



# Policy 1002

Subject

## SECURING AND INTERVIEWING WITNESSES

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*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.

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### 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 most effective and least intrusive manner that the circumstances allow.

## **DEFINITIONS**

**Body Attachment** — An order 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 or Summons.

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

**Grand Jury Subpoena** — An order issued by the court 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 for them.

**Interview** — A meeting at which information related to a criminal or civil violation is obtained from a person.

**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** — An order issued by the court that commands a person to appear at a specific location on a specified date, time, and place for the purpose of testifying and/or providing materials or 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 legal proceeding.

## **DIRECTIVES**

### **General**

1. Approaching a potential Witness to ask about their knowledge of an incident is considered a field interview, and members should conduct them in accordance with Policy 1112, *Field Interviews, Investigative Stops, and Weapons Pat-Downs*. For youth Witnesses, refer to Policy 1202, *Interactions with Youth*.
2. As with any field Interview, a member may request a Witness to make a statement, but the Witness is not required to answer any questions, or cooperate with law enforcement, and is free to leave at any point, except for exceptions mentioned below.

**EXCEPTION:** A person may NOT be free to leave in cases of a Subpoena, Body Attachment, or a member temporarily 'freezing the scene' (See *Witness Determination Procedure* section below) per guidance below.

- 2.1. Members shall not intimidate, coerce, Compel, or promise any unauthorized reward or thing of value for a Witness to give a statement or any other information.

**NOTE:** Authorized rewards are those would include: publicly advertised rewards, informant payment per BPD policy, reimbursement of a Witness's transportation costs, offers made with the State's Attorney's Office (SAO) involvement (cooperation agreements, expert witnesses), as well as more informal trust-building or caretaking measures such as buying lunch.

**EXAMPLE:** It would be coercion against policy and unlawful for a member to threaten to issue a citation or other charging document solely to induce a person to provide a statement.

- 2.2. Members shall not detain a Witness for the purpose of giving information related to a criminal investigation unless the members:

- 2.2.1. Have reasonable suspicion that the person is involved in criminal activity (See Policy 1112, *Field Interviews, Investigative Stops, and Weapons Pat-Downs*);

- 2.2.2. Are freezing the scene of a crime (See section below), or

- 2.2.3. Have an arrest warrant or Body Attachment. A witness 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 to speak.

### **Witness Determination Procedure**

4. When responding to the scene of a crime or incident, members shall attempt to locate and identify persons who may be Witnesses. When approaching individuals who may be Witnesses, members shall follow the directives outlined for field interviews in 1112, *Field Interviews, Investigative Stops & Weapons Pat-Downs*, as well as:

- 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*).

- 4.1.1. 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 an administrative report. (See Policy 824, *Body-Worn Camera*).

- 4.2. Approaching the person calmly and respectfully, and shall introduce themselves by name and rank unless exigent circumstances require gathering information immediately.

- 4.3. Using words, tone, and actions that communicate to the person that their responses are voluntary.
- 4.4. Informing the person that they may decline to answer questions and are free to leave without consequences.

**EXCEPTION:** A person may NOT be free to leave in cases of a Subpoena, Body Attachment, or a member temporarily 'Freezing the Scene' per section below.

- 4.5. Using 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. Members shall attempt to gather indexing information (name, address, contact information) of the individual and inform the individual it is voluntary.

**NOTE:** Individuals are not required to carry any means of identification, and cannot be compelled to provide identification.
- 5.1. After the member has attempted to gather indexing information, the member shall determine whether the individual is a Witness, suspect or is not involved in the incident.
- 6. If a person has been identified as a Witness, the member shall 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.).

**NOTE:** If the Witness is a youth, see "Youth Interviews: Witnesses and Victims" under Policy 1202, *Interactions with Youth*, for guidance.

- 7. If contact information was not collected by the member, the primary detective, primary unit or supervisor responsible for the investigation should 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 individuals 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.

**NOTE:** 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.

- 9. Members shall not transport the individual off-site, unless:
  - 9.1. The individual requested to be transported, to be documented in writing and signed as well as captured on BWC and documented in the Incident Report,

- 9.2. The individual consented to be transported, to be captured on BWC or documented in the Incident Report,
  - 9.3. There is a Body Attachment issued for them, or
  - 9.4. The member is bringing the individual before a judicial officer for the purpose of obtaining a Body Attachment.
10. In order to transport an individual for the purpose of obtaining a Body Attachment, the member shall have probable cause 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.

### **Freezing the Scene**

11. Upon arrival at a scene of a crime where suspects, victims, 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.
- 11.1. Members may detain individuals only for a reasonable period of time necessary to determine whether the individuals are involved or Witnesses.
- 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.
- 11.2. Members may seek to determine the identities of individuals at the scene consistent with Policy 1112, *Field Interviews, Investigative Stops, and Weapons Pat-Downs*.
- 11.3. Members 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.
- 11.4. As soon as a person is deemed not a suspect, victim, or Witness, members shall not further detain them involuntarily.

### **Prohibited Actions**

12. Members shall not engage in conduct that would lead a reasonable person to believe under the circumstances that they must respond to questioning by law-enforcement.
13. Members 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.
14. Members shall not conduct a weapons pat-down or warrantless search of a Witness unless otherwise authorized by Policy 1112, *Field Interviews, Investigative Stops, and Weapons Pat-Downs* and/or Policy 1109, *Warrantless Searches*.

**On-Scene Interviews**

15. Once it is determined that an On-Scene Interview should be conducted with the Witness, the member shall:
  - 15.1. Conduct an Interview to determine what information the person has regarding the incident.
  - 15.2. Inform the individual that they may decline to answer questions and, if they are not being detained pursuant to the *Witness Determination Procedure* section 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, the member shall obtain their contact information and notify the SAO who will determine if the issuance of a Grand Jury Subpoena or Body Attachment is warranted.

**Prohibited Actions**

16. At no time shall a member Compel a Witness to give a statement. The statement shall be obtained freely and without coercion.
17. 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. (See "Body Attachments" below).

**NOTE:** This provision does not limit an member's authority to take appropriate law enforcement action based on unrelated matters.

**Off-Site Interviews**

18. Members shall conduct Off-Site Interviews at the location best suited for the type of Interview being conducted (e.g., Homicide, Sex Offense, PIB, OSA, Interviewee's residence or place of employment, etc.).
19. A member shall request consent to conduct a weapons pat-down of a Witness prior to allowing a Witness to be voluntarily transported in a police vehicle for an Off-Site Interview. When making the request, the member shall:
  - 19.1. Activate their BWC and explain to the Witness that the weapons pat-down is necessary for safety purposes and that the Witness has the right to refuse the weapons pat-down.
  - 19.2. Explain prior to the weapons pat-down that if the member finds anything illegal, the Witness may be subject to citation or arrest,
  - 19.3. If the Witness refuses, 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.
20. If the person to be Interviewed is a youth, members shall adhere to Policy 1202, *Interactions with Youth*.

### Prohibited Actions

21. At no time shall a member remove a Witness from the scene against their will for the purpose of giving an Off-Site Interview.

**NOTE:** This provision does not limit a member's authority to take appropriate law enforcement action based on unrelated matters.

### Reporting Requirements for Off-Site Interviews

22. When a member transports a Witness from the scene of the crime for an Off-Site Interview, the member shall include the following in the Incident Report:
- 22.1. Who made the determination to transport the Witness from the scene,
  - 22.2. The reason such a determination was made,
  - 22.3. The date, time, and location from which the Witness was transported,
  - 22.4. The date, time, and location of the final destination,
  - 22.5. Whether any injuries were sustained or force was used during the transport.
  - 22.6. When transporting a Witness of the opposite gender, follow Policy 503, *Transportation of Passengers*, for contacting the Communications Section and recording information on BWC.

### Grand Jury Subpoenas

23. If a Material Witness refuses to provide a voluntary statement relative to an incident or crime, a BPD member may ask the prosecutor to seek a Subpoena to Compel the Witness to provide testimony about the incident or crime.
24. Members shall contact the SAO for guidance in obtaining a Grand Jury Subpoena, Summons, or Body Attachment.

### Body Attachments

25. If a Material Witness fails to appear before a Grand Jury or court of jurisdiction, only a prosecutor, an Assistant State's Attorney (ASA) or Assistant United States Attorney (AUSA), may seek to have a Body Attachment issued.
26. Contact the SAO or United States Attorney's Office (USAO) for guidance in obtaining a Body Attachment. A Body Attachment application shall be presented to the court by the prosecutor and members should be prepared to answer the following questions for the prosecutor:
- 26.1. The name and address of the Material Witness;

- 26.2. The criminal case for which the testimony of the Material Witness is required;
  - 26.3. A summary of the information or testimony of which the member believes the Material Witness has knowledge;
  - 26.4. The relevance of the expected testimony of the Witness; and
  - 26.5. 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.
27. 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 as to:
- 27.1. Why the testimony of the Witness is material in a criminal proceeding, and
  - 27.2. Why it may become impracticable to secure the Witness's attendance by Subpoena or Summons.
28. 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.

### **REFERENCED POLICIES**

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

### **RECISSION**

Rescind Policy 1002, *Securing and Interviewing Witnesses*, dated 9 February 2021.

### **COMMUNICATION OF POLICY**

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