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	SUBJECT		EFFECTIVE DATE
	<b>Virginia Beach Police Department General Order</b> <b>Chapter 6 - Constitutional Issues</b>		<b>05/01/2006</b>
			ORIGINATOR/REVIEW Professional Development & Training
DISTRIBUTION	CALEA: 1.2.3 B, C, 44.2.2 C & E, 44.2.3		
ALL			
BY THE AUTHORITY OF THE CHIEF OF POLICE:		<i>James A. Curran</i>	

## Purpose

To promulgate legal guidelines for ensuring that individual Fifth and Sixth Amendment rights are protected and to provide guidance for waivers of those rights prior to conducting interrogations.

## Policy (CALEA 1.2.3 B)

Sworn members of the Virginia Beach Police Department shall adhere to the provisions of the United States Constitution and the rulings of the courts in conducting interviews and interrogations as well as providing access to counsel prior to or during such interviews.

All testimonial statements and/or information provided by citizens to the police, in whatever manner, must be voluntary. Generally, information provided by citizens in non-custodial settings will be considered voluntary due to the consensual nature of the interaction. Information provided by citizens as a result of coercion or during unconstitutional seizures will be considered involuntarily given and will be suppressed from use in any future trial, in addition to the potential for civil liability.

The U.S. Supreme Court has ruled that there are two distinct and separate instances when individuals may have constitutional protections before providing the police with testimonial evidence: one under the Fifth Amendment when an individual is in custody and interrogated for which Miranda warnings are required, and one under the Sixth Amendment for which a waiver of a right to counsel is required for all police initiated conversations.

## Fifth Amendment Rights (CALEA 1.2.3 C)

Miranda rights are required prior to conducting custodial interrogations. Advising individuals of these rights when they are not required or when provided at inappropriate times may actually hinder a criminal investigation. The responsibility for advising an individual of his/her Miranda rights rests with the officer or detective who will be conducting the interrogation. Unless directed to do so by a supervisor, officers will not initiate an interrogation or advise an individual of Miranda rights unless the officer is responsible for the investigation of the case.

Prior to interrogating an individual who is in custody, the individual must be provided the following warnings:

1. You have the right to remain silent.
2. Anything you say can be used against you in court.
3. You have the right to talk to a lawyer.

4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you desire one.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

In order to secure a knowing, intelligent, and voluntary waiver of the above rights, the following questions should be asked and an affirmative response secured for each question:

1. Do you understand each of these rights I have explained to you?
2. Having these rights in mind, do you wish to talk to us?

In limited circumstances, officers may reinitiate an interrogation with an individual who has invoked his Miranda rights. For example, if the individual reinitiates the conversation, then the interrogation may resume. Additionally, once an individual has waived his rights, that waiver is presumed to continue unless revoked by the individual. For example, if an individual is given Miranda warnings at one location and waives his/her rights, and then transported to another location, there is no need to re-read Miranda warnings.

As a general rule, officers are not required to read Miranda:

1. During investigative detentions.
2. Transporting individuals who are under arrest from one location to another.
3. When the suspect makes spontaneous statements with no prompting by the police.
4. Requesting identifying information to complete TRACER and booking forms.
5. Questioning prisoners who have been sentenced, if the questioning relates to the particular offenses the prisoner was convicted of.

### **Sixth Amendment Rights**

A Sixth Amendment right to counsel applies only when a defendant has been indicted, made an initial court appearance on a specific charge, or if the defendant has retained counsel on the specific charge.

Prior to initiating a conversation intended to elicit information about specific charges, the defendant must be provided the following warnings:

1. You have the right to talk to a lawyer and have him/her present with you while we are talking to you.
2. If you cannot afford to hire a lawyer, one will be appointed to represent you before we talk to you, if you wish.
3. You can decide at any time to exercise these rights.

Officers should explain Fifth or Sixth Amendment warnings using a department legal rights form, or a department-issued legal rights card.

When an individual waives his/her Fifth or Sixth Amendment rights, the burden is on the Commonwealth to show that the individual made a knowing and intelligent decision. The court will consider such factors as the individual's age, intelligence level, familiarity with the criminal justice system, whether or not the individual has consumed drugs or alcohol, etc. The Court will also consider whether or not the individual made a verbal or written waiver. When practicable, officers should have individuals read and sign a legal rights waiver form.

### **Questioning Juveniles (CALEA 44.2.2 C, E, 44.2.3 A, B)**

Juveniles interviewed or interrogated by the police are afforded the same Fifth and Sixth Amendment protections as adults. The physical size of the juvenile, the seriousness of the offense, or whether or not the juvenile is considered a suspect does not change the legal requirements during interviews and interrogations.

Officers should recognize that juveniles are generally more impressionable than adults and may be more susceptible to intimidation caused by the situation and/or presence of police officers. When determining the voluntariness of statements made by juveniles, courts will examine all the circumstances surrounding the encounter between the officer and the juvenile. Some of the factors the court will consider include:

- The environment where the interview or interrogation is conducted
- Any prior experience the juvenile has with the criminal justice system
- The juvenile's maturity, education and intelligence level
- Whether or not a parent (or guardian) and/or legal counsel were notified and permitted officers to question a juvenile; or the parent and/or counsel was present during the interview/interrogation. While there is no legal requirement that a parent and/or counsel be notified or be present, this is an important factor the court will weigh when determining the voluntariness of a confession or waiver of Miranda rights by the juvenile. If in doubt, officers should consult with a supervisor or the Commonwealth Attorney's office.
- The juvenile's capability to understand his/her legal rights and the consequences of waiving those rights.

### **Interrogation Of Juveniles**

Prior to the custodial interrogation of a juvenile, and in accordance with General Order 6.07 (Juvenile Legal Issues), the officer shall make every effort to contact the parent or guardian of the juvenile in custody and advise of the status and location of the juvenile. No more than two officers will conduct a custodial interrogation of a juvenile unless authorized by a supervisor. Interrogations of juveniles should be limited to the minimum amount of time required to obtain the information needed. While there are no rigid time periods established for the interrogation of juveniles, officers should be cognizant that the courts will closely examine extended interrogations of juveniles, especially when it appears that officers are continuing the interrogation after it should be obvious that all available information from the juvenile has been gathered. Officers should make complete notes concerning all the circumstances and events surrounding the interview or interrogation of a juvenile. Whenever possible, interrogations of juveniles will be videotaped. Also in accordance with General Order 6.07 (Juvenile Legal Issues), officers who make custodial arrests of juvenile suspects, whether the juvenile is returned to a parent or guardian, or turned over to Juvenile intake or the court, shall explain police department and juvenile justice system procedures

to the juvenile, and if possible the parent or guardian. Such notification shall take place whether or not the juvenile suspect is interrogated.

Officers will make every effort to stay current with changes related to Fifth and Sixth Amendment law and relevant court decisions. If there is uncertainty about the legal ramifications of questioning, an individual officer should consult with a supervisor and/or the Commonwealth Attorney's office.