

November 30, 2011

**CITY OF FERGUSON
OFFICE OF THE CHIEF OF POLICE**

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MIRANDA DECISION

409.00 PURPOSE

The Miranda Decision, rendered by the U.S. Supreme Court, requires certain warnings and secure an oral waiver prior to questioning an accused before any statements made by the suspect, can be admitted into evidence. The purpose of this General Order is to establish the procedure to comply with the U.S. Supreme Court decision which governs procedures for assuring compliance with all applicable constitutional requirements, including; interviews; interrogations; and access to counsel.

409.01 WARNING TO BE GIVEN:

- A. You have the right to remain silent;
- B. Anything you say can be used against you in court or other proceedings;
- C. You have the right to talk to a lawyer for advice before you are questioned, and to have him with you during questioning;
- D. If you cannot afford a lawyer, one will be appointed for you, free of any cost to you, before any questioning.

409.02 WHEN WARNINGS ARE REQUIRED:

The warnings must be orally given prior to any questioning whenever an individual is arrested or taken into custody for any offense, whether a felony, misdemeanor or city ordinance violation, with the exception of certain situations enumerated in this General Order. Once an individual being questioned makes a statement that forms a basis for an arrest.

NOTE: Refer to "Juvenile Procedures" governing interrogation of juveniles.

All individuals regardless of age, intelligence or prior police contacts have the right to be given warnings.

409.03 WHEN WARNINGS ARE NOT REQUIRED:

The warnings need not be given when an individual is arrested or detained on any charge and there is no need or desire to question or obtain a statement.

A. Person Not Arrested or Detained: The warnings are not required so long as the individual interviewed / questioned:

1. Is not under arrest or in police custody; or
2. Has not been deprived of his freedom of movement or activity in any significant way.

B. Certain Traffic Violators: The warnings are not required for those traffic violators who have been:

1. Issued a Uniform Complaint and Summons or booked for any state misdemeanor or city ordinance traffic violation (e.g., No State Vehicle License, Reckless Driving, etc.) NOTE: The warnings should always be given if the traffic violation also involves the commission of a felony (e.g., Manslaughter) and alcohol related traffic offenses;
2. Booked for a city court or state court bench warrant for a traffic charge; or
3. Booked only as a "Fugitive" from another jurisdiction

C. General On-The-Scene Questioning: Police officers arriving at the scene of an offense or violation can question bystanders who have not been arrested without giving them the warnings. NOTE: An officer is required to give the warnings and secure an oral waiver prior to further interrogation when he begins to believe that an individual he is questioning has committed or is committing an offense or violation.

D. Field Interrogation:

1. Brief on the street detention for questioning of individuals who are stopped under circumstances requiring investigation does not require the warnings. Such action is treated as general on-the-scene questioning.
2. No subject will be brought to the station and charged with any offense, unless probable cause exists that indicates the subject has committed a specific crime. Suspects stopped on the street based on reasonable suspicion will be interviewed on the street and all investigation techniques such as, record

checks and wanted checks will be done on the street. These subjects are not to be brought to the station for investigation. This is not to be confused with the situation of a subject fitting the general description of a wanted subject in the area of a crime that has just been committed. This subject can be detained and held pending an identification of a complainant. For further guidance in these matters, the watch commander should be called to the scene of the incident and make a determination of whether the subject should be brought to the station or released from the scene.
E. Spontaneous Statements: No warnings are required when individuals spontaneously make statements on their own initiative without prior questioning of any kind by police officers. Any statement given freely and voluntarily is admissible in evidence. However, after such a spontaneous statement has been made, the police must issue the warnings to the individual and secure an oral waiver prior to any further questioning.
F. Suspect Voluntarily Surrenders: The Miranda Warnings are not required in a case where a subject voluntarily comes to the police for the purpose of questioning, so long as he has not been arrested and is not the focus of the investigation.
G. Other Circumstances: The warnings are not required in the following situations:
1. Questioning the accused as to his name, address, place of employment or other identifying information;
2. Making a thorough search of the accused's person;
3. Requesting the accused to provide handwriting samples;
4. Taking fingerprints or photographs of the accused for booking;
5. Requiring the accused to perform any other reasonable acts aimed at identifying him, except participating in a lineup or confrontation where he will be subjected to witness identification; or
6. Requiring the accused to submit to a test designed to determine the alcohol content of his blood.
409.04 ACCESS TO COUNSEL - INTERROGATIONS
Upon advising an individual of their rights officers must make available a telephone and phone book and allow the individual to contact an attorney of their choosing if necessary. An individual requesting an attorney prior to questioning must be given every opportunity to contact an attorney or if requesting a court appointed attorney, the prosecuting attorney's office of the concerned jurisdiction shall be notified of the request. However, if the individual

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has already talked to a lawyer, there is no need to delay interrogation after waiver. Continued questioning after an arrested person has either requested the presence of an attorney or expressed a preference to remain silent is not permissible.

Once an arrested person has obtained the assistance of counsel, the attorney will be notified prior to any further questioning until final disposition of the case is made. No admission, statement, or confession can be admitted into evidence at the trial unless the prosecution can establish that the warnings had been given and that the individual understood his rights and freely, intelligently and voluntarily waived them. The officer should put facts in the report from which a court could find that he waived his rights. This should include but not be limited to the Ferguson Constitutional Rights and Waiver Form 002. In addition, any evidence obtained as a result of an inadmissible confession is also excluded from evidence (e.g., a murder weapon recovered as a result of an inadmissible confession).

409.05 PROCEDURES FOR INTERROGATION AND GIVING WARNINGS:

When the officer determines that the warnings are required, he will read or recite the warnings specified by the US Supreme Court Miranda decision. He will ask the suspect if he understands the Miranda warning and read or recite them again if necessary.

NOTE: The Miranda Decision does not require a written waiver by an individual prior to interrogation. It requires only that the individual be completely advised of his rights; that he understands the warnings given; and that he intelligently and voluntarily waives these rights. Consequently, the waiver can be oral.

The officer may proceed to interrogate the accused only after the accused agrees to voluntarily waive his constitutional rights after having been apprised of the Miranda warnings.

409.06 REPORT WRITING: The officer will include the following information in his police report when an individual waives his rights and agrees to make a statement:

- A. The fact that the individual was quoted the warnings appearing on the FPD 002 (each specific warning need not be listed in the report);
- B. The words used by the individual which show that he agreed to voluntarily waive his rights and make a statement;
- C. Any statement made by the individual in non- felony cases;
- D. If the suspect refuses to make a written statement and/or alibi, then the refusal should be so noted in the body of the officer's report.

NOTE: In felony cases, the statement appearing in the Voluntary Statement Form (FPD F-019) will not be reported in the police report. However, it is

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permissible to put a brief summary statement in the police report and attach a copy of the suspect's written statement to the report. The original written statement will be placed into evidence using established procedures.
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If the individual states that he does not wish to make a statement, the officer will include this fact in his report.

409.07 PROCEDURE FOR COMPLETING RIGHTS AND WAIVER FORM:
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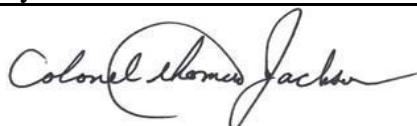
A. The Rights and Waiver Form FPD 002 and Voluntary Statement Form FPD 019, will be used when all of the following conditions are met:
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1. The individual is arrested for a felony;
2. The individual has been properly advised of his rights; and
3. The individual wishes to waive his rights and wants to make a written statement verified by his signature.

NOTE: In multiple clean up cases, the form will be used only for offenses for which an information application will be made.

B. Instructions for completing the forms:

1. The individual will sign in his own handwriting, in the appropriate section whether or not he wishes counsel after reading or being read the rights. This signature will be witnessed by the interviewing officer and a second witness, both of who will sign the form.
2. Voluntary Statement Form: After the individual acknowledges, in writing, his waiver of rights as specified on the Rights and Waiver Form and agrees to make a written statement, he will then write his statement in his own words or it may be written by the interviewing officer. The signature of the interviewer, witnesses and suspect will verify the statement.

By order of:


COLONEL THOMAS JACKSON
Chief of Police

Distribution : All Department Personnel
Attachments: FPD Form 002
FPD Form 019

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**FERGUSON POLICE DEPARTMENT
STATEMENT OF CONSTITUTIONAL RIGHTS AND WAIVER**

BEFORE WE ASK YOU ANY QUESTIONS, IT IS MY DUTY TO ADVISE YOU OF YOUR RIGHTS:

- 1. **YOU HAVE THE RIGHTS TO REMAIN SILENT.**
- 2. **ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT OR OTHER PROCEEDINGS.**
- 3. **YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS, AND TO HAVE HIM WITH YOU DURING QUESTIONING.**
- 4. **IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU, FREE OF ANY COST TO YOU, BEFORE ANY QUESTIONING.**

STATEMENT OF RIGHTS GIVEN BY

_____ ,

TO _____, AT _____ (TIME),

ON _____ (DATE).

WAIVER

I UNDERSTAND WHAT MY RIGHTS ARE, AND I AM WILLING TO ANSWER QUESTIONS.

SIGNATURE OF PERSON RECEIVING RIGHTS

WITNESS

WITNESS

CASE NUMBER: _____

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FERGUSON POLICE DEPARTMENT VOLUNTARY STATEMENT

DATE: _____ TIME: _____ PLACE: _____

I, _____, am _____ years of
age and my address is _____

I hereby voluntarily agree to make a statement to answer questions asked of me by _____, who has identified

himself/herself to me as a member of the Ferguson Police Department. I did not at any time ask that an attorney-at-law be present to represent me in this matter. I further state that I have not been threatened or mistreated in any fashion, nor have any gratuities been promised to me in return for making this statement.

SIGNATURE	
WITNESS	
WITNESS	

SIGNATURE	
WITNESS	
WITNESS	

DATE: _____
TIME COMPLETED _____
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