

Detective Division Special Order	Date of Issue 09 April 2007	Effective Date 12 April 2007	No. 07-05
Subject Treatment of Witnesses	Amends		
Related Directives	Rescinds D.D.S.O. 06-01 D.D.S.O. 06-01 A		

I. PURPOSE

This order:

1. memorializes the uniform standard of treatment of witnesses.
2. order defines the term "Witness Advisory".
3. establishes when a Witness Advisory must be provided and documented.
4. establishes the new module for recording the giving of the Treatment of Witness Advisory in the C.H.R.I.S. Reporting System.
5. delineates the procedures for entering the information in C.H.R.I.S.

II. POLICY

A. All police action regarding witnesses shall be in accordance with the Fourth Amendment. The Fourth Amendment requires probable cause for the police to seize a person, or to detain a person in a police facility, against the person's will. There is no probable cause to seize a person or detain a person in a police facility solely because the person is a witness. A witness shall be free to leave.

B. Conditions for witnesses at police facilities shall be reasonable. Members shall ensure, to the extent reasonably possible, that where a witness is in a Police Facility, the witness's reasonable needs for food, water and bathroom facilities shall be adequately addressed and the witness's need and desire for security, privacy and confidentiality shall be protected.

III. LAW

Fourth Amendment objective test: The test for determining whether a person, including a witness, has been seized within the meaning of the Fourth Amendment is whether, in view of all the circumstances, a reasonable person would have believed that he/she was not free to leave. Members shall not create or perpetuate circumstances under which a reasonable person in the witness's position would believe that he/she was not free to leave.

IV. DEFINITIONS

- A. **"Witness Advisory"**- a statement by an officer which clearly advises the witness that he/she is free to leave, to the effect that:
1. you are here as a witness because we need your help to solve a crime;
 2. we are asking you to stay here as long as is reasonably necessary to help solve the crime;

3. you are free to leave when you want;
4. we depend upon the help of witnesses like you to solve crimes and prevent additional crimes;

NOTE: Depending upon the circumstances, the wording of the Witness Advisory need not be these exact words or in the exact order presented, but must under all circumstances include the clear statement to the witness that: **“You are free to leave when you want.”**

- B. **Police Facility** - a Chicago Police Department facility where the follow-up investigation of a crime is being conducted by Chicago Police Department members, usually, but not always the Detective Division Area.

V. DETECTIVE RESPONSIBILITIES

Detectives investigating crimes will:

- A. Ensure the comfort and overall well-being of the witness while in the Police Facility to the extent reasonably possible, including access to bathroom facilities, telephone, food and drink on a reasonable basis.
- B. Ensure the security and privacy of the witness while in the Police Facility to the extent reasonably possible.
- C. Ensure the integrity of the investigation, including the integrity of the witness's accounts and statements, to the extent reasonably possible.
- D. If the circumstances surrounding a witness in a Police Facility are such that a reasonable person in the witness's position would have believed that he/she was not free to leave, then the Detective must inform the witness that the witness is free to leave.
- E. Document on the General Progress Reports the circumstances of voluntariness, including, if a witness advisory was provided to the witness, the date and time, the name of the detective by whom it was provided, and who else was present during the Witness Advisory. *See* Section IX for circumstances which may relate to voluntariness.

VI. PRESUMPTION OF VOLUNTARINESS

- A. Providing a Witness Advisory shall create a presumption that the witness's statements and cooperation are voluntary.
- B. The absence of a Witness Advisory shall not create a presumption against voluntariness. Instead, if there is no Witness Advisory, voluntariness shall be assessed by whether the circumstances surrounding the witness were such that a reasonable person in the witness's position would have believed that he/she was free to leave.

VII. WITNESS COOPERATION ENCOURAGED

Nothing in this Order shall preclude a detective from attempting to persuade a witness to stay at the Police Facility and cooperate with the investigation, provided that the detective does not prevent the witness from leaving the Police Facility when the witness wants to leave.

VIII. ACCESS TO WITNESSES

For purposes of ensuring the security and privacy of the witness while in the Police Facility and ensuring the integrity of the investigation, a detective may:

- A. deny others access to the witness in person or by telephone. When a person appears at the Police Facility claiming to be a family member, friend or lawyer seeking access to the witness, the law does not require that the detective grant that request, or that the detective notify the witness that the family member, friend or lawyer is seeking such access, although the detective in his/her discretion may do so when appropriate.
- B. temporarily limit telephone access of the witness, but only for so long as is necessary to protect the security and privacy of the witness and the integrity of the investigation;
- C. place the witness in a locked interview room *provided* that the detective ensures that the witness has reasonable access to bathroom facilities, food and water and that the witness's right to leave is not denied. The detective may do this by either remaining in close proximity to the room or ensuring that other police personnel who are aware of the witness's presence remain in close proximity to the room.

NOTE: When a detective places a witness in a locked interview room, the detective must inform the witness that he/she has the right to leave upon request.

IX. CIRCUMSTANCES RELATING TO VOLUNTARINESS

The following are circumstances that the courts have considered in assessing whether a reasonable person would believe that he/she is free to leave, but no single factor is determinative and this list is not meant to preclude other relevant factors from being considered:

- A. the setting of the interview, such as whether it is in a Police Facility;
- C. how the witness came to the attention of the police, such as whether the witness affirmatively contacted the police;
- D. the method of how the witness was transported to the Police Facility, such as whether the witness came to the Police Facility on his/her own initiative without the aid of the police;
- E. whether the witness was required to appear at a particular time;
- F. the length of the interview;

- G. whether the witness was granted requests for breaks and provided with reasonable access to bathroom facilities, food and drink;
- H. the focus of the questioning on someone other than the witness;
- I. whether the witness was threatened or pressured or whether the police appealed to the witness's sense of duty and helpfulness in solving and preventing crimes;
- J. whether the witness had self-interest in cooperating, such as a witness who seeks a deal on another charge against that witness in exchange for cooperation;
- K. whether the witness is the victim or a close family member of the victim.

X. WITNESS ADVISORY MODULE WITHIN THE C.H.R.I.S. REPORTING SYSTEM

Effective 0001 hours, 01 December 2006, a new Treatment of Witness Advisory module will exist in the C.H.R.I.S. Reporting System. Whenever a witness is added in a Supplementary Report, a screen will appear, asking if the Treatment of Witness Advisory was given to the witness. The detective completing the report must reconcile this screen with either a "yes" or a "no" and complete the related fields before he or she may proceed with the report.

XI. PROCEDURES

- A. When completing a Supplementary Report in C.H.R.I.S., when entering the last name or descriptors of a witness, a dialogue box entitled "Witness Window" will appear on the screen.
- B. If the Treatment of Witness Advisory was given to the witness being entered, the reporting detective will select "Yes" from the drop-down field in the box. The detective will then be required to complete the "Date/Time Given" and "Given By" fields before selecting the "Done" button. The system will not allow the reporting detective to proceed to the next step in the reporting process until this procedure is completed.
- C. If the Treatment of Witness Advisory was not given to the witness being entered, the reporting detective will select "No" from the drop-down field in the box. The reporting detective must then enter the reason as to why the advisory was not given, by typing a brief explanation in the "Why Not?" field of the box. This is a free-form box which has a maximum input of 255 characters, allowing for a brief description.
- D. After entering the necessary information in the "Why Not ?" field, the detective will click the "Done" button to close the box. The system will not allow the reporting detective to proceed to the next step in the reporting process until this procedure is completed.
- E. None of the above entries are visible in the current version of the printed Supplementary Report.

XII. SUPERVISORS RESPONSIBILITIES

- A. Because the Witness Advisory module is a mandatory step anytime a witness is entered in the C.H.R.I.S. Reporting System, all reports submitted for approval that contain witness entries will be checked either "yes" or "no" for the Witness Advisory.
- B. If a supervisor wishes to verify that a Treatment of Witness Advisory was given, the supervisor will open the report in C.H.R.I.S., click on the last name of the witness, then press the tab button on the computer keyboard. The Witness Window will then appear.

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