

<p style="text-align: center;">East Haven Police Department</p> 	Type of Directive: Policies & Procedures		No. 504.2
	Subject/Title: Interviewing Suspects and Arrestees	Issue Date: July 29, 2014	
		Effective Date: September 1, 2014	
	Issuing Authority: Honorable Board of Police Commissioners	Review Date: Annually	
References/Attachments: Policies and Procedures # 303 Policies and Procedures # 418		Rescinds: 504.1	Amends: N/A

I. PURPOSE

- A. The purpose of this directive is to set forth the policies and procedures of the East Haven Police Department regarding conducting interviews of suspects and arrestees.

II. POLICY

- A. It is the policy of this Department that personnel shall observe all Constitutional rights afforded by law of those persons they interrogate in the course of an investigative detention or an arrest.
- B. All persons interrogated will be treated with respect, regardless of their background or other characteristics.

III. GENERAL GUIDELINES AND CONSIDERATIONS

- A. Custody exists when an officer tells an individual that he or she is under arrest. A functionally equivalent situation exists when a “reasonable person” in the suspect’s position would feel that his or her freedom of action has been restricted to the same degree as a formal arrest.
- B. Interrogation includes direct questioning of an individual about a crime or suspected crime, as well as any words or actions on the part of the police that the officers should know are reasonably likely to elicit an incriminating response.

IV. PROCEDURES

A. Overview

1. Interrogations of persons who are in police custody must conform to the standards set forth in the Miranda decision and to due process. Miranda requirements only apply if both of the following situations are present.
 - a. If the suspect “voluntarily, knowingly and intelligently” waives his or her rights to this constitutional protection, the interrogation can begin.
 - b. A suspect can stop any police questioning at any time by invoking his or her right to remain silent or by requesting the services of an attorney.
2. “Spontaneous” statements made to the police before, during or after arrest by a person in custody are admissible as evidence. This is true, even though the arrested person was not warned of his or her rights, provided that such statements are voluntary and are not made in response to police questioning or other actions.
3. In order to obtain results, every police investigator should recognize the Department’s objectives in conducting an interrogation.
 - a. Learning the truth.
 - b. Ascertaining the identity of criminal participants and accessories.
 - c. Obtaining an admission or a confession of guilt.
 - d. Acquiring all the facts, circumstances and methods of operation of the crime under investigation.
 - e. Gathering information that may corroborate or disprove information obtained from other sources.
 - f. Eliminating suspects.
 - g. Uncovering information of any other crimes in which the suspect being questioned is, or has been involved.
 - h. Recovering evidence or property.
 - i. Recording and reporting all information obtained for subsequent court action.

B. Providing Miranda Warnings.

1. As soon as feasible after a person is in custody and prior to beginning interrogation, a police officer shall give the person in custody the following Miranda warnings.
 - a. “You have the right to remain silent. If you choose to speak, anything you say may be used against you in a court of law. You have the right to consult with an attorney before answering any questions, and you may have an attorney with you during questioning. If you cannot afford an attorney and want one, an attorney will be provided at no cost before any questioning. If you decide to answer questions, you may stop at any time.”

2. Officers shall issue the Miranda warnings in as clear and unhurried manner as feasible prior to questioning by reading the warnings from a preprinted card or form. Persons who do not speak English must be given these warnings in a language that they understand.
3. Officers shall then ask the following questions.
 - a. “Do you understand each of the rights I have just read to you?”
 - b. “Having these rights in mind, do you wish to speak with me now?”
4. All arrested persons shall have the Miranda warnings read to them when they are booked, whether the warnings were previously given or not.
 - a. The suspect shall then be asked to sign the form acknowledging that the warnings were given. The officer giving the warnings shall sign the form as a witness, giving the date and time the suspect was advised.
 - b. Officers should provide the Miranda warnings at the beginning of the booking procedure to ensure the future admissibility of all booking responses (including address, employment and telephone number).
5. Whenever a police officer has any doubt as to the applicability of the Miranda warnings in any particular case, it is advisable that these warnings be given to any suspect to avoid any subsequent legal barrier to the admissibility of any statements obtained.
6. If, at any time, a suspect requests to read his or her rights or to be informed of his or her rights, these requests shall be granted.
7. Officers may note any spontaneous and volunteered statements. When a suspect or prisoner voluntarily makes a statement, officers do not have to prevent him or her from continuing to talk and the Miranda warnings are not a prerequisite for admissibility.
 - a. Spontaneous and volunteered statements are statements made by a suspect of his or her own free will and not made in response to police questioning.
 - b. Spontaneous and volunteered statements may be taken after the suspect is in custody and before, during, or after actual interrogation so long as the statements are clearly voluntary.
8. A person who voluntarily enters a police station and makes incriminating statements need not be given the Miranda warnings.
9. A person need not be given Miranda warnings if he or she has been stopped for violating motor vehicle laws. An officer requesting a motorist to perform field sobriety tests is not required to administer the Miranda warnings.

C. Waiver of rights.

1. An officer may conduct a custodial interrogation only if the suspect provides an express or implied waiver of his or her Fifth Amendment rights.
2. Requirements for a Valid Waiver.
 - a. When an officer is required to administer the Miranda warnings, the officer has the obligation to ensure that the requirements of a valid waiver have been satisfied.
 - b. The waiver must be made “voluntarily, knowingly and intelligently” to meet the conditions of the Miranda decision.
 - c. The interrogating officer should be certain that the suspect understands the rights, which have been read to him or her, as the burden will be on the prosecution to prove that the waiver was knowing and intelligent.
 - d. In determining whether a valid waiver was made, the court also examines whether in the light of the totality of the circumstances surrounding the making of the waiver an officer overbore the will of the suspect such that the statement was not a free and voluntary act. The burden will also be on the prosecution to prove that both the waiver and any ensuing statements were voluntary.
 - e. In determining whether a waiver is voluntary, knowing and intelligent, the court considers the circumstances of the interrogation and the individual characteristics and conduct of the suspect, such as the following.
 - 1) Length of time that transpired between giving the Miranda warnings and the waiver.
 - 2) The presence of promises or other inducements.
 - 3) The initiator concerning the discussion of a deal or leniency (whether the defendant or the police).
 - 4) The suspect’s age, education, intelligence, emotional stability, physical and mental condition, command of the English language, and experience with and in the criminal justice system.
 - f. When the suspect waives his or her rights, the interrogating officer shall obtain a written waiver. A waiver in limited circumstances may be made orally. A written and properly witnessed waiver is more likely to be upheld in court.
 - g. Silence on the part of the suspect does not constitute a valid waiver. However, in the absence of an express waiver, a waiver may be implied from the suspect’s words and actions.
 - h. An implied waiver may be found where the following are true.

- 1) The suspect does not expressly indicate that he or she understands his or her rights but states that he or she is willing to talk after being given Miranda warnings.
- 2) The suspect states only that he or she understands his or her rights but thereafter talks to the police.
- i. Questioning should not commence until the police officer conducting the interview is satisfied that the accused understands the Miranda warnings. After giving the warnings, police officers should immediately ask the suspect if he/she understands them. Although the voluntariness of a waiver is a separate and distinct inquiry from the voluntariness of a statement, the inquiry is based on many of the same relevant factors.
- j. The physical and emotional condition of the person being questioned is an important consideration in determining the validity of a waiver. An officer should not question if the suspect is clearly not capable of understanding his or her rights.
3. A suspect must be competent to waive his or her rights prior to police questioning. The question of competency is a question of fact to be determined by the circumstances in each case.
 - a. The competency issue is more likely to be raised under the following circumstances:
 - 1) If the person about to be questioned is distraught or very disturbed because of any mental or emotional condition.
 - 2) If the subject has been wounded or is the victim of shock or other physical impairment.
 - 3) If the subject is so intoxicated or influenced by alcohol and/or drugs that he or she cannot think rationally or act sensibly.
 - 4) If the subject's intelligence level is so low or his or her learning and education are so minimal that he or she does not comprehend his or her rights.
4. The officers should obtain the following information in order to assess the suspect's ability to intelligently understand and waive his or her rights. This information should be obtained after the Miranda warnings have been read and after the suspect has shown an initial willingness to waive those rights.
 - a. The subject's age.
 - b. Whether the subject is under the influence of any drugs and/or alcohol.
 - c. Whether the subject is suffering from any mental or emotional problem.
 - d. The subject's education and learning.

- e. The subject's employment status.
 - f. Whether the subject has ever been given Miranda warnings previously.
 - g. Whether the subject understands the words used by the officer in reciting the Miranda warnings or what they mean.
- D. Juveniles (persons under 18 years of age) have all the Constitutional rights as adult suspects.
- 1. Officers questioning juvenile suspects under age 16 must ensure that the juvenile's parent or guardian is present during any questioning. If the juvenile is between ages 16 and 18 officers must inform the juvenile of his or her right to have a parent or guardian present during questioning. The officer must make a reasonable effort to contact such parent or guardian.
 - 2. Both the juvenile and the parent or guardian must be informed of the Miranda rights and waive such rights.
- E. A suspect may invoke his or her right to remain silent verbally or through "nonverbal expressive conduct" such as shaking his or her head in response to a question about whether he or she wishes to speak to officers.
- 1. When there is reasonable police uncertainty about whether the suspect intends to invoke the right to remain silent, the officer should stop questioning and ask questions in order to clarify the suspect's intention. The inquiry should be brief asking simple clarifying questions.
 - 2. Where the initial request to invoke the right to remain silent is clear the officer may not create ambiguity by continuing to question him or her about his or her invocation.
 - 3. A suspect who has voluntarily waived his or her right to remain silent may still invoke this right at any point by refusing to answer any more questions. At this point the police questioning must cease.
 - 4. A suspect must clearly and unequivocally invoke his or her right to remain silent once waived.
 - a. Like the pre-waiver scenario, a suspect may clearly and unequivocally invoke his or her right to remain silent through "nonverbal expressive conduct" such as shaking his or her head in response to a question about whether he or she wants to speak to officers.
 - b. If there is reasonable police uncertainty about whether the suspect intends to invoke the right to remain silent, the officer should stop questioning and ask questions in order to clarify the suspect's intention. The inquiry should be in a brief and even-handed fashion, asking simple clarifying questions.

- c. Where the initial request to invoke the right to remain silent is clear the officer may not create ambiguity by continuing to question him or her about his or her invocation.
- F. Response to Suspect's Questions or Statements.
1. If the suspect initiates statements or conversation after invoking his or her right to remain silent, officers may respond to those statements or conversation.
 2. The prosecution has the burden of proving beyond a reasonable doubt that subsequent events indicated a voluntary, knowing, and intelligent waiver of the right to remain silent.
 3. If the suspect indicates a desire to continue the questioning or make a statement, Miranda warnings should be reread to the suspect.
- G. Invocation of the Right to Counsel.
1. If there is reasonable police uncertainty concerning the nature and scope of the suspect's invocation of right to counsel, an officer must cease the interrogation, but is entitled to ask a question to clarify the suspect's intent.
 2. The inquiry should be brief, worded only to elicit an affirmative or negative response concerning whether the suspect wants an attorney, and should not be designed to keep the suspect talking.
 3. For example, an officer may ask, "I just want to be sure – do you want an attorney?"
 4. After such an inquiry, nothing further should be asked unless the suspect responds to the question in the negative.
 5. A suspect need not give any reason for requesting an attorney, and officers may not inquire why a suspect is requesting one.
 6. Withdrawal of Waiver: Although a suspect has voluntarily waived his or her right to counsel, he or she may still request the services of an attorney at any time, and at this point the police questioning must cease.
 7. A suspect must clearly and unequivocally invoke his or her right to counsel once waived.
 - a. Like the pre-waiver scenario, if there is reasonable police uncertainty concerning the nature and scope of the suspect's invocation, an officer must cease the interrogation, but is entitled to ask a question to clarify the suspect's intent. Again, the inquiry should be brief, worded only to elicit an affirmative or negative response concerning whether the suspect wants an attorney, and should not be designed to keep the suspect talking.

- b. After such an inquiry, nothing further should be asked unless the suspect responds to the question in the negative.
8. If the suspect states that he or she wishes to consult an attorney, officers must not question him or her further until he or she has had an opportunity to consult an attorney.
- a. Officers must honor a suspect's right to have an attorney present during questioning.
 - b. If the suspect initiates statements or conversation, officers may respond to those statements or conversation.
 - c. The burden remains upon the prosecution to show that subsequent events indicated a waiver of the right to have counsel present during the interrogation. Thus, before an officer may recommence interrogation in these circumstances, they must first obtain from the suspect a voluntary, knowing, and intelligent waiver.
9. An officer has a duty to immediately inform a suspect of both his or her attorney's efforts to provide legal assistance.
- a. This duty is triggered when an officer receives a specific communication from an identified attorney that he or she is acting on the suspect's behalf.
 - b. Where an attorney calls a police station to inform investigators that he or she represents the suspect and wants to speak with the suspect, an officer has an obligation to inform the suspect immediately of the fact of the call.
 - 1) An officer may not delay transmitting the message.
 - 2) The person who first takes the call must connect the attorney immediately to someone who has access to the officers conducting the interrogation.
10. After an officer informs a suspect of an attorney's offer of assistance, the suspect must then be given the opportunity to choose whether to speak with the attorney or decline the offer.
11. If the suspect accepts the attorney's offer to provide assistance, officers must stop all interrogation until the suspect is afforded an opportunity to consult with the attorney either by telephone or in person.
12. If the suspect waives his right to remain silent after learning that his or her attorney has attempted to contact him or her and is apprised of any message the attorney has conveyed, an officer should re-read the Miranda warnings so that his waiver is made with full knowledge that his or her attorney has made a concrete offer of assistance.
- H. A suspect may answer some questions and refuse to answer others, but a police officer is not required to discontinue questioning unless the suspect indicates that he or she wishes to remain totally silent, to stop the questioning, or to consult with an attorney.

- I. Adversarial proceedings.
 - 1. Adversarial proceedings begin when judicial proceedings have commenced against a suspect, either through formal charges, preliminary hearing, indictment, information, or arraignment.
 - 2. Once adversarial proceedings have commenced against a suspect, that person has the right to counsel under the Sixth Amendment, whether or not he or she is in custody. He or she should not be questioned in the absence of counsel on the offense for which he or she was charged.
- J. Documenting Statements and Confessions.
 - 1. Interrogations conducted in a custodial setting shall be in compliance with Policies and Procedures # 418 – Electronic Recording of Interviews.
 - 2. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. These include the following.
 - a. Location, date, time of day and duration of the interview.
 - b. Identities of officers and others present.
 - c. Miranda warnings given, suspect responses and waivers provided, if any.
 - d. The nature and duration of breaks in questioning to provide the suspect food, drink, use of the restroom, or for other purposes.
 - 3. The suspect shall be asked to read, sign and date all written statements and confessions.
 - 4. The interrogating officer(s) shall sign and date all written statements and confessions.
 - 5. The interrogating officer shall prepare and submit a report in accordance with departmental procedures that shall include the above information and any written or recorded statements.