

DEKALB POLICE DEPARTMENT

Subject: **Interview and Interrogation**

Policy #: **402.1**

Effective Since: 8-21-03

Revision Effective: 1-1-19

FTO Training Task: # 39

Reference Material: IACP "Interrogations and Confessions" Research Paper; Policy 401.1

ILEAP Standards Covered: ADM.02.02(a) & (b); OPR.13.01

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PURPOSE: It is the purpose of this policy to provide officers with legally sound procedures for conducting non-custodial interviews and custodial interrogations.

POLICY: Custodial interrogations of suspects and the statements and confessions that are elicited are vitally important in the preparation of criminal cases. However, to be admissible as evidence, custodial statements and confessions must be given freely and voluntarily, with due consideration for the suspect's right to silence and right to counsel, and with the suspect's knowing waiver of their rights under Miranda.

Officers are strictly forbidden from obtaining involuntary statements or confessions by deliberate coercion or intimidation. Officers shall not deny in any way the due process rights of the accused and shall not unnecessarily delay arraignment or other court proceedings.

At all times, officers shall respect the legal rights of arrestees and treat them in a humane manner. For a list of arrestee rights, see Policy 404.2, under the heading "Rights of Arrestees."

DEFINITIONS:

Custody: A custodial situation exists when an officer tells a suspect that he is under arrest, or physically arrests the person. A functionally equivalent situation exists when a "reasonable person" in the suspect's position would feel that his freedom of action has been restricted to the same degree as a formal arrest.

Interview: the act of questioning a person not under arrest or in custody.

Interrogation: Interrogation includes direct questioning of an arrested suspect or a person in custody about a crime or suspected crime, as well as any words, statements or actions by officers that the officers should know are reasonably likely to elicit an incriminating response from the suspect.

PROCEDURES:

A. Non-custodial interviews : The following represent examples of interview situations that are not custodial, or are not considered interrogations, and thus do not require issuance of Miranda warnings:

1. Voluntary citizen contacts where the officer or citizen initiates casual communication not intended as part of any investigation.
2. Investigatory stops, commonly referred to as "field interviews", or "Terry stops." (See Policy 401.1, Citizen Contacts & Field Interviews)
3. Routine questioning during a typical traffic stop or accident or for an ordinance violation; to include driving under the influence (DUI) stops and arrests until a custodial interrogation begins.
4. During routine informational questioning at the scene of an incident or crime when the questions are not specifically intended to elicit incriminating responses.
5. Obtaining routine booking information questions not intended to elicit incriminating responses.
6. During voluntary appearances at the police facility. Voluntary interviews should begin with telling the subject he is not under arrest and is free to leave at any time and should be conducted in a non-secure location where it is reasonably believed that exit is possible and permissible.
7. When information or statements are made spontaneously, voluntarily, and without prompting by police, commonly referred to as "spontaneous statements" or "excited

utterances." (Note: Follow-up questions that exceed simple requests for clarification of initial statements may require Miranda warnings.)

B. Administering Miranda and Obtaining Waivers in Custodial Interrogations :

1. Miranda warnings are required and shall be administered prior to custodial interrogation.
2. Miranda warnings should preferably be read by officers from a pre-printed source to all persons subjected to custodial interrogation. In custodial situations, recitation from memory or paraphrasing the warnings should be avoided, as it precludes officers from testifying in court as to the precise wording used.
3. It is a court-accepted practice to provide a written copy of the Miranda warning to the suspect when it is being read, and to have the suspect initial or sign the copy to indicate the warning was read and understood.
4. Officers shall ensure that suspects understand their right to remain silent and their right to an attorney. Suspects may be interrogated only when they have knowingly and intelligently waived their rights. Threats, false promises, or coercion to induce suspect statements are prohibited.
 - a. Waivers of Miranda rights must be performed affirmatively.
 - b. Written waivers, particularly in felony charges, are preferred and should be obtained whenever possible.
5. Officers arresting deaf suspects shall notify their immediate supervisor and make arrangements to procure the assistance of a qualified interpreter.
6. When interrogating persons in custody who speak only a foreign language, the officer should make arrangements to procure the assistance of an interpreter that would be able to testify later in court if necessary.

C. Invoking the Right to Silence: "On being taken into custody every person shall have the right to remain silent. No unlawful means of any kind shall be used to obtain a statement, admission, or confession from any person in custody." 725 ILCS 5/103-2(a) & (b)

1. When a subject invokes his right to remain silent, all interrogation shall terminate immediately.
2. If a subject invokes his right to silence but later initiates communication that indicates his willingness to answer questions, interrogation can begin after re-administering Miranda warnings and obtaining a waiver. The suspect's statement that initiated communication with the officer should be documented in the case report.
3. Officers may, after waiting a significant period of time, attempt interrogation of a suspect who has previously invoked his right to silence, to determine if they have changed their mind. However, prior to questioning, Miranda warnings must be re-administered, and a waiver obtained. See Michigan vs. Mosley for this case law which is followed in Illinois.

D. Invoking the Right to Counsel :

Right to contact attorney and family: "Persons who are arrested shall have the right to communicate with an attorney of their choice and a member of their family by making a reasonable number of telephone calls or in any other reasonable manner. Such communication shall be permitted within a reasonable time after arrival at the first place of custody." 725 ILCS 5/103-3(a)

Right to contact attorney and family upon prisoner transport: "In the event the accused is transported to a new place of custody his right to communicate with an attorney and a member of his family is renewed." 725 ILCS 5/103-3(b)

Right to consult with attorney: "Any person committed, imprisoned or restrained of his liberty for any cause whatever and whether or not such person is charged with an offense shall, except in cases of imminent danger of escape, be allowed to consult with any licensed attorney at law of this State whom such person may desire to see or consult, alone and in private at the place of custody, as many times and for such period each time as is reasonable." 725 ILCS 5/103-4

1. When a suspect makes reference to counsel, but his intentions are unclear, officers may question the suspect further to clarify his intentions; e.g., "It's up to you, do you want a lawyer or not?"
2. When a suspect invokes his right to counsel, all interrogation shall cease immediately. The suspect may not again be interrogated about the crime for which he is charged, other crimes, or by other officers (from this or other agencies) unless:
 - a. The suspect's attorney is present at the questioning; or
 - b. The suspect initiates 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.
3. If a suspect's attorney wishes to speak to a suspect in custody, the officer shall inform the suspect that an attorney is present. Officers do not have to automatically admit the attorney, unless the suspect requests the attorney's presence.

E. Rights and privileges of foreign nationals and those with diplomatic immunity . For an explanation of Consular Notification and Access for detained or arrested foreign nationals, and an explanation of privileges for those with diplomatic immunity, see Policy 404.2 under the heading "Rights of Arrestees."

F. Documenting Statements and Confessions

1. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes but is not necessarily limited to:
 - a. location, date, time, and duration of interrogation;
 - b. the identities of officers or others present;
 - c. Miranda warnings given, suspect responses and waivers provided, if any; and
 - d. the nature and duration of breaks in questioning, and providing the suspect food, drink, use of lavatories, or other services.
2. Officers are encouraged to employ the use of written statements of the suspect when the suspect has been given the Miranda warning and agrees to make the statement. It is an acceptable practice to have the officer dictate the statement and have the suspect read and sign it when complete. The written statement can be made in question and answer format.
3. Investigative officers are encouraged to use video and audio recording for purposes of recording statements and confessions consistent with legal regulations.
4. Videotaped statements are mandated by law in felony cases and sex offenses involving juvenile suspects.
5. Videotaped statements are mandated by law as of 1-1-17 for a number of felony charges: first degree murder, intentional homicide of an unborn child, second degree murder, voluntary manslaughter of an unborn child, involuntary manslaughter and reckless homicide of a person or unborn child, drug-induced homicide, predatory criminal sexual assault of a child, aggravated arson, aggravated kidnapping, aggravated vehicular hijacking, home invasion, aggravated criminal sexual assault, armed robbery, and aggravated battery with a firearm.

6. When possible, videotaped statements should be taken in all other major felony cases.
7. Except in cases that include a mandatory videotaped statement, consent by the suspect is required for electronic recording.
8. Except for cases mandated by law, an Investigations Division supervisor may decide in which cases audio and/or video tape recordings are appropriate.
9. Recordings designated as evidence shall be handled in the following manner:
 - a. Original recordings are made on an internal recording system, recorded on a server and backed up to an additional server.
 - b. Appropriate security measures should be taken to preclude the possibility of erasure or tampering.
 - c. Recordings shall be stored on a secure server under controlled access.
 - d. Any hard-copy recordings retained in evidence shall be inventoried on a routine basis consistent with the department's evidence procedures.
 - e. Recordings must be preserved until notification that:
 1. the conviction or adjudication is final, and
 2. all direct and habeas corpus appeals are exhausted, or
 3. the prosecution of the offense is barred.

G. Use of Interview Rooms

1. There are two interview rooms in the booking area. For custodial interviews, these are secure rooms and weapons must be secured in lockboxes before use of these rooms. [ILEAP OPR.13.01(e)]
2. Persons in custody and left alone in an interview room will be under constant monitoring through visual or video monitoring. [ILEAP OPR.13.01(a)]
3. The detective area interview suite can be utilized as a weapons-secure area and may be used for custodial interviews. When the detective area interview suite is being used for custodial interviews, officers entering the interview suite must have their weapons secured in the designated lockboxes. [ILEAP OPR.13.01(e)]
4. All interviewees in custody should be searched prior to entry to an interview room. [ILEAP OPR.13.01(c)]
5. The interview room shall be inspected prior to an interview to be sure it is clear of weapons, contraband, or other items. [ILEAP OPR.13.01(d)]
6. Keys and fobs for interview rooms shall be security retained on the officer's person or in designated secure locations within the police department. [ILEAP OPR.13.01(f)]
7. There are cameras located in all interview rooms. Officers should consider video recording when an interview is taking place. Please note that any audio recording must be made in mandatory cases, with consent or under a warrant in order to not violate the Eavesdropping statute.
8. If a custodial arrest has been made, the suspect should be securely locked in the room when the officer is not present.
9. There should not be more than two officers present during questioning, unless under unusual or exigent circumstances.
10. During an interview, additional personnel shall be in close proximity of the room, available to intervene as needed. [ILEAP OPR.13.01(b)]
11. Each room is equipped with a table and two chairs. No other items should be kept or stored in the rooms unless being used by the officer for the actual interview. Officers should check items being brought into the room by the interviewed person.
12. Interviewees should be offered access to restrooms, water, or food at periodic intervals. Short recesses should be taken periodically to provide for the comfort of the interviewed person. Provisions for such should be documented in a report

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or on the prisoner inspection sheet. Statements and confessions must be obtained consistent with the guidelines established in this policy.

13. Training on proper interview techniques and the use of the interview rooms will be provided to all personnel, including review of this policy, a tour of the available interview rooms, and an explanation of the use of electronic monitoring and recording. [ILEAP OPR.13.01(g)]

Policy originally issued 8-21-03; this revision becomes effective on 1-1-19 by authority of the Chief of Police .

NOTE: This policy and procedure summarizes the department's position on this specific matter. This policy is for general direction and guidance primarily designed for use by the department's members. This policy is for internal use only and does not create or enlarge an officer's liability in any way. This policy shall not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of an internal departmental complaint and then only in a non-judicial administrative setting.