

# POLICY 2

## Investigatory Stops, Non-custodial Interviews, and Search and Seizure of Youth

---

### PURPOSE

Ensure:

1. Young people's constitutional rights are upheld during law enforcement-initiated stops and inquiries, and
2. Officers respond to youth in a constitutional and developmentally appropriate, trauma-informed, equitable manner.

---

### POLICY

This policy guides officers in initiating interactions with youth, to:

1. Protect young people's constitutional rights,
2. Limit the use of investigatory stops to situations where officers have reasonable, articulable suspicion of delinquent activity or a status offense,
3. Prohibit officers from conducting searches and arrests without probable cause, and
4. Encourage alternatives to law enforcement contact, stops, searches, and youth arrests when feasible and consistent with public safety.

---

# REASONS FOR YOUTH-SPECIFIC POLICIES

## Why investigatory stops, non-custodial interviews, and searches should be different for youth

- Youth have difficulty considering the consequences of their actions, and are more likely to engage in risky and dangerous behavior. They are also likely to be heavily influenced by their peers and other external factors. This is normal adolescent development and should not be treated as manifestation of guilt, willful disobedience, or defective character.
- For many youth, being stopped, questioned, or searched by law enforcement is an unfamiliar and stressful situation. Youth may react to these encounters in a distrustful, anxious, and angry manner, even if they have been stopped before.
- In conducting any investigatory stop, officers should be aware that youth may not comply immediately with directives to stop due to heightened stress in the moment and resulting delay in their ability to fully process and integrate external information. Instead, they may respond without thinking by: fleeing, making verbal challenges, freezing or failing to respond, disregarding directives, assuming mistreatment by law enforcement, or screaming for help. These responses may be even more common among youth who have experienced trauma or among youth of color who have been disproportionately in contact with the law enforcement.
- In field or non-custodial interviews, officers should be aware that youth may not understand that the interview is a voluntary encounter, even if an adult would more likely understand that they are free to leave. They may respond with hostility, verbal disrespect, silence, or attempt to leave the interview site.
- In conducting searches, officers should be aware that youth may have been exposed to sexual abuse, physical abuse, or other trauma which may affect the way they respond, including by refusing to consent, physically struggling or resisting, or attempting to flee.
- Youth may be incapable of giving valid consent to searches due to age or developmental stage, potential substance use, mental health crisis, disability, limited English proficiency, fear, stress, or perceived coercion by law enforcement. Youth, particularly youth of color and youth who may have experienced trauma, may believe they have no right to refuse.

Additional source and background information for this policy can be found in the [Appendix to Policy 2](#).

# DEFINITIONS

## **DEVELOPMENTALLY APPROPRIATE LANGUAGE**

Developmentally appropriate language uses vocabulary, syntax, and speed and complexity of communication that matches an individual's developmental level and capacity for understanding. Developmentally appropriate language is necessary to ensure meaningful communication and increases the likelihood that youth are able to understand and assert their constitutional rights.

## **DIVERSION**

A decision or program to address a youth's alleged delinquent conduct or status offense without involving the youth formally in the juvenile criminal system, using through programming, supervision, and supports in an effort to prevent reoffending. Diversion aims to address youth behavior informally in the community, in an effort to maintain youth connectedness in the community, and avoid stigma and additional trauma.

## **PARENT**

The youth's biological or adoptive parent, guardian, or legal custodian.

## **WEAPONS PAT DOWN**

A brief, non-probing running of the hands over the outside of the youth's clothing feeling for a weapon. A weapons pat down is authorized when the officer has reasonable suspicion that the youth is armed. This can include situations in which the officer reasonably suspects that the youth has committed, is committing, or is about to commit a violent crime or when the officer observes something on the youth that they reasonably suspect is a weapon. A weapons pat down may not be conducted to discover evidence or the proceeds or instrumentalities of a crime. An officer cannot "pat-down" a bag or item of personal property unless: 1) the officer has a reasonable articulable suspicion that the youth is armed, 2) the officer has a reasonable articulable suspicion that the bag or item could contain a weapon; and 3) the bag or item is within the youth's reach.

## **PROCEDURAL JUSTICE FOR YOUTH**

Procedural justice is predicated on four core principles. Officers: 1) treat people with dignity and respect regardless of social status, 2) give people voice during interactions, 3) use neutral and transparent decision-making as well as explanations for the officer's actions, and 4) treat people in a lawful and trustworthy manner.<sup>1</sup> SFY believes that an additional two core principles are merited for interactions with youth: 1) express concern and care for the youth's well-being and safety, and 2) do not take advantage of the youth's lack of status and power to their disadvantage.

## RESPONSIBLE ADULT

Any adult related to the youth by blood, adoption, or marriage, or who has an established familial or mentoring relationship with the youth, who does not exhibit adverse interests to the youth. A responsible adult can include, but is not limited to, godparents, clergy, teachers, neighbors, and family friends.

## TRAUMA

As defined by the U.S. Department of Health and Human Services, individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.

## TRAUMA-INFORMED

A trauma-informed **officer**: 1) anticipates that exposure to and experience of trauma is widespread, 2) realizes that the impacts of trauma often lead to reactive, survival behaviors; 3) recognizes hallmarks of traumatic responses, which are often shaped by a perspective of powerlessness, and 4) responds by considering the role trauma may play in a person's response while taking steps to avoid re-traumatization. A trauma-informed law enforcement **agency** supports its officers' trauma-informed responses by promoting awareness of and training about trauma, policies that require training for trauma-informed skills with the public and among officers.

## YOUTH

Any person under the age of 18.

1. Tom Tyler is the author of the term procedural justice. His definition was first published in *Why People Obey the Law*. (New Haven, CT: Yale University Press, 1990). He further explained this theory in "Procedural Justice, Legitimacy and the Effective Rule of Law," *Crime & Justice*, vol. 30, 2003, pp.283-357. JSTOR, <https://www.jstor.org/stable/1147701>. The tactical use and impacts of law enforcement's use of Procedural Justice are available on the U.S. Department of Justice website at: <https://cops.usdoj.gov/proceduraljustice>.

---

# PROCEDURE

## I. Investigatory Stops

- A. An investigatory stop is only permitted when an officer has reasonable articulable suspicion (RAS)** that the youth has committed, is committing, or is about to commit a delinquent act or status offense. RAS allows the officer to temporarily detain the youth for the purpose of confirming or dispelling that suspicion.
- B. If the officer has no legal basis to detain a youth,** they must immediately inform the youth that they are free to leave at any time, and allow the youth to leave if they elect to do so. Officers shall not block or attempt to delay the youth's departure with, for example, additional questions, or retaining any property belonging to the youth, once the youth has made their intention to leave known.
- C. A youth's behavioral responses alone cannot provide** basis for reasonable suspicion.<sup>2</sup> Rather, in determining whether reasonable articulable suspicion exists, officers should consider the totality of the circumstances. Officers should not assume the following behaviors, standing alone, are indicative of guilt:
- Fleeing,
  - Verbal challenges or hostility toward the officer,
  - Freezing or unexpected non-responsiveness,
  - Disregard for law enforcement directives,
  - Expressing a presumption of law enforcement mistreatment,
  - Startled movements or evasive behavior,
  - Screaming for help.
- D. When considering whether to arrest and charge youth** with disorderly conduct, disturbing the peace, obstruction of justice, or when the arrest would be based solely on the youth's response to a stop rather than on the behavior that led to the initial law enforcement contact,
1. Officers shall consult a supervisor, where the supervisor is available.
  2. The supervisor will determine whether the elements of a suspected offense have been established.
  3. If a supervisor finds that there is no justification for the arrest, no further action against the youth will be taken.

---

2. See Cleveland Division of Police General Police Order 5.12.01, Interactions with Youth, Section II, (2021).

- E. Whenever possible, officers should issue warnings**, rather than make arrests, for pedestrian youth who are allegedly in violation of transportation codes (e.g., for jay-walking or riding a bicycle on the sidewalk).

## **II. Non-custodial interviews of youth during an investigatory stop**

### **A. Permissible questions**

When officers have reasonable articulable suspicion to believe that a youth is or has been involved in criminal activity, officers may ask youth limited questions to ascertain their involvement in a matter under investigation.

However, if at any point a reasonable youth would not feel free to terminate the interview and leave, officers must advise the youth of their *Miranda* rights and otherwise comply with the requirements of [Policy 4: Miranda Warnings, Waiver of Rights, and Youth Interrogations](#).

1. In questioning youth, officers shall inform youth that they are not in custody.
2. Officers shall use developmentally appropriate language. Officers shall take all reasonable steps to ensure that youth understand their questions. Officers shall:
  - Approach youth in a calm, respectful manner,
  - Repeat questions if necessary,
  - Slow down/not rush questions unless it is an emergency situation.

### **B. Notification to and presence of parent or other responsible adult**

1. The officer must stop questioning and notify a parent or other responsible adult designated by the parent to be present when:
  - The officer intends to physically transport the youth from the scene of the non-custodial interview or
  - The youth requests that a parent or other responsible adult be present.
2. Exceptions When Necessary to Render Aid, or Protect the Youth or the Public:

## Policy 2 – Procedure (cont'd)

When circumstances in II.B.1 exist, the officer may, prior to contacting the youth's parent or other responsible adult designated by the parent, the officer may ask the youth questions related to the need to:

- Render aid
- Protect the youth's safety, or
- Assess the situation to determine there is no imminent threat of harm to the youth or other members of the public (e.g., if the officer encounters an individual who appears to be unconscious on the ground, to render aid, the officer may ask a nearby youth, "What happened?").

3. Officers may interview youth without consent from a responsible adult if:

- **Youth initiated a call for service** or otherwise requested assistance from authorities (e.g., law enforcement, school officials, or other mandatory reporters under law). In this situation, officers must still inform the youth that they can have a responsible adult present if they wish. The officer shall limit the interview to questions about the reason which the youth has requested assistance.
- **The officer has answered a call for service or has other factual basis to suspect that the responsible adult is the perpetrator of an offense against the youth.** Officers must inform the youth that they can have a different responsible adult present if they wish. Officers shall adhere to the Department's policies for child abuse investigations for situations in which the responsible adult is a suspect in the commission of an offense with a youth victim.

4. Limits on Questions

The officer may not ask questions intended to further the investigation of a suspected offense beyond the original scope of the investigatory stop, or to extend the detention.

5. Prohibited actions

Officers may not:

- curse at or use derogatory language to speak or refer to youth, mock youth, or otherwise engage in demeaning, threatening, or humiliating speech or tactics,
- use deception in questioning youth,
- offer leniency or special consideration, including anything of value, during an interview and/or investigatory stop in return for youth agreeing to serve as a confidential informant.

### III. Search and seizure of youth incidental to an investigatory stop

Warrantless searches of youth are to be conducted pursuant to the same Fourth Amendment rights as adults using developmentally appropriate, trauma-informed approaches as noted below.

#### A. Weapons Pat Downs

A weapons pat down is only permitted when an officer has reasonable articulable suspicion (RAS) that the youth is armed and dangerous.<sup>3</sup> Should an officer choose to conduct a pat down to ensure their personal safety during an investigatory stop, it should last no longer than necessary to effectuate the purpose of the stop. In conducting the pat down, officers should also avoid escalating the situation.<sup>4</sup>

To conduct a pat down of a youth, officers must:

- Explain the legal purpose of the pat down,
- Explain how the pat down will be conducted, e.g. where the officer will touch and why, how the officers will use the back of their hands,
- If feasible, ask the youth to explain the pat down in their own words to ensure the youth's understanding,
- In the rare circumstances when a youth must be handcuffed or flexicuffed to protect the officer or public safety during the pat down, officers must explain that the cuffing does not mean the youth is arrested.

#### B. Consent Searches<sup>5</sup>

##### 1. Documenting consent searches of youth

Where the officer has a body worn camera, dash camera in the law enforcement vehicle, or any other means of making an audio and video recording, consent searches of youth must be recorded.

##### 2. Obtaining the youth's consent

- When possible, an officer must request a supervisor's permission to seek a youth's consent,

---

3. See *Terry v. Ohio*, 392 U.S. 1, 24, 26 (1968)

4. See Baltimore Police Department Policy 317, Fair and Impartial Policing, at 3-4 (2021).

5. Several aspects of this Policy's provisions on consent searches of youth are based on the policy of the Baltimore, MD. Police Department. See Baltimore Police Department Policy 1202. Interactions with Youth, at 6-7 (2022).



## Policy 2 – Procedure (cont'd)

- An officer must not seek a youth's consent to search when the youth is under 15 years old,
- An officer will not directly or indirectly threaten a youth with adverse consequences for refusing to consent to a search,
- When an officer requests a youth's consent to search them or their property for contraband or evidence of a suspected offense, the officers shall, in developmentally appropriate language<sup>6</sup>:
  - Inform the youth of the basis for the request to conduct the search,
  - Ask the youth their age,
  - Explain to the youth how the search will proceed, including what parts of the youth's body will be touched,
  - Ask the youth to explain the search and its purpose in the youth's own words,
  - Ask the youth to expressly and verbally consent to the search,
  - Explain to the youth that the youth may refuse, limit, or revoke consent at any time.
- The officer will consider the following factors in determining the youth's capacity to understand the interaction and whether the consent to search has been given voluntarily:
  - The youth's age,
  - Whether the youth appears to be experiencing a mental health crisis,
  - Whether the youth appears to have a disability that would interfere with the ability to understand the interaction,
  - Whether the youth is under the influence of drugs or alcohol,
  - Whether the youth and the officer can communicate effectively in English or the youth's primary language,
  - Other factors that may lead the youth to believe they have no choice but to give their consent to the search, including:

---

6. Ideally, officers will use a written procedure or script that meets these requirements. See, e.g., Baltimore Police Department Policy 1202, Interactions with Youth, at 6.

- The legal immigration status of the youth or their family
- Perceived risks of saying no, such as risk of arrest, risk of physical harm, or risk that the officer may notify the youth's parent or other responsible adult about the law enforcement encounter.
- The presence of peers or other witnesses to whom the youth may want to respond, impress, or seek approval,
- Inadequate understanding of their legal rights.

### 3. Conducting the Search

To conduct a search of a youth, officers must:

- Search the youth's clothing and person without inserting a hand into the youth's underwear,
- Ensure, wherever possible, that the officer conducting the search is the same gender as the youth, and, when possible, allow a youth who is non-binary or gender non-conforming to choose the officer who will conduct the search.

### 4. Strip Searches

Strip searches of youth are **prohibited**.

The following does not constitute a strip search or body cavity search:

- Removal or rearranging of clothing reasonably required to render medical treatment or assistance,
- Removal of articles of outer clothing, such as coats, ties, belts, shoes,
- A weapons search that includes minor manipulation at or around the waistband of the pants, including untucking and shaking out a person's shirt, which may expose the waistband of a person's undergarments only.

## IV. Redirection, referrals, and diversion

- A. Where probable cause exists that a youth has committed a nonviolent misdemeanor offense**, officers may exercise reasonable discretion and choose alternatives to arrest. These alternatives should be the default unless good reason can be articulated why arrest is the preferred option, given that long-term outcomes tend to be better for youth who are not arrested in discretionary circumstances.

These alternatives should include but not be limited to:

1. **Warn and Release:** Officers may warn and release the youth to their parent or other responsible adult designated by the parent.
2. **Referral for Rehabilitative Services:** Officers may make a referral to a community social service or mental health agency, particularly when problems related to mental illness, suicidal gestures and behaviors, drug use or other substance use, and personal or family crises appear to be involved or influencing the youth's behavior.
3. **Referral to Local Agencies:** Where available and appropriate, officers may make referrals to local agencies for positive youth development supports, including recreational, literacy, vocational, volunteer, mentoring, and/or other activities to positively engage youth and deter unruly and/or delinquent behaviors. However, officers shall not arrest youth with the intent or purpose of obtaining social services or positive youth development supports for the youth.
4. **Diversion:** Where available, officers may make referrals to diversion service providers.
  - Officers and service providers should require knowing and voluntary consent from youth and/or their responsible adult to participate in a diversion program. To facilitate voluntary participation, the officer's demeanor and approach will be key.
  - Law enforcement agencies should support officers by seeking out and developing a wide network of community-based providers which use best practices for diversion programming.
  - Law enforcement agencies should build strong cross-agency partnerships for such purposes, use written diversion agreements, rely on strategies to prevent future prosecution, offer one-on-one mentoring, ensure equity and cultural competency in programming, and facilitate expungement of arrest records.
  - In exercising discretion to warn and release youth, and in making referrals to service providers, officers shall act consistent with non-discrimination obligations and principles of equity, to avoid the risk of perpetuating racial and ethnic disparities at later stages of the juvenile criminal system.

## **V. Interactions to further ensure procedural justice and transparency**

### **A. Officer Conduct During An Investigatory Stop**

Officers who stop youth during an investigatory stop will:

- Identify themselves by name, rank, and badge number as soon as it is reasonable and practicable to do so.
- Answer youth's questions about the reason for any stop.
- Ensure that the length of any investigatory or vehicle stop is no longer than reasonably necessary to take appropriate action for the known or suspected offense, as well as any offense that is legitimately discovered during the course of the investigation.
- Provide youth with information about how to raise concerns or file a complaint regarding a stop or custodial interrogation. Information about how to file the complaint should be made available in the native languages used in the community served by the Department.
- Officers who determine that a youth who is stopped was not engaged in any criminal or delinquent activity will provide youth with the officer's contact information, and may engage in other supportive, positive interaction with the youth.

### **B. Agency And Officer Stop Data Collection**

In any investigatory stop of youth, officers will collect and document the following:

- Rationale for the Stop:
  - All causes for investigatory stop,
  - Whether the stop was in response to a call for service,
  - Whether a pat down was conducted and if so, all reasons for conducting the pat down,
  - Whether the youth consented to a search,
  - Contraband or evidence seized, or the absence of contraband or evidence,
  - Whether the officer called for backup during the stop,
  - The statute or regulation for any warning, citation, or summons issued or for any arrest.

## Policy 2 – Procedure (cont'd)

- Additional Characteristics of the Youth Stopped:
  - The youth’s observable race, ethnicity, gender, and stated or approximate age, as perceived by the officer,
  - The youth’s true age, if disclosed to the officer verbally or through documentation such as a driver’s license or identification card,
  - Whether the youth is alone or in a group,
  - The youth’s apparent English proficiency,
  - Any reported, observed or perceived physical, mental, or developmental disabilities,
  - Whether the youth appeared to be experiencing a mental or other behavioral health crisis,
  - Whether the youth appeared to be under the influence of drugs or alcohol.