

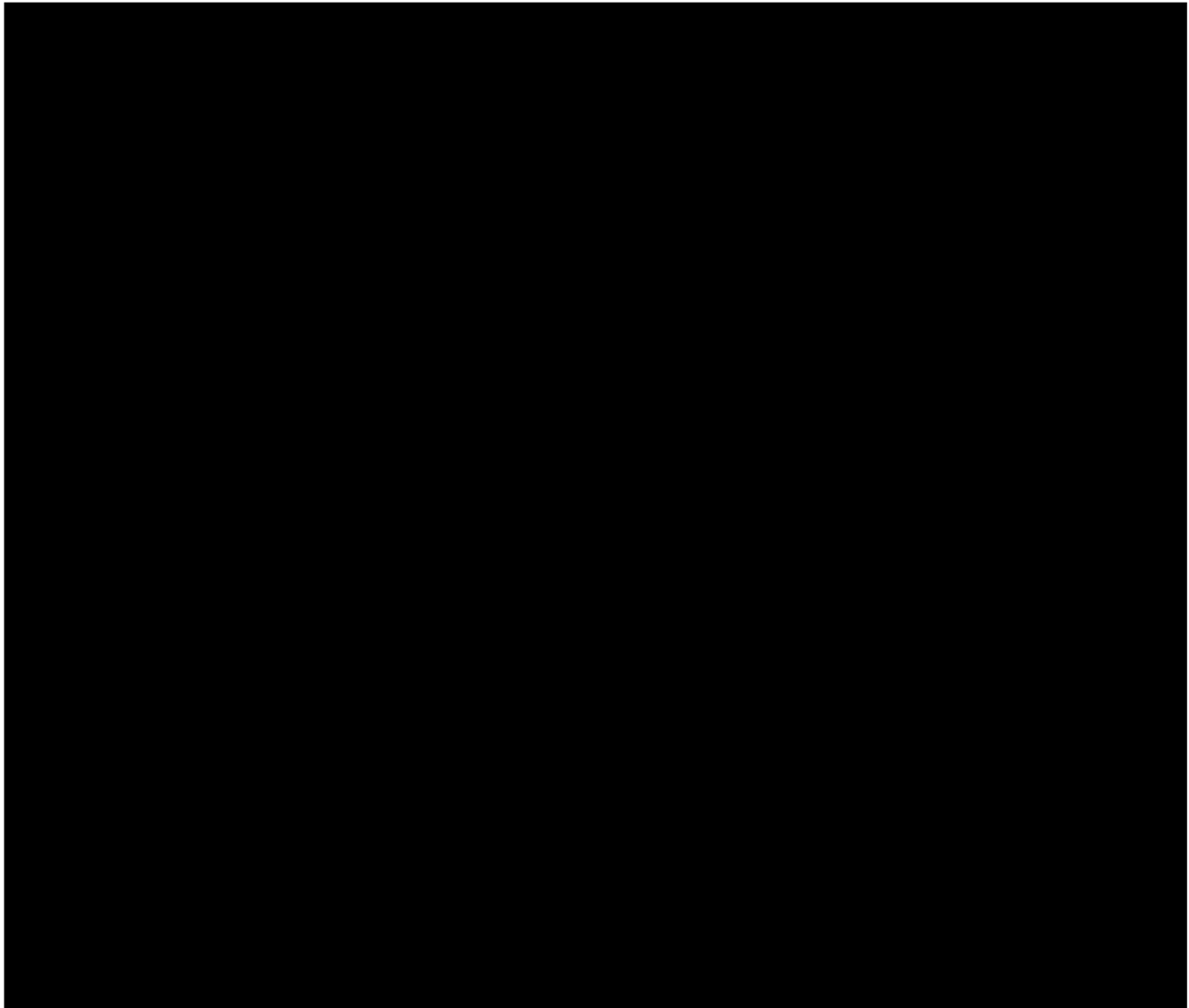


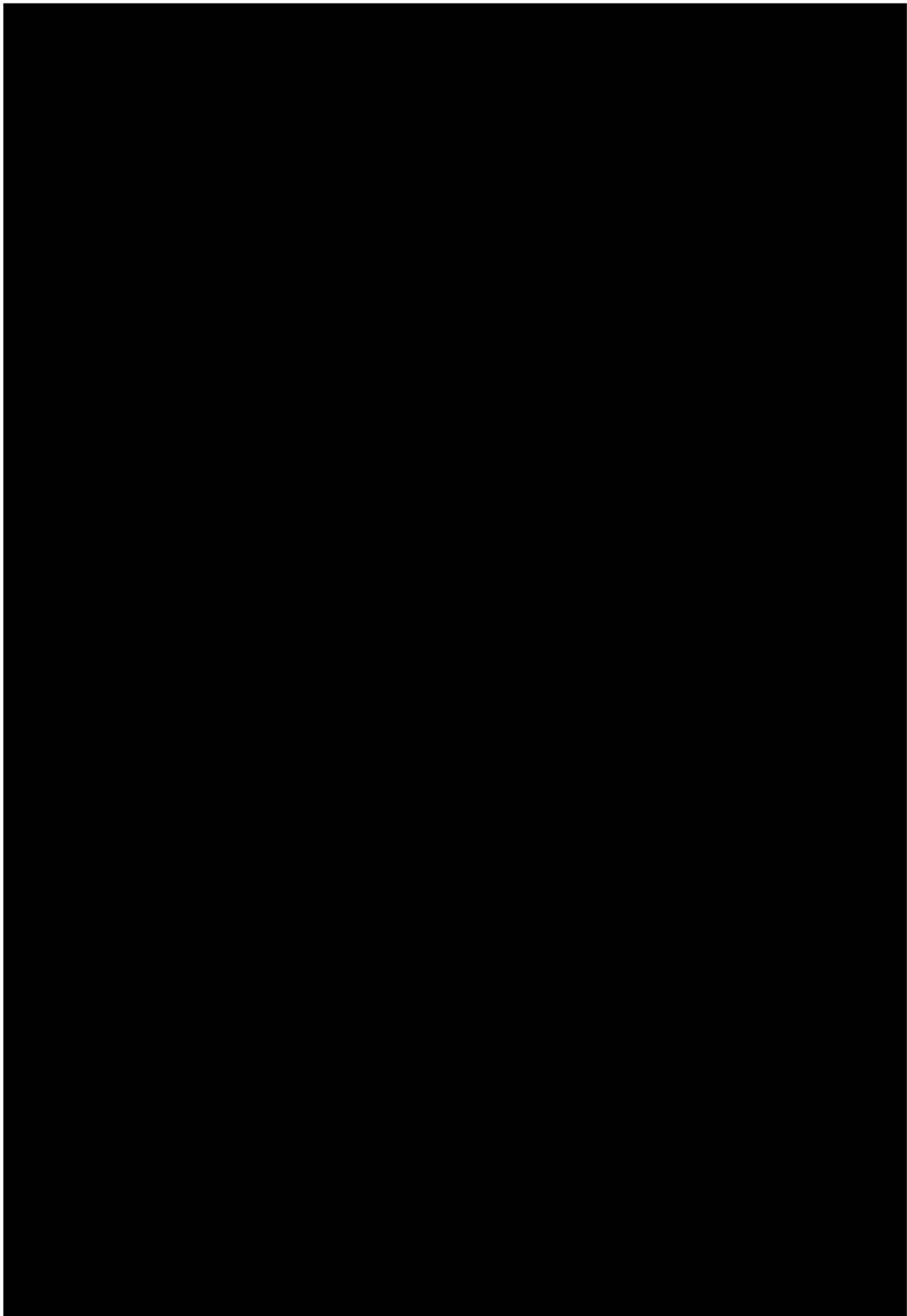
STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY
DIVISION OF STATE POLICE
PROFESSIONAL STANDARDS OF CONDUCT



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CHAPTER 1-D
INTERVIEWS AND INTERROGATION





1-D.3.1 Miranda Warning Rights:

- A. In the process of informing a person of his Miranda Rights, the State must prove that:
 - 1. The person was **warned** of his rights,

2. The person **waived** those rights, and
 3. Any statements made were **voluntarily, knowingly, and intelligently**.
- B. If the State fails to show beyond a reasonable doubt that the above requirements were satisfied, any statement taken may be excluded at trial, as may be any evidence obtained as a result of the interrogation.
- C. Prior to any custodial interrogation, the person must be warned of his MIRANDA WARNING rights:
1. You have the right to remain silent;
 2. Anything you say can and will be used against you in a court of law;
 3. You have the right to talk with a lawyer for advice before any questioning and to have one with you during questioning;
 4. If you cannot afford a lawyer, one will be appointed for you; and
 5. If you decide to answer questions now without a lawyer present, you still have the right to stop answering at any time.

1-D.3.2 Waiver of Rights Under Miranda:

- A. After advising a person of his rights under Miranda, the Division member must determine whether the person understands the rights.
- B. After the person has acknowledged his understanding of the rights, the Division member then must inquire if the person is willing to waive his rights.
- C. The above may be accomplished by the Division member asking the person in custody the following two questions:
1. Do you understand each of these rights? (Miranda Warning Rights)
 2. Understanding these rights are you willing to answer questions?
- D. A person may waive his Miranda Rights provided the waiver is made :
1. Knowingly,
 2. Intelligently and
 3. Voluntarily.
- E. The Division member should consider and be prepared to comment on the following factors in the determination of whether a person validly waived his Miranda Rights:

1. Age
 2. Intelligence level
 3. Physical and/or mental condition
 4. Language fluency
- F. The Division member does not have to use the precise words of the Miranda waiver form so long as the warning reasonably conveys the necessary meaning.
- G. The Division member does not have to warn the person about the specific charges prompting the questioning.
- H. A waiver of rights should never be presumed solely from the silence of the person. The person must, by an affirmative act, demonstrate his intent to waive his rights.
- I. Whenever possible, the Division member should obtain a written waiver from the person. The person can, however, waive his rights orally as well as in writing.

1-D.3.3 Custodial Interrogation:

- A. The term "IN CUSTODY" is defined as any restriction placed on a person which, based upon the "**totality of the circumstances,**" constitutes a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.
- B. The term "CUSTODIAL INTERROGATION" deals with two separate conditions: custody and interrogation. Both conditions must exist before a Division member is obligated to inform a person of his Miranda Rights. Custodial interrogation under Miranda refers to express questioning or any words or actions on the part of the police, reasonably likely to elicit an incriminating response from a person who is in custody or otherwise deprived of his freedom of movement in any significant way.
- C. If a reasonable person in the defendant's position feels that he is not free to leave, then that person is in custody for the purposes of Miranda, which is an objective, not subjective standard

1-D.3.4 Must Use Miranda When There is Custodial Interrogation:

- A. The Courts will decide whether a person was in custody at the time of the interrogation on a case by case basis, looking at the "totality of the circumstances."
1. Simply because the investigation has focused upon the suspect does not necessarily mean that he is in custody.
 2. A short-term roadside detention does not equate to custody.
 3. A person who is voluntarily present at a police station is not in custody. Custody may be dissipated by informing the suspect he is free to leave.

- B. The Courts have held that interrogation is not limited to questioning. The term “Interrogation” under Miranda refers not only to express questioning, but also to certain activities of the police constituting the functional equivalent of interrogation, or activities designed to get an incriminating response.
- C. Some police activities have not been held to constitute interrogation within the meaning of Miranda.
 - 1. It is not interrogation to ask a DWI suspect if he will submit to a breath test because it is part of the normal processing of a suspected drunk driver.
 - 2. If the defendant makes unprovoked spontaneous statements, there is not interrogation.
 - 3. Suspect’s statements about an unrelated crime while in custody to an undercover police officer who was posing as a prisoner did not constitute interrogation because the suspect did not know the person he spoke to was a police officer.
 - 4. An incarcerated suspect’s statements to a family member who is cooperating with the police do not constitute interrogation.

1-D.3.5 Assertion of Right to Remain Silent:

- A. In *Miranda v. Arizona*, the U.S. Supreme Court held that if an accused in police custody indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the **interrogation must cease**. The person, however, must clearly invoke his rights such that a reasonable officer in the circumstances would understand the person’s statement to be an invocation of the right to remain silent. *Davis v. U.S.* 512 U.S. 460 (1994)
- B. In a later case, *Michigan v. Mosley*, 43 U.S. 96 (1975), the U.S. Supreme Court held that police have the duty to “**scrupulously honor**” the suspect’s right of silence so long as he remains in custody. The Court in this case also addressed the circumstances under which an interrogation may be resumed (Mosley Factors). In citing the Mosley factors, the Court rejected the view that a defendant’s expression of his desire to remain silent created a per se prohibition on all future questioning.
- C. To “ **scrupulously honor** “ the defendant’s right to silence the Division member must:
 - 1. Immediately cease the interrogation;
 - 2. Allow a “significant period of time” to pass before resuming the interrogation;
 - 3. Advise the suspect of his Miranda Warnings and obtain a waiver before questioning him again.

- D. The New Hampshire Supreme Court has found that Part I, Article 15 permits a police officer to speak with a suspect about the **same crime** if the above three Mosley factors are met. **State v. Laurie, 135 N.H. 438 (1992).**
- E. Miranda bars the State from commenting upon the silence of the suspect after he has been advised of his rights.

1-D.3.6 Assertion of Right to Counsel:

- A. A suspect has a constitutional right to have his lawyer present for any custodial interrogation, and he may stop answering questions at any time and ask for his lawyer.
- B. If, after a waiver of the Miranda Rights, or at any point in the interrogation the suspect requests in any manner to contact an attorney,
 - 1. All questioning of the suspect must cease,
 - 2. No further interrogation may take place until the suspect has counsel present so long as the suspect is in custody. **Edwards v. Arizona, 451 U.S. 477 (1981)**
- C. **Edwards v. Arizona** states in pertinent part that the accused, having expressed his desire to deal with the police only through counsel, **is not** subject to further interrogation until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.
- D. The rule applies not only to the crime you wish to speak to the suspect about, but also to any other, separate crimes, and this situation lasts as long as the person is in custody. **Minnick v. Mississippi 111, S. Ct. 1486 (1990)**
- E. To initiate conversation about the charges, the defendant must do more than speak about the details of this present confinement. He must refer to the specific charges for which he is confined. **Minnick v. Mississippi**
- F. The police **may not** reinitiate contact with the suspect after he has invoked his Miranda right to counsel, even after the suspect has had an opportunity to consult with an attorney as long as the suspect remains in custody.
- G. If the suspect, after asserting his right to counsel, resumes a dialogue with police, he must again be advised of his Miranda Rights and waive those rights, preferably in writing, before further questioning.
- H. The police **may not** initiate conversation with the suspect about a different crime once he has invoked his right to counsel and he remains in custody. **Arizona v. Roberson 486 U.S. 195 (1989)**

1-D.3.7 Custodial Interrogation of a Juvenile:

- A. The New Hampshire Supreme Court in **Benoit v. State of New Hampshire** established guidelines for police officers to follow when questioning a juvenile in a custodial environment.
- B. The State must prove beyond a reasonable doubt that the juvenile was warned of his rights and waived them voluntarily, knowingly and intelligently. The Court will view the waiver based upon the "totality of the circumstances".
- C. The Court stated that in order for a juvenile to be deemed to have waived his rights under Part I, Article 15, of the New Hampshire Constitution, they must be informed of said rights in a **language understandable to a child** and **the court must review and weigh the following:**
 - 1. Chronological age
 - 2. Mental age
 - 3. Educational level
 - 4. Physical condition
 - 5. Previous dealings with the police and court appearances
 - 6. Extent of rights explained
 - 7. Language of the warnings
 - 8. Interrogation method
 - 9. Interrogation length
 - 10. Time in custody
 - 11. Was the defendant held incommunicado or could he call an adult
 - 12. The defendant's understanding of the offense
 - 13. Was the defendant warned of transfer to an adult court
 - 14. That a judge and jury would decide if the waiver was voluntary
 - 15. That if the resultant charges are felony-level for an adult.
- D. The defendant must be informed of the consequences of his certification as adult.
- E. Whenever possible, the number of officers engaged in the interrogation of a juvenile should be limited to two.

1-D.3.8 The Sixth Amendment Right to Counsel:

- A. The Sixth Amendment to the U.S. Constitution is **offense specific**, that is, it applies only to the charges pending against the defendant. A defendant's Sixth Amendment right attaches at the time of arraignment of charges or at the time a complaint is filed in Court. This right exists until the charges are resolved by trial, even if the defendant is free on bail.
- B. Once an attorney invokes this right on behalf of the defendant at the time of the complaint being filed, the police **may not** seek to speak to the defendant further about that offense. The police **may**, however, approach the defendant and question him about a separate matter.
- C. A person can waive his Sixth amendment right to counsel. The Court will view the waiver based upon the "totality of the circumstances".

1-D.3.9 Prisoner's Access to Counsel:

- A. Telephone Calls: RSA 594:16 requires police officers to allow prisoners to consult with attorneys at all reasonable times. Failure to do so is a misdemeanor.
 - 1. Within a reasonable time following arrest and processing, prisoners will be permitted the use of a telephone which is free of any recording device, to notify friends, relatives or legal counsel of the arrest.
 - 2. Any unusual expenses including the cost of long- distance toll calls shall be assumed by the prisoner.
 - 3. Long distance calls may be charged to a telephone credit card possessed by the prisoner or the toll charges may be accepted by the person who is called.
- B. Contact attempts by attorneys: With limited exception, prisoners shall be informed of any attempts by an attorney to contact them, whether the attempts were made in person or by telephone.
 - 1. A limited exception to the above can exist during a custodial interrogation situation. It is clear that a subject in custody must be **advised** of his Miranda Rights and a **valid waiver** obtained before the police initiate a custodial interrogation. Once the two requirements of Miranda are satisfied by the police and a custodial interrogation has commenced, the police are not required to halt the interrogation simply because of a contact attempt by an attorney. (**Moran v. Burbine**)
 - 2. The Court has held that the **Miranda** protections are all designed for the benefit of the **defendant** and not for the attorney. Miranda imposes no legal obligation on the police to tell a suspect that a lawyer has been retained on his behalf.
 - 3. Prior to the attachment of the Sixth Amendment Right to Counsel, which attaches at the time of arraignment or formal institution of charges, the decision to invoke or waive the Miranda Rights protections is an individual

and personal decision resting solely with individual who is the subject of the Miranda Rights.

- C. Attorney access to clients: An attorney, who personally appears at the troop station or other place where the prisoner is detained, or who requests to speak with the prisoner by telephone, shall, with limited exception (see category number 1 above), be permitted to interview the prisoner, by telephone or in person, in a secure and confidential area within the facility. The telephone or the area furnished shall be free of any audio recording device.

CHAPTER 1-D INTERVIEWS AND INTERROGATION

September 11, 1998

The section at the beginning concerning Interviews was added at the recommendation of the mock assessors. SGTS Dave Crawford and Dave Kelley gave guidance on this section.

In section 1-D.3.A, we added the second sentence citing the Davis case.

Juvenile interrogation situation changed number of investigators from one to two to be consistent with Chapter 44-A, Juvenile Procedures.