



**Maryland-National Capital Park Police
Prince George's County Division**



DIVISION DIRECTIVE

TITLE CONSTITUTIONAL RIGHTS			PROCEDURE NUMBER PG404.0
SECTION Operational Procedures	DISTRIBUTION A	EFFECTIVE DATE 05/01/17	REVIEW DATE 05/01/21
REPLACES PG404.0 "Constitutional Rights", issued 07/01/04			
RELATED DIRECTIVES PG416.0, 442.0, 1000.0, 1100.0	REFERENCES CALEA 1, 42	AUTHORITY <i>S.R. Johnson</i> Chief Stanley R. Johnson	

I. PURPOSE

This directive establishes procedures for ensuring that all defendants are advised of and receive all of their rights and privileges as required or established by the U.S. Constitution, Maryland law, Supreme Court decisions, international legal obligations, and other sources as applicable.

II. POLICY

It is the policy of this Division that during all criminal investigations, all persons receive all rights to which they are entitled and that all officers abide by the requirements of this directive in ensuring these rights.

III. CONFESSIONS AND ADMISSIONS

- A. Officers shall not make any promises or offer any inducement to any person(s) that would be calculated to lead a person to waive any of his/her Constitutional Rights.
- B. Officers shall not use any coercive methods, either physical or mental, during any interrogation. Suspects shall be interrogated for reasonable periods of time and shall be given reasonable breaks as necessary to allow for the use of the bathroom facilities and to obtain drink and/or food.

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- C. Officers shall not offer any person any inducement to cooperate in any interview or interrogation nor offer any assurances as to what may happen during any phase of an investigation.

IV. PROMPT PRESENTMENT

- A. All persons arrested who are not released on their signature to appear shall be taken before a judicial officer without unnecessary delay.
- B. Where there is a need to delay prompt presentment (generally past 24 hrs.), a written waiver shall be obtained.

V. MIRANDA WARNINGS

- A. The Fifth Amendment to the U.S. Constitution provides all persons with the privilege against compelled self-incrimination. For the purposes of police interrogations, it should be assumed that every person always has the right to remain silent. The 1966 Miranda decision requires certain warnings be given to suspects before they are interrogated. Several recent Supreme Court decisions have narrowed that requirement so that only in-custody suspects need be advised of their Miranda warnings if they are going to be interrogated. When a person who is not in police custody chooses to talk with the police about a matter, he need not be advised of his rights and a waiver of his right to silence is implied from his choice to remain with the police and talk.

The 1990 Minnick v. Mississippi Supreme Court decision further requires that, once a suspect or defendant has invoked their Fifth Amendment privilege to remain silent and consult with counsel, no further interrogation by any law enforcement officer from any agency for any reason can take place without the presence of counsel.

- B. If an in-custody suspect/defendant, having been given their Miranda warning, invokes their right to remain silent and consult with counsel, or initially waives their right and then after some questioning invokes their right to counsel, all further questioning must stop and no further interrogation can take place by any law enforcement agency without the presence of counsel unless the suspect/defendant initiates the conversation.
- C. All Miranda warnings shall be given in writing using the most current form P.G.C. Form #2628, (attached). This form shall be submitted with the case file. The defendant may be given a copy of the completed form if he/she so desires.

VI. RIGHT TO COUNSEL

- A. There are three situations where persons have a right to counsel regarding their interaction with the police:

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1. The Fifth Amendment right created by the Miranda decision attaches only when a person is under arrest and is to be interrogated by the police. A waiver is required only if both of these situations arise simultaneously. An arrest alone or a non-custodial interrogation does not trigger this protection. Suspects are advised of this right in their Miranda warning and must knowingly waive it before they can be questioned. Once a suspect has asserted his Fifth Amendment right to counsel, police are prohibited from all further interrogation efforts unless the suspect initiates the communication concerning his criminal involvement or counsel has been made available.
2. The Sixth Amendment right to counsel is separate and distinct and attaches only when someone is "formally charged" with a crime. "Formal charging" occurs when a defendant has been indicted by a grand jury or has received a formal, in-court notification of the charges, such as a bond hearing or initial appearance. Once the Sixth Amendment right to counsel has been asserted, either at or after formal charging, police are prohibited from further attempts to interrogate regarding the matter formally charged unless the defendant initiates the communication concerning the case or counsel has been made available.

Officers are cautioned that a Sixth Amendment assertion of the right to counsel can be made even though not directly to a law enforcement officer. Such assertions are frequently made during court appearances, however they are still binding on ALL law enforcement officers. The primary officer assigned to the case is responsible for knowing whether an assertion has been made and notifying any other officers, as appropriate.

3. Any time a foreign national, of legal or illegal status, is arrested or detained they must be advised of their right to have their consular officials notified. The definition used for detention includes any situation where an individual is taken into custody, including emergency commitment procedures and D.W.I. arrests. Any stop that only involves issuance of a citation and immediate release does not fall into this category. In some cases treaties require automatic consular notification, even against the foreign national's wishes. To facilitate this policy the U.S. Department of State has issued a booklet containing a summary of Consular Notification Requirements with notification and foreign language advice of rights packets. Copies of this booklet are kept in the Communications Section and the lockup filing cabinet. All officers shall adhere to this policy when arresting or detaining a person determined to be a foreign national.
- B. Any officer wishing to question an in-custody or incarcerated suspect in any other jurisdiction shall not assume that the person has been advised of their Miranda warnings and arraigned or "formally charged". Before any interview or

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interrogation takes place the officer shall determine if the person has invoked their right to counsel or waived this right.

- C. All officers shall listen carefully to all defendant statements regarding the assertion or waiving of rights and, whenever possible, document the exact words used in making these statements.
- D. If a formally charged defendant has not previously asserted a right to counsel, prior to any questioning, officers shall advise the defendant of his/her rights by administering the full Miranda warning and shall advise the suspect that the prospective questioning concerns a specific (named) crime and that the defendant has been formally charged with that crime.

VII. PRE-TRIAL PUBLICITY

No employee shall issue or otherwise disseminate in any manner, any information or material that may lead to any pre-trial publicity for any case, which would tend to prejudice a fair trial.

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