as well.

#### C. Admissions & Confessions

1. The State of Georgia will not convict any person of a crime based upon a confession alone. There must be evidence to corroborate the confession.
2. The need to investigate and document is the reason for understanding the difference between an admission and a confession. The law enforcement officer must obtain corroborating evidence to complete an investigation.

Refer to Section III. of this procedure for definitions.

3. All admissions and confessions must be documented in detail, noting and describing the specific elements corroborated, and explaining how any affirmative defense or excuse provided by the suspect has been proven or disproven.
4. It is the responsibility of the officer to further investigate and seek evidence that will fill in the missing elements of a suspect's admission.

5. Officers are prohibited from promising a hope of benefit to a suspect for cooperating. However, officers can inform the suspect that the prosecutor (i.e., Solicitor General's Office, District Attorney's Office, etc.) will be notified and/or briefed that the suspect was cooperative and forthcoming.
6. Jackson-Denno Hearing
  - a. As with any criminal evidence, admissions and confessions may be challenged by the defense. The purpose of a Jackson-Denno Hearing is for the defense to argue that an admission or confession was in violation of the Miranda Rights Warning, was not voluntarily provided, was coerced by police, etc.
  - b. Jackson-Denno Hearings occur prior to the criminal trial, but before the trial judge. Officers are likely to be the only witness(es) before the Court and should be prepared to answer questions about the methods used to interrogate the suspect (defendant).

Testimonial topics may include, but are not limited to, recording and documentation methods, other witnesses or officers present, administration and waiver of the Miranda Rights Warning, whether or not the officer(s) promised a hope of benefit for cooperating, etc.

#### D. Juvenile Suspects

1. Juvenile suspects are unique in that the courts will conduct a more thorough inquiry to determine the voluntariness of any statement made by a juvenile.
2. The admissibility of statements by juveniles depends upon whether or not, under the totality of the circumstances, there was a knowing and intelligent waiver of his/her constitutional rights, Riley v. State, 237 Ga. 124, 128 (1976).
3. The burden is demonstrating that the juvenile understood and waived those rights. The analysis involves the application of a nine (9) part test. The factors considered by the court include: "The age of the accused; the education of the accused; the knowledge of the accused as to the substance of the charge and nature of his rights to consult with an attorney; whether the accused was held incommunicado or allowed to consult with relatives or an attorney; whether the accused was interrogated before or after formal charges had been filed; methods used in interrogation; length of interrogation; whether the accused refused to

voluntarily give statements on prior occasions; and whether the accused repudiated an extrajudicial statement at a later date," Henry v. State, 264 Ga. 861, 862 (1995), applying Riley v. State.

The officers' incident report and/or documentation of the interrogation must address and answer the nine (9) questions the court will use to determine if the juvenile knowingly waived his rights.

## E. Other Legal Considerations

### 1. Right to Remain Silent

- a. The suspect has the right to remain silent. If he invokes this right, all questioning must stop. However, law enforcement officers do have the authority to contact the suspect after a cooling-off period of at least two (2) hours, per Michigan v. Mosely, 423 U.S. 96 (1975). If contact is re-established with the suspect after the cooling-off period, officers shall re-administer the Miranda Rights Warning and obtain a waiver before resuming questioning.

NOTE: The two (2) hour cooling-off period only applies to the right to remain silent.

- b. Once invoked, the right to remain silent bars officers from talking with the suspect while he is in custody, about any crime(s), until the cooling-off period expires.

### 2. Right to Counsel

- a. The suspect has the right to counsel during questioning. Once the right to counsel is invoked, ALL law enforcement officers are barred from interrogating the suspect about ANY crimes while he/she is in custody without his/her attorney present.
- b. After a suspect invokes his/her right to counsel, officers are prohibited from re-initiating contact with the suspect while he/she is still in custody.
- c. After a suspect invokes his/her right to counsel, the suspect can contact law enforcement officers and/or re-initiate contact. If this occurs, officers shall document in detail the facts and circumstances of the suspect's initiated and/or re-initiated contact. Officers should utilize a recording device, if possible.

- d. After a suspect invokes his/her right to counsel, the suspect has been released from custody (i.e., jail or confinement, etc.), and a fourteen (14) day cooling-off period has passed, officers can re-initiate contact with the suspect, per Maryland v. Shatzer 559 U.S. 98 (2010).
- e. 6<sup>th</sup> Amendment Right to Counsel
  - 1) Once a suspect has been formally charged with a criminal offense (e.g., arrest warrant; indictment; accusation filed; etc.), the suspect (defendant) is arrested and brought before a Magistrate, beginning the formal criminal justice process. If under any of those circumstances, the defendant invokes his/her right to counsel, ALL law enforcement officers are barred from talking with him/her about the formally-charged case without his/her attorney present.
  - 2) The 6<sup>th</sup> Amendment right to counsel attaches once the formal criminal process begins and the right to counsel is invoked by the defendant. Once invoked, the 6<sup>th</sup> Amendment right to counsel continues for the duration of the prosecution of that specific case, regardless of whether or not the defendant makes bond or is released from custody.
  - 3) In the event of a 6<sup>th</sup> Amendment right to counsel situation, the Miranda Rights Warning will be administered to, and a waiver obtained from, any defendant who is willing be interrogated.
  - 4) The 6<sup>th</sup> Amendment right to counsel does not bar law enforcement officers from initiating contact with the suspect to discuss other alleged criminal activity that is not related to the formally-charged case.

## **V. AUDIO & VIDEO RECORDINGS OF INTERVIEWS & INTERROGATIONS**

### **A. Interview Rooms**

The Department furnishes designated interview rooms for the purpose of conducting interviews and interrogations during investigations. When the interview rooms are utilized, departmental personnel shall adhere to the following procedures:

1. The interview rooms shall be used for all interviews and interrogations, whenever possible.

2. Personnel shall inspect each interview room to be utilized for any weapons or contraband prior to conducting an interview or interrogation, and prior to the person to be interviewed and/or interrogated entering the room.

Upon completion of the interview or interrogation, personnel shall again inspect each utilized interview room for any weapons or contraband.

3. Personnel conducting interviews or interrogations shall ensure that their firearm(s) is/are securely holstered. At least once (1) officer participating in the interview shall have his portable radio readily available to summon assistance, as needed. [CALEA 42.2.10(a)(d)]
4. Interview rooms will only be equipped with a table and chairs. If any other items or equipment (i.e., television; video unit; marking board; computer; etc.) are necessary, they may be brought into the room, but must be documented in the corresponding Incident Report and/or case file. [CALEA 42.2.10(e)]

The only exception shall be rooms designated for the interviewing of children that may include, but are not limited to, toys, games, television, marking board, etc. Personnel who utilized an interview room are responsible for the removal of any added furnishings or equipment at the conclusion of the interview.

5. Interviews and interrogations of suspects will normally be conducted by two (2) officers. Both officers need not be present in the interview room; a second officer may monitor the interview via closed-circuit television or audio.

Additional personnel should be requested to participate where prudence and safety warrant the presence of additional officers. When an interview or interrogation is not actively being conducted, a minimum of one (1) officer shall be dedicated to the immediate supervision and/or monitoring of the suspect(s). [CALEA 42.2.10(b)(c)]

6. Interviews and interrogations of suspects in interview rooms should be recorded via audio and/or video recording systems, whenever possible.
7. Restrooms, water and other items are available to facilitate a comfortable break and should be maintained as part of the interview or interrogation process, as necessary. Any actions or effort taken to provide such resources and or facilities shall be documented in the corresponding report(s) and/or case file(s). [CALEA 42.2.10(f)]

**8. All visitors and/or suspects will be escorted by departmental personnel while inside restricted and/or secure areas of departmental facilities.**

B. Locations other than Interview Rooms

Whenever possible, audio and/or video recordings will be made of all interviews and interrogations of suspects/offenders conducted away from departmental facilities. When such interviews are necessary due to the nature and/or expediency of the case at hand, the officer's primary concern will be the safety of all parties involved in the interview process.

**VI. CANCELLATION**

This procedure rescinds and supersedes the following standard operating procedure:

*D36: Interviews (Field) and Interrogations*, dated October 1, 2009.