

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 28, 2005

GENERAL ORDER I-18

SUBJECT: INTERVIEWS AND INTERROGATIONS

PURPOSE

- 1 - The purpose of this General Order is to establish procedures to be used in interviews and interrogations.

DEFINITION

- 2 - For the purpose of this Order, an "Interview" shall be that process by which information is obtained from a person contacted during a police investigation. An "Interrogation" is the process of questioning designed to obtain an admission or confession from a person suspected of a crime.

POLICY

- 3 - Berkeley Police Officers are expected to actively seek information from victims, witnesses and suspects in order to aid the solution of the matter being investigated. No attempt shall be made to obtain a statement by force, threats, or promises.

PROCEDURE

- 4 - Interviews - Legal Restrictions
 - a. When an officer has not arrested an individual or otherwise taken the individual into "custody" in a manner which restricts the individual's freedom or ability to discontinue the conversation, the officer may ask whatever questions are necessary and pertinent. The key in this circumstance is custody. Where there is no "custody," the law places no restrictions on questioning. In other words, an unrestricted situation is when an officer talks to an individual in a voluntary, non-custodial setting, about crime conditions or leads.
- 5 - Interviews - Physical Limitations
 - a. Frequently, the officer cannot select the ideal location for the interview and must conduct the interview under adverse conditions, e.g., an officer investigating a street crime may be hampered by weather conditions or crowds attracted to the scene. To overcome adverse conditions, the officer must control the communication process and elicit pertinent information immediately. In situations where there are distractions and confusion, the officer **should** gather only the basic facts.
- 6 - Interviews - Authority and Method

*Highlighted text is new

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- a. Officers will, when possible, interview any person who may have the potential to supply information that relates to an incident under investigation. Interviews should be conducted at a place that is convenient and familiar to the person being interviewed, and as soon after the incident as is possible and practical. Officers will strive to conduct interviews in a manner which is low-pressure, informal, and causes the least amount of inconvenience to the person being interviewed. Officers shall be especially sensitive to victims of sexual assaults and violent crimes.
- b. In the interview, the officer must review all available information and be prepared with a logical, structured sequence of questioning (random questioning is seldom successful because it lacks direction, indicates unpreparedness, and reveals a lack of information). The officer must also be prepared to control and direct the interview. He/she must be prepared to evaluate the information as the interview progresses. The officer must also be familiar with the statutory elements of the criminal offense involved in order to solicit proper statements and to determine whether an offense occurred.

7 - Interview Guidelines

- a. Avoid specific questions. The objective of the officer is to get the victim or witness to describe their observations of an incident -- not to simply answer the officer's questions.
- b. Avoid yes/no questions. When an explanation can be given, more facts are likely to be given.
- c. Do not use leading questions. Leading or subjective questions often have the same effect as yes/no questions. They cause a person to say something they don't really mean.
- d. Avoid rapid-fire questions. Such questions often tend to make the subject confused and facts may be left out if questions cannot be answered in their entirety.
- e. Avoid conspicuous use of the notebook. When a person sees that their every comment is being noted, they may become hesitant to provide details. Officers may also become so intent in writing notes that they fail to actively listen; important details may be missed.
- f. Ending the interview. When it is apparent that the interview is ending, close the conversation in a polite and courteous manner, summarizing what has been covered and allowing the subject to correct or add any details as necessary.

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8 - Interrogations - Voluntariness

- a. No attempt will be made to obtain a statement by force, threats, or promises. Whether an accused or suspect will cooperate is left entirely to the individual. If he/she indicates at any time prior to or during questioning that he/she wishes to remain silent, or that he/she wants an attorney, all interrogation for evidence of guilt must cease.

9 - Interrogations - Inherent Coercion

- a. Courts, in holding a statement involuntary, have looked upon the following situations or characteristics as being "inherently coercive" without considering whether the suspect's individual will was overborne:

- (1) Physical abuse, or the threat of such abuse.
- (2) Extended period of incommunicado interrogation.
- (3) Unwillingness to permit the accused access to an attorney, family or friends, especially when such individuals make efforts to contact the subject.
- (4) Severe physical conditions under which the accused is interrogated.

All of the above situations are merely illustrative. It is not possible to predict what given situation, or set of circumstances will cause a court to label the episode as "inherently coercive".

10 - Interrogation - Warning of Rights

- a. The law requires that, before any interrogation, an accused in-custody is entitled to be warned of his/her right to remain silent and his/her right to an attorney at this critical stage of the criminal prosecution. Failure to warn renders the product of interrogation (confession or admission) subject to exclusion. Both the right against self-incrimination and the right to counsel may be waived; however, giving the warnings and obtaining a valid waiver is an appropriate way for an officer to discharge his/her responsibility in this regard.

- (1) A person must be advised of the names and official identity of the interviewing officer(s), the nature of the inquiry, and must be warned of his/her rights as set forth below, before the interview, and the person:

- (a) has been arrested and is in-custody;

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- (b) is not under arrest, but an arrest is clearly intended either during or upon conclusion of the interview;
- (c) is significantly restricted in his/her freedom of actions, and
- (d) whether in-custody or not has been previously arrested or otherwise formally charged and prosecution is pending, when the subject matter of the interview concerns the pending charge, or related offense.

11 - Interrogation - Waiver of Rights

- a. Before a statement can be admitted into evidence, the State must prove that the suspect fully understood the warnings and freely decided to answer questions. A suspect, who remains silent after receiving warnings, has not agreed to be questioned.
- b. Use of the Berkeley Police Department "Admonition and Waiver" form. Inasmuch as the State will have to meet a "heavy burden" in establishing that an accused knowingly and intelligently waived his/her rights, it is desirable that the subject's acknowledgment of the warnings and his/her waiver be obtained in writing. The form should be used for this purpose. Completion of this form by the suspect provides documentary proof of both the warning and the waiver of rights.

12 - Interrogation - Use of Interpreters

- a. Use of an interpreter should be considered for an interview with either a subject or witness when there is doubt of the interviewee's ability to use and understand the English language and the interviewing officer is not qualified to use the principle language of the interviewee. Confessions may be excluded from court because they are given in English, without an interpreter, by subjects who allege at trial that they did not have a good understanding of the English language. A garbled interview with a State witness may contribute to the impeachment of that witness at trial.

13 - Statements

- a. When possible, written statements should be taken in all cases in which any confession or admission of guilt is obtained. Written confessions should be prepared in the first person in the language of the defendant. Where individuals giving signed statements cannot speak or read English, the statement, where possible, should be made in their native language.
 - (1) The BPD statement form with Miranda Waiver, BPD 314-738A, shall be used when taking written statements from suspects.

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14 - Original documents in connection with an investigation shall be routed and filed in the manner set forth in General Order R-31.

References: General Orders J-18, R-29, **and R-31***
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