

## RIGHTS WARNING PROCEDURE

### A. **THE WARNING**

Inform the suspect/accused of:

1. Your official position.
2. Nature of the offense(s).
3. The fact that he is a suspect/accused.

Then advise the suspect/accused of his rights as follows:

"BEFORE I ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS."

1. YOU DO NOT HAVE TO ANSWER MY QUESTIONS OR SAY ANYTHING.
2. ANYTHING YOU SAY OR DO CAN BE USED AS EVIDENCE AGAINST YOU IN A CRIMINAL TRIAL.
3. (FOR PERSONNEL SUBJECT TO THE OCMJ) YOU HAVE A RIGHT TO TALK TO A LAWYER BEFORE OR AFTER QUESTIONING OR HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. THIS LAWYER CAN BE A CIVILIAN LAWYER YOU ARRANGE FOR, AND IF NECESSARY, YOU PAY FOR, OR A MILITARY LAWYER DETAILED FOR YOU AT NO EXPENSE TO YOU. ALSO, YOU MAY ASK FOR A MILITARY LAWYER OF YOUR CHOICE BY NAME AND HE WILL BE DETAILED FOR YOU IF HIS SUPERIORS DETERMINE HE IS REASONABLY AVAILABLE.
3. (FOR CIVILIANS NOT SUBJECT TO THE OCMJ) YOU HAVE A RIGHT TO TALK TO A LAWYER BEFORE OR AFTER QUESTIONING OR HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. IF YOU CANNOT AFFORD A LAWYER AND WANT ONE, ARRANGEMENTS WILL BE MADE TO OBTAIN A LAWYER FOR YOU.
4. IF YOU ARE NOW WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION, WITH OR WITHOUT A LAWYER PRESENT, YOU HAVE A RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME OR SPEAK WITH A LAWYER BEFORE ANSWERING FURTHER, EVEN IF YOU SIGN A WAIVER CERTIFICATE.

Make sure the suspect/accused fully understands his rights.

### B. **THE WAIVER**

"DO YOU WANT A LAWYER AT THIS TIME?"

*(If the suspect/accused says "yes," stop the questioning until he has a lawyer. If the suspect/accused says "no," ask him the following question).*

"AT THIS TIME ARE YOU WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION?"

*(If the suspect/accused says "no," stop the interview and have him read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him read and sign the waiver section of the waiver certificate on the other side of this form).*

### C. **SPECIAL INSTRUCTIONS**

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he has stated that he understands his rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

#### PRIOR INCRIMINATING STATEMENTS

- (1) If the suspect/accused has made spontaneous incriminating statements before being properly advised of his rights, he should be told that statements made at that time cannot be used against him and do not obligate him to answer further questions.
- (2) If suspect/accused was questioned as such previously without being properly advised of his rights, he should be told that statements made at that time cannot be used against him and do not obligate him to answer further questions.

*NOTE: If (1) or (2) apply, the fact that the suspect/accused was advised accordingly should be noted on the waiver certificate and initialed by the suspect/accused.*