

	KENOSHA POLICE DEPARTMENT			
	POLICY AND PROCEDURE			
	1.7 Questioning			
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I. PURPOSE

The purpose of this policy is to provide officers of the Kenosha Police Department with guidelines for questioning persons in compliance with the requirements of the 5th and 6th Amendments of the Constitution of the United States.

II. POLICY

It is the policy of the Kenosha Police Department that all officers will safeguard the Constitutional Rights of all persons during the investigation and questioning of suspects. The police officer should always be alert to gather information from suspects which will help in the solution of crime. However, it is necessary to be equally alert to ensure that all questioning conforms to legal standards.

III. PROCEDURE

THE CONSTITUTIONAL BASIS FOR RESTRICTIONS ON QUESTIONING

In the 5th Amendment the Constitution sets forth protections against compulsory self-incrimination, while the 6th Amendment guarantees the right to counsel. With these basic rights in mind the restrictions placed on police questioning become easily understandable. Simply explained, if a person is under arrest or they are not free to leave police custody, they must be provided the Miranda warnings and associated rights.

NON-CUSTODIAL QUESTIONING PROCEDURES

There are few legal restrictions regarding non-custodial questioning. Miranda is not required, however, the officer must make sure that the subject being questioned understands that they are free to stop the questioning and leave if they wish.

In California v. Beheler the court set forth a standard warning referred to as the “Beheler Admonition” which satisfies most standards of notice for non-custodial questioning. The Beheler Admonition simply states “You are not under arrest. You are free to leave any time you wish. OK?” While it is not required that an officer use the Beheler Admonition, the point of law that must be considered is that the person being questioned must feel they are free to leave.

The location where the questioning takes place can have a significant effect on a person’s perception of whether or not they are free to leave. Questioning that takes place in a detention center or other secure area would normally be associated with the perception of being in custody. Questioning at the police station is acceptable as long as the subject knows they are free to leave. The court has recommended that the person being questioned come to the

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station voluntarily and on their own for this reason. Questioning of a juvenile at school is always considered custodial.

CUSTODIAL QUESTIONING PROCEDURES: THE SITUATION OF STOPS AND ARRESTS

A. Stop Situation

1. "Terry Stops": Under the police authority to stop suspicious persons, the officer is entitled to make a "threshold inquiry" of the subject by asking their name, address, and an explanation of their conduct. Miranda warnings do not have to be given, however, the subject is not required to answer. (See policy 1.5 Stop and Frisk for detailed legal and procedural guidelines pertaining to Stops.).
2. Warnings: When questions go beyond the "threshold" items of identity and what they are doing, the police officer is to warn the suspect that they are under no obligation to answer. If at that time the officer intends to arrest the person, the officer should give the suspect the full Miranda warnings which are set out below and then proceed accordingly.

B. Arrest Situation

1. Electronic Recording: All in-custody questioning will be in compliance with policy [42.1 ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS AND CONFESSIONS](#).
2. Warnings Following Arrest: Once a suspect is taken into custody and is not free to leave, they must be advised of their Miranda rights *if* the officer intends to ask questions about the incident or a different crime. Before the officer begins any questioning they must:
 - a. Give the person the Miranda warnings. Read these verbatim from a printed card or form so no question may arise at trial as to whether the defendant was fully advised. Do not recite them from memory. The Miranda warnings are:
 1. You have a right to remain silent.
 2. Anything you say may be used against you in a court of law.
 3. You have the right to consult with a lawyer before questioning and to have a lawyer present with you during questioning.
 4. If you cannot afford to hire a lawyer, one will be appointed to represent you at public expense before or during any questioning, if you so wish.
 5. If you decide to answer questions now without a lawyer present, you have the right to stop the questioning and remain silent at any time you wish, and the right to ask for and have a lawyer at any time you wish, including during the questioning.

If an officer gives a suspect the Miranda warnings the officer will indicate in their report that the subject was given the warnings and whether the subject invoked or waived either or both of their rights. If one officer of the department is aware that the suspect has exercised their Miranda rights, the whole department is deemed to be aware of this fact. It is important for officers to communicate with each other about the Miranda issue to avoid the possibility of a confession being inadmissible.

IMPORTANT: Read the warnings regardless of how sure the suspect is that they know their rights. The subject being questioned may be fully familiar with the law, but all persons must be given the warnings.

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- b. Recite the warnings slowly and clearly so there can be no doubt that the person has heard them.
- c. If the suspect does not speak English, give the warnings in a language the suspect understands. If possible, a certified translator should be used. If available show the suspect the warnings printed in their language. If unable to give the warnings in a language the suspect understands, ask no further questions.

QUESTIONING AFTER THE WARNINGS WAIVER

After the warnings have been given, the suspect can waive their rights to silence and to the assistance of a lawyer. If they do, any incriminating statements made can be used as evidence.

A. Procedures to demonstrate waiver.

1. To prove knowledge and voluntariness, the suspect must first be informed of their rights and second, the suspect must willingly decide to forego their rights to silence and counsel. The following departmental procedures have been established in order to ensure that allegations of waiver can satisfy the most stringent of tests. If an officer wishes to question a person in custody, first give the person the Miranda warnings, then proceed:
 - a. Ask the person, "Do you understand each of these rights I have explained to you?" If they don't understand, explain them, if they do, continue.
 - b. Ask the person, "Having these rights in mind, do you wish to answer questions?"
 - c. If the person indicates that they are willing to talk, ask them if they are willing to sign a written waiver of their rights. If they are willing, have them sign the waiver.
 - d. The person may not want to sign a waiver and yet may be willing to talk and answer questions. In that case, questioning is allowed, but if possible, the subject's agreement should be recorded. If the interview is not recorded, and the situation complies with the exceptions to mandatory recording detailed in policy 42.1, have a witness present who can testify to the voluntary willingness of the person to talk.

One way to support that a waiver was made intelligently and voluntarily is to have witnesses present. But be careful, occasionally courts have ruled that incriminating statements were "involuntary," and therefore invalid, because of the presence and display of police authority resulting from having a large number of police officers as witnesses.

B. Effect of retraction of waiver.

If questioning is proceeding after a valid waiver and the person being questioned changes their mind about the waiver or in any other way indicates they no longer want to talk, interrogation should cease. If the police officer wishes to ask further questions, the person must again knowingly and voluntarily waive their rights. The steps enumerated above should be repeated to ensure an effective waiver.