

## SCRANTON POLICE DEPARTMENT POLICY

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### **I. PURPOSE**

Constitutional requirements, both state and federal, are vital to the role and function of law enforcement in a free society. It is the purpose of this policy to ensure that all members of the Scranton Police Department comply with these constitutional requirements thereby ensuring that all people are treated in a fair, legal and equitable manner.

### **II. POLICY**

The Scranton Police Department shall provide for and promote the delivery of police services corresponding to the provisions of this policy.

### **III. PROCEDURE**

#### **A. Custodial and Non-Custodial Interviews**

1. Custodial and Non-Custodial Interviews conducted at Scranton Police Headquarters shall be in compliance with Policy 17-003 Recording Custodial and Non-Custodial Interviews.
2. Interview
  - a. An interview is defined as 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.
  - b. Interviews may occur in a variety of circumstances and locations.
  - c. Officers shall conduct interviews in the same manner as if they were engaging in any normal conversation.

- d. Officers conducting interviews shall be aware of the nature of questions, their location, the interviewed person's location, and the conditions present when conducting interviews so that the subject does not have any reason to believe that he or she is in custody.
  - e. Officers shall consider the following criteria during non-custodial interviews:
    - 1) Miranda warnings are not required to be given to a subject by officers when the subject is being interviewed but is not in custody.
    - 2) Non-Custodial statements taken from victims, witnesses and suspects shall be documented. The format of the actual statement will be at the discretion of the individual officer.
3. Custodial Interview
- a. An custodial interview is defined as an accusatory procedure designed to elicit from the subject an acknowledgement that he or she did not tell the truth during an initial statement, whether that person is a suspect who originally denied involvement in an incident, or a victim who fabricated the nature of the alleged offense.
  - b. Officers shall consider the following during custodial interviews:
    - 1) The test for determining whether a person is being subjected to custodial interview, so as to require Miranda warnings, is whether he or she is physically deprived of his or her freedom in any significant way or is placed in a situation in which a reasonable person would believe that their freedom of action or movement is restricted by such interview.
    - 2) Officers shall provide Miranda warning advisements whenever a person in custody is subjected to custodial interview.
    - 3) If providing Miranda Warnings in writing, officers shall use the designated Miranda rights form (SPD Form 08-005 Waiver of Right to Counsel and Agreement to Make Statement).
    - 4) When obtaining written statements from detainees during custodial interviews, the format of the written statement shall be at the discretion of the investigator.

#### B. Access to Counsel

Officers shall consider the following procedure when safeguarding a detainee's access to counsel during a custodial interview:

- 1. Right to Counsel
  - 1) When a person has been placed under arrest by an officer, and is being subjected to a custodial interview, he or she shall be advised of the right to speak to counsel through the Miranda Warning advisement. If he/she invokes his/her right to counsel, thereafter he/she shall be afforded the opportunity to speak to an attorney before any questioning occurs.
  - 2) When a detainee asks to speak to an attorney before or during a custodial interview, the interviewer shall cease questioning the detainee and provide the detainee the opportunity to confer with counsel before continuing questioning the detainee.

### C. Waiver of Right to Counsel

1. Detainees may waive their right to counsel following the Miranda warnings; however, interviewers shall document that the waiver was a knowing and intelligent waiver (ex. That the detainee knew that he/she had a right to consult with counsel before answering questions and he/she freely chose to otherwise proceed with the custodial interview without exercising that right.)
2. Documentation of a waiver shall be indicated in the investigative report. It is recommended that this waiver also be documented on the designated Miranda form unless the waiver was documented through video recording (e.g. MVR, recorded interview room, etc.).
3. If the suspect waives his/her right to counsel after receiving the Miranda warnings, law enforcement officers are free to question him/her. If the suspect requests counsel at any time during the custodial interview the investigator shall not subject the suspect to further questioning until an attorney has been made available or the suspect freely reinitiates conversation. In the event a suspect freely reinitiates conversation after previously invoking the right to counsel, the suspect shall be re-Mirandized. The officer should have the suspect acknowledge, either in writing or on video recording, that they have previously requested counsel but now wish to waive that right and continue the interview without counsel.
4. The interviewing officer must ensure that the suspect unambiguously requests counsel. A suspect must articulate his/her desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, interviewing officers are not required to stop questioning the suspect.

By Order Of:

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Chief Carl R. Graziano  
Superintendent of Police  
Scranton Police Department