WEST NORRITON TOWNSHIP POLICE DEPARTMENT

Subject: In Custody Requirements		Policy # 1.2.2
Accreditation 1.2.2		
Effective Date: June 10, 2008	Revised Date:	
By Authority Of: Chief A. Dale Mabry	Signature: ADMabry	

1.2.2 COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS

A. Interviews

1. Defined – 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.

2. Procedures

   a. Interviews may occur in a variety of circumstances and locations
   b. Officers conducting interviews shall be aware of the nature of questions, their location, the interviewed persons' location, and the conditions present when conducting interviews so that the subject does not have any reason to believe that he/she is in custody.

B. Interrogations

1. Defined – An accusatory procedure designed to elicit from the subject a confession, or an acknowledgement that he/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.

2. Procedures

   a. Non-custodial interviews/interrogations

      i. Miranda warnings are not required to be given to a subject by officers when the subject is being interviewed or interrogated, but is not in custody.

   b. Custodial interrogations

      i. The test for determining whether a person is being subjected to custodial interrogation, so as to require Miranda warnings, is whether he/she is physically deprived of his/her freedom in any significant way or is placed in a situation in which a person would reasonably believe that his/her freedom of action or movement is restricted by such interrogation.

ii. Officers shall provide, verbally and/or written, Miranda warning advisements whenever a person is subjected to custodial interrogation.

iii. When providing written Miranda warnings during custodial interrogations, officers should use a Q&A format. Each page of the statement should be signed or initialed by the officer and person giving the statement

c. All original rights forms and written statement(s) received shall be kept in the case folder for that case.

C. Access to Counsel

1. Officers shall consider the following procedure when safeguarding a detainee's access to counsel during interrogation:

a. Right to counsel

i. When a subject has been placed under arrest by an officer, and the subject is being subjected to a custodial interrogation he/she shall be advised of the right to speak to counsel through the Miranda warning advisement. If they do not waive the right, the interrogation shall not proceed, unless the detainee waives the right at a later time.

ii. When a detainee requests to speak to an attorney before, or during a custodial interrogation, the officer shall cease questioning.

b. Waiver of right to counsel

i. Detainees may waive their right to counsel following the Miranda warnings, however officers shall document that the waiver was a knowing and intelligent waiver e.g., that the detainee knew of his/her right to consult with counsel before answering questions and he/she freely chose to proceed with the interrogation without exercising that right. A detainee's waiver of his/her right to counsel shall be documented.

ii. If the suspect waives his/her right to counsel after receiving the Miranda warnings, law enforcement officers are free to question him/her. But if a suspect requests counsel at any time during the interview, the officer shall not subject him/her to further questioning until a lawyer has been made available or the suspect freely reinitiates conversation. Caution should always be used when a suspect freely reinitiates conversation. A call may be made to an ADA to determine if the interview shall continue.

iii. The officer must ensure that the suspect clearly requests counsel.
A suspect must articulate his/her desire to have counsel present sufficiently enough 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, the interrogating officer is not required to stop questioning the suspect.

D. Search and Seizure (in-custody) – Officers should consider the following procedures when searching a person in custody and seizing property:

1. Search

   a. All subjects taken into custody shall be searched by an officer. When possible, a search will be conducted on scene. In the case that a subject who was not searched is turned over to another officer, that officer shall be informed that the subject was not searched. If circumstances on scene do not allow for a search to be conducted, one will be completed as soon as reasonable.
   b. All efforts shall be made for a same gender search, officer to subject incustody. When reasonable, officers from another department may be requested. Officer safety is always the primary consideration. If a same gender search is not possible; the search should be conducted in front of another officer/witness. When possible, the back of the hand should be used during the search, if it does not interfere with officer safety.

2. Seizure

   a. All property taken from a person in custody and subject to detainment shall be seized. The officer shall inventory the property on a property record form as outlined in General Order 3-003 Property and Evidence.
   b. All contraband/evidence located on a subject searched shall be seized. The contraband/evidence shall be properly packaged and turned into the Evidence Custodian as outlined in General Order 3-003 Property and Evidence.