

UW Whitewater Police



Compliance with Constitutional Requirements

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Approved By: Chief Kiederlen	Effective Date: 10/28/2022	Revised Date: New	Revision number:

I. Purpose

The purpose of this General Order is to provide a written directive for sworn personnel of UW-Whitewater Police Department to ensure compliance with constitutional requirements in regards to the areas of interviews, interrogations, and access to counsel.

II. Definitions

Field Interview: An interviewing tactic used during consensual contacts with community members to gather information about criminal activity.

Interrogation: Refers to the questioning of suspects and hostile witnesses from whom officers attempt to obtain crime-related facts, admissions, or confessions.

Interview: Refers to the planned questioning of the following: witnesses, victims, confidential informants, cooperating individuals, and/or others who have information regarding an accident, crime or other incident.

Miranda v. Arizona (1966): This case law establishes the following due process protections: The suspect has the right to remain silent; that if the suspect gives up the right to remain silent, anything the suspect says can and will be used against him or her in a court of law; the suspect has a right to speak to an attorney and have an attorney present when being questioned by law enforcement officers; and that if the suspect cannot afford an attorney, one will be appointed to represent the suspect before any questioning occurs.

Miranda Warnings: Refers to the constitutional requirement that once an individual is detained by the police, there are certain warnings a police officer is required to give to a detainee.

III. Policy

UW-Whitewater Police Department (UWWPD) will be responsive to and protect the constitutional rights of our community. All applicable regulations and laws that apply to interrogations and access to counsel will be followed by UWWPD personnel. It is further the policy of UWWPD that the decision to waive a constitutional protection belongs with an accused individual and that UWWPD personnel will not attempt to coerce or unduly influence a suspect in the decision of whether or not to exercise any right.

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IV. Procedure

A. Interviews

1. Interviews are critical components of a police investigation. Most police interviews are conducted with victims, complainants and witnesses to an accident, crime or other incident.
2. UWWPD sworn personnel should give clear notification that the interview is non-custodial and that the person being interviewed is free to discontinue and leave at any time.
3. A fact-finding interview of a possible criminal suspect is not an interrogation, and thus the *Miranda* warnings are not required.
4. If, at any time during an interview, a person's responses incriminate, or tend to incriminate them in the commission of a crime, the questioning personnel shall give the *Miranda* warnings before continuing the interview, regardless of whether the person has been arrested. This indicates that the person is now a suspect and they are not at liberty to leave.

B. Field Interviews

1. In *Terry v. Ohio* (1968) the Supreme Court ruled that an officer "may in appropriate circumstances and in an appropriate manner approach a person for the purposes of investigating criminal behavior even though there is not probable cause to make an arrest."
2. Valid Field Interview Situations
 - a. An officer may conduct a field interview under the following circumstances:
 - i. The officer has reasonable suspicion that the subject may have committed, may be committing, or may be about to commit a crime;
 - ii. The officer believes the subject may be a hazard to self or others;
 - iii. The officer believes the interview may have a preventive effect.
 - b. Field interviews should be conducted in a manner that promotes crime prevention and improves community relations whenever possible.
3. Documenting Field Interview Contacts
 - a. Field interviews should be documented under "Field Contact" in UWWPD's records management system, to provide other officers, investigators, administrative personnel, etc. with information concerning suspicious persons and situations.
 - b. A call summary should be completed for each "Field Contact" in the records management system that includes a summary of the field interview.

C. Interrogations

1. Interrogations shall be conducted in accordance with all applicable constitutional requirements, state statutes, and departmental directives.
2. Interrogations should be pre-planned and investigating officers should have a clear understanding of the issues to be covered. This could include an understanding of

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the evidence available, victim/witness accounts, offense elements, possible alibis and defenses, and applicable laws.

3. Where practical and when available, consideration should be given to recording the entire interrogation with audio and video.
 - a. This consideration should be given regardless of whether the interrogation is conducted in the field or in a police facility.
 - b. Per Wisconsin State Statute 968.073(2), any custodial interrogation of an adult felony suspect shall be at least audio recorded.
 - c. See General Order 42.2.8 Custodial Interrogation of Adults for full requirements on recording of adult interrogations.
4. The *Miranda* warning shall be read to suspects when the elements of custody and interrogation are both present. The element of custody exists when persons are under arrest or when they believe their freedom of movement is significantly curtailed.
 - a. Sworn personnel should ensure that suspects understand each of their *Miranda* rights as they have been read to them.
 - b. Translators should be provided if required.
 - c. If the suspect is waiving their *Miranda* rights, UWPD personnel should use the agency pre-printed waiver of rights form (see appendix A) whenever possible.
 - i. This form should be signed before questioning starts.
 - ii. If at any stage of the custodial questioning the suspect indicates that they want to stop talking or to consult with an attorney before continuing, the questioning shall stop.
 - iii. Per *Maryland v. Shatzer (2010)* case law, if a suspect invokes silence during a custodial interrogation, they may not be re-approached unless they re-initiate contact or after they've been released from custody or back into general population for two weeks.
5. Factors affecting the voluntariness and admissibility of statements include suspect age, mentality, education, nationality, criminal experience, reasons for arrest, rights advisories, whether basic necessities were provided during questioning, and general interrogation methods.
6. During an interrogation, **the following methods are against due process and are prohibited:**
 - a. Use physical force, threats, promises or coercive tactics.
 - b. Deny or unduly delay restroom or refreshment needs.
7. 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 (see Appendix B).
 - a. Information developed through interrogations and/or confessions should be corroborated to the fullest extent possible by information and evidence available through other investigative means.

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- b. If there is more than one suspect, any incriminating statements or information supplied by one suspect against another must be independently substantiated.
- 8. Special Cases – Juveniles: Any interrogation of juveniles shall be conducted in compliance with the written directives listed in General Order 44.2.3 Interrogation of Juveniles.

D. Access to Counsel

- 1. Subjects of interrogations shall be informed of access to counsel in accordance with applicable constitutional requirements, state statutes, and departmental directives.
- 2. *Escobedo v. Illinois (1964)* case law established that when a person accused of committing a crime is being interrogated, such a person has right to have an attorney present.
 - a. Officers must cease an interrogation once an individual has expressed a desire to speak with an attorney or have an attorney present during questions. The suspect may not again be interrogated about the crime for which he or she is charged, other crimes, or by other officers (from UWWPD or another agency) unless:
 - i. The suspect's attorney is present at the questioning; or
 - ii. The suspect initiates a new contact with the police. In this later case, Miranda rights must again be administered and a waiver obtained before any questioning may take place. Officers shall also document and, if possible, obtain written verification that the suspect initiated the communication.
 - b. Upon request, a telephone shall be provided for access to counsel. Audio recording of attorney-client conversation is prohibited.
 - c. Officers shall bring arrested persons, unless they have been released on bond or their own recognizance, before a magistrate or other judicial official without delay, to file formal charges or complaints. Judicial officials shall then ensure that accused persons are guaranteed the right to court-appointed or private counsel.
 - d. Occasionally, persons who have been charged will not request or receive the assistance of counsel until after the time of their initial court appearance and the filing of formal charges. Officers shall work with prosecutorial officials to determine whether such persons have obtained counsel and whether notice to counsel is required before having any further contact.

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Appendix A. Miranda Waiver

WARNING AND WAIVER OF RIGHTS

Date _____

Time _____

I. *WARNING OF LEGAL RIGHTS GIVEN TO:* _____

Before I ask you any questions, you must know what your legal rights are.

1. You have the right to remain silent.
2. Anything you say can, and will, be used against you in a court of law.
3. You have the right to consult with a lawyer before questioning, and to have a lawyer present with you during questioning if you so wish.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you, at public expense, before or during any questioning if you so wish.
5. If you decide to answer questions now without a lawyer present, you have the right to stop the questioning and remain silent at any time you wish, and the right to ask for and have a lawyer at any time you wish, including during questioning.

Signature

II. *WAIVER OF RIGHTS*

1. Do you understand each of these rights?
2. Realizing that you have these rights, are you now willing to answer questions or make a statement?

Signature

Officer Signature

Incident Number

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Appendix B. Statement Form

Statement Form

Date of Birth _____ Incident Number _____

Name _____ Student Yes No
Last _____ Complete First _____ Middle _____

Local Address _____
Street (Residence Hall) City State Zip Code

Local Phone () _____ Home Phone () _____

Home Address _____
Street _____ City _____ State _____ Zip Code _____

Date of Statement _____ Time of Statement _____

I hereby make the following voluntary statement to _____, who has identified himself/herself to me as a member of the University Police. No threats or promises have been made to me to cause me to make this statement. I do so of my own free will:

I have read (or had read to me) the above statement and find it is true and correct to the best of my knowledge and belief.

Signature

Date/Time:

Witness

Page _____ of _____

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Statement Form – Continued Pages

Incident Number _____ Statement of _____

I have read (or had read to me) the above statement and find it is true and correct to the best of my knowledge and belief.

Signature _____

Date/Time:

Witness _____

Page _____ of _____