
(1) Custodial Interrogation

(a) Custody

Custody exists when a reasonable person would believe that the person's **freedom of action** is restricted to the extent of an arrest. Custody may involve a period of detention or confinement, such as while a person is in shackles, in an officer's vehicle, or in some building under the officer's control.

(b) Interrogation - Different Than General Questioning

Interrogation occurs when an officer questions a person using **words or actions** that the officer reasonably would **anticipate provoking** an incriminating reply by the person. Interrogation does not occur when an officer presents preliminary inquiries to a person in the context of an investigatory stop or when obtaining background information such as a person's name. However, the questioning does not need to be explicit. For example, a group of officers engaging in a conversation intended to provoke the suspect into providing an incriminatory remark constitutes questioning.

(2) Procedural Safeguards

The following conditions must have existed when a person answered an officer's questions in a custodial interrogation in order for those answers to be **admissible** in a criminal proceeding: 1) An **adequate warning** occurred; and 2) A **waiver** occurred.

(a) Adequate Warning Obligation

Miranda v. Arizona requires that an officer make all of the following **warning statements** to a person: "You have the right to remain silent. Anything that you say can and will be used against you in a court of law. You have a right to consult with a lawyer and to have a lawyer present during interrogation. If you cannot afford a lawyer, one will be appointed for you."

(i) Right to Silence Applies to Charged Offense

In Michigan v. Mosley, the Court decided that after a person invokes the right to silence, an officer **may not question** the person about the offense for which the person is in custody. The officer, however, may later question the person about a **separate offense** after providing another adequate warning.

(ii) Fifth Amendment Right Must Be Asserted

In Davis v. United States, the Court ruled that a person must **clearly and unequivocally** invoke the right to counsel under the Fifth Amendment. When a person does request the assistance of counsel, an officer must **carefully honor** that request and cease questioning the witness.

(iii) Delay Between Warnings and Confession

Under Davis, *supra*, if the officer waits for a significant period before seeking to obtain the person's confession in the absence of counsel, the officer must then provide **new Miranda warnings** before engaging in a conversational interrogation. Miranda warnings provided after a confession is made are ineffective.

(iv) Questioning Cannot Occur Without Counsel

After a defendant asserts his right to counsel, unless the defendant voluntarily initiates a subsequent conversation, answers to subsequent questioning will not be admissible. In Oregon v. Bradshaw, the Court concluded that if a person **voluntarily initiates** communication with an officer in the absence of legal counsel, then the officer could obtain a valid waiver of the right to counsel.

(v) Public Safety Exception

Under the Court's decision in New York v. Quarles, a person is not entitled to receive an adequate warning (i.e., to enable the accused to request counsel) before an officer begins an interrogation of the accused regarding **public safety concerns**.

b) Waiver of the Rights

If a person elects to make a statement after receiving an adequate warning, then to properly **waive the right** against self-incrimination, the person's waiver must be voluntary, knowing, and intelligent:

(i) Voluntary

A person's waiver is voluntary if it did not occur as a result of coercion. To analyze if coercion existed, consider the **totality of the circumstances**. The types of facts subject to that analysis include an officer's conduct and a person's age, maturity, and intelligence. A person's confession that results from an officer's **deliberate deception** or **coercive threat** of serious injury or death would not be considered voluntary.

(ii) Knowing & Intelligent

A person's waiver occurs knowingly if the person **understands** the nature of the person's rights and the results of relinquishing them.

3) PRIVILEGE AGAINST SELF-INCRIMINATION

a) Scope of Right Not to Testify