

Section 3. Miranda Rights (Fifth Amendment)

1. **Rule:** *The Fifth Amendment provides for the right against self-incrimination.* This prohibits the Government from compelling a person to provide testimonial information that would potentially incriminate that person. The U.S. Supreme Court has interpreted this to mean that a person who is subjected to a *custodial interrogation during which testimonial information is being sought* must be provided certain protections (these are known as *Miranda Rights*). Under the *exclusionary rule*, if the Government violates a person's *Miranda Rights*, the prosecution will not be allowed to use *testimonial* evidence obtained from the violation *when presenting its case* in the person's *criminal trial*.
 - a. **Application of Exclusionary Rule to Physical Evidence:** The exclusionary rule *does not apply to physical evidence* derived from a *Miranda* violation, so long as the failure to give *Miranda* warnings was done *unintentionally*.
2. **Requirements:** There are three requirements which must be satisfied for these rights to be implicated:
 - a. The suspect must be in *custody*
 - i. **Custody:** The suspect is *not free to leave* and the atmosphere is one of *police domination and coercion*
 1. **Note:** Prisoners generally do not have the right to receive *Miranda* warnings in circumstances where a police informant or undercover agent is attempting to elicit incriminating evidence from them regarding another crime (one distinct from the crime for which they are imprisoned), because they are not considered "in custody" (to be considered "in custody" the police must further restrain the prisoner).
 - b. The suspect must be *interrogated*
 - i. **Interrogation:** Any conduct by a Government agent which he or she knows or should know is *likely to elicit an incriminating response from the suspect*.
 1. **Ex:** Pursuant to a valid arrest warrant, the police arrest Δ for murder. After giving Δ his *Miranda* warnings, Δ asks for his attorney. The police then place Δ in their vehicle and drive to the police station. During the drive, one of the officers says to the other, "I am so glad the state legislature just passed a law which mandates that judges impose the death sentence for any person who does not voluntarily confess to a murder before he is found guilty." Out of fear of being put to death, Δ immediately tells the police that he did in fact commit the murder, and to please tell the judge he confessed. At his subsequent trial, Δ 's attorney seeks to have his confession excluded.
 - a. The confession *is not admissible*. Although the police did not directly ask Δ a question, Δ was still interrogated (the police officer knew at the time he made the statement that it was likely Δ would make an incriminating response).
 2. **Note:** If a suspect blurts out a spontaneous statement without being questioned, this will be admissible against him, as the suspect has not been interrogated.
 - c. The Government agents must be seeking *testimonial information*
 - i. **Testimonial Information:** Statements of fact or opinion made by the suspect that relate to the suspect's potential involvement in a criminal act, which could then be used against the suspect at trial.
 1. **Examples of testimonial info:** Whether the suspect did or did not commit the crime; whether the suspect was or was not present at the scene of the crime; whether the suspect did or did not have animosity toward the victim, etc.
 2. **Examples of non-testimonial information:** A suspect's fingerprints; a suspect's image; the sound of a suspect's voice; a sample of the suspect's handwriting; basic booking information (name, address, social security number, date of birth, etc.).
 - a. **Lineup, Show-ups, Voice Samples, Handwriting Samples and Photoarrays:** A suspect may be compelled to stand in a lineup (Δ is placed in a room with a number of other individuals for presentation to the witness) or show-up (Δ is the only person presented to the witness), or to submit a voice sample, handwriting sample, or a photograph to be examined by a potential witness, without receiving *Miranda* warnings or *having an attorney present*.
 - i. **Note:** Once a suspect *is formally charged* the **Sixth Amendment** requires that he be allowed to have his attorney present for any lineup or show-up.

3. Warnings

- a. If the above requirements are satisfied (i.e. the suspect has been subject to a custodial interrogation where testimonial information was elicited), the suspect must be informed by the Government agent(s) that he has the following rights:
 - i. The right to remain silent
 - ii. The right to an attorney
 - iii. The right to have an attorney provided to him if he cannot afford one
 - iv. The right to know that anything he says can be used against him in court
- b. **Public Safety Exception:** In an emergency situation (i.e. there is an imminent threat to the public), the police are not required to provide a suspect *Miranda* warnings before questioning him.
 - i. **Ex:** An armed robbery suspect, being chased by the police, runs into a grocery store. An officer enters the store and finds the suspect in one of the aisles, without the gun. The officer asks him “where is the gun?” at which point the suspect tells him that he hid the gun in the frozen pizza section of the grocery store. The officer finds the gun and arrests the suspect for robbery.
 1. The gun and the confession are admissible against the suspect at his criminal trial. Although the suspect was in custody, was being interrogated, and testimonial information was being sought, the officer did not have to provide the suspect with *Miranda* warnings because there was an imminent threat to the public (e.g. a child could find the gun and hurt himself).

4. Rights: After the police inform the suspect of his rights, one of three things will happen, (1) he will waive his rights, or (2) he will invoke his right to remain silent, or (3) he will invoke his right to an attorney.

- a. **Waiver:** In order for the police to proceed with the interrogation, the suspect must *voluntarily and intelligently waive his rights*. This can be done *orally or in a signed writing*. It is not necessary that the suspect say “I waive my rights”, as long as the police have asked him if he understands these rights and he has said “yes” or he continues to talk with the police. Any information gained after that point will be admissible against the defendant.
 - i. **Voluntarily:** In giving the waiver, the suspect must be *free from duress*.
 1. **Duress:** Any *threatening or coercive* conduct by the police (e.g. refusing to allow the suspect to go to the bathroom; questioning a suspect for 12 hours straight; threatening to harm the suspect or his family).
 - ii. **Intelligently:** The suspect must know the nature of the rights he has and the consequences of waiving them.
 1. **Note:** This does not mean that the police have to give the suspect a message from his attorney that he should not answer any questions before he gets there.
- b. **Right to Remain Silent: A suspect may only invoke this right by unequivocally and unambiguously stating that he wishes to remain silent.** If a suspect invokes his right to silence, the police must cease the interrogation, and may not question the suspect about any crime for a *reasonable period of time*. If the police choose to interrogate the suspect later, they may only do so if the interrogation is about an unrelated crime. They must also re-administer these warnings and get a waiver in order to continue with the interrogation.
 - i. **Exception:** If the suspect voluntarily reinitiates contact with the police.
- c. **Right to an Attorney: A suspect may only invoke this right by unequivocally and unambiguously stating that he wants an attorney.** If a suspect invokes his right to an attorney, the police must cease the interrogation, and may not question the suspect about any crime until the suspect’s attorney is present.
 - i. **Exceptions:**
 1. If the suspect voluntarily reinitiates contact with the police or the suspect has been released from police custody for at least 14 days.
- d. **“Not Offense Specific” v. “Offense Specific”**
 - i. As stated above, if a suspect asserts his right to remain silent or right to counsel the suspect *may not be questioned about any crime*. Thus *Miranda Rights* are “*not offense specific*” (not limited solely to the questioning regarding the crime for which the police have initially taken the suspect into custody).
 - ii. This is different from the *6th Amendment’s Right to Counsel* which *is* “*offense specific*” (if a suspect has been formally charged with a crime and is represented by an attorney, the police *may not question that suspect about the crime for which he has been charged outside the presence of his attorney, but may question him about unrelated crimes*).