

TITLE: ADMINISTRATION OF MIRANDA WARNINGS

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PURPOSE

The purpose of this directive is to establish guidelines regarding the responsibilities of members of the Santa Fe Police Department as they apply to Miranda warning.

DISCUSSION

Suspect interviews and interrogations shall be conducted in accordance with established state and federal laws to ensure the suspect’s civil rights are not violated. No attempt will be made to obtain confessions or statements by force, coercion, threat or promise.

POLICY

Miranda warnings must be given when an individual is in custody and being interrogated. The purpose of Miranda warnings is to advise a person who is in custody or who is detained under circumstances in which a reasonable person would believe he or she is not free to leave, of the rights they have under the Fifth and Sixth Amendments of the United States Constitution and corresponding sections of the New Mexico Constitution. Such warnings must be given before any statements are taken from these individuals.

Miranda warnings are not required for minimal custodial stops for traffic violations. Non-custodial interviews do not require Miranda warnings. Custody is the critical factor which triggers the requirement to give Miranda warnings before an interview or questioning. Custody includes an arrest,

detention, or any other situation where the person would not feel free to leave.

PROCEDURE

INTERVIEWING WITNESSES

56.1.01 NON-CUSTODIAL INTERVIEWS

A. Non-custodial interviews do not require Miranda warnings.

1. No Miranda warning is required to be given to persons being interviewed **UNLESS** the person is placed in a situation where he/she would feel that he/she is not free to leave.
2. Interviews conducted in the home of the person do not require Miranda warnings unless the person is arrested in the home or the interview would be viewed as taking place in a coercive atmosphere.
3. Persons who come to the police department to discuss matters with investigating officers, even at the officer’s request, need not be given the Miranda warnings so long as they are advised that they are free to leave at any time.
4. Persons who are under “investigative detention” should be advised of their Miranda rights as they are detained in custody and are not free to leave.
5. Persons who are mere witnesses or from who factual information is gathered during the course of an investigation need not be advised of their Miranda rights, unless they are in custody.

INTERVIEWING SUSPECTS BEFORE ARRESTS

56.1.02 It is no longer required that persons be advised of their Miranda rights simply because they have become the focus of an investigation or are considered to be a suspect in a criminal matter. Custody, not focus, determines whether Miranda warnings are required.

A. Persons who have become the suspect of an investigation may be interviewed in non-

custodial settings without giving Miranda warnings, just like other witnesses.

- B.** Suspects who voluntarily come to the police department at the request of the investigating officer should be advised that they can leave at any time. This should either be documented in writing or on tape in every instance.
- C.** In cases where an officer/detective intends to arrest the person on an outstanding warrant or if certain information is gained during the course of the interview, no Miranda warnings are required as long as the person remains free to leave at any time.
 - 1.** Officers **MUST** remember that once the warrant for a person's arrest is mentioned, much less served, the person will be in a custody situation where he or she will feel they are not free to leave, and Miranda warnings are required before the interview of the person continues.
- D.** Once the person is placed in custody and is no longer free to leave, warnings must be given before any further questioning takes place.
- E.** It should also be noted the circumstances under which the interview was conducted, (how many persons present and who they are as well as where the interview was conducted).
- F.** If an officer is unsure of the status of the person to be interviewed or is not familiar with the facts and circumstances of how this person came to be interviewed, the officer **MUST** get answers to these questions before the interview or give the person the Miranda warnings and secure waivers of the Miranda rights before proceeding with the interview.

INTERVIEWING SUSPECTS AT THE TIME OF ARREST

56.1.03 Persons who have been arrested, whether on the charge which they are to be interviewed about or on an unrelated charge, **MUST** be advised of their Miranda rights because an arrest means that they are in custody. An intelligent and voluntary waiver of those rights must be obtained from the

person to be interviewed **BEFORE** any interview is conducted.

- A.** Miranda warnings need not be given before obtaining personal identification such as name, address, date of birth and/or social security number. A person is not required to provide their SSN or Green Card for identification purposes alone. If a person volunteers this data however, it is acceptable.
 - 1.** The arresting officer is **NOT** required to advise a person of the Miranda rights unless the officer is planning to interview the arrested person beyond the scope of those items noted in paragraph, **A**, above.
- B.** If the arrest is on an outstanding felony warrant from this Department, the arresting officer should contact the officer or detective in charge of the case before advising the arrested person of their Miranda rights or conducting any interview.
 - 1.** In the event the officer or detective in charge of the case is not available or cannot be contacted, the officer's supervisor should be contacted before proceeding with any interview.
- C.** Once an interview is being conducted, any statement by the arrested person, whether in response to questioning by an officer or otherwise given, should be recorded or noted in the officer's report along with the notice of Miranda Warnings.
- D.** Officers/detectives should also note all answers given by persons who were not properly notified of their rights as per Miranda as this information might prove to be valuable later on.
- E.** If it is determined that an officer/detective forgot to notify an arrested person of their rights as per Miranda, stop the interview, provide the Miranda warnings, then continue with the interview.
- F.** If, after notice of Miranda the person now decides to invoke their rights, this does not relieve the officer/detective from documenting each statement made by the person even though proper warnings were not given.
- G.** The officer advising a person of his or her Miranda rights should note the date, time, and

location where the rights were read to the arrested person. In addition, the following items should be documented in the officer's official report:

1. The officer should note if the Miranda warnings were read from a Miranda Card;
2. The officer should note in the report whether the Miranda warning was read in Spanish or in English; and
3. The officer should note the date time and location of the waiver of the Miranda Rights and the name of any officers who were witnesses to the advisement of the rights and the waiver of the rights.

ADVISEMENT OF MIRANDA RIGHTS

56.1.04 All persons meeting the criteria of being in custody, under arrest, or held under circumstances under which a reasonable person would believe they are not free to leave, and who are to be interviewed or questioned shall be advised of their Miranda rights.

- A. The rights shall be administered in the language, which the arrested person understands, either English or Spanish. In the event the arrested person understands neither English nor Spanish, the shift commander shall be notified.
- B. Waivers to **BOTH** the Fifth Amendment and Sixth Amendment portions of the Miranda warning shall be obtained before interviewing or questioning of the person. The arrested person should not be asked, "Do you wish to waive your rights."
 1. The officer advising the person or his/her Miranda rights should determine first if the person wishes to waive the right to remain silent.
 2. If the person says "yes" then officer should proceed to determine whether he/she wishes to waive the right to have an attorney present.
 3. If the person says "yes" to both, then the interview may proceed.
4. If a person gives an ambiguous answer to either, the officer conducting the interview may continue questioning only to determine if the person wishes to waive the specific rights to which the ambiguous answer was given.
5. If it is determined that the person wishes to waive the rights, then the interview may proceed.
- C. If a person indicates that he/she does not wish to waive the rights to remain silent, any and all questioning must stop at that time. The officer will not ask if he/she wishes to waive the right to counsel.
- D. If, after having invoked his/her right to silence, a person later wishes to make a statement to the officer, the officer may conduct an interview only if the following are done:
 1. The arrested person initiated the post invocation of rights contact.
 2. The officer again advises the arrested person of all of the Miranda rights.
 3. The arrested person knowingly, intentionally and voluntarily waives **BOTH** his/her right to remain silent and the right to counsel.
 4. A proper written waiver is executed.
- E. If a person indicates that he/she is willing to waive his/her right to remain silent **BUT NOT** the right to counsel, otherwise makes it known that he/she wishes to have an attorney present, any and all questioning must stop at that point and may not be started again until after the arrested person has his/her attorney present.
 1. Even if the arrested person wishes to talk before the attorney arrives or advises the officer of a change of mind, there can be no further interview or statement until after the person has been allowed to contact an attorney.
 2. In this case the officer should contact a supervisor who will contact the District Attorney's office for further guidance.

3. This difference between the effect that the invocation of rights has on the resuming of the interview process is the reason for the separate waiver of the rights to remain silent and to counsel.
- F.** The Miranda rights are deemed to be invoked any time a person asserts that he/she does not want to answer any additional questions or that he/she wants to talk to an attorney.
- G.** If the arrested person or other person being interviewed requests a break in the questioning, the date and time of the request should be noted and recorded. If questioning is resumed with the same person, the date and time the questioning is resumed should be noted and recorded.
1. In the event there is a long break between termination and resumption of the questioning, the person being interviewed should again be advised of his or her Miranda rights and proper waivers obtained before the questioning or interviewing is resumed.

QUESTIONING PERSONS ARRESTED FOR DRIVING WHILE INTOXICATED

56.1.05 When a person is arrested for Driving Under the Influence of alcohol/drugs, the officer should, after arrest and before any other questioning, advise the person of the Implied Consent Law. Once the person has either given consent to take the blood alcohol test or refused to take the blood alcohol test, **ONLY** then, should the Miranda rights be administered.

- A.** With D.W.I. suspects, the Miranda warnings apply to "in custody" situations.
- B.** There is no need to give a D.W.I. Suspect Miranda warnings prior to arrest. The officer, of course, cannot delay the actual arrest an unreasonable amount of time so as to avoid the Miranda warnings.
- C.** During the initial contact with the driver, the pre-field test interview, and the administration of the field sobriety tests, there is no need to give the Miranda warnings to the defendant.

- D.** If the officer is not going to question the arrested person about the facts and circumstances surrounding the charges for which the person is under arrest, there is no need to advise the person of his/her Miranda rights and no need to obtain any waiver.

QUESTIONING PERSONS ARRESTED FOR VEHICULAR HOMICIDE, OR GREAT BODILY HARM BY VEHICLE INVOLVING DWI

56.1.06 In cases of vehicular homicide or great bodily harm, where it is not determined initially or readily apparent who the driver of the vehicle was, Miranda warnings should be given to any and all persons who are custodially detained and are going to be interviewed or questioned about the accident. The key is the detention of the persons. For purposes of investigation and information gathering, questioning of persons at the scene, who are not detained does not require the Miranda warnings.

- A.** For custodial questioning of individuals in connection with accidents, the Miranda warnings should be given and a waiver obtained as described above.

RECORDING TELEPHONE CONVERSATIONS

56.1.07 During the course of an investigation, persons may be interviewed over the telephone.

- A.** Under such circumstances, it may be desirable to tape record this information for:
 1. Use as evidence in the case; or
 2. Future reference in the continuing investigation; or
 3. For use during preparation of the written report.
- B.** The recording of telephone conversations may be used towards this end pursuant to **30-12-1 (NMSA)** without the officer or detective being required to provide Miranda Warnings.
- C.** This section does not apply to wire-taps which have special requirements.

NOTE: In the event a question concerning Miranda warnings or any related legal matter arises, the officer should contact his or her supervisor. In the event the supervisor has a question about how to proceed under the circumstances of a given case, the supervisor may contact the on-call Assistant District Attorney.

MIRANDA RIGHTS

56.1.08 The rights afforded to all persons under the Constitution of the United States as interpreted in **MIRANDA V. ARIZONA**. The rights are listed as follows:

ENGLISH:

1. You have the right to remain silent.
2. Anything you say can be used against you in a court of law.
3. You have the right to talk to a lawyer for advice before we ask you any questions, if you wish.
4. If you cannot afford a lawyer, one will be appointed for you, before any questioning, if you wish.
5. If you decide to answer questions now, without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

SPANISH:

1. Usted tiene el derecho de quedarse callado.
2. Cualquier cosa que diga puede emplearse y se empleara en contra de usted en el juzgado.
3. Usted tiene el derecho de hablar con un abogado y de pedirle que este presente mientras los interrogan a usted.
4. Si usted no puede pagar a un abogado, se nombrara uno para representario antes de que lo interroguen, si lo desea usted.
5. Usted puede decidir cuando quiera ejercer estos derechos y no contestar ningunas preguntas ni hacer ningunas declaraciones.

APPROVED: _____

BEVERLY K. LENNEN

Chief of Police

DATE: _____

07-23-04