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|  MIDDLETON POLICE DEPARTMENT | DATE December 27, 2012 | POLICY 1.7.02 |
| SUBJECT: Constitutional Requirements | REVIEWED November 28, 2017 | |

Refer to: [Miranda Primer Revised](#)
History: 12/12; 01/15; 11/2017
[WILEAG \(5th d Ed.\) Standards](#): 1.7.2

PURPOSE

The purpose of this policy is to provide guidelines to assure compliance with all applicable constitutional requirements as they relate to interviews, interrogations, and access to counsel.

POLICY

It is the policy of the Middleton Police Department that officers uphold the Constitution of the United States. Officers shall acquaint themselves with the Constitution and the Bill of Rights as they specifically relate to custodial interviews and interrogations.

DEFINITION

Custodial Interview/Interrogation means a police initiated custodial questioning designed to elicit an incriminating response. Use of words or actions that police should know are reasonably likely to elicit an incriminating response is considered an interrogation. A custodial interview or interrogation requires Miranda warnings to be given prior to any questioning about a crime and requires that the suspect knowingly and voluntarily agrees to waive those rights.

Custody means a reasonable person would feel that they are under arrest or restrained in a way equivalent to an arrest. Factors include the suspect’s freedom to leave, the purpose, place and length of the interrogation, and the degree of restraint. A “Terry” stop or traffic stop are usually not custody.

PROCEDURE

Conduct During Interview/Interrogations

While conducting custodial interviews or interrogations, all officers shall:

- Avoid coercion or involuntary confessions or admissions.
- Inform defendants of their Miranda rights.
- Allow an arrestee reasonable access to counsel (upon arrestee’s request) or terminate the interrogation/interview.

Right to Counsel

Officers shall allow an arrestee to contact counsel, upon his/her request, as soon as practical and safe to do so.

Miranda Rights

If a suspect is in custody and a police officer wishes to interrogate him, a *Miranda* warning is required. While the *Miranda* warning is not required at the initial moment of police contact with the suspect, the warning is required immediately prior to the custodial interrogation. Spontaneous utterances given freely prior to the receipt of *Miranda* shall be documented in detail.

Although the *Miranda* warning need not be given in exact form, it is strongly recommended that officers use a *Miranda* warning card to minimize the possibility of a fatally defective omission of required information.

There are three possible responses to the *Miranda* warning. The suspect can assert the right to silence, the right to an attorney, or waive these rights and agree to answer questions. Once the right to silence or to counsel is asserted, the interrogation must stop. (A suspect may waive a right but still refuse to answer a particular question.) A waiver of the *Miranda* rights must be both voluntary and knowing. A written waiver of the *Miranda* rights is desirable when possible. If the suspect refuses to sign a written waiver but is nonetheless willing to talk, clear documentation of the verbal waiver is needed. After waiving their rights a suspect can change his/her mind at any time during the interrogation and reassert his/her right to silence or to counsel. A defendant must assert the right to counsel in an unambiguous manner. Counsel cannot assert the right for the suspect. The right is personal to the defendant. (Also see policy relating to recorded interviews.)

Exceptions to Miranda

- *Miranda* warnings are not required for questioning about noncriminal activity such as ordinance violations.
- *Miranda* is not required for general on-the-scene questioning that is investigatory and not accusatory in nature.
- *Miranda* is not required under the public safety or rescue doctrine if the police are confronted with a life-saving emergency situation. *Miranda* is not required if a strong need for private safety is present.
- *Miranda* is not required for routine administrative booking questions.
- *Miranda* is not required if talking to a suspect in a siege situation when the goal is to obtain a peaceful surrender.

Right to Know

Every person placed under arrest has the right to know why he or she has been arrested. Upon any arrest, the arresting officer shall notify the arrestee the reason for the arrest. If exigent circumstances exist that prevent the officer from making the immediate notification, the arresting officer shall inform the arrestee as soon as reasonably possible. If the arrest is for a warrant, the officer will inform the arrested person of its contents.

Access

An arrestee shall be allowed reasonable access to a named Attorney upon the arrestee's request.

Arraignment

Once an individual has been arrested and jailed, all investigative reports will be completed and submitted in a manner that ensures no delay in arraignment. A probable cause statement shall also be completed by one of the arresting officers. When a person is arrested and jailed without a warrant, they must be brought before a judge within 48 hours, so a judicial determination of probable cause can be made, or the arrested person released. This is typically done through the arraignment process. If an arraignment will not be accomplished within 48 hours, the Court Officer or Dane County Jail personnel will present the arresting officer's probable cause statement to a Court Commissioner or Judge for review, probable cause determination and signature. If there is insufficient probable cause, the Court Commissioner or Judge will direct that the arrested person be released from custody.

A person taken into custody on a probation hold while an investigation is made to determine if a probation violation has occurred is not under arrest and not subject to the requirement of a probable cause hearing within 48 hours of a warrantless arrest. The interval between an arrest and an initial appearance is never unreasonable when the arrested suspect is already in the lawful physical custody of the state.

Pretrial Publicity

Freedom of information and privacy must be carefully balanced to negate publicity that may prejudice a fair trial. Release of information is controlled by policy.