



Sheridan Police Department
Policies and Procedures
20.1 Replaces 402
Chapter 20 – Investigations
Section 1 – Constitutional Requirements

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Signature:

The U.S. Constitution, the Bill of Rights and the Wyoming Constitution guarantee every citizen certain safeguards from government intrusion into their lives. The Sheridan Police Department expects officers to respect these safeguards and protect the civil rights of citizens.

20.1.1 Compliance with Constitutional Requirements During Criminal Investigations

- A. An individual's rights as set forth under the U.S. Constitution, include:
 - 1. The Fifth Amendment which offers protection against self-incrimination; and
 - 2. The Sixth Amendment which provides the right of assistance of counsel.
- B. Officers conducting criminal investigations shall take all precautions necessary to ensure that persons involved are afforded their constitutional rights.
- C. In order to assure compliance with constitutional requirements during criminal investigations, officers shall make certain that:
 - 1. All statements or confessions are voluntary and non-coercive;
 - 2. All persons subject to custodial interrogation are advised of their rights;
 - 3. Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial. See sections 14.4 (Records Release) and 23.1 (Media).

20.1.2 Procedures for Adults

- A. In a number of landmark decisions, the United States Supreme Court has limited the police power to question suspects. The most notable of these decisions is *Miranda V. Arizona* (384 US 436 1966) which mandated that the police cannot question a suspect taken into custody or whose freedom to act is impaired in any significant way, unless the subject “fully understands” his or her constitutional rights and further “knowingly and intelligently waives those rights.”
- B. When an adult is arrested or restrained to a degree associated with a formal arrest, such that a reasonable person would perceive they are in custody, a police officer shall give the person in custody the Miranda warning prior to questioning.
- C. The point at which custody occurs is determined by the circumstances surrounding the interrogation as interpreted by a reasonable person. The beliefs or intent of the investigating officer or the suspect is not the deciding factor. Some of the factors considered when applying the reasonable person test may include:
 - 1. Place of questioning. When conducted at the police department, or in a police vehicle, such circumstances may lead to a conclusion that custody has occurred unless the officer has specifically informed the person that they are not under arrest and are free to leave at any time.
 - 2. Time of questioning. When conducted during unusual hours.

3. Persons present. If a person is removed from the presence of family or friends, or if several officers are present, a custodial interrogation may be indicated.
 4. Physical restraint used. Physical restraint such as handcuffing the person will usually lead to a finding of custody.
 5. Orders to perform tasks not required by law. Any order to do something that the law does not require is indicative of custody (i.e. - ordering a person not to leave a room).
 6. Length and form of questioning. Lengthy questioning consisting of accusatory statements, confrontation with witnesses or evidence, and leading questions may lead to a finding of custody.
 7. Demeanor of the investigating officer. When an officer is accusatory and confronts a person with alleged guilt, the custody finding may occur.
- D. Miranda warnings should be read from the Miranda rights form or a card to ensure that none are omitted.
- E. Miranda warnings convey the following messages:
1. You have the right to remain silent;
 2. Anything you say may be used against you in a court of law;
 3. You have the right to talk to a lawyer and have him or her 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.
- F. Each officer giving the warning shall ask the person if he or she heard and understood the warning.
- G. Determining if the person wishes to waive his or her rights will depend on the totality of the circumstances. Factors an officer should be aware of include:
1. The person's waiver must be given freely, knowingly and voluntarily;
 2. The validity of a waiver depends on the subject's age, intellectual capacity, physical/mental condition, surroundings and similar factors;
 3. Waiver cannot be inferred from silence;
 4. Reasonable verbal acknowledgment of understanding and a willingness to speak is acceptable. The United States Supreme Court has ruled that police are allowed to interrogate suspects who have not unambiguously invoked or waived their rights, and any statement given during questioning prior to invocation or waiving is admissible as evidence;
 5. A written waiver should be taken in the presence of witnesses who can testify to the circumstances of the waiver;
 6. It is possible that the subject will waive his or her rights after he or she has had them read and explained, but will refuse to sign the departmental waiver rights form. This does not render the statement invalid.
- H. A subject may answer some questions, but refuse to answer others. Unless the person indicates that he or she desires all questions to cease, officers are not required to stop all questioning.
- I. Officers should recognize that there is a significant difference between a subject who invokes the right to remain silent versus the subject who invokes the right to counsel. If a subject decides to remain silent, officers must stop questioning. The subject may be approached at a later time by the officer to determine if he or she wishes to answer questions. The U.S. Supreme Court in *Michigan v Mosley* indicated a second interrogation may be allowed when:

1. The suspect's right to remain silent was clearly honored in the first interrogation;
2. A significant amount of time passed between the first and second interrogation;
3. The suspect was given a fresh set of warnings before the second interrogation;
and
4. No pressure tactics or illegal tactics were used to get the suspect to relent.

A period of at least two (2) hours between the invocation of the right to remain silent and the re-initiation of questioning is commonly identified as sufficient.

- J. A subject who requests the aid or presence of an attorney shall not be questioned further at that time.
- K. Occasionally, a subject may also change his or her mind after initially requesting aid from an attorney prior to speaking with police. Should this occur, the interrogating officer should read Miranda warnings to the subject again before beginning another interrogation. The officer will need to articulate that the subject's change of mind was voluntary and not influenced by the actions or prompting of the police following his or her original request for counsel.
- L. Once a subject has been formally charged with the offense in court, and counsel retained or appointed, he or she may not be questioned without consulting his or her attorney, unless the subject initiates the contact with the officer.
- M. Generally, no Miranda warning is required when speaking to witnesses and victims in relation to criminal activity or incidents that they have been involved in. However, at such time the victim or witness becomes a suspect, the procedures for a suspect will apply.
- N. In the circumstance that a suspect is not under arrest, is free to leave at any time, and the officer has created no circumstances that might lead a reasonable person to believe otherwise, a Miranda warning is not required. Officers are cautioned that if a statement is given under these conditions and it is challenged, the burden to prove the setting was not custodial will be on the officer.
- O. Miranda warnings are only necessary when custody and questioning occur at the same time. The lack of one or the other dispenses with the need for any warning. Miranda warnings are not required when:
 1. Making general on-scene inquiries;
 2. Making inquiry surrounding exigent circumstances (such as imminent threats to public safety);
 3. Making an arrest and no interrogation will be conducted after the arrest; and
 4. Roadside questioning during routine traffic stops, including DWI stops.
- P. If the suspect is deaf or unable to speak English, the interrogating officer shall arrange to obtain an interpreter.
- Q. Officers should note pertinent facts regarding the warnings in their reports.
- R. When a subject makes voluntary, unsolicited statements, it is not necessary to stop the subject and advise him of these rights so long as the officer is not asking questions.

20.1.3 Procedures for Juveniles

- A. Juveniles have the same constitutional rights as adults as they relate to police interrogations. Officers will take reasonable steps to ensure that a juvenile's constitutional rights are protected while a juvenile is in custody and/or during an in-custody interrogation.
- B. A juvenile's parent or guardian does not have to be present for officers to interrogate a juvenile in custody; however, depending upon the severity of the delinquent act committed, interrogating officers should consider the parent or guardian's presence or notification.

- C. When a juvenile is arrested or restrained to a degree associated with a formal arrest, such that a reasonable person would perceive they are in custody, a police officer, prior to questioning the juvenile, shall give him or her Miranda warnings.
- D. Numerous factors are involved in determining validity of a juvenile waiver:
 - 1. Chronological age of the juvenile;
 - 2. The apparent mental age of the juvenile;
 - 3. The educational level of the juvenile;
 - 4. The juvenile's physical condition;
 - 5. The juvenile's previous dealings with the police and courts;
 - 6. The extent of the explanation of rights;
 - 7. Whether the juvenile was given an opportunity to consult with an adult;
 - 8. The juvenile's understanding of the offense charged; and
 - 9. Whether the juvenile was warned of the possible transfer to adult court.
- E. Custodial interrogations of juveniles should be conducted by no more than two (2) officers, be limited in duration and suitable breaks shall be provided.
- F. Officers shall explain to the juvenile being interrogated, the department's function in the case and how he or she will be handled in the juvenile justice system as the case progresses.