



# El Segundo Police Department

## Training Section

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## TRAINING BULLETIN

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### MIRANDA (FIFTH AMENDMENT) RULES

Miranda advisements were designed to ensure that statements made by a suspect **in custody** could be introduced at trial to prove guilt without violating the suspect's Fifth Amendment privilege against self-incrimination.

#### **Rule No. 1 - Both "Custody" and "Interrogation" Must Exist at the Same Time:**

No Miranda warnings are necessary unless both "custody" and "interrogation" exist at the same time.

"Interrogation" means either (1) engaging in direct questioning about the crime being investigated or (2) engaging in conduct that is the "functional equivalent" of interrogation because you should reasonably know that it is likely to elicit an incriminating response.

#### **Miranda "custody," which is different from Fourth Amendment**

**"custody,"** means either (1) that the suspect actually has been arrested or (2) that the suspect's freedom of movement has been restrained to the degree associated with a formal arrest ("equivalent restraints") and he is aware of these restraints. Whether "custody" exists will be decided "objectively."

**At a police station,** "custody" automatically exists unless a reasonable person in the suspect's position would believe, objectively, that she is free to leave.

**Anywhere else,** "free to leave" is not the determinative test. For "custody" to exist anywhere other than at a police station or similar facility, it takes (1) not being free to leave (i.e., a "detention") **PLUS** (2) some additional force or pressure, such as handcuffs, drawn weapons, or the cage of a police car.

During ordinary detentions, when none of these additional factors exist, you may engage in some preliminary or investigatory questioning without first giving Miranda warnings. "General on-the-scene questioning as to facts surrounding a crime . . . is not affected by our holding." Generally, "custody" for Miranda purposes "does not include a temporary detention for investigation."

You are permitted to ask "a moderate number of questions to determine . . . identity and to try to obtain information confirming or dispelling the officer's suspicions."

Also, there cannot be Miranda "custody" if the person truly is free to leave or end the interview, for example, when you are talking to a suspect on the telephone or engaging in a "consensual encounter" on the street. This is true even though the person you are talking to may be your prime, or only, suspect: the U.S. Supreme Court has made it clear that "focus" is not relevant unless you communicate it to the suspect by word or deed.

**Rule No. 2 - Waiver Must Be Voluntary:**

Every time you advise a suspect of his Miranda rights and he waives them, this waiver has to be "knowing, voluntary, and intelligent." It is possible, for instance, for a suspect to be in such bad shape (injured, drugged, etc.) that he cannot make a knowing waiver of his rights. However, assuming the suspect can make a valid waiver, the waiver may be either **express** or **implied**.

**Rule No. 3 - Statement Must Be Voluntary:**

Every time a suspect gives a statement, regardless of whether it follows a valid Miranda waiver, the statement itself must also be voluntary. This is a due process (Fourteenth Amendment) issue, totally different from the preceding waiver-of-Miranda-rights issue, with different standards and remedies.

"Voluntariness" of a statement will be determined based on all the circumstances. A statement will be considered involuntary ("coerced") only if it resulted from improper police conduct, such as threats, undue force, or promises. A statement may also be considered involuntary if the police intentionally violated Miranda.

**Rule No. 4 - Invocation Requires Cessation of Questioning:**

If you advise a suspect of her Miranda rights (because "custody" exists and "interrogation" is about to take place), all questioning must cease immediately if the suspect does not waive her rights. The same is true if she invokes her rights later, during the questioning, after having previously waived.

There are two different Miranda rights that a suspect may invoke: (1) the right to silence (by saying he does not want to talk (anymore) or refusing to waive rights generally) and (2) the right to counsel (by clearly expressing his desire for an attorney). If a suspect in custody invokes either of these rights in any manner at any time during the interrogation, his request must be "scrupulously honored" and all further questioning must cease immediately.

Compliance with Miranda is necessary if you want anything the suspect may say (at a later time) to be admissible against him at trial to prove guilt in the prosecutor's case-in-chief. Moreover, an **intentional** violation of this (or any other) Miranda rule possibly could result in civil rights litigation against you, as well as a threat of **personal liability**.

### **Intentional Miranda Violations/Civil Liability/Impeachment**

With the exception of situations involving threats to public safety, DO NOT intentionally violate Miranda. Intentional violations could result in civil liability or in a court finding the Miranda advisements "ineffective" or the statements involuntary. Even though the law permits a statement following a Miranda violation to be used as impeachment or as a basis for obtaining physical evidence, courts do not like officers deliberately violating Miranda and will exclude statements obtained by officers acting in deliberate violation of Miranda to take advantage of these exceptions. These exceptions should be viewed as tools for prosecutors to argue in favor of admission of evidence based on excusable Miranda violations.

#### **Exception No. 1 - "Volunteered" Statements are Admissible:**

Miranda only prohibits police-initiated interrogation. "Volunteered" or "spontaneous" statements, not made in response to direct interrogation or its functional equivalent, are always admissible. (Edwards.)

#### **Exception No. 2 - Suspect-Initiated Further Interrogation is OK:**

Miranda applies only to police-initiated interrogation. Thus, even in situations where you are not entitled to go back and "try again"--such as where the suspect has previously invoked his Miranda right to counsel--it is lawful for further interrogation to occur if the suspect initiates it, i.e., brings up the topic during a subsequent contact. However, the suspect must indicate that he wishes "to open up a more generalized discussion" about the crime, as opposed to asking, for example, for a drink of water. (Bradshaw, Gamache, Sims.) Also, you must always re-advise the suspect of his Miranda rights and obtain an express waiver.

#### **Exception No. 3 - Use of Undercover Operators is OK:**

Miranda applies only if the suspect knows he is talking to a peace officer or a police agent. If he does not know this, then no Miranda advisements are necessary because he cannot be feeling the "inherent compulsion" or pressure of **police** custodial interrogation that Miranda was designed to relieve. This is true even though the suspect is in jail, and even though the suspect has previously invoked one or both of his Miranda rights, i.e., silence and/or counsel.