

GENERAL ORDER 41.4.1

Constitutional Rights

GENERAL ORDER CROSS-REFERENCE: None.

SUMMARY

Establishes a directive for issuing Miranda warnings to ensure a subject's Constitutional rights.

DISCUSSION

It is important in any criminal investigation to ensure that an individual's Constitutional rights are not violated, and to ensure that any statements or confessions given by a suspect are legally obtained and permissible in a criminal proceeding.

POLICY

I

Officers shall advise a suspect of his Constitutional rights as provided in the Miranda decision and subsequent Court Decisions prior to any custodial interrogation. The statement of rights used by Department members shall follow the guidelines established by the District Attorney's Office.

II

Officers may question persons during general on-the-scene investigations as to facts surrounding a crime. Persons questioned during this time need not be advised of their Constitutional rights until the person is taken into custody, or otherwise deprived of their freedom.

Individuals who volunteer information or spontaneous statements made by suspects are admissible as evidence and need not be preceded by warnings. Any follow-up questioning initiated by an officer shall be preceded by a warning.

III

Per ORS 133.400 a custodial interview specifically for aggravated murder or a crime described in ORS 137.700 or 137.707 (Measure 11 Crimes) by an officer at a law enforcement facility shall be electronically recorded. The recording must encompass the entire interview. Per ORS 165.540 5(b) officers are not required to notify suspects of the video/audio recording if it pertains to the specific above mentioned crimes. This exception does not relieve officers of the requirement to notify a suspect of his Constitutional rights provided by Miranda.

When a suspect is interviewed utilizing a video or audio recording device outside of the parameters established above:

1. The person shall be informed that such recording is being made, and the statement so informing him shall be included in the recording unless exempted by ORS 165.540 (b) as described below.
2. The recording shall commence with an indication of the time and conclude with the ending time.
3. At the beginning of the interview, arrested persons shall be advised of their Constitutional rights, and such statements and responses included in the recording.

The name of all persons present during the interview, the location of the interview, and a statement that the testimony is being given voluntarily should be included.

Per ORS 165.540, telephone statements or confessions given when one of the participants consents to recording the conversation, (i.e., the officer) are legal, the suspect need not be advised of his Constitutional rights.

IV

After a suspect has been advised of his rights and requests to speak to an attorney, no further questioning shall take place. Statements made after a suspect invokes his rights are not admissible in court, unless the suspect initiates the conversation and has been re-advised of his Miranda rights and wishes to continue the conversation.

An officer will not do anything that prevents or deprives a suspect's access to his legal counsel.

V

Suspects shall not be coerced into giving involuntary statements or confessions.

VI

Suspects' rights to a speedy arraignment shall be protected.

VII

Pretrial publicity which would tend to prejudice a fair trial shall be avoided.

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