Miranda and Involuntary Confessions

If a statement or confession is "involuntary," it can't come in at trial.

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Under the Fifth Amendment, suspects cannot be forced to incriminate themselves. And the Fourteenth Amendment prohibits coercive questioning by police officers. So, confessions to crimes that are coerced, or involuntary, aren't admissible against defendants in criminal cases, even though they may be true.

In order to protect defendants from the pressures inherent in police questioning, courts have required, among other things, that officers inform defendants of their right to remain silent and right to have an attorney present during questioning. Advising defendants of these *Miranda* rights is supposed to ensure that defendants make statements with a full understanding of their rights and the consequences of waiving those rights.

But even when officers give *Miranda* warnings (and especially when they don’t), police can overstep their bounds by questioning defendants in ways that are too harsh or too unfair. When this happens, the prosecution usually cannot use the defendant’s statement (the involuntary or coerced confession) in court.

(For more on the effects of illegal interrogations, see our [article on statements obtained through *Miranda*violations](https://www.nolo.com/legal-encyclopedia/statements-obtained-police-violate-miranda.html).)

Free Will

The legal standard for an involuntary confession is whether law enforcement officers used tactics that undermined the suspect’s ability to exercise free will. This is a high standard and a difficult one for a defendant to meet. The classic case of an involuntary confession is a police officer questioning a suspect who is in pain and in the intensive care unit after suffering serious injuries; the officer continues the interrogation despite the defendant’s request for an attorney.

The key to establishing an involuntary confession is showing that some sort of improper law enforcement tactic overcame the suspect’s free will. Of course, if a police officer [tortures](https://www.nolo.com/legal-encyclopedia/evidence-obtained-through-torture.html) someone or locks a person in a room without food or water for days at a time, then it's pretty obvious that the confession has been coerced.

**VARIATIONS ON A THEME**

Though many critical rights come from the U.S. Constitution, states have their own constitutions and statutes. State law often provides protections that are similar, if not identical, to the those the federal Constitution gives. But [occasionally state law offers expanded rights](https://www.nolo.com/legal-encyclopedia/your-states-laws-might-offer-more-protections.html). Keep this potential expansion in mind when reading about general criminal law principles. It could be, for example, that evidence that would be admissible under the federal Constitution is inadmissible under state law.

In modern times, police usually use less brutal tactics, but involuntary confessions can still occur. In determining whether the suspect’s will was overcome, courts consider all the circumstances surrounding the questioning. They pay particular attention to the following factors:

* the location of the questioning (the police station is usually considered more intimidating)
* the length of the interrogation (the longer, the more coercive)
* whether officers gave *Miranda*warnings
* whether police honored the suspect’s requests for a lawyer or to remain silent
* whether the defendant was allowed contact with family members or an attorney
* who initiated the conversation (a defendant that freely interacts with police will have a harder time showing coercion)
* the defendant’s age or immaturity
* the defendant’s health or physical state, and
* the defendant’s experience with the criminal justice system.

Consider a 15-year-old who has no previous police experience and confesses after being hauled into the station; officers didn’t provide *Miranda* warnings and held the minor incommunicado for several hours. That defendant has a much better claim of coercion than a 30-year-old with a long rap sheet who admits to a crime while being interviewed by police at home.

* + Police Action

A confession is coerced only if there is some inappropriate action on the part of the police. No matter what state the defendant is in, the confession isn’t involuntary unless the police strong-armed him or her in some way. Examples of coercive tactics include:

* depriving the defendant of food, water, or use of the bathroom
* threats (although threats to carry out the law, such as threatening to arrest a codefendant, are usually fine)
* promises of leniency
* kicking, striking, or otherwise getting physical with the suspect, and
* interrogating the suspect at gunpoint.

Generally, police are permitted to lie to suspects. For example, a police officer saying that certain evidence exists when it doesn’t hasn’t legally coerced any subsequent confession. (For more information on police tactics, see [Tactics Police Use to Get a Confession](https://www.criminaldefenselawyer.com/resources/criminal-defense/defendants-rights/tactics-police-use-get-a-confession).)

Intoxication, Mental Illness, and Physical Health

Even if the defendant is in poor mental or physical health or intoxicated, a court won’t find any confession involuntary unless there is some evidence that the suspect’s thinking is impaired. Merely being on drugs or suffering from physical or mental problems isn’t enough—the condition must affect the defendant’s ability to think clearly. However, the court will consider the defendant's physical and mental state and any use of intoxicating substances in deciding whether the defendant exercised free will in confessing.