JOPLIN POLICE DEPARTMENT	6-04 STANDARD OPERATING GUIDELINE
SUBJECT: Interviews and Interrogations	**REVIEW DATE: Annually - June**
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I. POLICY

Of all the actions an officer might take while on duty, the ones with the most severe consequences concern constitutional rights. It is the policy of the Joplin Police Department to ensure that decisions are made in a manner consistent with City, State and Federal Laws and constitutional guidelines while conducting interviews and interrogations.

II. PURPOSE

To establish guidelines for interviews and interrogations performed by officers of the department.

III. DEFINITIONS

A. Interview

An **interview**, as opposed to an interrogation, may be construed as any conversation with a suspect, witness, victim, or the citizen. (1.2.3 A)

B. Interrogation

An **interrogation**, to paraphrase the Supreme Court, includes direct questioning (or its functional equivalent) about a crime or suspected crime, as well as any words or conduct on behalf of the police that may elicit an incriminating response from the suspect.

1. Officers are reminded that an interrogation does not rely solely or exclusively on words; conduct can be the "functional equivalent" of asking questions.

C. Custody

A person is in **custody** when an officer tells him or her that he or she is under arrest. The functional equivalent of being in custody occurs when a reasonable person in the suspect's place would feel that his or her freedom of action has been restricted to the same degree as a formal arrest.

IV. PROCEDURE:

The objective of every criminal investigation is to present to the court the evidence of the crime and the suspected offender. There are two general methods for gathering such information: interview or interrogation. Interviewing is a method used to obtain information from those willing to provide it. Interrogation is the process of obtaining information from suspected persons or from reluctant witnesses unwilling to cooperate voluntarily. At times even the victim of a crime is in this reluctant category. An interview is described as a conversation with a purpose. It may include bits and pieces of information from different persons which, when accumulated, can become valuable to the case. When a police officer arrives

at the scene of a crime and before any suspect is identified, he can legally ask many general questions as to what occurred. (Under his police powers a police officer has the authority to stop suspicious persons and to conduct a "threshold inquiry" by asking a suspect his name, address, and what he is doing). Once the questioning determines that the subject is a suspect, he must be advised of his rights before further questioning. The United States Supreme Court in several landmark decisions, primarily Miranda V Arizona, 384 Us 436 (1966), has imposed limitations on police powers to question suspects. Under these court guidelines, the police cannot question any person who has been taken into custody or deprived of his freedom in any significant way until they have first informed him of his right to remain silent; that anything he may say can be used against him, that he is entitled to have his attorney present when being interrogated, and that an attorney will be provided if the suspect cannot afford one. If the suspect "knowingly" waives his rights to this Constitutional protection, the interrogation may begin. The police may have the burden of proving later that the suspect was not coerced into submitting to questioning. The suspect can stop the interrogation at any time by invoking his privilege of silence or requesting a lawyer.

It is important, therefore, for every police officer to clearly understand the effect of the Miranda decision in carrying out his duties. Officers should also be aware that interrogation includes not only express questioning but has been defined as words or actions by the police which the officers should have known were reasonably likely to elicit an incriminating response. However, if suspects freely choose to divulge information without questioning there is not a violation of rights simply because no warnings were given (Rhode Island V Innis, 466 US 291, 1980). There is no requirement that an officer prevent a suspect from continuing to talk, and whatever statements are made voluntarily, such statements shall be noted. But if an officer wishes to gain further information through questioning, warnings shall be given before questioning the suspect. The following guidelines will make an interrogation and the information gained admissible when presented to the court. (1.2.3 B)

A. Interviewing Witnesses (1.2.3 A)

The effective interviewing of persons having knowledge that is helpful in the solution of a case is a vital part of the investigative process. The interviewing of witnesses enables the investigator to collect pertinent facts, substantiate information already available from other sources or to obtain additional information.

B. Initial Witness Contact (1.2.3 A)

1. Witnesses should be interviewed as soon as possible.

2. Consideration must be given to the physical and emotional needs of the witnesses.

3. The immediate objective of the interviewing officer should be to establish a cooperative relationship.

4. An officer should immediately identify himself or show identification if not in uniform.

C. Rights admonition (1.2.3 B)

1. When an adult is taken into custody or is otherwise deprived of his/her freedom, a police officer shall give the person in custody their *Miranda* warnings prior to questioning.

2. To achieve uniformity in administering *Miranda* warnings, police officers shall be issued cards with the *Miranda* warnings and waiver on them. Before custodial interrogation, officers shall advise suspects of their rights by reading aloud from the card or the Advice of Rights Form the following information:

a. "You have the right to remain silent."

b. "Anything you say can and will be used against you in a court of law."

c. "You have the right to talk to a lawyer and have him present with you while you are being questioned."

d. "If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one."

e. "You may stop talking at any time."

3. After the warning, to secure a waiver, the officer shall ask and receive affirmative replies to the following questions:

a. "Do you understand each of these rights I have explained to you?"

b. "Having these rights in mind, do you wish to talk to us now?"

4. After the rights have been read, understood, and the person wishes to waive them, the officer will have the suspect sign the waiver of rights form when available. **Officers shall interrogate suspects only when they have knowingly and intelligently waived their rights.** Officers **shall cease** questioning whenever the suspect invokes the right to silence or requests the presence of counsel. (1.2.3 C)

a. Officers shall not try to elicit incriminating evidence unless the suspect waives the right to counsel.

b. If a suspect, once in custody, requests counsel after being advised of *Miranda* rights, he or she **cannot** be interrogated again about the crime for which he or she was charged or by any other officers unless (l) the counsel is present during the interrogation or (2) the suspect himself initiates the interrogation. Officers therefore cannot obtain a waiver under these circumstances unless the suspect initiates interrogation. If a suspect refers to counsel but his or her intentions are unclear, officers may question the suspect further to clarify his or her intentions.

c. If the suspect is deaf or unable to speak English, the interrogating officer shall notify the on-duty supervisor and shall immediately arrange to obtain an interpreter. No interrogation should be attempted without a competent translator.

5. Juveniles will not be interrogated without the presence of a County Juvenile Officer who has notified the parent(s) or guardian and has taken care to advise the juvenile of their rights and has ensured that the rights were understood before obtaining a waiver. Officers should honor a child's request to speak to a parent or guardian before waiving his or her rights. Whenever possible, the child's parents should be present while the child's rights are explained, and the waiver obtained.

6. If a suspect has invoked his or her right to silence, officers may interrogate the suspect **if**, after a passage of time, the suspect initiates communication with officers. Before questioning, however, officers shall again administer *Miranda* warnings and shall obtain a written waiver.

D. Voluntariness of confessions

The courts have provided officers with much latitude in interrogating suspects. If a suspect's claim is that he or she was coerced into confessing, the courts will examine the interrogation according to the **totality of the circumstances**. If coercion was used to overcome the suspect's will, then the courts will find any resulting confession to be involuntary. If officers use trickery, threats, or offer promises to obtain confessions, they must:

1. Carefully assess the suspect's background, age, education, mental impairment, and physical condition to determine vulnerability to coercion; and

2. Coupled with the background characteristics choose an appropriate mix of interrogation tactics and environmental factors to convince the suspect to confess without overbearing the suspect's will. **Note that *Miranda* warnings would have been given before the interrogation takes place, in most instances.**

E. Exemptions or special cases

1. *Miranda* warnings do not apply to the following non-custodial situations. This list is not all-inclusive:

   a. Brief on-scene questioning.

   b. Identification procedures such as fingerprinting, conducting a lineup, sobriety tests. (Questioning during booking **may** require *Miranda* warnings.)

   c. Volunteered, spontaneous statements. (Once the officer has heard the suspect express spontaneous incriminating statements, the officer shall then advise the suspect of *Miranda* rights and obtain a waiver before asking additional questions.)

   d. Brief investigative detention or stop/frisk.

   e. Roadside questioning during routine traffic stops, including DUI stops until custodial interrogation begins.

   f. Routine booking questions attendant to arrest.

   g. Questioning by private persons.

2. Public-safety exception

   When an officer urgently needs information from a suspect because lives are in imminent danger, officers may delay giving *Miranda* warnings **until** the officers have received information sufficient to dispel the emergency. **Officers are advised that a genuine, life-threatening emergency must exist.**

F. Documentation requirements

1. Officers shall document the circumstances surrounding the conduct of interrogations and the recording of confessions. Required information includes but is not limited to the following:

   a. Location, date, time, duration of the interrogation.

   b. Identities of everyone present.

   c. *Miranda* warnings given, the suspect's responses, and any waivers provided.

   d. The nature and duration of any breaks or lapses during the interrogation and the reasons for them.

2. Video or audio tape recordings shall be treated as evidence and handled accordingly.

3. Pursuant to RSMo 590.701 the following procedures shall be followed when conducting a custodial interrogation.

   a. A custodial interrogation is defined as the questioning of a person under arrest, who is no longer at the scene of the crime, by a member of a law enforcement agency along with the answers and other statements of the person questioned. A custodial interrogation shall not include:

      i. A situation in which a person voluntarily agrees to meet with a member of a law enforcement agency

      ii. A detention by a law enforcement agency that has not risen to the level of an arrest

      iii. Questioning that is routinely asked during the processing of the arrest of the suspect

      iv. Questioning pursuant to an alcohol influence report

      v. Questioning during the transportation of a suspect.

   b. All custodial interrogations shall be recorded when feasible.

   c. Law enforcement agencies may record an interrogation in any circumstance with or without the knowledge or consent of a suspect, but they shall not be required to record an interrogation under subsection (b) of this section:

      i. If the interrogation occurs outside the state of Missouri;

      ii. If exigent public safety circumstances prevent recording;

      iii. To the extent the suspect makes spontaneous statements;

      iv. If the recording equipment fails; or

      v. If recording equipment is not available at the location where the interrogation takes place.

G. Interview Rooms

The Department has four (4) interview rooms located in the Investigations Bureau area. Officers of this department are authorized to use the interview rooms for interviews of victims, witness, and suspects, and are accountable for their supervision and welfare while utilizing the rooms.

1. Suspects will never be left alone in an interview unless the room is posted by a guard and will have access to water, restrooms, and other needs, by requesting service from the arresting officer. (42.2.10 F) Visual observation of victims and witnesses in the interview rooms will be monitored by department personnel periodically either physically or via closed circuit cameras.

2. Male and female prisoners, as well as adults and juveniles, must be separated by sight and sound.

3. Suspects will be searched by a person of the same gender prior to entering the interview rooms. (42.2.10 B)

4. Suspects or arrestees will not be restrained to any objects in the interview room. In the event of an emergency, or if an interviewee becomes violent, the interviewee should be removed to a holding cell in the booking area.

5. The interview rooms will be checked prior to placing the suspect inside. After the suspect is removed, the room will again be checked. (42.2.10 B)

6. In the event of an emergency, officers will use their portable radio, radio phone, duress alarm or telephone to request assistance. The dispatchers will notify personnel in the building over the intercom of the situation and will assign a patrol unit and supervisor to respond to the interview rooms. (42.2.10 B, D)

7. Only those personnel conducting the investigation should be in the interview room area. (42.2.10 C)

8. While interviewing detainees in the interview rooms, officers and detectives may secure their weapons in a secure storage area, provided within the investigations bureau. (42.2.10 A)

9. Fire Safety.

    a. No smoking is allowed in the building. If an arrestee is granted permission to smoke, it will be done outside the building under direct supervision of a police officer.

    b. The police station is equipped with size 10 ABC fire extinguishers, strategically placed within seventy-five feet travel distance to any point in the building as specified by the International Fire Code Section 9-06. (42.2.10 E)

    c. In the event of a fire or other emergency requiring evacuation the officer conducting the interview should ensure the evacuation of the detainee using posted evacuation routes. Detainees should be evacuated to a secure area nearest the exit used. Exits are clearly marked throughout the building.

10. Interview rooms will be equipped with a table and a minimum of two chairs. (42.2.10 E)

V. COMPLIANCE

Violations of this policy, or portions thereof, may result in disciplinary action as described in the City of Joplin's Personnel Rules, or the Joplin Police Department's Rules and Regulations and General Orders. Members of the Joplin Police Department, while assigned to or assisting other agencies, shall comply with this policy.

VI. APPLICATION

This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in any evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this policy, if proven, can only inform the basis of a complaint by this department, and then only in a non-judicial administrative setting.