

BATON ROUGE POLICE DEPARTMENT

General Order
No.303

Effective Date
04-04-1996

Revised Date
08-01-2006

Subject: Custodial Interrogation

Reviewed 9/1/16

POLICY

It is the policy of this department to interrogate suspects, in such a manner, as to observe all rights as guaranteed under the Constitution of this State and the United States.

Suspects are not to be abused physically and are only to be questioned for reasonable periods of time, with breaks for rest room use as required.

The following procedure is limited to the questioning of persons suspected of criminal wrongdoing. It does not apply to the interviewing of witnesses (even though those witnesses may not be cooperative) and victims. It is further limited to the questioning of suspects in a custodial setting, not in the field. The Louisiana Children's Code has enacted additional safeguards relative to the questioning of juveniles suspected or charged with crimes. Officers of this department are directed to review G.O. 308 "Juvenile Procedure" for a description of those procedures.

DEFINITIONS

Adverse Criminal Proceeding--generally any judicial proceeding (arraignment, grand jury testimony by the defendant, etc.) after booking that would be detrimental to the defendant.

Interrogation--is any question or other conduct specifically designed to elicit an incriminating remark. Silence is not interrogation.

Custodial Miranda--A person is in custody for purposes of Miranda when she/he would reasonably feel that within a relatively short period of time, she/he would not be free to leave.

PROCEDURES

I. Advice of Rights

- A. Before a suspect who is in custody may be questioned, he must be advised of the Miranda warnings. Additionally, the Louisiana constitution requires that any person arrested must be advised of his Miranda warnings.
- B. After the advice of rights, the suspect must acknowledge he understands the rights and must knowingly, voluntarily, and intelligently waive them.
 1. The burden of proof is on the State to show that the suspect has, in fact, done so.
 2. The suspect's educational level and anything that would affect the suspect's state of mind (i.e. recent alcohol or drug use) should be entered in the remarks section.
 3. If the suspect requests to contact his/her lawyer, a reasonable time should be allowed for the suspect to make contact.

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- C. If a significant amount of time elapses between the advice of rights and additional questioning, the suspect will again be advised.
 - 1. A significant amount of time is defined as more than a rest break or time to confer with other officers.
 - 2. Investigator will confirm that the accused has been advised of his Miranda Warnings and he has waived his Rights prior to questioning on non-related crimes. A copy of the original waiver will be included in the additional investigation.

II. Right to Counsel

- A. Before the defendant is involved in any adverse judicial criminal proceeding:
 - 1. If at any time the suspect requests an attorney, the questioning will cease. The invocation of right to counsel by the suspect must be clear and unambiguous.
 - 2. Once the suspect has invoked the right to counsel, there will be no questioning until his attorney is present unless, **with no prompting from the officer**, the suspect changes his mind.
- B. After the defendant's involvement in any other adverse judicial criminal proceeding:
 - 1. If the defendant did not expressly waive his right to counsel before a judge, he may not be questioned outside of the presence of his attorney. He may not waive his right to counsel at an interrogation.
 - 2. If the defendant did waive his right to appointment of a lawyer at the first adverse judicial criminal proceeding (usually the arraignment), the defendant is free to either waive or invoke his right to a lawyer at a custodial interrogation.

III. Right to Silence

A suspect who invokes his/her right to silence must be given a reasonable time of quiet before questioning is resumed. Ten minutes would be a minimum reasonable time.

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IV. Documentation

- A. Confessions are regularly, if not always, challenged in court and securing an admissible confession is somewhat difficult; therefore, proper documentation of the interrogation is essential.
 - 1. If possible the interrogation should be tape recorded or videotaped. If not, then it should be reproduced as accurately as possible in writing as a part of the report.
 - 2. If the suspect is able to do so and has no objections, he should make a written statement. The **Voluntary Statement** form is the proper instrument for this.
- B. If a written or recorded statement is taken, the original will be placed in evidence. Copies of a written statement may be attached to the report.