Interview and Interrogation

Course
Law Enforcement II

Unit XIV
Interview and Interrogation

Essential Question
What are the Constitutional rights afforded an individual during interviews and interrogations?

TEKS
§130.294(c)(14)(A)(B)

Prior Student Learning
Bill of Rights and Arrest, Search and Seizure

Estimated Time
4 hours

Rationale
Nothing can make or break a case in the courts like improper interviews and interrogations. Students need to understand the constitutional rights afforded to every individual during police interviews or interrogations.

Objectives
The student will be able to:
1. Define key terms associated with interview and interrogation
2. Discuss legal requirements for an interview
3. List the types of people who might be interviewed
4. Describe strategies for interviews and interrogations
5. Examine the factors that make an interrogation successful
6. Explain the five stress responses
7. Differentiate between adult and juvenile guidelines for interview and interrogation
8. Demonstrate interview and interrogation technique
9. Simulate interviews of rape victims, child witnesses, and child victims

Engage
Prior to class do an Internet search two videos using the following key terms:
- Gastonia Officer Shot Witness Interview Part 2 (referred to as video clip 1 below)
- Nathan’s Interrogation Video (referred to as video clip 2 below)
Show video clip 1 and have the students listen carefully to the types of questions being asked and the types of responses sought from the witness.

Then show video clip 2 and have the students compare and contrast the style of questions used in the interview verses the interrogation. Observe the behaviors of the persons being questioned and discuss their demeanor.

As a class discuss the differences between the two questioning techniques. Use the Discussion Rubric for assessment.

Key Points
I. Key terms
   A. **Statement** – a broad term meaning simply an oral or written declaration or assertion
   B. **Admission** – a statement or acknowledgement of facts by a person that tends to incriminate that person, but which is not sufficient itself to establish guilt of a crime
   C. **Confession** – a statement or acknowledgement of facts by a person establishing that person’s guilt of all elements of a crime
   D. **Interview** – the questioning of a subject who is not suspected of
criminal activity at the time of the encounter. A person being interviewed may become a suspect. Interviews are used as a tool to prepare for interrogation.

E. **Interrogation** – the questioning of a person that has been stopped or arrested, and who is suspected of criminal activity.

II. Legal requirements for an interview
A. Whenever a person is in custody, the reading of rights is necessary
   1. *Miranda v. Arizona*
      a. Miranda was arrested at his home and taken to a police station for questioning in connection with a kidnapping and rape.
      b. He was 23 years old and poor, and had completed only half of the ninth grade.
      c. Officers interrogated him for two hours, resulting in a written confession.
      d. Miranda was convicted of the kidnapping and rape.
      e. The issue was whether police must inform a person subjected to custodial interrogation of his or her constitutional rights involving self-incrimination and the right to counsel prior to questioning.
      f. The Supreme Court’s decision
         i. Was based on the 5th and 6th amendment requirements.
         ii. Stated that evidence obtained by the police during custodial interrogation cannot be used in court unless the subject is informed of the following rights prior to interrogation:
            a) Miranda Warning (rights)
               1) The right to remain silent.
               2) Any statement made may be used in a court of law.
               3) The right to have an attorney present during the questioning.
               4) If the subject cannot afford an attorney, one will be appointed for him or her prior to questioning.
               5) The right to terminate the interview at anytime.

III. Types of people to be interviewed
A. Victims
   1. Determine if an offense has occurred.
   2. Select the correct offense title.
   3. Identify the suspect(s) as fully as possible.
   4. Obtain any information that might be pertinent to a follow-up investigation.
B. Witnesses (the same criteria as victims).
C. Suspects – to gather information for the interrogation

IV. Strategies for interview and interrogation
   A. Know what information you have and what information you need to obtain from the suspects
   B. Establish rapport by asking questions unrelated to the case
   C. Keep subjects talking and allow them to tell their own stories
   D. Direct questions toward establishing the validity of witness/suspect statements
   E. Direct questions toward establishing the facts of the incident
   F. Confront suspects with any discrepancies with known facts
   G. Avoid closed (yes or no) questions – instead have subjects explain their answers
   H. Avoid rapid fire questions to allow subjects time to answer
   I. Avoid leading or suggestive questions
   J. Control your emotions, be patient, or pass the subject onto another officer

V. Interviewing child witnesses and victims
   A. Plan the interview
      1. Proper preparation includes giving the child the choice of when and where to have the interview, the gender of the interviewer, and who will accompany him or her
         a. Location
            i. The child needs to feel safe and comfortable
            ii. Child-friendly décor without being distracting
            iii. A private area devoid of noise
            iv. Age appropriate play materials
         b. Timing
            i. Take the child’s routines into account when scheduling the interview
            ii. Avoid embarrassing them by taking them out of class unless it is necessary
         c. The number and duration of interviews
            i. A single interview is always preferred
            ii. Balance the need for justice with the needs of the child
            iii. Give the child an approximate idea of how long the interview will last
            iv. Discuss whether breaks will be needed
      2. Tailor the interview to the child – consider the child’s
         a. Age and gender
         b. Race, culture, religion, ethnicity, and language
         c. Cognitive and linguistic abilities
         d. Present emotional state
         e. Mental and physical health
         f. Family composition and living arrangements
         g. Nature of his or her relationship with family members
         h. Daily routines – bedtimes, meals, baths, etc.
i. Sources of stress
j. Previous involvement with child services
k. Details of previous actions taken and support

3. The influence of the interviewer is important, the child needs support throughout the interview

B. Conduct the interview
1. Building rapport
   a. Is very important, never omit it
   b. Overcome initial hesitation, unease, or mistrust
   c. Gain understanding of a child’s communication skills and cognitive/linguistic development
   d. Reassure the child that it is not his or her fault

2. Atmosphere of the interview
   a. Age, attention span, and rapport building determine the pace
   b. Speak slowly and clearly while allowing for pauses
   c. Speak in a normal tone
   d. Look for fatigue or the need for a break
   e. Begin with general questions as a warm-up
   f. Make the child feel safe

3. Ground Rules
   a. The child talks and the interviewer listens
   b. The interviewer was not present at the event
   c. Tell the child, “Even if you think I know, tell me anyway”
   d. Then tell child it is okay to ask the interviewer to re-word or re-ask a question
   e. Do not give the child answers
   f. Interviewer mistakes can be corrected

4. Telling the Truth
   a. Make the child aware of the importance of telling the truth
   b. Let the child tell the story in his or her own words
   c. Discuss the difference between the truth and lies, and give concrete examples

5. Closure
   a. Summarize the child’s statements
   b. Check with the other interviewers to see if any additional questions are needed
   c. Ask the child if he or she has any questions
   d. Inform the child of the next step in the process
   e. Provide him or her with contact information
   f. Thank the child for his or her time and effort
   g. Give the child time to compose himself or herself

C. Juvenile Guidelines
1. Oral statements
   a. Are admissible under Family Code (FC) 51.095 if the statement tends to establish guilt, such as the findings of secreted or stolen property or instruments used in the crime
      i. The statement is res gestae (made spontaneously
and instinctively)  
ii. The statement is made in open court  
2. Written statements  
a. Are admissible under FC 51.095 if the child is in custody of an officer and, before making the statement, had been taken to a magistrate with a statement packet  
i. The magistrate gives the child the Miranda warning  
ii. The officer takes the written statement from the juvenile, but it must be in front of the magistrate  
iii. The juvenile voluntarily waives the Miranda rights in the presence of the magistrate  
iv. The officer returns the juvenile to the magistrate with the unsigned statement

VI. Interviewing sexual assault victims  
A. First contact with the victim  
1. Clearly identify yourself  
2. Establish rapport  
a. Use a calm, professional, and confident manner  
b. Explain what is going to happen  
c. Express personal regret  
d. Assure the victim that the assault was not his or her fault  
e. Reassure the victim’s safety  
f. Assure him or her that you are competent, experienced, and professional  
B. Contact with the victim  
1. Never touch, cuddle, or unduly scrutinize the victim’s body  
2. Offer the victim choices  
3. Lean toward the victim in an attentive manner  
4. Adjust your position if the victim is uncomfortable  
5. Create a sense of privacy and remove the victim from the scene  
6. Offer support services  
7. Never leave the victim alone  
C. Assess the victim  
1. Note the victim’s physical condition  
2. Note the victim’s physical posture and emotional state  
3. Note the victim’s mental acuity  
4. Remember that the victim’s reactions may not seem normal or appropriate, such as smiling, laughing, or seeming disinterested  
D. Allow time for the medical examination  
1. Before the medical examination, interview the victim as briefly as possible, obtaining only facts (who, what, when, where, how) and any other necessary details  
2. After the medical examination, allow time for the victim to change clothes and get comfortable  
E. Conduct the interview  
1. Act sympathetic, calm, and professional
2. Create a relaxed and comfortable atmosphere
3. Maintain privacy, encouraging family and friends to wait in another room
4. Reassure the victim that he or she is in control and can leave at anytime
5. Give the victim plenty of space
6. Protect the victim’s privacy
7. Obtain the victim’s consent for recording
8. Allow the victim to vent
9. Lead the victim step-by-step through the assault
10. Do not stop and fill in the gaps – instead, note the gaps and return later
11. Reassure the victim regularly
12. Use familiar terminology
13. Be sure to ask
   a. Did the victim know the offender?
   b. Did the offender have and maintain an erection?
   c. Did the offender insert a foreign object?
14. Ask questions about the offender’s verbal and sexual behavior
15. Ask the victim to report any personal items that are missing
16. Leave the following question for last (if relevant): Why did the victim wait to make the report?
17. Ask the victim about his or her sexual behaviors and hygiene
18. Explain HIV testing
19. Explain what to expect at each step of the process

VII. Factors that make an interrogation successful
   A. Prepare for the interrogation
      1. Setting and environmental concerns
         a. It is crucial for the interrogator to control not only the physical environment of an interrogation, but also the subject being interrogated and the topic of discussion
         b. The setting of an interrogation is also very important
            i. The interrogation area should be a small, empty room with minimal furniture and no distractions
            ii. The room should be sound-insulated to avoid unwanted noise
            iii. You may only have one shot at a confession
      2. Knowledge of case facts
         a. It is essential that the interrogator know as many facts about the case as possible, including how the crime was committed
         b. Many times if you can tell the suspect how the crime was committed, they will tell you the reason it was committed
         c. This technique is somewhat risky because the interrogator will lose credibility with the suspect if he or she provides facts that have not yet been proven
   3. Familiarity with the suspect’s background
a. Knowledge of the suspect's history is important in an interrogation
b. If you understand a suspect’s feelings, attitudes, and personal values, you stand a greater chance of success
c. Oftentimes suspects will confess because of emotions or defend themselves with logic
d. Understanding the suspect’s goals and needs helps you be more successful at obtaining a confession

B. Determine whether to conduct an interview or interrogation
   1. Interviews
      a. Occur prior to an interrogation
      b. Are used by investigators to learn information about suspects, including their fears, concerns, and attitudes, which may later be useful in the interrogation
      c. Consist of questions about the subjects themselves, the crime, and others that might have been involved
      d. Help investigators identify verbal and nonverbal behaviors exhibited by the suspects
      e. Help build rapport and establish common ground
      f. Used to determine if a need for an interrogation exists
      g. Are used to gather information
   2. Interrogations
      a. Processes that bring the investigation to a close
      b. Statements obtained during the interview are now used to confront the suspect(s)
      c. Controlled by the investigators – they do not take notes, since they should have obtained all the information needed during the interview
      d. Their ultimate goal is to obtain a truthful admission or confession

C. Document the confession
   1. Take care of the details prior to beginning the interrogation
   2. The interrogators risk being unsuccessful if they have to stop to take care of paperwork, change audio tapes, etc.
   3. Audio and video recordings should always occur during an interrogation (oral statement)
   4. Have the suspect write a statement and sign so that if the audio and video fail, there is still evidence admissible in court (written statement)

VIII. Legal requirements for conducting interrogations
   A. It is the duty of the officers to warn the suspect who is in custody of his or her rights prior to obtaining a statement
   B. Oral Statements (for the use of oral confessions see Criminal Code of Procedure (CCP) Article 38.22 section 3a)
      1. A res gestae statement is admissible
      2. Used to establish guilt
      3. Made in open court
   C. Written Statements (for the use of written confessions see CCP
**Article 38.22 section 1 and 2)**

1. Record information from the person involved
2. Make notes during the interview – review and correct them with the suspect
3. Write or type the statement in the suspect’s own words
4. Enter the statement as evidence

**IX. Qualifications of an interrogator**

A. Patient – long suffering, unperturbed by obstacles, delays and failures
B. Self-Confident – settled state of mind; feeling sure, calm, and self-assured without cockiness
C. Adaptable – adjusting to the situation or person being interrogated
D. Corrected attitude – open-minded, unprejudiced, sympathetic, and understanding
E. Alert – quick to understand and act; to perceive important, minute details and take advantage of them
F. Courteous and tactful – polite, sits quietly and listens

**X. Kinetic interview and interrogation**

A. No single behavior by itself proves anything
B. Deceptive behaviors are diagnosed in clusters (two or more signals appearing at the same time)
C. Behaviors that are significant are those that are inconsistent when stimuli are repeated
D. Human communication is 65% body language, 7% verbal, 12% voice quality, and 16% miscellaneous signals (Hamilton 2001)
E. Signals are easier to decipher when the subject is not in control of his or her communication flow, no prepared line of thought
F. The interviewer must identify a baseline for the subject’s normal behavior and then look for changes
G. Changes in behavior will be timely, about 3–5 seconds after the critical stimulus
H. Deceptions should not be pointed out to the subject
I. Conduct a reality check. Do the facts of the case fit the behavior exhibited?
J. The observing and interpreting of human kinetic behavior is hard work
K. It’s easier for people to control their verbal kinetic signals than their nonverbal signals
L. Deceptive people are 90% more likely to experience speech dysfunction than honest people (Hamilton 2001). Speech dysfunction occurs because the person is unable to maintain a clear line of thought
M. A total lack of body movement is as unnatural as excessive body movement
N. Look for body language that is inconsistent with the suspect’s speech
XI. Stress responses – individuals under stress will react with one of five stress response states

A. Anger
   1. This response is used to gain control. Do not get pulled into a subject’s anger; it results in closure
   2. Forms of anger are covert anger, focused anger, and rage

B. Depression
   1. The opposite form of anger or anger turned inward
   2. Interviewers should empathize with depression and pull out the negative comments
   3. Reactive behavior, person speaks of feeling depressed, health problems, trouble with personal life, etc.
   4. Blames the issue at hand for causing his or her problems

C. Denial
   1. The rejection of reality
   2. When discussing critical areas, deceptive subjects have more frequent occurrences of memory failure than honest people
   3. More than 90% of deceptive behavior is presented in denial (Hamilton 2001)
   4. Symptoms
      a. Memory lapse
         i. In this case, focus the subject’s attention on the inability to recall
         ii. Examples are “I can’t recall,” “I don’t think so,” etc.
      b. Denial flag expressions
         i. May preface a deceptive comment
         ii. Examples are “I have absolutely no reason to lie,” “I’m being straightforward,” etc.
      c. Modifiers
         i. Are used to respond to questions but really devaluate the answer
         ii. Examples are “possibly,” “hardly ever,” “generally,” etc.
      d. Guilt phrases
         i. Suggest guilt
         ii. Examples are admitting to similar crimes, agreeing they are suspects, etc.
      e. Stalling Mechanisms
         i. Create time to formulate an answer
         ii. Used because the suspect does not have a clear line of thought

D. Bargaining
   1. The disguise of reality
   2. Examples are complaints for sympathy, minimizing, religious remarks, and excessive courtesy

E. Acceptance
   1. Submission to the truth
   2. Punishment statements and third person statements are common
XII. Interrogation Strategies
   A. Emotion dominant
      1. Slow and chronological
      2. Personalize everything, building the case one piece at a time
   B. Sensory dominant
      1. Move quickly and get to the point
      2. Be objective and do not bluff
   C. Logic dominant
      1. Logical and accurate
      2. Link each piece of evidence and expect little feedback
   D. Ego dominant
      1. Feed the ego
      2. Blame everyone else
      3. Use case facts only to impeach

XIII. Confession Signals
   A. Stop talking and start listening
   B. Show acceptance and give the subject a way out
   C. Use common sense and do not promise things over which you have no control
   D. Remember to be courteous and patient

Activities
1. **Mock Interview.** Select a student to play the part of the child witness. Give the student the Witness Information handout to look over. Select a student to play the part of the investigator. Have this student tell you the steps he or she would take to prepare the interview. The investigator will then simulate an interview with the child witness. Use the Mock Interview Rubric to assess the interview. Different scenarios can be created to simulate interviews of a child victim and sexual assault victim. Use the following materials as needed:
   - Interviewing Child Witnesses and Victims computer-based presentation
   - Interviewing Sexual Assault Victims computer-based presentation
   - Do's and Don'ts of Interviewing a Sexual Assault Victim handout
   - Mock Interview Rubric (Sexual Assault).

2. **Mock Interrogation.** Select a student to play the role of the accused. Select another student or a team of students to play the role of the interrogator. Give the students playing the suspect and the interrogator(s) the offense details using copies of the Interrogation Information handout. Allow the suspect to create any additional facts as needed. Use the Mock Interrogation Rubric for assessment.

Assessments
Interview and Interrogation Exam and Key
Mock Interrogation Rubric
Mock Interview Rubric