

**PROCEDURAL INSTRUCTION**

08-10-06

08-08-06

06-5

SUBJECT

Miranda Warning and Miranda Waiver

AMENDS

REFERENCE

RsMo 211.059, 211.071, 211.271, 564.034; Legal Bulletin
91-1, 96-1, 97-5 & 02-7

RESCINDS

Procedural Instruction 02-4

I. PURPOSE

To establish procedures and guidelines for the use of the Miranda Warning and the Miranda Waiver.

II. GUIDELINES

- A. When an adult has been taken into police custody or is otherwise deprived of their freedom of action in any significant way, it shall be the duty of the officer initiating **custodial questioning** to give the Miranda Warning. **There is absolutely no necessity to give a Miranda Warning at the time of arrest as long as the officer does not undertake any questioning.**
- B. Any spontaneous statement or admission not the result of questioning may still be, and has always been, admissible in court. Spontaneous statements or admissions should be documented by the officer hearing each statement.
- C. All law enforcement officers shall carry the Miranda Warning Card, Form 72 P.D., while on duty and shall read the card when issuing these warnings.

III. PROCEDURE

- A. When a law enforcement officer takes a person into police custody, or otherwise deprives them of their freedom of action in any significant way, that person shall be issued the following Miranda Warning **before any questioning takes place.**
 - 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 talk to a lawyer and have him present with you while you are being questioned.
 - 4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
 - 5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

B. The following questions should be asked after the specific warning and an affirmative reply is secured to each question in order to secure a waiver.

1. Do you understand each of these rights I have explained to you?
2. Having these rights in mind, do you wish to talk to us now?

NOTE: If a person indicates prior to or during custodial questioning that they wish to remain silent, or wish to consult with a lawyer, the questioning must stop. Questioning **will not** begin or continue until the person has consulted with a lawyer, or voluntarily reinitiates communication with the police which leads to reinterrogation and voluntarily, knowingly, and intelligently waiving their rights.

C. When a formal interrogation is contemplated and the person wants to waive their rights, a typewritten or department printed waiver, i.e., Miranda Waiver, Form 340 P.D., shall be completed and signed by the person before any questioning. A witness shall be present through the signing of the waiver by the person. The typewritten waiver shall have the following minimum content:

Before being asked any questions, I have been told of my right to remain silent, that anything I say can and will be used against me in court, that I have the right to talk with a lawyer and to have the lawyer with me during questioning. I have also been told that if I cannot afford a lawyer that one will be appointed for me, at no cost to me, before I am questioned. I have also been told that I can stop talking at anytime. I understand all of these rights and I am willing to talk to you.

/s/_____

1. If a person understands the warning and still wishes to talk without consulting a lawyer and/or having them present, the statement should be taken immediately. It should be the discretion of the investigative element whether to audiotape, videotape or type the statement. The names of all persons present and the time should be set forth in the statement. The person shall be requested to date and sign the statement.
2. If a person wants to give a statement but refuses to sign the Miranda Waiver, Form 340 P.D., the officer should write "refused" in the signature space and complete the remainder of the form.

3. Anytime an officer gives the Miranda Warning it should be stated in the officer's report. The officer should also verbally notify the detective handling the investigation that the Miranda Warning was given.
 4. In cases where an officer takes a confession, admission, or statement, to eliminate any question of admissibility of the utterance or writing, they should state in their report(s):
 - a. The circumstances of the utterance or writing.
 - b. The location where made.
 - c. The length of time the individual has been in custody.
 - d. The individual's ability to understand their own actions, e.g., education level, physical and mental condition, criminal background, age, experience, or anything else that would tend to show that the suspect knew what they were doing when they agreed to talk to the officer. This evidence indicates a knowing and intelligent waiver.
- D. The Miranda Waiver, Forms 340 P.D., and 340A P.D. (Spanish language version), are available at division stations and investigative elements and should be utilized when interrogating a person.
1. When interrogating an intoxicated driving arrest, officers shall utilize the Miranda Rights portion of the Department of Revenue Alcohol Influence Report, Form 2389, and complete the appropriate blanks. Officers shall continue to complete DUI Miranda Waiver, Form 341A P.D., for arrests who do not speak English, but do speak and read Spanish.
 2. When a non-Spanish speaking officer wishes to question a Spanish-speaking arrest, they will contact Communications Unit personnel to determine if there is a Spanish-speaking officer available to act as an interpreter. If an interpreter is not available, the officer will contact his/her supervisor for instructions.

NOTE: The Communications Unit maintains a list of interpreters for several languages.
 3. When an arrest cannot read, regardless what language they speak, the interpreter shall read the Miranda Waiver, Form 340 P.D., or 340A P.D. (Spanish language version), and request the arrest to sign the appropriate waiver. The officer should make a notation under the signature space and state, "The Miranda Waiver was read aloud to the suspect by _____. The suspect indicated they understood and signed the waiver."

- *E. In accordance with RSMo, §546.034, deaf individuals who are arrested, or otherwise deprived of freedom of action in any significant way, shall be provided the services of a language interpreter (signer) before any questioning. Communication Unit personnel should be contacted for the names and telephone numbers of qualified interpreters.

- F. Blind individuals who are arrested, or otherwise deprived of freedom of action in any significant way, will have a witness, independent of the police, present with them while the Miranda Warning is being read to them.

- G. When a person is stopped at any location under suspicious circumstances, it is not necessary to give the Miranda Warning until such time as the officer has decided to place the person in police custody or otherwise deprive them of freedom of action in any significant way, **and** desires to question them further. The Miranda Warning does **not** need to be given when:
 - 1. An ordinary traffic summons is issued. Although an ordinary traffic stop temporarily curtails the "freedom of action" of the driver, questioning at the scene does not constitute custodial interrogation.
 - 2. An 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. It is considered an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement.

NOTE: A driver taken into physical custody and removed to a police facility for purposes of booking, bonding, verification, etc., must be read the Miranda Warning prior to any questioning at the police facility.
 - 3. A person enters a police facility and states that they wish to confess to a crime, or a person calls the police to offer a confession or any other statement they desire to make. Such are strictly volunteered statements and are not barred by the Fifth Amendment. Their admissibility in court is not affected by the U.S. Supreme Court ruling in *Miranda vs. Arizona*. However, before any questioning, the Miranda Warning should be given.

- H. Facts for Consideration by Law Enforcement Officers
 - 1. If the warnings are not given before any questioning, the statements themselves, and evidence obtained through such statements, are not admissible in court.
 - 2. A person's agreement to talk must appear affirmatively. The waiver of their rights to remain silent and to have a lawyer with them must be **knowingly and intelligently** made. Care should

be taken that the suspect is in such physical and mental condition that they can give a knowing and intelligent waiver.

- I. The Miranda Warning Card, Form 72 P.D., will be read when a law enforcement officer issues the Miranda Warning. The card provides the exact warning, which should be given in order to effectively advise a person of their right to remain silent and their right to a lawyer before any questioning. During trial testimony, it will undoubtedly be an aid when the officer can produce the warning card and state the exact words that were used to warn the person of their rights.

James D. Corwin
Chief of Police

Adopted by the Board of Police Commissioners this _____ day of _____
2006.

James B. Wilson
President

DISTRIBUTION: Law Enforcement Personnel
Civilian Supervisory Positions
Department Element Manuals
Post on all bulletin boards for two weeks.

