



Date: November 17, 2001

G.O. 01-33

To: All Personnel

From: Sheriff Ken Jenne

Subject: GENERAL ORDER - ADDS SECTION 13.2.15 ENTITLED "INTERROGATION OF SUSPECTS WITH DEVELOPMENTAL DISABILITIES" TO THE POLICY AND PROCEDURES MANUAL

The following policy will be effective immediately:

13.2.15 Interrogation of Suspects With Developmental Disabilities:

- A. **General:** BSO recognizes that developmentally disabled suspects require special care and sensitivity when dealt with in a custodial situation. BSO's foremost concern is to ensure subjects understand their constitutional rights and are not taken advantage of. Although the potential for obtaining a false confession will always be inherent with the detective's role as interrogator, this policy is intended to minimize the potential of developmentally disabled subjects offering a false confession during the course of a criminal investigation. Through innovative training and sound policies and procedures, BSO can better protect the rights of these vulnerable persons while still arriving at the truth and avoiding false confessions and/or false testimony implicating others.
- B. **Disclaimer:** This policy was enacted to assist detectives in evaluating and working with persons considered developmentally disabled. Detectives are not psychologists or psychiatrists. Their conclusions concerning the mental state of a person may not always be accurate. A good faith effort will be made, based on specialized training, to recognize the characteristics of a developmentally disabled person and deal with the situation as mandated by BSO policies and procedures.
- C. **Definitions:**
1. **Appropriate Adult:** A parent, relative, guardian, or other person responsible for the subject's care or custody.
 2. **Corroborating Evidence:** This includes any form of connective physical evidence to include, but not be limited to serological, hair, fiber, and latent or patent fingerprint evidence. This also includes conclusive eyewitness observations positively linking the suspect to the crime at the time of its occurrence.
 3. **Developmentally Disabled:** A person who is in a state of arrested or incomplete development of mind, which originates during the developmental period and is associated with recognizable significant impairment of intelligence and social functioning.

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4. False Confession: Full or partial admissions of guilt that are unfounded and without merit.
5. Post Confession Analysis: Supervisory review of any confession obtained from a developmentally disabled person.
6. Post Confession Analysis Team: A specially trained team consisting of a psychologist, assistant state attorney, and Criminal Investigation commander, who will be tasked with reviewing confessions from the developmentally disabled that lack any corroborating evidence.

D. Custodial and Non-custodial Interrogations of Developmentally Disabled:

1. Detectives will make observations of any person they intend to interrogate in an effort to determine if the person exhibits any outward characteristics of a developmentally disabled person.
2. Detectives will notify their immediate supervisor upon recognizing they may be questioning a subject who is considered developmentally disabled as soon as practical.
3. Prior to interrogating a subject who is considered to be developmentally disabled, detectives will make a reasonable effort to notify and afford an appropriate adult the opportunity to be present during all questioning. If unable to make contact, detectives will record the date and time attempts were made and reason the effort failed. If contact is made and the appropriate adult declines, the detective will document the date and time and reasons why. A developmentally disabled subject may not waive BSO's policy to notify an appropriate adult.
4. Detectives will inquire from the subject and/or appropriate adult if the developmentally disabled subject's dysfunction triggers fits of aggression or other unstable emotions and if prescribed medications are required. Any information provided will be documented in the written report, to include:
 - a. If the subject is prescribed medication, type of medication, and when was it last taken.
 - b. Does the subject regularly comply with medication.
5. In accordance with Section 13.2.2A, developmentally disabled suspects will be advised of their constitutional rights (Miranda Warning).
6. When advising developmentally disabled subjects of their constitutional rights, detectives will speak slowly and clearly and ask subjects to explain their response rather than simply answer yes or no.
7. In all cases, a second detective will be present to witness subjects being advised of their constitutional rights.
8. In all cases, a second detective will be present during the interrogation process.

9. Detectives will be required to document the details of the interrogation.
10. During the course of the interrogation, detectives should:
 - a. Realize the developmentally disabled are easily persuaded.
 - b. Use simple language and speak slowly and clearly.
 - c. Use concrete terms and ideas.
 - d. Avoid questions that tell the subject the answer detectives expect.
 - e. Repeat questions from a slightly different perspective to ensure the subject understands the line of questioning.
 - f. Avoid leading or suggestive questions.
 - g. Minimize questions that require a simple yes or no response.
 - h. Realize developmentally disabled are eager to please and often respond to questions in a manner they think pleases the detective.
11. A supervisor will be required to monitor all interrogations of any person considered to be developmentally disabled.
12. Detectives will attempt to conduct the interrogation during reasonable hours and within a reasonable period of time, unless exigent circumstances dictate otherwise.
13. Detectives will ensure adequate breaks are provided and any apparent needs met.
14. Developmentally disabled subjects will not be left unattended in an interview room. Subjects will be physically monitored the entire time they are in BSO's custody or control.
15. Confessions will be tape recorded if possible. Recordings will include an introduction stating the date, time, location, case number, persons present, and recognition that the statement is being taken from a developmentally disabled person.

E. Post Confession Analysis:

1. Any confession offered by developmentally disabled will undergo a Post Confession Analysis (PCA) by the unit supervisor. The PCA will be conducted prior to subjects being charged with the crime they admitted to.
2. Any confession offered by developmentally disabled subjects that lacks any corroborating evidence will undergo a review by the Post Confession Analysis Team (PCAT) prior to them being charged with the crime they admitted to.
3. The PCA review process, whether conducted by the unit supervisor or PCA team, will evaluate the validity of the confession using, at a minimum, the following criteria:


- a. Was the appropriate adult notified and given the opportunity to be present during the interrogation.
 - b. Did developmentally disabled subjects understand their constitutional rights.
 - c. Was the developmentally disabled subject able to provide an accurate description of the major and minor details of the crime and its scene.
 - d. Were there any unusual or unique elements to the crime or its scene that were not publicly known that the developmentally disabled subject was able to provide.
 - e. Did the developmentally disabled subject provide information that led to the discovery of evidence previously unknown.
 - f. What type of evidence exists that positively links the subject to the crime.
 - g. How conclusive is the evidence.
 - h. Would there be any logical explanation concerning why evidence might not conclude that the confessor is the suspect.
 - i. How credible is the witness testimony.
 - j. Are the witness accounts consistent with the subject's account of what happened.
 - k. Were the witness identifications done within proper policy and procedure and all photographic line-ups developed using Standard Operating Procedures.
 - l. Were leading or suggestive questions avoided as much as possible.
 - m. Was the interrogation process conducted within a reasonable duration of time and during reasonable hours.
 - n. Were adequate breaks provided and apparent needs of the developmentally disabled subject met.
4. Upon completion of the PCA, a determination will be made whether to charge the developmentally disabled subject with the crime or release the subject pending further investigation. This decision will be based on the credibility of the confession offered and any corroborating evidence.
 5. Prior to releasing the subject, the reviewing supervisor or PCA team will take into consideration any apparent factors that might lead them to believe the subject may be mentally ill and the subject is a threat to the subject or others. In such cases, a psychiatric evaluation will be sought.
 6. If released, the subject will be released to an appropriate adult.

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- F. **Collection of Evidence From Developmentally Disabled:** The use of any consent to search form will be prohibited when dealing with developmentally disabled subjects. Unless exigent circumstances exist, a search warrant will be required for the collection of any serological, hair, or fiber evidence collected directly from the subject.
- G. **Transporting/Booking of Developmentally Disabled:**
1. Detectives will be responsible for notifying the transportation or booking deputy that the prisoner is developmentally disabled. Any medications or other apparent needs will be brought to the attention of the transportation or booking deputy upon transfer of the prisoner.
 2. Detectives and Booking staff will personally notify Classifications and medical staff that the prisoner may be developmentally disabled, so appropriate placement and medical arrangements can be made.
 3. If the subject meets Baker Act criteria, detectives will comply with Section 10.18.
- H. **Training Requirements:**
1. All detectives will receive yearly specialized training to assist them in recognizing the following characteristics of developmentally disabled persons:
 - a. May not communicate at age level which may include having a limited vocabulary; having a speech defect; having difficulty understanding or answering questions; not possessing skills to read or write; and mimicking responses or answers.
 - b. May not behave at age level which may include preferring younger persons (children) for friends; having inappropriate interactions with peers of the opposite sex; being easily influenced by and anxious to please others; exhibiting a low frustration tolerance; and exhibiting signs of difficulty in making change, using the telephone, telling time, etc.
 - c. May not understand consequences of situations which may include not recognizing the seriousness of the situation; may not reflect on actions and acts impulsively; and trying to please others and disregarding legality of actions.
 - d. May not behave appropriately during police custodial situations which may include not understanding their rights; being overly willing to confess; having difficulty recalling facts or details of the offense; being overwhelmed by police authority; not wanting their disability noticed; and telling what they think others want to hear.
 2. All detectives will receive annual specialized training on how to properly question developmentally disabled suspects to avoid leading questions that may prompt them to make false confessions. This training will also include:
 - a. How to recognize warning signs of a false confession.

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- b. How to formulate questions that will help corroborate a confession when there is no evidence or credible witness testimony linking the suspect to the crime.
- c. How to identify psychological factors that influence innocent suspects to confess falsely.
- d. How to recognize certain personalities and characteristics that are more prone to suggestibility.



SHERIFF KEN JENNE

NOTE: File this General Order within the current Policy and Procedures Manual.