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| <b>SCHUYLER COUNTY SHERIFF'S OFFICE GENERAL ORDERS</b> |                           |
| <b>DATE: 12/14/2020</b>                                | <b>GENERAL ORDER #260</b> |
| <b>SUBJECT: Constitutional Safeguards</b>              |                           |
| <b>AUTHORIZATION: SHERIFF WILLIAM E. YESSMAN</b>       |                           |

**OBJECTIVE: MEMBERS AND EMPLOYEES OF THE SCHUYLER COUNTY SHERIFF'S OFFICE SHALL AT ALL TIMES BE AWARE OF AND PROTECT THE CONSTITUTIONAL RIGHTS OF ALL WHOM THEY ENCOUNTER, AND ESPECIALLY WHEN CONDUCTING CRIMINAL INVESTIGATIONS. MEMBERS/EMPLOYEES MUST MAKE EVERY REASONABLE EFFORT TO KEEP ABREAST OF COURT DECISIONS AND STATUTORY LAW.**

**POLICY: It is the policy of the Schuyler County Sheriff's Office to follow the guidelines as set forth in this order.**

**DETAILS:**

**I. Constitutional Safeguards**

- A. Volunteer-ness of confessions: See Section 60.45 of the New York State Criminal Procedure Law. A good rule of thumb for a member to follow when contemplating an interrogation is to ask, "Is what I am about to do or say apt to make an innocent person confess?"
- B. Delay in arraignment: See Section 140.20 of the New York State Criminal Procedure Law. Note that questioning of a subject during an investigative stop, for the purpose of resolving an ambiguous situation, does not constitute an arrest.
- C. Failure to inform defendant of rights: Miranda warnings need only be given to a suspect who is in custody and who is subjected to interrogation. There is no standard for determining exactly when an investigative detention becomes a custodial arrest, however the courts have stated that an arrest has occurred when a reasonable person in the same set of circumstances of detention would consider himself under arrest, and not free to leave. Factors to be considered are.
  - 1. Has the detainee been informed that he/she is under arrest?
  - 2. What was the amount of force used to effect the detention?

3. Has the detainee been moved or transported from the scene of the stop?

D. Scope of the Miranda Warnings: Reg. Miranda ~v~ Arizona 384 US 436

1. You have the right to remain silent and refuse to answer my questions.
2. Anything you do say may be used against you in a court of law.
3. As we discuss this matter, you have a right to stop answering my questions at any time you desire.
4. You have a right to a lawyer before speaking to me, to remain silent until you talk to him, and to have him present while you are being questioned.
5. If you want a lawyer but you cannot afford one, a lawyer will be provided to you without cost.
6. Do you understand each of these rights that I have explained to you?
7. Now that I have advised you of your rights are you willing to answer my questions without an attorney?

All of these points must be covered in such a way that the suspect clearly understands what he/she is being told. If the suspect indicates at any time, or in any manner that he/she does not want to speak, the interrogation must cease. The interrogator is not permitted to talk him/her out of his/her refusal to submit to questioning. If the suspect says at any time that he/she wants a lawyer, the interrogation must cease until he/she has had an opportunity to confer with a lawyer and no further questions may be asked of him/her outside the lawyer's presence or without the lawyer's permission. The interrogator is not permitted to talk him/her out of his/her decision to contact a lawyer.

E. Deprivation of counsel: The following cases govern certain aspects of a defendant's rights regarding interrogation and access to an attorney.

1. People-v-Hobson: Once an attorney enters the criminal proceeding, a defendant cannot waive his rights unless an attorney is actually present during such waiver.
2. People-v-Garofolo: Attorney's telephone call to police station deemed entry to proceedings, even though the call was to a switchboard operator and never reached the officer conducting the interrogation.
3. People-v-Arthur: Attorney's telephone call to the officer in charge of an investigation was sufficient to constitute entry of counsel.

4. People-v-Cunningham: Once a defendant in custody has asked for a lawyer, he cannot change his mind about having counsel unless an attorney is physically present.
  5. People-v-Rogers: Once an attorney enters the proceedings, a defendant in custody cannot be questioned in the absence of the attorney, even about charges which are unrelated to the charges for which the defendant is being held, however, a defendant taken into custody on a new, unrelated charge is free to waive his right to counsel in the absence of a lawyer.
  6. People-v-Skinner: Defendant not in custody cannot be questioned outside his attorney's presence even though the attorney had entered the proceedings two years earlier.
  7. People-v-Servidio: Questioning of defendant was permitted where police did not have actual knowledge that he was represented by attorney on pending unrelated charges.
  8. People-v-Waterman: Defendant who has been indicted cannot be questioned without an attorney.
  9. People-v-Meyer: Defendant who has been arraigned cannot be questioned without an attorney.
  10. People-v-Samuels: Once an accusatory instrument has been filed with the court and a warrant issued, defendant cannot be questioned without an attorney.
  11. People-v-Kazmarick: A defendant in custody for whom there is an outstanding warrant of arrest on pending but unrelated charges, and there is no attorney for those charges, could be questioned without an attorney, even though police know about the unrelated charges.
  12. Rode Island-v-Innis: (Federal) Interrogation can be accomplished without actual questioning. If police conduct and actions are likely to elicit incriminating remarks, it must be considered to be interrogation.
- F. The Fourth Amendment to the United States Constitution requires that a warrant be obtained in order to conduct a lawful search, with the following possible exceptions:
1. Exigency: To prevent imminent danger to the officer or a third person, to prevent the destruction of evidence or, in hot pursuit of a fleeing felon.

2. Incident to Arrest: To insure officer safety and to prevent the destruction of evidence. Are to be searched limited to the extent of arrestee's reach.
3. Consent: Freely, voluntarily and knowingly given by one who is empowered to do so. Person giving such permission must be advised of his constitutional right to withhold his consent to search.
4. Vehicles: Provided there is articulatable probable cause.
5. Plain View: Provided officer's presence is lawful.
6. Inventory: Provided property is within the officer's legal control.
7. Administrative: Only by agencies having particular enforcement responsibilities such as fire, health or building departments.