

Policy 1207



Subject	
YOUTH INTERROGATIONS	
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By Order of the Police Commissioner

POLICY

It is the policy of the Baltimore Police Department (BPD) to safeguard and respect the constitutional rights of Youth through acknowledgement of and accommodations for the unique legal and practical considerations that apply when conducting Interrogations of Youth. All Youth shall be advised of their constitutional rights prior to Custodial Interrogation. Members shall use the Explanation and Waiver of Rights for Youth, Form 68 (Appendix A), to advise Youth of their constitutional rights, unless it is impractical (see note on page 7 for these limited circumstances).

CORE PRINCIPLES

Constitutional Enforcement. Statements by suspects and witnesses are only lawful if they are knowingly, voluntarily, and intelligently made. The BPD is dedicated to preserving all persons' constitutional right to silence and right to counsel. As people in Custody are not free to leave on their own, protecting these rights requires additional precautions when conducting Custodial Interrogations. Consistent with *Miranda v. Arizona*, before questioning a person in police Custody, they must be told of the Fifth Amendment right not to make any self-incriminating statements, including the right to remain silent, and the right to an attorney and that anything they say can be held against them. The individual must then be asked and confirm that they voluntarily waive these rights. The manner in which a person is Interrogated must respect the need to ensure that only voluntary statements are obtained and must conform to guidelines established under state and federal law.

Special Considerations for Youth. A Youth's age, experience, education, background, and intelligence, may all impact the Youth's capacity to understand the warnings given to them, the nature of their Fifth Amendment rights, and the consequences of waiving those rights. Youth may be especially vulnerable to the pressures of an Interrogation, which may cause them to provide involuntary or even false confessions. Interrogation tactics that may not be considered coercive when applied to adults may be coercive when applied to Youth. Even in situations in which a Youth may knowingly, voluntarily, and intelligently, waive their *Miranda* rights, their statements may be involuntary if coercive tactics are used in the Interrogation itself. These differences should be taken into account when a member conducts an Interrogation of a Youth.

The U.S. Supreme Court has cautioned that a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. This is one factor to be considered when determining Custody and a Youth's ability to knowingly, voluntarily, and intelligently waive their constitutional rights.

Courtesy and Professionalism. All Interrogations shall be conducted with courtesy and professionalism, keeping in mind that an Interrogation is a search for the truth and not an exercise in hostility against the suspect.

Integrity and Transparency. Custodial Interrogations (including advisements and completion of waiver forms) shall be video- and/or audio-recorded and carefully documented, unless it is not practicable to do so.

Duty to Provide Medical Attention. Prior to, during, or after a Custodial Interrogation, when there is an obvious injury, complaint of injury, signs of medical distress, withdrawal or overdose, or when any person requests medical attention, members shall immediately render aid consistent with their training and notify their supervisor and the Communications Section. The member shall then request a medic to the scene or transport the person directly to the nearest hospital emergency room.

DEFINITIONS

Custodial Interrogation – Interrogation of a person in Custody.

Custody – A person who is either under formal arrest or would reasonably believe that they are under arrest.

- Circumstances that may make it more likely that a reasonable person would think that they are under arrest include, but are not limited to: being handcuffed, being confronted with evidence of criminal activity, hearing an officer express belief in the person's guilt, being held in a police facility or vehicle, being transported against their will, being Interrogated for an extended period of time, and whether the suspect was ultimately free to leave after the Interrogation.
- Circumstances that may make it less likely that a reasonable person would think that they were under arrest include: being told that they are not under arrest, being told that they are free to leave, being interviewed in an open or clearly unlocked space, not being guarded during pauses in Interrogation, having transported themselves to the Interrogation, being allowed to leave at the conclusion of the Interrogation.

Interrogation – Words or actions on the part of a police officer that are reasonably likely to result in an incriminating statement by the suspect. Interrogation includes direct questioning about a crime as well as indirect questioning involving anything where the officer knows or should know that their words or actions are reasonably likely to result in an incriminating response by the person being Interrogated. Routine booking questions and informing the suspect of charges against them generally are not considered to be Interrogation.

Youth – A person under the age of 18 years old.

GENERAL

1. In order to ensure that questioning is conducted in a constitutional, ethical, and professional manner, a Youth in Custody must be advised of their *Miranda* warnings prior to Custodial Interrogation. As with all persons, it is essential that the Youth who is being Interrogated understands their rights and that it is made clear these rights will be respected.
2. Interrogations of Youth must always follow special guidance for Youth set forth in this policy, regardless of the perceived maturity or comprehension of the Youth.

REQUIRED ACTIONS**Preparing for the Interrogation**

3. Any members conducting any Custodial Interrogation of a Youth must make both video and audio recordings of the Interrogation in its entirety, including the advisement of rights and any breaks. In the event that circumstances do not allow for video recording, audio recording will always be conducted. This includes misdemeanors as well as felonies. Recording practices shall be consistent with the requirements outlined in Policy 1105, *Custodial Interrogations*. Additionally, the Youth shall be informed that the Interrogation is being recorded.
4. Members should be aware of the developmental research that suggests Youth have a lower capacity for self-regulation in emotionally charged contexts, such as interviews or Interrogations, and are more susceptible than adults to Custodial Interrogation pressures. Youth may have difficulty in anticipating the consequences of their actions, and be more susceptible to immediate rewards and peer influence. Members shall refer to departmental training on special considerations for Youth Interrogations.
5. Before beginning an Interrogation of a Youth, the following information should be considered, if known or readily available, to assess the appropriate time, location, and manner in which to proceed with the Interrogation:
 - 5.1. Family situation – parents, legal guardian, or person responsible for Youth.
 - 5.2. Age.
 - 5.3. Education level, including whether a Youth is in special education or has a learning or developmental disability. In order to ascertain this information, the member shall ask the Youth and the Youth's parent/legal guardian, if present, the following questions:
 - 5.3.1. Is the Youth enrolled in school?
 - 5.3.2. What grade is the Youth in? [Member should consider whether the grade is appropriate for the age of the child or if the child is behind in school]
 - 5.3.3. Has the Youth ever received special education services? Has the Youth ever had an IEP [Individualized Education Program] in school?
 - 5.3.4. Has the Youth ever been diagnosed with a disability, including a learning disability? [If so, ask for more information]
 - 5.4. Language spoken.
6. A member who observes any signs that the Youth is experiencing a behavioral health disability, an intellectual disability, or is in crisis shall ask information about the Youth's mental ability, including learning and/or emotional disabilities, as a way to assess how to appropriately proceed with the Interrogation.

NOTE: If a member encounters Youth of any age displaying signs that their ability to understand is impaired by a behavioral health or intellectual disability (including use of alcohol or other drug use, suicidal ideation, mental illness, or a developmental disability), the member shall stop

the Interrogation immediately. Members shall document the reason for terminating the Interrogation, and consult with their supervisor in order to determine whether the Interrogation may resume at a later time.

7. If the member encounters a Youth of any age who has language barriers, deafness/hearing impairment, or illiteracy, the member shall refer to the section titled **Special Circumstances** in Policy 1105, *Custodial Interrogations*, before proceeding with any additional steps in the Interrogation.
8. The member should create an Interrogation plan, develop strategies for establishing rapport, develop age-appropriate questions, and utilize strategies that take into account the Youth's age, education, and prior experience with the justice system.
9. Members who have taken a Youth into Custody and elect to conduct an Interrogation of the Youth in one of the Department's authorized Interrogation/interview rooms shall first contact their immediate supervisor and obtain permission to transport the Youth to the location and use the Interrogation/interview room. The request and authorizing supervisor shall be documented in all subsequent reports. Custodial Interrogations shall be conducted in one of the Department authorized Interrogation/interview rooms, unless it is appropriate to conduct the Interrogation at the Baltimore City Juvenile Justice Center (BCJJC) or unless articulable exigent circumstances exist, which shall be documented in the investigative case file.
 - 9.1. It is appropriate to conduct an Interrogation at BCJJC when a Youth in Custody has been transported to this location.
 - 9.2. Regardless of the location of the Interrogation, it must occur in a location that is outside of the sight and sound of any adult detainee.
 - 9.3. Youth in Custody shall not be left unmonitored in an Interrogation/interview room. A member shall remain inside the Interrogation/interview room with the Youth in Custody or a member shall have visual contact with the Youth in Custody through a window or via electronic monitoring equipment.
10. The following basic amenities must be available to Youth prior to commencing an Interrogation and throughout an Interrogation:
 - 10.1. Reasonable access to toilets and washing facilities,
 - 10.2. Reasonable access to drinking water or other beverage,
 - 10.3. Food if the Youth has not eaten within four hours,
 - 10.4. Privacy during any requested visits with parent/legal guardian and lawyer, and
 - 10.5. Reasonable access to a phone to contact their lawyer, if requested.

Parent/Legal Guardian Notification

11. The member who intends to conduct an Interrogation must immediately make reasonable attempts to provide actual notice to the Youth's parent/legal guardian and notify the Youth's parent/legal guardian of the Youth's location and how to make immediate

in-person contact with the Youth.

12. The member shall notify the parent/legal guardian of the following:
 - 12.1. The Youth is in Custody,
 - 12.2. The Youth's location (including any future destination if the Youth is to be transported),
 - 12.3. The reason the Youth is in Custody,
 - 12.4. How to make immediate in-person contact with the Youth,
 - 12.5. That the member intends to advise the Youth of their *Miranda* rights,
 - 12.6. That the advisement of *Miranda* rights must take place in the presence of the parent/legal guardian and/or an attorney,
 - 12.7. That the Youth must consult with an attorney who is retained by the parent(s)/guardian(s) or an attorney from the Office of the Public Defender,
 - 12.8. That consultation with an attorney must be confidential and may be in person or by telephone or video conference,
 - 12.9. That the member will contact the Office of the Public Defender via telephone if the Youth does not have an attorney, and that the parent/legal guardian will have the opportunity to communicate with the attorney whom the officer contacts,
 - 12.10. That the Youth must have a parent/legal guardian and/or attorney present with them during the questioning. A parent/legal guardian *and* an attorney being present during questioning is preferred,
 - 12.11. That when a parent/legal guardian is present during the Interrogation, if at any point the parent/legal guardian wishes to consult with the Youth, they must be permitted to do so. If, at any point, the parent/legal guardian wishes to stop the Interrogation or obtain an attorney, the Interrogation will stop.

EXCEPTION: A parent/legal guardian will not be permitted to be present or observe an Interrogation when the parent/legal guardian is either: (1) A complainant in the offense under investigation, (2) Is suspected of being an accomplice in the offense under investigation, or (3) Expresses strong hostility towards the Youth.

13. The member(s) conducting the Custodial Interrogation shall obtain the consent of the Youth's parent/legal guardian before advising of rights, unless the above exception applies.
14. The member must document, in the investigative records, all attempts and follow-up attempts to contact parent/legal guardian. The member must include the name of the parent/legal guardian they attempted to contact/contacted and the method of contact.
15. All Youth must have parent/legal guardian and/or attorney present with them during the questioning. A parent/legal guardian *and* an attorney being present during questioning is preferred, but is not required.

16. A parent/legal guardian **cannot** waive a Youth's right to counsel or to remain silent.
17. The member will afford the Youth the opportunity to consult with a parent/legal guardian in confidence and outside of the presence or hearing of a member. The Interrogation will cease after the Youth's request to consult with a parent/legal guardian is made and until the request can be fulfilled.
18. If the parent/legal guardian object to questioning or requests an attorney for the Youth, no questioning shall occur even if the Youth is willing to answer questions.

Attorney Access for All Youth

19. Youth must consult with an attorney in confidence prior to the member advising of rights and commencing any questioning. The requirement of consultation with an attorney may not be waived.
20. Members must document the name of the attorney who was contacted as well as the county where the consultation took place.

NOTE: The Office of the Public Defender has created a 24/7 hotline for officers to use when needed, as outlined in this policy. The hotline number is **410-999-8287**. If no one answers, the member will leave a message and can expect a call back.

21. In the event that the parent/legal guardian of a Youth states that they would like to be present during the Interrogation, but the Youth states that they do not want the parent/legal guardian present, an attorney must be present in order to proceed with the Interrogation.
22. Regardless of the above requirements, a member **may** conduct an otherwise lawful Custodial Interrogation if they reasonably believe the information sought is necessary to protect against a threat to public safety and the questions posed are limited to those reasonably necessary to obtain the information required to protect against the threat to public safety.

All Youth: Explanation and Waiver of Rights for Youth, Form 68

23. Whatever advice of rights has previously occurred, the member(s) conducting a Custodial Interrogation of a Youth must advise the Youth and the Youth's parent/legal guardian, if present, of the Youth's *Miranda* rights, and secure a valid waiver from the Youth, prior to beginning the Custodial Interrogation.

NOTE: If there is a language barrier for the parent/legal guardian, the member shall request a Qualified Bilingual Member to assist in providing language access. If a Qualified Bilingual Member is unavailable, the member can request an in-person interpreter through Communications or can use the Language Line when the need is immediate. See Policy 1735, *Language Access Services for Limited English Proficient (LEP) Persons*. A Youth shall not provide language interpretation between the parent/legal guardian and the member.

24. The member shall provide the Youth in Custody and parent/legal guardian, if present, with a copy of the Explanation and Waiver of Rights for Youth, Form 68 (Appendix A), and go through the form, point by point, with the Youth and their parent/legal guardian and/or attorney that is present for the warnings.

- 24.1. If an attorney is present and when requested by the Youth or attorney, the Youth and their attorney shall be afforded an adequate opportunity to review the form and consult, in confidence and outside the presence or the hearing of any law enforcement officer, at any point prior to, or during, the advisement of rights.
- 24.2. The member shall give the Youth in Custody the opportunity to read the form to themselves.
- 24.3. The member shall then read the entire form (numbers 1-7) aloud to the Youth in Custody.
- 24.4. After reading each right to the Youth, the member shall ask the Youth to explain, in their own words, what that right means.
- 24.5. If the Youth answers "yes" to question 6 on Form 68 (that they do want a lawyer to help them decide if they want to talk), then the member must stop and contact a lawyer (See #20. Note. for more information).
- 24.6. If the Youth answers "no" to question 7 on Form 68 (that they do not want to talk to the member), then the member must stop and not question the Youth.
- 24.7. If the Youth states that they want to proceed without a lawyer present and that they are willing to speak to the members, the members must ask if the Youth is willing to sign the waiver statement. The member must explain that signing the statement means the Youth is voluntarily agreeing to talk to the police without having a lawyer present.
- 24.8. If the Youth refuses to sign, they may still waive their rights orally. To determine whether a Youth who refuses to sign the form intends to waive their rights, the member shall ask the Youth a "yes" or "no" question, such as "Do you want to have a lawyer help you decide if you want to talk to me?" or "Do you want to talk to me?" Where the Youth does not answer with a clear "yes" or "no," the member shall ask again until the member receives a clear response. Refusal to sign, as well as the decision to provide an oral waiver, must be documented on the form.

NOTE: An oral waiver of rights is still required in instances where a signed Explanation and Waiver of Rights for Youth may be impractical. The limited circumstances where a signed Form 68 may not be practical may include when a Youth has a visual impairment, language barrier (and the Form 68 is not available in their primary language), cannot read or write, or has a physical disability that would prevent them from signing the form but the Youth is otherwise able to knowingly, voluntarily, and intelligently make a waiver. All oral waivers must be video- and audio-recorded. Members will document in the investigative file the circumstances that made inclusion of a signed Explanation and Waiver of Rights for Youth form impractical.

- 24.9. Fill out the requested information in the appropriate lines.
25. When a member has grounds to believe that there is a substantial likelihood that a Youth is unable (e.g. an intellectual disability, under the influence of alcohol or drugs, mental capacity, or mental health disability) to understand the warnings given to them, the nature of their Fifth Amendment rights, and/or the consequences of waiving those rights, the member should not proceed with the Interrogation.

26. This advice of rights must be audio- and video-recorded, unless impracticable. Members will document in the investigative file the circumstances that made recording impractical.

Conducting the Interrogation

27. Members shall adhere to Policy 1105, *Custodial Interrogations*, when conducting Interrogations of all persons in Custody. Additionally, members shall refer to the section **Special Considerations for Youth** and apply the provisions outlined in this policy, Policy 1207, *Youth Interrogations*, when conducting an Interrogation of a Youth.
28. **The use of any form of deception during the Interrogation of any Youth is prohibited.**
29. A Youth shall not be Interrogated by more than two sworn members at the same time. The members shall not be armed during the Interrogation.
30. Normally, the Interrogation of a Youth should not go beyond a two-hour session, and a reasonable amount of breaks should be taken. The member should obtain supervisory approval for extending any Youth Interrogation and note the reason for the extension in the investigative file, along with the supervisor who approved the extension. If it is evident and observable that the Youth is exhausted, the Interrogation shall not proceed.
31. Youth shall not be shackled or otherwise restrained during Interrogations unless the Youth is engaging in behavior likely to cause injury to themselves or others. The member should consider whether the Youth may be experiencing a behavioral health crisis and consult Policy 712, *Crisis Intervention Program*. If the Youth is experiencing a behavioral health crisis, the Interrogation shall not proceed.
32. Members conducting Custodial Interrogations of Youth should provide the Youth with a brief overview of the procedures that will be followed by BPD during the course of the investigation and the possible subsequent prosecutorial phase of the case. Members shall provide this explanation in simple, clear, age-appropriate language.
33. Youth can often misunderstand questions. Members should tailor their questions to their knowledge or reasonable assessment of the following characteristics: the Youth's age, maturity, level of education, apparent mental ability, and other information known to the member at the time of the Interrogation. The following guidelines should be followed as appropriate in consideration of those characteristics:
- 33.1. Avoid police or legal jargon.
 - 33.2. Use names and places instead of pronouns.
 - 33.3. Use short, simple words and sentences.
 - 33.4. Avoid questions with multiple parts.
 - 33.5. Avoid "yes/no" questions, instead use targeted, open-ended questions that elicit a narrative response (e.g., "What did you do last night?").

- 33.6. Avoid leading questions. Instead, use questions beginning with “who,” “what,” “where,” “when,” and “how” to get more information about specific parts of the Youth’s story (e.g., “Where was the victim standing?”).
- 33.7. Avoid offering the Youth a limited set of options. (e.g., “Was the victim standing by the couch or by the door?”).
- 33.8. Connect time events to concrete events in the Youth’s life (e.g., “Did this happen when you were on summer break or when you were going to school?”).
- 33.9. Avoid completing the Youth’s sentences.
- 33.10. Avoid jumping ahead in the conversation.
- 33.11. Double-check responses by asking questions that elicit the information in a different way.

Supervisor

34. The supervisor or their designee will maintain contact or conduct periodic safety checks with the Interrogating member.
35. The supervisor shall be available for consultation with the Interrogating member, if needed.
36. The supervisor will review reports of Interrogations that were not recorded to ensure that the explanations are sufficient prior to signing/approving them.
37. The supervisor will review all reports required by this policy related to Interrogations to ensure compliance with this policy.

Mandatory Reporting

38. All BPD members are legally obligated to report their belief or knowledge that a minor has been subjected to abuse or neglect. This includes any abuse or neglect that is disclosed while a Youth is being Interrogated.
39. The member must follow procedures outlined in Policy 1202, *Interactions with Youth*.

APPENDICES

- A. Explanation and Waiver of Rights for Youth, Form 68.

ASSOCIATED POLICIES

- Police 712, *Crisis Intervention Program*
Policy 1105, *Custodial Interrogations*
Policy 1114, *Persons in Police Custody*
Policy 1202, *Interactions with Youth*
Policy 1735, *Language Access Services for Limited English Proficient (LEP) Persons*

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A

Explanation and Waiver of Rights for Youth, Form 68

Explanation and Waiver of Rights for Youth Form 068/19

POLICE DEPARTMENT BALTIMORE, MARYLAND

EXPLANATION AND WAIVER OF RIGHTS FOR YOUTH

CC# _____

NAME: _____

DATE/TIME: _____

LOCATION: _____

YOU ARE ADVISED THAT:

- 1. You have the right to remain silent. That means you do not have to say anything to me or another police officer if you do not want to.
2. Anything you say can be used against you in a court.
3. You have the right to get help from a lawyer right now. If you ask for a lawyer, I have to stop this interview until you talk to a lawyer.
4. If you can't pay lawyer, the court will get you one for free.
5. If you decide to talk to me, you can change your mind and stop at any time. You can stop and ask for a lawyer any time. If you say stop, I will not ask you any more questions.

After hearing these rights:

- 6. Do you want to have a lawyer help you decide if you want to talk to me? Circle one: YES or NO
7. Do you want to talk to me? Circle one: YES or NO

I am choosing to freely and voluntarily waive my rights and agree to talk with the police without having a lawyer present.

Signature of Youth

Signature of Parent/Guardian, if present

Officer's Printed Name Officer's Signature Rank Unit Seq. #

Witnesses