

**VIRGINIA MILITARY INSTITUTE
POLICE DEPARTMENT**

GENERAL ORDER	Number: 1-26
CONSTITUTIONAL SAFEGUARDS	Date: 6/9/20
VLEPSC Number:	Manual Number:
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Authorization: Chief Michael L. Marshall	Review Date: Annually

3.

- c. "You have the right to talk to a lawyer and have him present with you while you are being questioned."
 - d. "If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one."
 - e. "You may stop talking at any time."
 2. After the warning, in order to secure a waiver, the officer shall ask and receive affirmative replies to the following questions:
 - a. "Do you understand each of these rights I have explained to you?"
 - b. "Having these rights in mind, do you wish to talk to us now?"
 3. After the rights have been read, understood, and the person wishes to waive them, the officer will have the suspect sign the waiver of rights form. Officers shall interrogate suspects only when they have knowingly and intelligently waived their rights. Officers shall cease questioning whenever the suspect invokes the right to silence or requests the presence of counsel.
 - a. Officers shall not try to elicit incriminating evidence unless the suspect waives the right to counsel.
 - b. If a suspect, once in custody, requests counsel after being advised of Miranda rights, he or she cannot be interrogated again about the crime for which he or she was charged, other crimes, or by any other officers unless (1) the counsel is present during the interrogation or (2) the suspect himself initiates the interrogation. Officers therefore cannot obtain a waiver under these circumstances unless the suspect initiates interrogation. If a suspect refers to counsel but his or her intentions are unclear, officers may question the suspect further to clarify his or her intentions.
 - c. If the suspect is deaf or unable to speak English, the interrogating officer shall notify the on-duty supervisor and shall immediately arrange to obtain an interpreter.
 4. Officers will take care when advising juveniles of their rights to ensure that the rights are understood before obtaining a waiver. Officers should honor a child's request to speak to a parent or guardian before waiving his or her rights. Whenever possible, the child's parents should be present while the child's rights are explained and the waiver obtained.
 5. If a suspect has invoked his or her right to silence, officers may interrogate the suspect

- a. Carefully assess the suspect's background, age, education, mental impairment, and physical condition to determine vulnerability to coercion; and
- b. Coupled with the background characteristics, choose an appropriate mix of interrogation tactics and environmental factors to convince the suspect to confess without overbearing the suspect's will. Note that Miranda warnings would have been given before the interrogation takes place, in most instances.

D. Exemptions or Special Cases

1. Miranda warnings do not apply to the following situations which are non-custodial. This list is not all-inclusive:
 - a. Brief on

2. the person whose premises or person is being searched has a reasonable expectation of privacy.
- B. The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons and things. The Supreme Court is continuously interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits and criminal prosecution. In order to ensure that Fourth Amendment rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except for the following circumstances.
1. Open View and Plain View Searches
 2. Consent Searches
 3. Exigent Circumstances
 4. Pat Down/Frisks During Investigatory Stops
 5. Custodial Searches and Other Searches Incident to Arrest
 6. Vehicle Inventory Searches
 7. Open Fields and Curtilage
- C. As a general rule, no search warrant is required for a public place, as long as probable cause exists.
- D. Further guidance regarding search and seizure may be found in General Order 2-31 *Search and Seizure*

VII. EYEWITNESSES

- A. Eyewitnesses
1. Eyewitness identifications generally do not provide reliable evidence during criminal investigations. Consequently, the Supreme Court has addressed this issue in numerous cases and set forth guidelines to be followed when eyewitness identifications are solicited by officers. Eyewitness identifications may take the following form:
 - a. On-scene identification
 - b. Lineups
 - c. Photo lineups
 2. Officers should review General Order 2-22 *Eyewitness Identification* for guidance on eyewitness identification procedures.
- B. Hearsay
1. Officers shall understand the rules by which hearsay can be considered evidence and therefore of use in an investigation.
 - a. According to the Virginia Supreme Court, hearsay is "evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what he has heard others say."
 2. Hearsay is generally inadmissible in court.

3. Some hearsay is useful as evidence. Some exceptions to the Hearsay Rule, and therefore admissible include:
 - a. A dying declaration or a statement, oral or written, made by a mortally wounded

F. Conduct of the Vehicle Search

1. When possible, searches of vehicles shall be conducted contemporaneous with the stopping or discovery of the vehicle. As a general rule, vehicle searches shall be conducted as soon as reasonably possible.
2. When possible, officers shall avoid damaging a vehicle or its contents, and shall minimize the intrusiveness of the search and any inconvenience suffered by the passengers or owner.
3. As vehicles may contain sharp or pointed objects, and perhaps even syringes or other materials with body fluids on them, officers shall take precautions to minimize exposure to communicable diseases. See General Order 2-14 *Communicable Disease Exposure*.

IX. LIMITATIONS ON AUTHORITY

A. Limitations on Law-Enforcement Authority by Local Courts

1. Occasionally, the local courts may limit law-enforcement authority to enforce state statutes and local ordinances. The department manual shall contain relevant orders offering appropriate guidance to officers. These limitations include, but are not limited to:
 - a. The enforcement of certain parking ordinances.
 - b. The handling of juvenile offenders.
 - c. The issuance of summonses as opposed to arrests/incarceration.
 - d. Restrictions relating to the animal control ordinance.

B. Limitations on law enforcement authority by the commonwealth's attorney

1. Occasionally, the commonwealth's attorney may issue opinions to the department imposing limitations on officers. These areas include, but are not limited to:
 - a. Prosecution of certain cases.

