

**CONFESSIONS
THE FIFTH AMENDMENT
AND YOUR RIGHT TO SILENCE**

More than any other constitutional right, your Fifth Amendment right to silence has been burned into the American conscience through television, movies and other entertainment. Still, because a confession can be powerful evidence in any case, police still cut corners, take advantage and manipulate this right every day.

The Constitution

Your right to silence comes from the Fifth Amendment to the Federal Constitution which states “No person shall be compelled in any criminal case to be a witness against himself.”

When It Takes Effect

Although this right is constant, it is triggered in two scenarios: (1) Any time the police question a suspect and they reply they wish to remain silent or speak to their attorney and (2) when someone is taken into custody then questioned.

Miranda Rights

These came out because of the Supreme Court’s growing concern that holding someone for hours and repeatedly interrogating them leads to psychological exhaustion and false confessions. Based also on local rules, Washington police are required to warn you with the following:

1. You have the right to remain silent.
2. You have the right at this time to an attorney.
3. Anything you say can and will be used against you in a court of law.
4. If you are under the age of 18, anything you say can be used against you in a Juvenile Court prosecution for a juvenile offense and can also be used against you in an adult court criminal prosecution if the juvenile court decides that you are to be tried as an adult.
5. You have the right to talk to an attorney before answering any questions.
6. You have the right to have an attorney present during the questioning.
7. If you cannot afford an attorney, one will be appointed for you without cost, if you so desire.
8. You can exercise these rights at any time.
9. Do you understand these rights?

Sometimes, police forget step nine, and never confirm that the person understands.

In some cases, even non police must inform you of these rights if they are acting as an “agent” of the state. State v. Heritage, 152 Wn.2d 210 (2004). This does not include security or similar private “mall cops.”

The warnings must be in a **language** the person can understand. The police must obtain an interpreter if needed. This is another area where police cut corners claiming the person understood.

Police Do Not Need to Read Miranda Under the Following Scenarios:

The most common exception to Miranda is when police are holding a person for **DUI**, asking them questions to check sobriety and administering their field tests. This is strange since under most other scenarios, when police detain and question you for a suspected crime, the rule is triggered. Then again, DUI carries many exceptions to criminal procedure.

A mere investigative stop, known as “the Terry Stop” where someone is “free to leave.” There is a **huge grey area** here between the officer stopping someone temporarily and arresting them.

When someone is asked to consent to a **search** but the police likely need to read **Ferrier Warnings** .

When someone voluntarily and on their own initiative goes to the police station and is free to go.

When the police are investigating over the telephone, text, or email

When police ask to obtain physical evidence like blood samples, handwriting, urine etc.

What is “Custody?”

Miranda is required when there is such a restriction on a person's freedom as to render him "in custody." Oregon v. Mathiason, 429 U.S. 492, 495 (1977).

Not all interviews are “coercive and the law recognizes that most interactions with police will make people nervous and somewhat intimidated.

A suspect stuck in a hospital bed is not by itself “in custody.” State v. Butler, 165 Wn. App. 820 (2012).

Even when the police have “**probable cause**” to arrest, they do not have to issue warnings if they have not placed them under arrest. State v. McWatters, 63 Wn. App. 911 (1992).

Berkemer v. McCarty, 468 U. S. 420 (1984).

If delaying arrest is **merely a trick** to avoid Miranda however, then warnings are required. State v. France, 129 Wn. App. 907 (2005)

It is not the individual's subjective feeling but whether a **reasonable person** would feel under arrest.

If you have been arrested, interrogated or have given a statement to police and have questions, **PLEASE CALL OUR OFFICE FOR A FREE CONSULTATION.**