**XXXX Police Department Policy & Procedures: 004**

**INTERVIEWS AND INTERROGATION OF YOUTH**

**General Guidelines:**Developmental differences between adults and youth require that officers conduct interviews and interrogations in a manner that ensures voluntary, reliable, accurate results.

**Policies for Interviews and Interrogations of Youth:**

In the normal course of their duties, XXXX Police Department (X.P.D.) Officers will find it necessary to conduct interviews with youth who may be witnesses to or victims of a criminal acts. Officer will also participate in interrogations of youth suspected of or taken into custody for commission of offenses. Officers will ensure that all constitutional and statutory rights guaranteed to an individual under the law are adhered to at all times, prior to, and during any questioning.

**Determining Custody:**Prior to interrogating a youth who has been taken into police custody, or who is being interviewed in connection with an incident and is the focus of the police investigation, officers conducting the interview/interrogation will adhere to the following procedures.

To determine whether a person is in custody for purposes of *Miranda*, courts will examine the circumstances surrounding the interrogation and ask whether, given those circumstances, a “reasonable person” would have felt free to leave. When the person questioned is 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*.”[[1]](#endnote-1)

1. Age is a factor to be considered under the totality of circumstances in determining custody, regarding the timing and circumstances in officers’ questioning of youth.[[2]](#endnote-2) X)X)X)X courts consider additional factors when determining whether youth custody has attached for purposes of ensuring that *Miranda* advisements have occurred in a timely and adequate fashion.[[3]](#endnote-3)
2. **Administering Juvenile *Miranda* Warnings:**

Youth (and a responsible adult, if present) must be advised of their *Miranda* rights in a clear and understandable way prior to custodial interrogation.[[4]](#endnote-4) Officers should not make assumptions about youth’s literacy.

1. **Timing** of Administration of *Miranda* Warnings: Law enforcement officers are required to administer *Miranda* warnings when a youth is likely to perceive him/herself in custody, e.g. not free to leave. Officers must take into account a child's age so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer.

Officers should err on the side of caution and provide Miranda warnings early and often, especially when a youth would perceive that they are not free to leave due to the setting (e.g. a police station) or the implicit level of coercion (e.g. no other adult can advocate for the youth). Warnings should be provided in developmentally appropriate language to protect the admissibility of statements gathered from interviews and interrogations.

1. Age Appropriate Method of **Providing** *Miranda* Warnings to Youth:

The warning should be read slowly, one right at a time. Officers should not assume youth are literate.

To ensure solid understanding, youth should be asked to explain each right in his/her own words after it is read. Because age is not a reliable indicator of reading comprehension level, *Miranda* warnings should be administered to youth using age-appropriate language:[[5]](#endnote-5)

* You have the right to remain silent. That means you do not have to say anything.
* Anything you say can be used against you in court.
* You have the right to get help from a lawyer right now.
* You also have a right to have your mother, father, or another adult here.
* If you or your family cannot pay a lawyer, the court will get you one for free.
* You have the right to stop this interview at any time.
* Do you want to talk to me?
* Do you want to have a lawyer with you while you talk to me?
* Do you want your mother, father, or another adult concerned about you here while you talk to me?
1. Cease Questioning: Officers must cease their questioning of a youth immediately when a youth requests an attorney.

**Obtaining *Miranda* Waivers:**When a youth has knowingly waived his/her rights, officers may begin questioning. The State in each jurisdiction bears the burden of proving by a preponderance of the evidence that the *Miranda* waiver was knowing, voluntary, and intelligent.[[6]](#endnote-6) The validity of a youth’s *Miranda* waiver will be inferred from the totality-of-the-circumstances surrounding the alleged waiver, including:

* the youth’s age; frame of mind and mental competence,
* prior criminal experience;
* the length, intensity; and frequency of the interrogation; and,
* the existence of physical deprivation or inducement.

Prior to seeking a waiver, officers must attempt to assess whether the youth possesses the capacity to understand the *Miranda* warnings and to also appreciate the consequences of waiver. To determine this, officers should ask youth to verbally explain the potential consequences of his/her responses/ confession.

**Custodial Interviews:**

When interrogating youth in custody, officers must take into account that youth are more likely to overestimate immediate rewards (i.e. just completing the interview, going home, getting to sleep, etc.) and less able than adults to consider the long-term consequences of their actions and decisions.[[7]](#endnote-7)To reduce the risk of suppression of a youth’s statement by a reviewing court and reduce the risk of obtaining a factually unreliable statement, officers should observe the following guidelines when questioning youth witnesses and suspects:

* Ask open-ended, non-leading questions that encourage the youth to produce a narrative answer. Threatening, accusatorial, or antagonistic questioning styles should be avoided.
* Indicate the purpose of the interview and the subject matter to be discussed.
* Do not create a false appearance of friendship or trust.
* Do not engage in deception; for example, do not give youth the perception that the officers will be able to take actions (e.g. reduce charges), or have evidence (e.g. claims that a videotape exists) when such actions and evidence do not exist.
* Questioning shall be interrupted by breaks after 120 minutes. Breaks should provide youth with a legitimate opportunity to clear his/her mind and be able to eat, drink and use the restroom, as well as a cessation of questioning.[[8]](#endnote-8)
* All custodial interviews of youth witnesses and suspects should be video recorded. The recorder should be turned on the moment the officer begins talking to the youth and should remain on until the last question is answered.
	1. When officers are questioning youth regarding serious felonies, officers should record the provision of *Miranda* warnings and the youth’s *Miranda* waiver.
* Officers should explain what the next steps in the process will be.

**Ensuring Voluntary Youth Statements:**

Courts will review all statements obtained by youth in custody for voluntariness.[[9]](#endnote-9) To avoid statements that appear coerced because they are motivated by the sole goal of being released from custody, or manifesting fear, officers shall consider the below noted characteristics of the youth being questioned as well as the factors involved in the method of questioning they use. Courts will consider the “totality of circumstances” to determine whether coercion—potentially exploiting a youth’s vulnerability—renders the statement inadmissible in court.

Characteristics that will be considered in determining the **voluntariness** of a youth’s statements include the youth’s:[[10]](#endnote-10)

* age, intelligence, educational background;
* mental capacity (cognitive capacity as well as possibility of alcohol or other substances) and disability status,
* physical condition and whether officers used force on the youth prior to questioning;
* prior experience in the criminal system;
* level of fatigue;
* level of trauma related to the youth’s arrest and the incident leading to the youth being taken into custody, including whether the youth suffered any physical injury;
* familiarity with the English language.

Factors regarding **officers’** **timing, duration, and conduct during the** questioning that will be considered in determining the voluntariness of the youth’s statements include:

* duration of the questioning;
* time of day;
* length of confinement;
* whether *Miranda* or police caution warnings were given, when, and whether the youth understood them;
* use of force on youth prior to questioning;
* whether the room was of sufficient size and supplied with appropriate furniture;
* whether the youth was refused the use of bathroom, food, or drink;
* whether the youth was cuffed or threatened;
* whether there was a promise of leniency;
* whether the youth understood the interrogation process;
* whether a parent or responsible adult was notified and when;
* whether the youth asked for a parent or responsible adult to be present and whether a parent or responsible adult was present during questioning; and,
* whether the police prevented a concerned adult from speaking with the youth.

**Post-Interview Actions:**Whenever a confession is obtained from a youth, Officers shall undertake the following post-interrogation actions:

* Corroborate the youth’s confession by ensuring that the information provided is provably consistent with the crime scene.
* Review the recording of the interrogation to determine whether the youth was merely repeating information accidentally revealed to him/her through leading questions.
* Confirm that the youth has not provided objectively inaccurate information that is contradicted by the crime scene.

**Sexually Trafficked Children & Youth**It is the policy of X.P.D. that any person under the age of 18 engaged in commercial sexual activity is to be treated as a victim in need of protection. Officers shall adopt a victim-centered approach. Officers should also assess the functioning of the youth, e.g. ascertain whether the youth may have any cognitive disabilities.

* The questioning of potential victims of human trafficking who are under the age of 18, should be conducted by officers trained to recognize signs of trafficking as well as how to relate to and question youth. Officers must document examples of compulsion including the youth submitting to demands by force, fear, duress, or intimidation, or fraud from a person in authority (parents or persons acting *in loco* *parentis*, relatives teachers, coaches, and others) to whom the youth is powerless. Officers must anticipate that developing trust with a victim is time consuming and is achieved only when the victim feels safe.
* Questioning Protocol for Sexually Trafficked Youth:
* Officers shall notify the first-level supervisor that they will be questioning a potential sexually trafficked youth.
* Where possible, video recording victims’ statements is advised unless recording causes victim to refuse to speak.
* Officers shall determine whether child protective agencies should take the youth into care and/or remove other children related to the exploiter.
* Officers shall not disclose the names of youth involved in trafficking, even if they have criminal records.
1. *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2403 (2011). See also, JDB v. North Carolina, 564 U.S. 261 (2011)(Syllabus (b)(“So long as the child’s age [is] known to the officer or would [be] objectively apparent to a reasonable officer, including age in the custody analysis is consistent with the Miranda test’s objective nature.”) [↑](#endnote-ref-1)
2. *Id*. at 2406. In addition to age, courts will consider the location of questioning including the number of officers, whether the juvenile’s presence was voluntary, the length of the interrogation; and whether a parent or guardian was permitted to assist the juvenile during questioning. *See In re K.C.*, 32 N.E. 3d 988, ¶21, 22 (Ohio 2015). [↑](#endnote-ref-2)
3. Across the country, courts have applied the “reasonable child standard” in forty-three cases since 2011, forty of which concerned the “custody” analysis prescribed by *Miranda*. In X)X)X)X, this decision has interpreted in juvenile delinquency cases in *Brown v. State*, 452 Md.196 (2017); *Miles v. State,* Md. App. Lexis 546, 2017 WL 2226692 (Md. Ct. Spec. App. May 22, 2017) and *In re Hector S.,* Md. App. Lexis 635 (Md. Ct. Spec. App. July 12, 2016). A summary of these decisions indicates the following “bright line” tests:

	* *Brown v. State*: When a youth is approached on the street, no Miranda warning was necessary for the initial questioning regarding a delinquent act;
	* *Miles v. State*: When a youth was questioned by police for 10 minutes, in his home, with his mother present, the youth would not have reason to believe he was in custody and Miranda warnings were not necessary;
	* *In Re Hector S*: When a youth was questioned at a police station, the officers should reasonably have concluded that the youth did not perceive he had the right to leave and therefore should have been given Miranda warnings. [↑](#endnote-ref-3)
4. IACP Model Policy Juvenile Enforcement and Custody [↑](#endnote-ref-4)
5. IACP Training Key #652, *Interviews and Interrogations of Juveniles* (2011). [↑](#endnote-ref-5)
6. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). [↑](#endnote-ref-6)
7. *Reforming Juvenile Justice*, at 193 [↑](#endnote-ref-7)
8. IACP Training Key #652, *Interviews and Interrogations*, 5(2011) [↑](#endnote-ref-8)
9. The provision of *Miranda* warnings is but one factor in the voluntariness analysis. In *Haley v. Ohio*, the U.S. Supreme Court noted that adolescence is a

 *“…tender and difficult age for any boy of any race. He cannot be judged by the more exacting standards of maturity…A 15 year old lad, questioned through the dead of night by relays of police is a ready victim of the inquisition…we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic.”*  [↑](#endnote-ref-9)
10. For a full listing of the factors that contribute to findings of coercion, see, CALEA Standard 44.2.3 (2010) [↑](#endnote-ref-10)