

Abington Township Police Department Policy and Procedure Manual

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I. PURPOSE

The purpose of this general order is to provide members with legally sound procedures for conducting interviews, interrogations and access to counsel.

II. POLICY

Custodial interrogations of suspects, and any statements and confessions that are elicited, are vitally important in the preparation of criminal cases. However, to be admissible as evidence, statements and confessions must be given freely and voluntarily and with due consideration for the suspect's right to silence and right to counsel.

In addition, the field interview is an important tool for officers in preventing and investigating criminal activity. But even when conducted with respect for involved citizens and in strict conformance with the law, it can be perceived by some as a means of police harassment or intimidation conducted in a discriminatory manner against groups or individuals.

In order to maintain the effectiveness and legitimacy of this practice and to protect the safety of officers in approaching suspicious individuals, it is the policy of the Abington Township Police Department that all officers understand and follow this agency policy in order to observe due process rights of suspects and to guard against any charges of police coercion or intimidation during interrogation.

III. DEFINITIONS

- A. Custody: Exists when an officer places a suspect under arrest. A functionally equivalent situation exists when a "reasonable person" in the suspect's position would feel that his freedom of action has been restricted to the same degree as a formal arrest.
- B. Interrogation: Interrogation includes direct questioning of a suspect about a crime or suspected crime, as well as any words, statements or actions by officers that the officers should know are reasonably likely to elicit an incriminating response from the suspect.
- C. Custodial Interrogation: Questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.
- D. Interview: A non-accusatory conversation in which through questions and answers, the police interviewer tries to develop investigative and behavioral information that will test the veracity of statements made by a suspect, victim or witness.
- E. Field Interview: The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purposes of determining the individual's identity and resolving the officer's suspicions.
- F. Pat-Down Search: A "frisk" or external feeling of the outer garments of an individual for **weapons only**.
- G. Reasonable Suspicion: Articulate facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been, is being, or is about to be committed.

IV. PROCEDURES

- A. Interviews
 - 1. During interviews with victims, suspects or potential suspects or in field interview settings, an officer will uphold the Constitutional rights of all persons. Unless the situation involves a custodial interrogation, Miranda Warnings need not be given. In situations where an officer is unsure, the warnings should be given.
 - 2. Interviews may occur in a variety of circumstances and locations.
 - 3. Officers shall conduct interviews in the same manner as if they were engaging in any normal conversation.

4. Officers conducting interviews shall be aware of the nature of questions, their location, the interviewed persons location, and the conditions present when conducting interviews so that the subject does not have any reason to believe he/she is in custody.

B. Justification for Conducting a Field Interview

Police officers may stop individuals for the purpose of conducting a field interview only where reasonable suspicion is present. Reasonable suspicion must be more than a hunch or feeling, but need not meet the test for probable cause sufficient to make an arrest. In justifying the stop, the officer must be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to, the following:

1. The appearance or demeanor of an individual suggests that he is part of a criminal enterprise or is engaged in a criminal act.
2. The actions of the subject suggest that he is engaged in a criminal activity.
3. The hour of day or night is inappropriate for the subject's presence in the area.
4. The subject is carrying a suspicious object.
5. The subject's clothing bulges in a manner that suggests he is carrying a weapon.
6. The subject is located in proximate time and place to the alleged crime.
7. The officer has knowledge of the subject's prior criminal record or involvement in criminal activity.

C. Initiating a Field Interview

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a subject if he has articulable, reasonable suspicion to do so. The following guidelines shall be followed when making an authorized stop to conduct a field interview.

1. When approaching the subject, the officer shall clearly identify himself as a police officer, if not in uniform, by announcing his identity and displaying departmental identification.
2. Officers shall be courteous at all times during the contact but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions.

3. Before approaching more than one subject, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives.
4. Officers shall confine their questions to those concerning the subject's identity, place of residence and other inquiries necessary to resolve the officer's suspicions. However, in no instance shall an officer detain a subject longer than is reasonably necessary to make these limited inquiries.
5. Officers are not required to give subjects Miranda warnings in order to conduct field interviews unless the person is in custody and about to be interrogated.
6. Subjects are not required, nor can they be compelled, to answer any questions posed during field interviews. Likewise they are not required nor can they be compelled to identify themselves. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to make an arrest although it may provide sufficient justification for additional observation and investigation.

D. Pat-down Searches

1. Justification for Conducting Pat-Down Searches

A law enforcement officer has the right to perform a pat-down search of the outer garments of a subject for weapons if he has been legitimately stopped with reasonable suspicion and only when the officer has a reasonable fear for his own or another person's safety. Clearly, not every field interview poses sufficient justification for conducting a pat-down search. Following are some criteria that may form the basis for establishing justification for performing a pat-down search. Officers should note that these factors are not all-inclusive, there are other factors that could or should be considered. The existence of more than one of these factors may be required in order to support reasonable suspicion for the search.

- a. The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
- b. Where more than one subject must be handled by a single officer.
- c. The hour of the day and the location or neighborhood where the stop takes place.
- d. Prior knowledge of the subject's use of force and/or propensity to carry deadly weapons.
- e. The appearance and demeanor of the subject.

- f. Visual indications which suggest that the subject is carrying a firearm or other deadly weapon.
- g. The age and gender of the subject.

2. Procedures for Performing a Pat-Down Search

When reasonable suspicion exists to perform a pat-down search, it should be performed with due caution, restraint and sensitivity. These searches are only justifiable and may only be performed to protect the safety of officers and others and may never be used to shakedown individuals or groups of individuals or as a pretext for obtaining evidence. Pat-down searches should be conducted in the following manner.

- a. Whenever possible, pat-down searches should be conducted by at least two officers, one of whom performs the search while the other provides protective cover.
- b. Whenever possible, pat-down searches should be performed by officers of the same sex.
- c. Because pat-down searches are cursory in nature, they should be performed with the subject in a standing position or with hands placed against a stationary object and feet spread apart. Should a weapon be visually observed, however, a more secure search position may be used, such as the prone position.
- d. In a pat-down search, officers are permitted only to externally feel the outer clothing of the subject. Officers may not place their hands in pockets unless they feel an object that could reasonably be a weapon, such as a firearm, knife, club or other item.
- e. Requesting a suspect to empty their pockets is not in conformance with a pat down search.
- f. If the subject is carrying an object such as a handbag, suitcase, briefcase, sack or other item that may conceal a weapon, the officer should not open the item but instead place it out of reach of the subject.
- g. If the external feeling of the subject's clothing fails to disclose evidence of a weapon or other specific contraband (pursuant to the Plain Feel Doctrine), no further search may be made. If evidence of a weapon or other specific contraband is present, an officer may retrieve that item only. If the item is a weapon, the possession of which is a crime, the officer may make an arrest of the subject and complete a full-custody search of the subject.

E. Reporting

1. If after conducting a field interview there is no basis for making an arrest, the officer shall ensure that a record of the facts of the interview is documented in the Police CAD system.
 - a. When possible, the record will include the name, address and other identifiers.

F. Custodial Statements and Confessions

1. Miranda warnings are required and shall be administered prior to "custodial interrogation," as defined above.
2. The following represent examples of situations that are not "custodial" and do not require issuance of Miranda warnings.
 - a. Investigatory stop and frisk.
 - b. Questioning during a routine traffic stop or for a minor violation; to include driving while under the influence (DUI) stops until a custodial interrogation begins.
 - c. During routine questioning at the scene of an incident or crime when the questions are not intended to elicit incriminating responses.
 - d. During voluntary appearances at the police facility, provided that a "reasonable person" in the suspect's position would feel that his freedom of action has been restricted to the same degree as a formal arrest.
 - e. When information or statements are made spontaneously, voluntarily and without prompting by police. (Note: Follow-up questions that exceed simple requests for clarification of initial statements may require Miranda warnings.)
 - f. During questioning for the purpose of obtaining demographic information needed to complete police reports and criminal processing procedures.
3. Officers should be cautioned that it is dangerous and damaging to give Miranda warnings when they are not required.

4. Custodial interrogation should not be attempted in less than ideal conditions and only when necessary. **Officers should make every attempt not to conduct custodial interrogations except in absolute emergencies.** These will normally be done, at the station, by Detectives.

G. Administering Miranda

1. Miranda warnings shall be read by officers from the a document containing this information to all persons subjected to custodial interrogation. It is suggested that the Abington Township Police Department Constitutional Rights Form be used for this purpose. Freelancing, recitation from memory or paraphrasing the warnings is prohibited as it precludes officers from testifying in court as to the precise wording used.
 - a. Miranda warnings should never be issued unless a suspect is in custody and subjected to custodial interrogation.
 - b. It is just as damaging to give Miranda warnings when they are not required as it is to not give them when they are.
2. Officers shall ensure that in-custody suspects understand their right to remain silent and their right to an attorney. Suspects may be interrogated only when they have knowingly and intelligently waived their rights.
 - a. Waivers of the Miranda rights must be performed affirmatively.
 - b. Oral waivers are often sufficient but written waivers, particularly in felony charges, are preferred and should be obtained whenever possible on the appropriate Departmental form.
3. Officers interrogating deaf suspects or suspects who do not speak or understand English shall notify their immediate supervisor and make arrangements to procure the assistance of an interpreter in accordance with state and federal law. An interpreter must be present before the suspect=s rights are explained, waived, or any interrogation takes place.

H. Invoking Miranda Rights (the Right to Silence and the Right to Counsel)

1. When a suspect invokes his or her Miranda rights(either the right to counsel or the right to remain silent), interrogation shall cease immediately. The suspect may not again be interrogated about the crime for which he or she is charged, other crimes, or by other officers (from this or other agencies) unless;
 - a. the suspect has had an opportunity to consult with his/her attorney or their attorney is present at the questioning; or
 - b. the suspect initiates new contact with the police completely on their own. It is important to note that police cannot initiate this contact, *it*

must be initiated by the suspect, on their own, without any input from the police. If the suspect does initiate contact, Miranda rights must again be administered and a waiver obtained before any questioning may take place. Officers shall also document and, if possible, obtain written verification that the suspect initiated the communication.

I. Documenting Statements and Confessions

1. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes but is not necessarily limited to
 - a. location, date, time of day and duration of interrogation;
 - b. the identities of officers or others present;
 - c. Miranda warnings given, suspect responses and waivers provided, if any; and
 - d. the nature and duration of breaks in questioning provided the suspect for food, drink, use of lavatories or for other purposes.
2. Investigative officers are encouraged to document the confession in writing

Abington Township Police Department Constitutional Rights Form	1. Location of Interview		2. Complaint Number
	3. Crime Title	4. Interview Date	5. Time

6. Name - Last, First, Middle	7. Home Phone
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I hereby acknowledge in writing that I have been advised of my Constitutional Rights and that they were explained to me. Further, that this advise and explanation was given to me preceding any interrogation. I have been advised:

- (1) That I have the right to remain silent;
- (2) That anything I say can and will be used against me in a court of law;
- (3) That I have the right to talk to a lawyer of my choice before I am asked any questions and to have a lawyer present during questioning;
- (4) That if I cannot afford to hire an attorney and I want one, an attorney will be provided me, without cost, prior to any questioning;
- (5) That if I am willing to make a statement, I have a right to stop at any time.

Question: Do you understand your Constitutional Rights that were read and explained to you?

Answer:

Question: With these Constitutional Rights in mind, are you willing to talk with us and give a voluntary statement?

Answer:

Comments:

Printed Name:		Signature:	
Parent or Guardian:		Signature:	
Police Officer:		Signature:	
Witness:		Signature:	