

Miranda Warning

325.1 PURPOSE AND SCOPE

The purpose of this policy is to provide officers general legal guidelines when interviewing subjects in custody.

The Fifth Amendment to the United States Constitution states that a person "shall not be compelled in any criminal case to be a witness against himself." This privilege may be asserted or claimed in a variety of formal and informal settings and anytime a person's answers to "official questions" might incriminate him in future criminal proceedings. (Murphy (1983) 465 U.S. 420, 426.) Both "custody" and "interrogation" must exist at the same time before you have to worry about the Miranda decision. (Edwards (1981) 451 U.S. 477, 481-482; "Absent `custodial interrogation,' Miranda simply does not come into play." (Stansbury (1994) 114 S.Ct. 1526, 1528-1529)

Custody is simple to define and the definition can be found in any Legal Sourcebook on any Department computer. "Custody" exists for Miranda purposes when two requirements are met:

- (a) The suspect has been formally arrested or had his freedom restrained to a degree associated with a formal arrest--see Stansbury (1994) 511 U.S. 318; Beheler (1983) 463 U.S. 1121, 1125; Krantz (9th Cir. 1993) 983 F.2d 961, 963; Esqueda (1993) 17 Cal.App.4th 1450, 1481; Ochoa (1998) 19 Cal.4th 353, 401; and
- (b) The suspect is personally aware of this lack of freedom, or reasonably believe that it exists. (Beheler (1983) 463 U.S. 1121, 1125; Green (1985) 40 Cal.3d 126, 133-134; Mazza (1985) 175 Cal.App.3d 836; Valdivia (1986) 180 Cal.App.3d 657; Breault (1990) 223 Cal.App.3d 125.)

The same principle can be applied to "interrogation," which also can be found in any Department Legal Sourcebook. "Interrogation" is:

- (a) Any direct or "express" questioning about the crime being investigated; or
- (b) The "functional equivalent" of direct questioning, that is, "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely [from the suspect's perspective] to elicit an incriminating response from the suspect." (Innis (1980) 446 U.S. 291, 301; Cunningham (2001) 25 Cal.4th 926, 993; Bradford (1997) 14 Cal.4th 1005, 1034; Aguilera (1996) 51 Cal.App.4th 1151, 1161.)

325.2 MIRANDA WARNING

The "Warning" and "Waiver" are generally required prior to any questioning in which the arrested person in custody may incriminate himself/herself about the offense for which the person is in custody or before questioning about any offense in which prosecution may be pending against the person being questioned.