



# Policy 1002

|   |                       |
|---|-----------------------|
| Subject<br><b>SECURING AND INTERVIEWING WITNESSES</b> |                       |
| Date Published<br><b>9 February 2021</b>              | Page<br><b>1 of 8</b> |

*By Order of the Police Commissioner*

## POLICY

It is the policy of the Baltimore Police Department (BPD) to conduct Interviews of Witnesses and the public in accordance with the rights protected by the U.S. Constitution. This policy provides standards for securing and conducting Interviews of adult and youth Witnesses to gather facts about incidents and/or solve crimes while respecting the rights of the public and building community trust.

## CORE PRINCIPLES

**Constitutional Procedures.** The BPD is dedicated to protecting the public and Witnesses from violations of their constitutional rights when conducting Interviews. To conduct a sound investigation, the manner in which a Witness is Interviewed must be performed with integrity and conform to guidelines established under state and federal law and Department policies.

**Crime Prevention and Intervention.** The public plays an essential role in crime prevention by participating as Witnesses in the criminal justice process by providing information that helps solve crimes and effectively prosecute offenders.

**Courtesy and Professionalism.** All Interviews shall be conducted with courtesy and professionalism, in the least intrusive manner that the circumstances allow.

## DEFINITIONS

**Body Attachment** — A document issued by the court directing authorities to bring a person before the court. A Body Attachment is generally issued when a person fails to appear in response to a Subpoena.

**Compel** — To force or mandate a person to do something by word and/or action.

**Grand Jury Subpoena** — A document that Compels a person to appear before the Grand Jury to give testimony or provide evidence. A person who receives a Grand Jury Subpoena and fails to appear may be held in contempt of court, and may have a Body Attachment issued against them.

**Interrogation** — Words or action 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 actions are reasonably likely to result in an incriminating response by the suspect. Routine booking questions and informing the suspect of charges against them are not generally considered to be Interrogation.

**Interview** — A meeting at which information is obtained from a person. During an Interview, the person is free to leave at any time.

**Material Witness** — A Witness whose testimony is both legally relevant (meaning it tends to prove or disprove a material fact) and substantial (meaning that it supports the elements of the charged crime, or the defense of the charged crime).

**Off-Site Interview** — An Interview conducted away from the scene of an actual or alleged incident or crime. Off-Site Interviews are generally preferred when incidents or crimes are of a particularly sensitive, complex, or serious nature.

**On-Scene Interview** — An Interview conducted at the scene of an actual or alleged incident or crime. On-Scene Interviews are generally conducted for incidents or crimes of a less serious, complex or sensitive nature, in time-sensitive circumstances, and/or when a Witness cannot immediately respond for an Off-Site Interview.

**Subpoena** — A document issued by the court that commands a person to appear on a specified date, time, and place for the purpose of testifying and/or providing evidence.

**Witness** — A person who is believed to possess information relevant to a police investigation and/or one who is called on to testify before a court or another body.

## **DIRECTIVES**

1. Approaching a potential Witness to ask about their knowledge of an incident is considered a field interview, and should be conducted in accordance to Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*.
2. As with any field Interview, a member may request a Witness statement but the Witness is not required to answer any questions, cooperate with law enforcement, and is free to leave at any point. People are not required to carry any means of identification, and a Witness cannot be compelled to provide identification.

**NOTE:** The only exceptions to a person being free to leave is in cases of a Subpoena, Body Attachment, or a member temporarily 'freezing the scene' (see **Witness Determination Procedure, Required Action #6**) per guidance below.

- 2.1. Members shall not intimidate, coerce, Compel, or promise any reward for a Witness to give a statement.

**EXAMPLE:** It would be coercion for a member to threaten to issue a citation solely to induce a person to provide a statement.

- 2.2. A Witness cannot be detained without an arrest warrant or Body Attachment and cannot be Compelled to give a statement without a court order or a Grand Jury Subpoena.
3. If a Witness initially chooses to give a voluntary statement and later decides to stop, a member cannot Compel the Witness to continue.

**Member****Witness Determination Procedure****Required Action**

4. When responding to the scene of a crime or incident, attempt to locate and identify persons who may be Witnesses. As with all field Interviews, members shall:
  - 4.1. Activate body-worn camera (BWC) at the onset of the interaction with any potential Witness, victim or suspect, and shall not deactivate it until the completion of the interaction. See Policy 824, *Body-Worn Camera*.

**NOTE:** When victims, Witnesses, or other individuals wish to make a statement or share information during a voluntary interaction, but refuse to be recorded, members may deactivate the BWC in order to obtain the statement or information. The member shall memorialize this request on the BWC prior to deactivating the BWC. If this occurs, members shall document that they deactivated their BWC in their report. See Policy 824, *Body-Worn Camera*.

- 4.2. Approach the person calmly and respectfully, and shall introduce themselves by name and rank unless exigent circumstances require gathering information immediately.
- 4.3. Use words, tone, and actions that communicate to the person that their responses are voluntary.

**NOTE:** If the Witness is a youth, be sure to use simple, concrete, age-appropriate language to ensure the youth understands that their responses are voluntary and that they are free to leave. The member must receive consent of the youth's parent or guardian before proceeding with the Interview. The member shall also inform the youth that they can have a parent, guardian, or other supportive adult present during the Interview and must determine whether the youth wants such a person present and if so, shall not conduct the Interview until the parent, guardian, or other supportive adult is present. Whenever possible, a member who is trained in youth Interviewing should conduct the Interview. See Policy 1202, *Interactions with Youth*.

- 4.4. Inform the person that they may decline to answer questions and are free to leave without consequences.
  - 4.5. Use non-coercive means to elicit cooperation from a Witness. For example: appealing to the person's desire to help the member, explain that public participation in assisting law enforcement is in the best interest of the well-being and safety of the community.
5. To determine whether the person is a Witness or somehow involved in the incident, ask questions such as:
    - 5.1. Were you present when the incident or crime occurred?
    - 5.2. Did you witness the incident or crime?
    - 5.3. Do you know the victim or suspect?
    - 5.4. Do you have any knowledge about this incident or crime or the person(s) involved?

6. Once a person is identified as a Witness, notify the primary detective, primary unit, or supervisor responsible for investigating the incident or crime (e.g., Homicide Detective for homicide cases, Citywide Robbery Detective for robbery cases, supervisor for a use of force or supervisor's complaint, primary unit for a Signal 31, etc.).
7. Request contact information from any person determined to be a Witness, such as phone number(s), email address, home address, work address, school attended, etc. Witnesses are not required to provide this information nor are people required to carry any means of identification, and a Witness cannot be compelled to provide identification. Any such information must be obtained voluntarily from the Witness.
8. The primary detective, primary unit or supervisor responsible for the investigation shall then make the determination if an On-scene Interview or Off-site Interview of the Witness shall be conducted. The member shall not transport the person off-site, unless the person requested, they consented to transport, there is a Body Attachment issued for them, or the member is bringing them before a judicial officer for the purpose of obtaining a Body Attachment.

**NOTE:** In order to transport a person for the purpose of obtaining a Body Attachment, the member must have PC to believe that the testimony of the witness is material in a criminal proceeding and that it will be impractical to secure the witness's attendance by Subpoena. Outside of extreme circumstances, once a Witness has been identified but is unwilling to give a statement, their release must be expedited as soon as practicable.

- 8.1. If a member transports a Witness Off-site, that member must complete Supplemental Report, Form 7 (See Reporting Requirements section on page 7).
- 8.2. In their report, the member shall document who made the determination to transport the Witness Off-Site and the reasoning for that determination.
9. Upon arrival at a scene of a crime where suspects or Witnesses may still be present, members may "freeze the scene" for a brief period of time in order to determine whether those present are involved and to identify any potential Witnesses. Officers may detain individuals only for a reasonable period of time necessary to determine whether they are involved or Witnesses. As soon as a person is deemed not a suspect or a Witness, members shall not further detain them involuntarily. Members may seek to determine the identities of individuals at the scene consistent with Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*. Officers shall diligently seek to identify Witnesses, determine if they are willing to make a voluntary statement and then expedite their release as soon as practical.

**NOTE:** Reasonableness is determined, in part, by considering: (1) the seriousness of the crime under investigation, (2) the nature of the information the Witness can reasonably be expected to provide, (3) the level of evidence suggesting that the Witness can provide such information, and (4) whether there are any less intrusive methods of obtaining the same information.

#### Prohibited Actions

10. Member shall not engage in conduct that would lead a reasonable person to believe that they must comply or respond, with the exception of when the member has a court order mandating the Compelling of a statement or compliance.

11. Member shall not conduct the Witness determination procedure in a hostile manner, nor as a means of harassing any person or attempting to coerce any person to do anything.
12. Member shall not conduct a Weapons Pat-Down on a person unless they have reasonable articulable suspicion that the person is armed (see Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*). Be mindful that most persons carry mobile phones, wallets and other personal items in their pockets.
13. Member shall not conduct a warrantless search of a Witness unless:
  - 13.1. A weapons pat-down is supported by reasonable articulable suspicion that the person is armed and dangerous (see Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*). Be mindful that most persons carry mobile phones, wallets and other personal items in their pockets.
  - 13.2. There is probable cause that the person possesses contraband or evidence of a crime under the circumstances outlined in Policy 1109, *Warrantless Searches*, or
  - 13.3. For a consent Search, the member has (1) reasonable articulable suspicion (RAS) that a crime has been committed, and (2) RAS that the person is involved in the crime or possesses evidence of the crime or the place to be searched contains evidence of the crime.
  - 13.4. The member must advise the person that they have the right to refuse or withdraw consent to search at any time, and obtain objective proof of voluntary informed consent to search in writing or in a recording on the member's BWC.
  - 13.5. Refer to Policy 1109, *Warrantless Searches*, for all directives on conducting warrantless searches.

### On-Scene Interviews

On-Scene Interviews are generally conducted for incidents or crimes of a less serious, complex or sensitive nature, in time-sensitive circumstances, and/or when a Witness cannot immediately respond for an Off-Site Interview.

#### Required Action

14. Once the primary detective determines that an On-Scene Interview should be conducted with the Witness:
  - 14.1. Conduct an Interview to determine what information the person has regarding the incident.
  - 14.2. Inform the person that they may decline to answer questions and, if they are not being detained pursuant to **Witness Determination Procedure, Required Action #6** above, are free to leave. Be sure to use words, tones and actions that communicate to the person that they are not required to answer any questions.

**NOTE:** Under normal circumstances, if a Witness refuses to cooperate and has been identified as a Material Witness, obtain their contact information and notify the Office of the State's Attorney

(OSA) who will determine if the issuance of a Grand Jury Subpoena or Body Attachment is warranted.

#### Prohibited Actions

15. At no time shall a Witness be Compelled to give a statement, with the exception of when a Subpoena is obtained. The statement must be obtained freely and without coercion.
16. At no time shall a Witness be removed from the scene against their will for the purpose of giving an Off-Site Interview, unless there is a Body Attachment issued or being sought for the person.

#### **Off-Site Interviews**

Off-Site Interviews are generally preferred when incidents or crimes are of a particularly sensitive, complex, or serious nature. Benefits of Off-Site Interviews may include the use of audio-video recording equipment, and/or the participation of specially trained investigators, prosecutors, or experts.

#### Required Actions

17. Conduct Off-Site Interviews at the location best suited for the type of Interview being conducted (e.g., Homicide, Sex Offense, Office of Professional Responsibility, OSA, Interviewee's residence or place of employment, etc.).

**NOTE:** A member shall request consent to conduct a weapons pat-down of a witness prior to allowing them to be voluntarily transported in a police vehicle for off-site interview. The member shall activate their BWC and explain to the witness that the weapons pat-down is necessary for safety purposes. The member shall explain prior to the weapons pat-down that if the member finds anything illegal the Witness may be subject to citation or arrest, and that the Witness has the right to refuse the weapons pat-down. If the Witness refuses, the member shall inform the Witness that they must provide their own transportation to the interview. If the Witness refuses to consent to the weapons pat-down, their refusal cannot be used as a factor to support reasonable articulable suspicion or probable cause.

18. If the person to be Interviewed is a youth, the member should inform the youth that they can have a parent, guardian, or other supportive adult present during the Interview.
  - 18.1. If they would like a parent, guardian or supportive adult to be present, the member shall contact that adult immediately. The adult may accompany or transport the youth to the Off-Site Interview location.
  - 18.2. If the youth would like the adult to be present, wait for the adult to arrive at whatever point they become available.
  - 18.3. Member shall not transport a youth, who is a mere witness, to an Off-Site Interview location for the purpose of giving an Off-Site Interview without parental or guardian consent.
  - 18.4. If the youth is transported to the Off-Site Interview location without a parent or guardian present, follow Policy 1202, *Interactions with Youth* for the provisions related to custody, arrest, transport and contact with youth.

### Prohibited Actions

19. At no time shall a Witness be removed from the scene against their will for the purpose of giving an Off-Site Interview, unless there is a Body Attachment issued or being sought for the person.

### **Grand Jury Subpoena**

20. If a Material Witness refuses to provide a voluntary statement relative to an incident or crime, a BPD member may seek to obtain a Grand Jury Subpoena to Compel the Material Witness to provide testimony about the incident or crime.
21. Contact the OSA for guidance in obtaining a Grand Jury Subpoena.

### **Body Attachments**

22. If a Material Witness fails to appear before a Grand Jury or court of jurisdiction, the member may seek to have a Body Attachment issued.
23. Contact the OSA for guidance in obtaining a Body Attachment. A Body Attachment application must be presented to the court and must include:
  - 23.1. The name and address of the Material Witness;
  - 23.2. The criminal case for which the testimony of the Material Witness is required;
  - 23.3. A summary of the information or testimony of which the member believes the Material Witness has knowledge;
  - 23.4. The relevance of the expected testimony of the Witness;
  - 23.5. The reason(s) why it is likely the Material Witness will fail to appear in court and testify without the issuance of a Body Attachment.
24. The court may order the issuance of a Body Attachment and require a bond in an amount fixed by the court to Compel the Material Witness to attend court if the court is satisfied that:
  - 24.1. The testimony of the Witness is material in a criminal proceeding, and
  - 24.2. It may become impracticable to secure the Witness's attendance by Subpoena.
25. The member shall execute a Body Attachment by taking the Material Witness into custody and bringing the Material Witness before a judicial officer of the jurisdiction in which the Body Attachment was issued.
26. A Material Witness who is unable to post the prescribed bond shall be committed to a detention facility.

### **Reporting Requirements**

27. When a member transports a Witness from the scene of the crime for an Off-Site Interview, the member must complete a Supplemental Report, Form 7. The report must include:

- 27.1. Who made the determination to transport the Witness from the scene,
- 27.2. The reason such a determination was made,
- 27.3. The date, time, and location from which the Witness was transported,
- 27.4. The date, time, and location of the final destination,
- 27.5. Whether any injuries were sustained or force was used during the transport.

**ASSOCIATED POLICIES**

Policy 824, *Body-Worn Camera*  
Policy 1008, *Investigative Operations*  
Policy 1105, *Custodial Interrogations*  
Policy 1109, *Warrantless Searches*  
Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*  
Policy 1202, *Interactions with Youth*

**RECISSION**

Removed and destroyed/recycled Policy 1002, *Securing and Interviewing Witnesses*, dated 1 January 2018.

**COMMUNICATION OF POLICY**

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