

**SAN DIEGO POLICE DEPARTMENT  
PROCEDURE**

**DATE:** MARCH 1, 2013  
**NUMBER:** 4.03 – LEGAL  
**SUBJECT:** ADMONITION PROCEDURES  
**RELATED POLICY:** N/A  
**ORIGINATING DIVISION:** INVESTIGATIONS II  
**NEW PROCEDURE:**   
**PROCEDURAL CHANGE:**   
**SUPERSEDES:** DP 4.03 – 03/08/2010

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**I. PURPOSE**

This Department procedure establishes guidelines regarding admonition procedures.

**II. SCOPE**

This procedure applies to all sworn members of the Department.

**III. BACKGROUND**

The Fifth Amendment to the United States Constitution states that a person "shall not be compelled in any criminal case to be a witness against himself."

- A. The United States and California Supreme Courts have interpreted this to mean that a suspect must be given Miranda warnings and waive Fifth Amendment rights prior to custodial interrogation. In other words, the suspect must first be in custody and, secondly, be about to be interrogated before the warnings are required.
- B. If the suspect is a juvenile, custody alone will require an advisement of his or her rights; regardless of whether or not they are interviewed (refer to Welfare and Institutions Code, Section 625).

**IV. CUSTODY**

- A. Miranda applies only when the person being questioned is in custody. For purposes of giving Miranda warnings, "custody" exists when the following two requirements are met:
1. The suspect must in fact be deprived of his or her freedom in a significant way (generally meaning that they are not free to leave); and,
  2. They must personally be aware of this lack of freedom, or reasonably believe that it exists.
- B. Factors in determining custody
1. If a suspect was formally arrested, they are normally in custody and must be advised of the Miranda warning prior to questioning.
  2. There can be "custody" without an arrest. If the suspect was not arrested, the courts weigh many factors to determine whether they were "in custody" during the questioning. The following are some of the factors to consider:
    - a. Where the questioning takes place - an area station or a police car is more custodial than at or near the suspect's home or in their car;
    - b. When the questioning takes place - late at night is more custodial than during the day;
    - c. How many officers are present - many officers is more custodial than one officer;
    - d. How many of the suspect's friends and/or relatives are present - no friends or relatives is more custodial than when many friends or relatives are present;
    - e. How long the questioning lasts - lengthy questioning is more custodial than brief questioning;
    - f. How accusatory the questioning is - confrontation with evidence in order to get an admission or confession is more custodial than questions intended to simply "clear up" the situation;
    - g. What information the officer has - the more probable cause to arrest and the more the investigation has "focused" on the suspect, the more likely the courts are to find custody took place;

- h. What objective indications of custody exist - objective indications of custody include a firearm, handcuffing, moving the suspect significant distances, or locking them inside an interview room. Objective conditions reflecting lack of custody are refraining from a show of force, threats, or orders. If possible, always begin conversations as if the focus of the interview is to seek the subject's help ("request" that the suspect talk or accompany you, and do not "order" them to); and,
- i. What testimony the officer gives - what you say to a suspect at the scene, and how you testify in court, can be quite important. If you tell a suspect he is "under arrest," he is definitely in custody. However, if you tell him he is only being "detained," or that he is "free to leave," the courts are more likely to find no custody;

A suspect who is merely being detained, as opposed to arrested, is nevertheless not free to leave. Often at a suppression hearing, a defense attorney will ask an officer if the defendant was "free to leave if he wanted to." When the officer responds "no" (which is the true and correct answer), the defense attorney will try to get the officer to testify that the defendant was in "custody." You can avoid this trap in court by focusing on the difference between an "arrest" and a "detention," using the correct term during your testimony, and recognizing that even a detainee is not free to leave.

## V. ADMONITION PROCEDURES

### A. Admonition content

- 1. The right to remain silent;
- 2. Warned that anything the person says can and will be used against him or her in court; and,
- 3. The right to be represented by an attorney of the person's own choosing and to have the attorney present during questioning; or if unable to afford an attorney, one will be appointed prior to any questioning.

### B. Admonition is not required under the following circumstances:

- 1. When a person is stopped under suspicious circumstances (detention), no warning need be given unless and until the officer has developed probable cause to arrest or the questioning has ceased to be brief and casual and become sustained and coercive;

2. For traffic citations;
3. When statements are made over the telephone;
4. From persons who volunteer statements (e.g., when a person states that he or she wishes to confess to a crime). In this situation, an admonishment need only be given if the officer asks a question to bring out further details or encourages the person in any way to continue talking;
5. When the officer is engaged in general “on-the-scene” questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process; or,
6. If the officer does not intend to interrogate an adult in custody, admonition is not necessary. If following an arrest, the officer feels that interrogation would serve no purpose at such time; the officer should not admonish the subject. A follow-up investigator can then admonish the subject and interrogate him or her. However, if the arrestee expresses a desire to speak, they should certainly be admonished and be permitted to speak.

C. Admonition of felony suspects in custody

A felony suspect in custody should not be warned of his or her rights (except juveniles) and a waiver solicited unless an interrogation is to follow immediately or in the very near future. Conversely, interrogation should commence, without any significant delay, following a warning and waiver.

All too often, arrest reports indicate that the suspect was not advised at all, or if they were, and a waiver was obtained, no interrogation followed. In such cases, the arresting officer must include their reasons for failing to do so in his or her report.

D. Admonition in which the suspect is likely to waive their rights

Where the suspect appears likely to waive their rights and talk about the case, questioning should begin as soon as possible. Compliance with admonishment rules must precede the interrogation.

E. Deferral when the arresting officer is not familiar with an incident/investigation

Questioning should be deferred, together with warning of constitutional rights, when the arresting officer is unfamiliar with the case. For example, it often happens that an officer making an arrest upon a warrant or pursuant to instructions will be unfamiliar with the case.

## F. Procedural steps in admonition

1. Officers shall advise questioned persons verbally of his or her rights by reading the admonition form on the officer's notebook (PD-145). Waiver of these rights is normally obtained by asking the following questions listed on the form:

- a. “Do you understand each of these rights that I have explained to you?”
- b. “Having in mind and understanding your rights as I have told you, are you willing to talk with us?”

The answers to these questions will be recorded, in the spaces provided, on either the arrest report or the juvenile contact report. The exact words used by the suspect when answering admonition questions should be documented (i.e., if the answer to question one was, "Yeah, sure I do," it must be documented exactly as the suspect said it).

## G. Non-Waiver

1. Once the admonition is given and the individual indicates in any manner, prior to or during questioning, that he or she wishes to remain silent, the interrogation must cease.
2. If the individual states that he or she wants an attorney or the individual "consults" with an attorney, the interrogation must cease until an attorney is present or the individual has consulted with an attorney.
3. If a juvenile makes a request to see an attorney, one of his or her parents, or a guardian at any time prior to or during questioning, the interrogation must cease until the juvenile is given an opportunity to see his or her attorney, parent, or guardian.

## H. Waiver

1. If, after invoking the right to silence or counsel, the individual changes their mind and freely indicates that they now wish to speak, the individual should be re-admonished and be allowed to speak and be questioned.
2. After proper admonishment and the expression of a willingness to speak, reluctance to answer particular subjects or questions does not constitute the invocation of the right to silence. Questioning may continue until the right is clearly exercised. Officers should avoid coercive questioning practices by which the individual's will is overborne so that he or she is

not free to invoke the right to silence or counsel. Questioning must cease when the reluctance to speak is equivalent to a refusal to speak.

3. Spontaneous, voluntary statements by an individual who has invoked his or her rights while in the presence of an officer may also constitute a waiver, provided the officer(s) did not directly question or engage by word or action in the functional equivalent of interrogation. The individual should be allowed to continue, without interruption, his or her spontaneous declaration. However, no questions or direction shall be given by the officer(s) until the individual is re-admonished and freely indicates his or her willingness to continue.