



# Practice Points

## Interviewing an Alleged Perpetrator in Law Enforcement Custody: Mandatory Miranda Warnings

Staff must exercise caution when interviewing an alleged perpetrator who has been taken into custody and issued a Miranda Warning by law enforcement. Children's Division interviews with the alleged perpetrator may be used during criminal prosecution proceedings. Failure to comply with the procedures outlined below will likely result in any statements made by the alleged perpetrator to be inadmissible in the criminal proceeding. These procedures are applicable any time staff interview an alleged perpetrator who is in custody, even if the detention is unrelated to an incident of child abuse/neglect.

When the alleged perpetrator is in custody, staff **must** request law enforcement Mirandize the alleged perpetrator prior to conducting an interview regarding the allegations. Examples of 'in custody' include an alleged perpetrator having been arrested and taken to the police department for an interrogation, or when the alleged perpetrator has been detained and is currently in jail.

The alleged perpetrator may not understand that statements made to Children's Division staff could be self-incriminating if those statements are used in a criminal proceeding. Therefore, interviews should take place immediately after law enforcement has interviewed the alleged perpetrator. If the law enforcement interview has already taken place, staff must request law enforcement to re-issue the Miranda warning.

Once law enforcement has issued the Miranda warning, they can remain while Children's Division staff proceeds with the interview, but they do not have to stay.

Staff are discouraged from questioning an alleged perpetrator without a Miranda warning. However, in extreme circumstances, staff may question an alleged perpetrator while in custody about issues not pertaining to the allegations without a Miranda warning, such as gathering information to complete an Immediate Safety Intervention Plan (CD-263) or asking about possible placement options for their children. If conducting such an interview, staff must warn the alleged perpetrator they may not discuss the allegations without law enforcement issuing a Miranda warning. If the alleged perpetrator begins discussing the allegations, staff should cease the interview until law enforcement can re-issue the Miranda Warning.

If an alleged perpetrator, while in custody, states that they wish to remain silent or invokes their Miranda rights, staff must respect the request and cease all questioning.

Once released from custody, staff may interview the alleged perpetrator about the allegations without a Miranda warning. However if the alleged perpetrator has obtained legal counsel, staff must contact their attorney to ask permission to conduct an interview. If an alleged perpetrator states that he/she is represented by an attorney and wants staff to contact him/her through this attorney, staff must respect the request. Staff should make contact with his/her attorney to arrange the interview. Staff should ask the attorney to submit a written authorization to release information signed by the alleged perpetrator before the worker can release information about the merits of the report to the attorney. Upon being informed by the attorney that they are representing the alleged perpetrator, staff should direct communication and correspondence to the alleged perpetrator's attorney of record in order to set up an interview. The attorney's response communication and correspondence should be documented in the case record.

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