

*Model Policy*

# Miranda Warnings, Waiver of Rights, and Youth Interrogations

## Strategies for Youth

### PURPOSE

Ensure law enforcement officers follow guidelines for how to issue *Miranda* warnings to and conduct interrogations of youth in a developmentally appropriate, trauma informed, and equitable manner that protects youths' rights.

### POLICY

This policy provides officers with practices that help youth understand the consequences of their statements, ensuring that procedures involving *Miranda* warnings, waiver of rights and youth interrogations reflect an understanding of the special needs and vulnerabilities of youth and protect youths' rights. It is designed to advise officers in:

1. providing *Miranda* warnings to youth and conducting custodial interrogations in a manner that safeguards the youth's constitutional guarantee against self-incrimination and right to an attorney<sup>1</sup>; and
2. ensuring that any waiver of rights by youth will be knowing, voluntary, and intelligent.<sup>2</sup>

The policy also advises officers how to provide information to a youth's parent, when the youth is taken into custody, and outlines the roles of parents and attorneys in the *Miranda* warning and interrogation processes.

<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436,444 (1966); see also *In re Gault*, 387 U.S. 1 (1967) (youth facing delinquency proceedings must be afforded due process, including the right against self-incrimination and the right to counsel).

<sup>2</sup> See *Miranda*, 384 U.S. at 444; see also *Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (as with adults, the "totality of the circumstances" determines whether a youth has waived their rights during interrogation. This approach "permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.")

### REASONS FOR YOUTH SPECIFIC POLICIES

#### Why *Miranda* Warnings, Waiver of Rights, and Interrogations Should Be Different for Youth

- Youth brain development causes them to view and react differently from adults in custodial interviews and interrogations. In these settings, youth are more likely to:
  - Experience difficulty anticipating the consequence of their statements and actions,
  - Be susceptible to the promise of immediate rewards (e.g. the prospect of leaving the interrogation or of an officer's promise of lenient treatment for cooperation) rather than invoke their rights, and

#### About SFY's Model Law Enforcement Policies for Youth Interaction

In November 2023, Strategies for Youth (SFY) released "12 Model Law Enforcement Policies for Youth Interaction," a comprehensive, research- and evidence-based set of guidelines for law enforcement agencies seeking to improve their relations and outcomes with the young people they encounter in the day-to-day course of policing. SFY carefully drafted the policies based on research, case law, statutes, and U.S. Department of Justice consent decrees. A diverse group of national, regional, and state experts and stakeholders also reviewed the policies. The Spring issue of *Juvenile Justice Update* explored Model Policies for establishing an overall approach to dealing with youth, and for arrests and interrogations. In this issue, we highlight SFY's comprehensive Model Policy for *Miranda* Warnings.

– Be susceptible to coercion in various forms (e.g. false claims of the existence of evidence against the youth).

- As the U.S. Supreme Court found, a reasonable youth in law enforcement custody will "sometimes feel pressured to submit [to law enforcement questioning] when a reasonable adult would feel free to go."<sup>3</sup>

Youth are more likely than adults to make false confessions,<sup>4</sup> which may lead to wrongful convictions.<sup>5</sup> Interrogation tactics that may not be considered coercive when used with adults may be coercive when used with youth. And, even in situations where officers do not engage in overt physical or verbal coercion, youth of color may be intimidated by the presence of law enforcement given evidence of tension between communities of color and law enforcement.

- Evaluating whether a youth is "in custody," and thus entitled to a *Miranda* warning, requires officers to consider the youth's age<sup>6</sup> and other circumstances surrounding the interrogation in deciding whether a reasonable youth would feel free to end the interrogation and leave.
- A youth's developmental stage, experience, education, background,

<sup>3</sup> *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72, 277 (2011).

<sup>4</sup> See *J.D.B.*, 564 U.S. at 269 (the risk of false confessions "is all the more troubling – and recent studies suggest, all the more acute – when the subject of custodial interrogation is a juvenile.")

<sup>5</sup> International Association of Chiefs of Police, *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, at 1 (2012) (theiacp.org) ("False confessions are a leading cause of wrongful convictions of youth." Moreover, "[w]hen a juvenile is prosecuted on the basis of a false confession, the true perpetrator remains a hazard to the community, denying the victim justice, magnifying the impact of the crime and eroding public confidence in the justice system.")

<sup>6</sup> *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

See *MIRANDA WARNINGS*, next page

MIRANDA WARNINGS, from page 3

## DEFINITIONS

### AGENCY

This law enforcement agency.

### 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.

### PARENT

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

### 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 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.

cognitive functioning, mental health functioning, and any other potential disability may all impact the youth's capacity to understand *Miranda* warnings.

- The presence of an attorney during the interrogation is the most effective vehicle to protect the youth's rights.
- Although a parent or other responsible adult can support and advocate for a youth, these adults are not a substitute for an attorney. A parent may not understand the *Miranda* warnings. In some circumstances, a parent may even have a conflict of interest with the youth.
- Failing to communicate with youth in a developmentally appropriate way increases the risk of false, unreliable, or coerced confessions, and the exclusion of confession evidence obtained in violation of constitutional rights.

Additional source and background information for this policy can be found in the Supplementary Materials on page X.

## PROCEDURE

### I. When to Provide *Miranda* Warnings to Youth

Officers must provide *Miranda* warnings any time a youth is under arrest or reasonably believes that they are not free to leave an officer's presence and the officer intends to question them.

**A. Officers should assume that a youth would reasonably perceive** themselves not to be free to leave the presence of the officer when the officer has, or has stated an intent to:

- Take action, including using verbal directions, force, restraints, or blocking egress, to discourage or prevent the youth from leaving,
- Issue legal or other consequences for the youth's effort to leave the officer's presence,
- Hold the youth in a law enforcement agency station or vehicle,
- Tell the youth directly or by implication that they are not free to leave,
- Fail to tell the youth that they are free to leave,

- Keep the youth from contacting a parent or attorney,
- Make promises to the youth in exchange for the youth's cooperation.

**B. Should youth make incriminating, spontaneous statements** prior to *Miranda* warnings the officer shall immediately:

1. Notify the youth that they are not free to leave and are in custody,
2. Then provide the youth *Miranda* warnings (using the language set out in Section II, below) before attempting to clarify the youth's statement or asking any questions related to the statement.

### II. How to Provide *Miranda* Warnings to Youth

**A. The following language shall be read out loud by the officer**, and shall be included in written *Miranda* warnings provided to the youth, the youth's parent, and the attorney:

*"You have the right to remain silent. That means you do not have to say anything."*

See *MIRANDA WARNINGS*, page 8

## MIRANDA WARNINGS, from page 4

*Anything you do say can be used against you in court to try and show you committed a crime. I can tell the prosecutor, juvenile court judge or adult court judge and Probation Officer what you told me. You have the right to get help from a lawyer right now. The lawyer will work for you. If you cannot pay for a lawyer, a lawyer will be provided to you for free. You have the right to talk to a lawyer in private. You do not have to talk to me now, and if you do start to talk to me you can change your mind at any time and stop talking to me. Do you want to talk to me?"*

**B. After reading each right and before any waiver or rights**, to ensure accurate comprehension, the officer must ask the youth to explain in their own words their understanding of the right. Officers must require youth to make clear oral statements; officers shall not accept head nodding or non-verbal responses.

**C. If a youth's explanation demonstrates an incorrect or incomplete understanding of the warning, or the attorney states that the youth does not understand, the officer will:**

1. Re-read the warning,
2. After reading the rights, determine if the youth's understanding is accurate and complete,
3. Not proceed until the youth demonstrates clear understanding,
4. Contact a supervisor before proceeding if a youth continues to demonstrate lack of understanding despite the officer making several attempts to explain.

**D. If the youth asks for an attorney after the officer reads the warnings**, the officer will cease any questioning until an attorney is present.

**E. After reading the warnings, the officer must give the youth a meaningful opportunity to:**

1. Consult outside of the officer's presence with the youth's parent and the attorney to discuss the *Miranda* warnings and the advisability and consequences of waiving them.

**F. Public Safety Exception to Providing Youth with a *Miranda* Warning**

1. Officers may temporarily forgo the *Miranda* warning when necessary if they or the public are in immediate danger.

2. In order for this public safety exception to apply, officers shall first determine that an objectively reasonable need exists to protect the officer or public from an immediate danger.
3. Once an officer has determined that the public safety exception applies, the officer may question a youth without the *Miranda* warning as long as the questions asked are related to the immediate danger and reasonably necessary to secure public safety.
4. Once the emergency ends, this exception no longer applies.
5. Officers must document the need for the public safety exception, the information obtained from the youth, and the duration of the emergency that required the use of the public safety exception.

### III. Role of Parents During *Miranda* Warnings and Interrogations of Youth

**A. Immediately after taking the youth to a place of confinement** and—except where physically impossible—no later than one hour after the youth has been taken into custody, the officer must permit the youth to make a completed call to a parent, and a second call to a responsible adult if the youth is unable to reach the parent.

**B. The officer shall make efforts to contact the parent** and inform that person of the youth's arrest, and the location of the youth, prior to questioning the youth.

1. Notification and contact may be in person or electronic, by telephone or video conference, but not by email or text.
2. If the officer or Agency has reason to believe the youth is in the custody of a state or local child protective agency, the officer must call the social worker assigned to the youth and consult with the social worker about contacting the youth's biological and/or foster parents and/or responsible adults.
3. Should an attempt to contact a parent (or, when applicable, a social worker for a youth in the custody of a child protective agency) fail, renewed attempts shall be made until a parent or custodian is reached.
4. If the parent is unable to be physically present with the youth, the

Agency will make alternative means (e.g. video conference or phone) available for the parent's participation and will facilitate the youth's ability to speak privately with the parent through alternative means if the youth or parent so desire.

5. Officers must document all successful and unsuccessful attempts to contact the parent. This documentation must include the name of the parent and the method of contact. Officers must document if the parent participates by alternative means when *Miranda* warnings are given to the youth.

**C. When a parent is contacted, officers shall notify this person of the following:**

1. That the youth is in custody,
2. The youth's location (including any future destination if the youth is to be transported),
3. The reason the youth is in custody unless it would endanger a witness or compromise the investigation,
4. The officer's intention to advise the youth of their *Miranda* rights,
5. That the advisement of *Miranda* rights must take place in the presence of the parent (or a responsible adult who is designated by the parent) and an attorney,
6. The youth has the opportunity to consult with the parent and an attorney prior to and during any questioning by the officers,
7. The youth will not be permitted to waive their *Miranda* rights until the youth has consulted with an attorney.

**D. The following are the only exceptions to the requirement** that officers attempt to contact the youth's parent prior to provision of *Miranda* warnings:

1. The parent is suspected of being an accomplice to the offense,
2. The parent is suspected of committing a crime against the youth,
3. The parent is a complainant or suspected victim in the offense under investigation,
4. The parent cannot reasonably be located, refuses contact, or refuses to participate,
5. If the officer believes the information being sought from the youth is necessary to protect life, limb, or

See *MIRANDA WARNINGS*, next page

MIRANDA WARNINGS, from page 8

property from an imminent danger and the questions are limited to those that are reasonably necessary to obtain that information,

6. The parent expresses hostility to the youth.

If officers rely on any of these exceptions to not contact the youth's parent, they must document the reasons for doing so. They must also contact another responsible adult to assist the youth. A responsible adult who assists the youth under these circumstances should be treated as a parent for purposes of this policy.

**E. Once an officer has reached the parent, the officer must determine<sup>7</sup>, by questioning both the youth and parent, whether the youth:**

1. Appears to exhibit signs of cognitive, learning, or developmental impairments that may affect:
  - their understanding of the written/spoken word, and/or
  - their ability to read the warning and comprehend it,
2. Is taking medications that may affect the youth's ability to understand,
3. Appears to be in the midst of a mental health crisis,
4. Appears to be under the influence of alcohol or drugs,
5. Appears to have limited English language proficiency that may affect their ability to understand and convey information to the officer,
6. Appears to have a vision, speech, or hearing impairment that may affect their ability to understand and convey information to the officer,
7. If the officer concludes that the youth appears to have any of the impairments or conditions described above, the officer will document that conclusion and consult with a supervisor about how to proceed.

**F. The officer must also assess whether the parent appears to be under**

<sup>7</sup> For more guidance on expectations for officers' ability to recognize youth behaviors and indicators that are characteristic of disability, mental health crisis, or impairment from alcohol or drugs, see Policy 8: Policing Youth with Disabilities, Experiencing Mental Health Crises, or Impaired By Drugs or Alcohol.

the influence of alcohol or drugs, appears to be proficient in English, and appears able to hear, read, and comprehend the warnings.

1. If the parent does not seem to be capable of protecting the youth's interests, due to being under the influence of alcohol or drugs, a language barrier, a comprehension barrier, or any conflict with the youth as described in Section III.D, above, the officer must stop the process.
2. The officer must locate another responsible adult for the youth, if the officer believes the parent cannot represent the youth's interest.
3. The officer must document their actions if the officer concludes that the parent cannot represent the youth's interests.

**G. Officers will give youth the opportunity to consult with parents in confidence, outside of the hearing of the officers, and officers will not record youth-parent consultations.**

**H. Parents may be present during interrogations of youth unless:**

1. The youth states that they do not want the parent present during the interrogation; the youth's wishes prevail over the parent's insistence to be present,
2. The parent is a complainant in the offense under investigation,
3. The parent is suspected of being an accomplice in the offense under investigation,
4. The parent expresses hostility towards the youth.

**I. If the officer believes the parent is capable of protecting the youth's interests, and the Agency has followed the requirement of Section IV but has not contacted an attorney for the youth, the officer may read out loud and provide both the parent and the youth with a written copy of the *Miranda* warnings.**

**J. If a parent requests an attorney for the youth, officers shall not question the youth even if the youth states a willingness to answer the officer's questions.**

#### **IV. Role of Attorneys During *Miranda* Warnings and Interrogations of Youth**

**A. The Agency must attempt to contact an attorney for the youth before officers provide *Miranda* warnings to youth.**

1. Notification and contact may be in person or electronic, by telephone or by video conference.
2. Should an initial attempt to contact an attorney fail, renewed attempts shall be made by phone until a parent is contacted.
3. If the parent identifies an attorney for the youth, the Agency shall contact that attorney. If the youth is eligible for indigent defense, the Agency shall contact the appropriate public defender or other indigent defense agency.
4. All attempts to contact an attorney for the youth must be documented, and must include the name of the attorney or the attorney's organization and the method of attempted contact.
5. If the Agency has followed these procedures but has not made any contact with an attorney after 90 minutes, the officer may provide the youth with *Miranda* warnings so long as a parent who is capable of protecting the youth's interest is present with the youth when the warnings are given. Even after the 90 minutes has passed, the Agency will continue to make efforts to contact an attorney for the youth, and will document those efforts.

**B. Officers shall not interrogate a youth until the youth has had an opportunity to consult with an attorney.<sup>8</sup>**

1. Once the attorney is present, the youth must have the opportunity to consult with the attorney in private, outside the presence or hearing of officers.
2. Officers shall not accept a youth's waiver of *Miranda* rights if the youth has not consulted with an attorney.
3. If officers have read the youth their *Miranda* rights before the attorney arrives, once the attorney is present and has had a private consultation with the youth, officers shall re-read

<sup>8</sup> California, Hawaii, Maryland and Washington State all require that lawyers must be present before officers interrogate youth. See CAL. WELF. & INST. CODE § 625.6 (West 2024); California Attorney General Information Bulletin No. 2023-DLE-02, Mandatory Consultation with Counsel Prior to Custodial Interrogations of Youth Under 18 (2023); Hawaii H.B. 180, §3 (2023); Md. Code § 3-8A-14.2; RCW § 13.40.740. See also Baltimore Police Department Policy 1207, Youth Interrogations, at 6 (2022) (directing implementation of the Maryland law).

See MIRANDA WARNINGS, next page

MIRANDA WARNINGS, from page 9

the youth their *Miranda* rights in the presence of the attorney.

4. If a youth requests an attorney, the parent may not exclude an attorney from the interrogation.

## V. Process for Youth Who Waive their *Miranda* Rights

**A. Officers may not accept a youth's waiver of counsel before** the youth has had an opportunity to consult with an attorney.

**B. Officers may not accept a parent's effort to waive** the youth's right to remain silent or to be represented by an attorney.

**C. If the youth states they want to waive *Miranda* rights** after consulting with an attorney and a parent, officers must:

1. Tell the youth that:
  - A waiver means the youth will be interrogated by officers for the purpose of establishing whether and to what extent the youth participated in an offense, and that the youth's statements may be used against them in a court of law.
  - If the youth waives the right to an attorney, no attorney will be present during the interrogation unless the youth later invokes their *Miranda* rights,
  - Having the youth's parent present in the interrogation is not the same as having an attorney present,
  - The youth should not believe that waiving their rights means they will:
    - be released from custody sooner,
    - have their legal penalties reduced,

2. Officers will use a written waiver form, prepared by the law enforcement agency, in language no more advanced than the sixth grade level. This form will set out the implications of the youth's decision to waive their rights and should be presented to them in the presence of their parent and attorney by the officer who has provided the *Miranda* warnings. In light of the importance of communicating *Miranda* rights, depending on the number and proportion of youth with limited English proficiency (LEP) whom the law

enforcement agency encounters, the frequency with which the agency interacts with these youth, and the resources available to the agency, the agency may need to provide these youth with written waivers in their primary language.<sup>9</sup>

3. Officers shall not accept an oral waiver of rights by a youth unless:

- The youth cannot read or write,
- The youth has a disability that prevents the youth from reading or signing a written waiver, or
- The youth has limited English proficiency and the Agency does not have a written waiver in the youth's primary language.

4. When a youth seeks to orally waive their rights, officers must:

- Video and audio record the entire *Miranda* warnings process.
- Using developmentally appropriate language, obtain clear verbal confirmation from the youth that the youth is aware:
  - They are entitled to the presence of an attorney during questioning,
  - They have a right not to self-incriminate,
  - Any statements the youth makes may be used against them in a court of law, and
- Document in the investigatory file the circumstances that led to accepting an oral waiver in lieu of a written waiver.

5. **When a youth with LEP seeks to orally waive their rights, and no written waiver in the youth's primary**

<sup>9</sup> See U.S. Department of Justice, Federal Register: Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41455 (June 12, 2002) (DOJ LEP Guidance). See also *id.*, at 41459-61 (describing the appropriate analysis to determine the extent of the obligation to provide LEP services, including that "[d]ecisions by a Federal, State, or local entity to make an activity compulsory, such as ... the communication of *Miranda* rights, can serve as strong evidence of the program's importance"); at 41466-67 ("Many police and sheriffs' departments already provide language services in a wide variety of circumstances to obtain information effectively, to build trust and relationships with the community, and to contribute to the safety of law enforcement personnel. For example, many police departments already have available printed *Miranda* rights in languages other than English....")

**language is available**, the agency may need to provide the youth an oral interpreter.<sup>10</sup>

- D. If a youth waives their *Miranda* rights but subsequently states that they do not want to answer questions**, or want an attorney present, officers shall not try to convince the youth otherwise, and shall immediately stop questioning.

## VI. Preparing for the Interrogation

### A. Role of the Supervisor

Whenever feasible, officers conducting an interrogation of a youth should be able to contact a supervisor for consultation with the interrogating officer(s). Where available, the supervisor should also conduct periodic safety checks of the youth being interrogated, ensure officers' adherence to policy, and determine when incidents arise that require ending or prolonging the interrogation.

### B. Considerations Before Commencing Interrogation

Before beginning an interrogation of a youth, officers shall gather and consider the following information from the youth, the parent, and the attorney, in order to assess the appropriate time, location, and conduct of the investigation:

1. The youth's age,
2. The youth's family and home life, including identifying any responsible adults in the youth's life,
3. The youth's education level, including whether they have been identified as having an intellectual, developmental, or behavioral health disability, and/or a vision, speech, or hearing impairment. To ascertain this information, the officer shall ask the following questions:

- Is the youth enrolled in school?
- What grade is the youth in? (Officers should consider whether the grade is appropriate for the age of the youth.),
- Has the youth ever received special education services or had an IEP (Individualized Education Program) or other educational plan to

<sup>10</sup> See DOJ LEP Guidance, 67 FR at 41466-67 (Noting that many police departments have "interpreters available to inform LEP persons of their rights and to interpret police interviews.")

See MIRANDA WARNINGS, next page

MIRANDA WARNINGS, from page 10

address the youth's disability (e.g., a 504 Plan)?

- Has the youth ever been diagnosed with a learning disability, developmental disability, or intellectual disability?
  - Has the youth ever been diagnosed with an emotional, behavioral, or mental health disability?
  - Has the youth ever had a traumatic brain injury?
  - Is the youth able to read and write?
  - Is the youth able to put concepts into their own words?
4. Primary language spoken by the youth as well as the youth's apparent ability to speak and understand English.

#### C. Recording Youth Interrogations

All proceedings from the advisement of rights, the overview of the process, the conduct of the interrogation, and the breaks in the interrogation shall be video and audio-recorded. The supervisor will check that all interrogations have been properly recorded.

### VII. Conditions for Interrogation of Youth

#### A. Interview/Interrogation Room

When the interrogation takes place on Agency premises, officers shall conduct custodial interrogations in one of the Agency's authorized interrogation/interview rooms unless an articulable reason requires the interrogation to occur elsewhere. Officers must note the location of the interrogation in the investigative record.

1. Interrogations of youth must occur in a location outside the sight and sound of adult detainees.
2. Officers shall not leave youth in custody unmonitored in an interrogation/interview room. An officer shall remain inside the room with the youth in custody or shall have visual contact with the youth in custody through a window or via electronic monitoring equipment.
3. Officers must never fasten a youth in custody to an immovable object while waiting for the interrogation to begin.
4. Officers must make the following basic amenities available to youth

prior to commencing an interrogation and throughout an interrogation:

- Reasonable access to toilets and washing facilities,
  - Reasonable access to drinking water or another beverage,
  - Food if the youth has not eaten within three (3) hours,
  - Reasonable access to a phone to contact their responsible adult and lawyer, if requested, if the responsible adult or lawyer is not present in the interrogation room.
5. Once the officer completes the interrogation, the officer will ensure that the youth has been released from the interrogation room and placed in the custody of another adult.
  6. Officers must never leave a youth in an interrogation room overnight.

#### B. Timing of Interrogation

1. Where feasible, and where there is no public safety risk, interrogations should not be conducted between 11 pm and 6 am.
2. If exigent circumstances exist (e.g. information possessed by the youth in custody may be related to the imminent safety of a person), officers may question youth between 11 pm and 6 am solely for the purpose of addressing the imminent safety matter:

- Such decision must be approved by a supervisor;
- The reason for conducting an interrogation during those hours must be set forth in the officer's investigative report.

#### C. Duration of Interrogation

1. After 60 minutes of questioning/interrogating a youth, officers should stop for a 10-minute break. During the break they shall allow youth to use the amenities described above.
2. Officers must notify a supervisor if the interrogation is to continue beyond 60 minutes to obtain permission to continue, and note this in the investigative record.

The Supervisor must consider:

- The justification for continuing past 60 minutes,
- Whether the youth has eaten or had something to drink within the last three (3) hours,

- The total duration of the interrogation at the time of the request to continue.

3. When an interrogation continues after 60 minutes, the officer should note in the investigative record the reason and duration of its continuation as well as the name of the supervisor who approved its extension.
4. No interrogation of a youth shall exceed four (4) hours.

#### D. Presence of Officers

No more than two (2) officers may be in a room with a youth during an interrogation. Officers may not bring any weapon into the interview room.

### VIII. Conduct of Interrogations

#### A. Method of Questioning

In view of the developmental differences of youth—as well as how stress and anxiety can affect a youth's capacity to understand even simple concepts—officers must approach interrogations of youth with extreme care. Officers 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 officer at the time of the interrogation. The following guidelines should be followed as appropriate in consideration of those characteristics:

#### AVOID:

- Jargon, technical or legal language,
- Leading questions (e.g., "Was the victim standing by the couch or by the door?"),
- Questions with multiple parts,
- Assuming youth's understanding of adult or law enforcement vocabulary,
- Using rapid-fire questions without giving the youth adequate opportunity to process each question,
- Injecting important facts or circumstances of the crime into the interrogation,
- Completing the youth's sentences,
- Repeatedly interrupting the youth,
- Repeatedly confronting youth with accusations of guilt and denying youths' claims of their innocence,
- Telling youth that they are powerless to prove themselves innocent.

See MIRANDA WARNINGS, next page

MIRANDA WARNINGS, from page 11

**USE:**

- Names and places instead of pronouns,
- Short, simple words and sentences,
- Open-ended questions that elicit a narrative response (e.g., “What did you do last night?”),
- 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?”),
- Permit youth to fully explain their answers,
- Time events connected to concrete events in the youth’s life (e.g., “Did this happen when you were at school or when you got home that day?”),
- Questions that elicit the information in a different way, to double check the consistency of the youth’s responses,
- Questions that ask the youth to explain their understanding of the consequences of their statements.

**B. Officers Are Prohibited From Using Restraints, Force, or Intimidation**

1. **Restraints:** Officers shall not shackle or otherwise restrain the youth during interrogations unless the youth is engaging in behavior likely to cause injury to themselves or others.
2. **No Touching:** Officers will not touch youth during the interrogation and will not use their size or the room’s furniture to intimidate youth or otherwise cause them to perceive that the officer plans to use force.
3. **No Threat or Use of Force/Harm:** Officers must not engage in threats of use of force, including for rhetorical or dramatic purposes or to intimidate and/or prompt youth to make admissions or confessions. This includes a strict prohibition on throwing items (e.g. chairs, papers, books) at, or near, youth.
4. **No Use of Force:** Officers must not use force on youth during interrogations.
5. **No Intimidation through Implied Threats:** Officers shall not engage in physical intimidation through being in close proximity to youth.

**C. Officers Are Prohibited From Making Threats or Using Deceit and Promises**

1. Officers are prohibited from threatening youth during an interrogation. Such threats may include:
  - Threatening to tell co-defendants or other youth what the interrogated youth has said,
  - Threatening to publicly share the information and/or the youth’s cooperation,
  - Threatening to harm youth the next time the officer sees them on the street,
  - Implying that the youth is certain to be found guilty,
  - Describing harm that may occur while incarcerated (e.g. rape, attacks),
  - Threatening the youth’s family.
2. Officers are prohibited from using deceit<sup>11</sup> including:
  - Explicit or implicit promises of leniency by the court or prosecutors,
  - Promises of reduction of charges,
  - False claims that co-defendants have made statements during interrogations that implicate youth,
  - False claims that the youth is certain to be found guilty,
  - False claims about length of potential incarceration,
  - False claims of incriminating evidence against the youth.

<sup>11</sup> Some states, including California, Connecticut, Delaware, Illinois, Indiana, Oregon, Pennsylvania and Utah, prohibit or restrict the use of deception in law enforcement interrogations of youth. *See* CAL. WELF. & INST. CODE § 625.7 (West 2024); CT. PUBLIC ACT. 23-27, sSB1071 (2023); DEL. CODE ANN. tit. 11, § 2021-22 (2021); 705 ILL. COMP. STAT. ANN. 405 / §5-401.6 (2023); IND. ENROLLED ACT 415 (2023); OR. REV. STAT. § 133.401 (2022); PA. 23-27 (2023); UTAH CODE ANN. § 80-6-206 (2023). *See also* Baltimore Police Department Policy 1207, Youth Interrogations (2022) at 8 (“The use of any form of deception during the Interrogation of any Youth is prohibited.”). In addition, Reid & Associates, a leading law enforcement trainer, advises law enforcement officers to “exercise extreme caution” when interrogating juveniles, suspects with a lower intelligence or suspects with mental impairments, as these individuals are “more susceptible to false confessions.” *See* Reid & Associates, Clarifying Misrepresentations About Law Enforcement Interrogation Techniques, at 29 (2019).

**IX. Special Considerations: Disability, Drug or Alcohol Impairment,<sup>12</sup> or Limited English Proficiency**

**A. Youth With Behavioral Health Disabilities or in Mental Health Crisis**

Officers will stop the interrogation immediately if they observe any indication or learn that the youth has a behavioral health disability, is experiencing a mental health crisis (e.g. suicidal ideation, psychotic symptoms such as apparent delusions or hallucinations), displays bizarre behavior or verbalizations, or demonstrates any other signs of a behavioral health disability that may impair their capacity to knowingly and intelligently participate in the interrogation. Officers will then:

1. Document the reason for terminating the interrogation and consult with a supervisor to determine whether to proceed and, if so, under what conditions they will proceed,
2. In consultation with a supervisor, if emergency mental health services are necessary, contact and request services for the youth from appropriate mental health professionals,
3. Document any emergency mental health services that are provided to the youth,
4. Document any modifications made to the interrogation so that the youth can knowingly and intelligently participate,
5. Ensure, if it is decided that the interrogation will proceed, that a parent and an attorney are present for the entirety of the interrogation,
6. The officer will also follow the procedures described in 1-5 above if the youth is observed to experience a behavioral health crisis while alone in an interrogation room.

**B. Youth With Intellectual or Developmental Disabilities**

If an officer observes any signs of, or learns that the youth has, an intellectual or developmental disability that impacts their capacity to knowingly and intelligently participate in the interrogation, the officer will stop the interrogation immediately. The officer will then:

<sup>12</sup> *See* Policy 8: Policing Youth with Disabilities, Experiencing Mental Health Crises, or Impaired By Alcohol or Drugs.

*See* MIRANDA WARNINGS, next page

MIRANDA WARNINGS, from page 12

1. Document the reason for terminating the interrogation and consult with their supervisor to determine whether to proceed with the interrogation, and, if so, under what conditions.
2. In consultation with their supervisor, determine whether any modifications to the interrogation should be made so that the youth can knowingly and intelligently participate.,,
3. Document any modifications made to the interrogation,
4. Ensure, if it is decided that the interrogation will proceed, that a parent and an attorney must be present for the entirety of it.

**C. Youth With Vision, Speech, or Hearing Impairment**

If an officer observes any signs of, or learns that the youth has, a vision, speech, or hearing impairment that impacts their capacity to communicate effectively during the interrogation, the officer will stop the interrogation immediately. The officer will then:

1. Document the reason for terminating the interrogation and consult with their supervisor in order to determine whether to proceed with the interrogation, and, if so, under what conditions,
2. In consultation with their supervisor, determine whether any modifications to the interrogation should be made so that the youth can knowingly and intelligently participate,
3. Document any modifications made to the interrogation,
4. Ensure, if it is decided that the interrogation will proceed, that a parent and an attorney must be present for the entirety of it.

**D. Youth Whose Ability to Participate in the Interrogation Is Impaired by Drugs or Alcohol**

When an officer encounters a youth of any age displaying signs that their ability to understand is impaired by alcohol or drugs, the officer shall stop the interrogation immediately. The officer will:

1. Document the reason for terminating the interrogation and consult with a supervisor to determine whether to proceed with the interrogation, and, if so, under what conditions.

2. Investigate whether medical attention is necessary to ensure the well-being of the youth in custody.
3. Document any modifications made to the interrogation.
4. If it is decided that the interrogation will proceed, a parent and an attorney must be present for the entirety of it.

**E. Youth With Limited English Language Proficiency<sup>13</sup>**

When an officer encounters a youth of any age who has limited proficiency in English, the officer shall stop the interrogation immediately and use the following procedures:

1. Consult with the officer’s supervisor as to whether the interrogation will proceed, and if so, how to provide effective language access for the youth.
2. If the officer and the supervisor agree that a certified/qualified

<sup>13</sup> For more guidance on communicating with limited English proficient persons during custodial interrogations, see DOJ LEP Guidance, 67 FR at 41469 (“Given the importance of being able to communicate effectively under such circumstances [of custodial interrogation], law enforcement recipients should ensure competent and free language services for LEP individuals in such situations.... [I]n formulating a plan for effectively communicating with LEP individuals, agencies should strongly consider whether qualified independent interpreters would be more appropriate during custodial interrogations than law enforcement personnel themselves.”) Law enforcement agencies should also be aware that DOJ has also cautioned that recipients of federal financial assistance “should not plan to rely on an LEP person’s family members, friends, or other informal interpreters to provide meaningful access to important programs and activities,” although LEP persons “should be permitted to use, at their own expense, an interpreter of their own choosing in place of or as a supplement to the free language services expressly offered by the recipient.” DOJ noted that “such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence or other criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person.” DOJ noted that the advisability of free competent interpreter services is “particularly true” in situations “when credibility and accuracy are important to protect an individual’s rights....” See *id.*, at 41462. See also, Baltimore Police Department Policy 1735, Language Access Services for Limited English Proficiency Persons (2017), at 8 (“The preferred method for interviewing an LEP suspect is direct communication through an on-site interpreter; Language Line may be used in situations where timely on-site interpreter services are not available.”)

interpreter is necessary to provide the youth with effective language access, the officer will request an interpreter and wait for the interpreter to be present before proceeding with the interrogation.

3. If the officer and the supervisor agree that a certified/qualified interpreter is necessary to provide the youth with effective language access, but no interpreter is available in a timely manner, the officer must not proceed with the interrogation.
4. If it is decided that the interrogation will proceed, the Agency will ensure that a parent and an attorney are present for its entirety.

**X. Obligations After Conclusion of Interrogation**

**A. Supervisor’s Obligations**

The Supervisor will review:

- Officers’ reports of interrogations to ensure compliance with the policy and obtain missing information,
- Explanations provided in the investigative report for deviations from the policy prior to signing/approving them,
- Reports of interrogations that were not recorded to ensure that the explanations of deviations from policy are sufficient prior to signing/approving them.

The Supervisor will ensure that the youth has been taken from the interrogation/Interview room and released to responsible adults or detention as soon as practical.

**B. Obligations of Investigating Officers**

Once officers have obtained a statement, they must conduct the following investigative steps to ensure the statement is accurate.

1. Officers shall review the recording to determine whether the youth provided verifiable details about the crime that may have been inadvertently revealed by officers during the interrogation.
2. Officers have a duty to ensure that any statements are corroborated by objective, physical evidence; officers shall not rely solely on statements from other youth.

See MIRANDA WARNINGS, next page



MIRANDA WARNINGS, from page 13

### Supplementary Materials

This appendix contains additional source and background information for Policy 4: *Miranda* Warnings, Waiver of Rights, and Youth Interrogation.

### Conducting youth interrogations

BALTIMORE POLICE DEP'T, POLICY 1207 YOUTH INTERROGATIONS 1-10 (2022)

<https://www.baltimorepolice.org/transparency/bpd-policies/1207-youth-interrogations>

This policy provides detailed guidance about how officers should prepare for and conduct youth interrogations.

FAIR & JUST PROSECUTION, YOUTH INTERROGATION: KEY PRINCIPLES AND POLICY RECOMMENDATIONS 1-13 (2022)

<https://fairandjustprosecution.org/wp-content/uploads/2022/01/FJP-Juvenile-Interrogation-Issue-Brief.pdf>

This issue brief describes “relevant research, emerging reforms, and best practices regarding the interrogation of children,” accompanied by a Model Youth Interrogation Policy.

### Youth Brain Development

*Juvenile Justice & the Adolescent Brain*, THE CTR. FOR L., BRAIN & BEHAVIOR

<https://clbb.mgh.harvard.edu/juvenilejustice/>

The long-term goals of the Center’s juvenile justice program are “to promote neuroscientific research that may elucidate the adolescent brain, to establish an effective resource for the translation of neuroscientific findings that may have implications for juvenile justice in the policy arena, and to realize changes in juvenile criminal law and treatment that accurately reflect the science.”

### How Youth Brain Development Puts Youth at a Disadvantage in Interrogations

Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J. L. & PUB. POL’Y 395, 404-05 (2013)

“[Youth] developmental characteristics—immaturity, impulsivity, and susceptibility to social influences—heighten youths’ vulnerability in the interrogation room.” Although most youth have comparable cognitive abilities with adults by mid-adolescence, meaning that “they can distinguish right from wrong and reason similarly” to adults, “the ability to make good choices with complete information in a laboratory differs from the ability to make adult-like decisions under stressful conditions with incomplete information.” *See id.*

### Youth Lack of Understanding of *Miranda* Warnings and Waiver of Rights

Elizabeth S. Scott et al., *Brain Development, Social Context and Justice Policy*, 5 WASH. UNIV. J. L. & POL’Y, 13, 36 (2018)

“[A]lthough laboratory studies have found that adolescents comprehend the meaning of *Miranda* rights, there is good reason to question whether a juvenile in the real world setting of an interrogation room is likely to make a competent decision about waiving or asserting these rights.” The stress of interrogation is compounded by “[p]olice tactics that combine implicit threats of

punishment unless the juvenile agrees to waive and promises of rewards (such as permission to end the interrogation).” *See id.* “Substantial evidence indicates that juveniles waive their *Miranda* rights at a much higher rate than do adults, and confess falsely at a higher rate. It seems likely that the competence that teenagers show in the research setting is compromised by emotional factors in this social context, justifying special scrutiny of juveniles’ waivers and confessions.” *Id.*

Richard Rogers et al., *Mired in Miranda Misconceptions: A Study of Legally Involved Juveniles at Different Levels of Psychosocial Maturity*, 32 BEHAV. SCI. & L., 104, 104-20 (2014)

Study results indicated that youth “manifested an unexpectedly large frequency of erroneous *Miranda* beliefs,” with youth in low, middle, and high levels of maturity averaging a dozen or more misconceptions, and failing to recall half to two-thirds of *Miranda* concepts.

Feld, *supra*, at 404-05

The article described studies where researchers found the language in *Miranda* warnings “beyond the comprehension of many mid-teen delinquents, and its concepts beyond the grasp of many younger juveniles. Even youths who understand *Miranda*’s words may be unable to exercise the rights as well as adults. Juveniles do not fully appreciate the function or importance of rights, or view them as an entitlement, rather than as a privilege that authorities allow, but which they may unilaterally withdraw.” *Id.*

Joshua A. Tepfer et al., *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 919 (2010)

Many youth “do not understand the full range of consequences that flow from a decision to waive [*Miranda*] rights and speak with police officers. Further, many youth are incapable of asserting those rights in the often intimidating presence of their interrogators.” *Id.*

Lorelei Laird, *Miranda for Youngsters: Police Routinely Read Juveniles their Miranda Rights, But Do Kids Really Understand Them?*, AM. BAR ASS’N (JUNE 2018)

[https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights--but-do-kid/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights--but-do-kid/)

“Research shows that juveniles waive their *Miranda* rights at extremely high rates, with several studies putting it at roughly 90 percent. Yet it’s not clear that these kids understand what they’re giving up.”

### Youth-Specific *Miranda* Warnings and Waivers

BALTIMORE POLICE DEP’T, *supra*, at 1-10 APP. A

This policy appendix is an “Explanation and Waiver of Rights for Youth.”

INT’L ASS’N OF CHIEFS OF POLICE, REDUCING RISKS: AN EXECUTIVE’S GUIDE TO EFFECTIVE JUV. INTERVIEW AND INTERROGATION 7 (2012)

<https://www.theiacp.org/resources/document/reducing-risks>

This guide recommends “simplified” *Miranda* warnings, written at a third-grade comprehension level; *see also id.*, at 19-35 (providing sample forms and worksheets for use in youth interviews

and interrogations, including: Sample Juvenile Pre-Interview/Interrogation Checklist; Sample Interview Plan, Worksheet – Is This Juvenile Interview Custodial?; Worksheet – Assessing [Juvenile] Competency; and Sample Juvenile *Miranda* Warnings).

AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, INTERVIEWING AND INTERROGATING JUV. SUSPECTS (2013)

[https://www.aacap.org/AACAP/Policy\\_Statements/2013/Interviewing\\_and\\_Interrogating\\_Juvenile\\_Suspects.aspx](https://www.aacap.org/AACAP/Policy_Statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx)

“When administering *Miranda* warnings, many jurisdictions use the version and forms developed for adult suspects. Research demonstrates that these warnings are often too complex and advanced for most juveniles.”

### Impact of Race or National Origin on Youths’ Ability to Exercise *Miranda* Rights

Kristin Henning & Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 ARIZ. STATE L. J. 883, 903-06, 915-16 (2020)

The authors assert that “Black youth will perceive and experience police encounters—including the police interrogation—as significantly more coercive than White youth.” The authors also note Black youths’ views of law enforcement are “shaped from a young age as they learn of or see firsthand the experiences of their friends and family members, especially those who have been verbally or physically assaulted by police.” *See id.*, at 903. They are also influenced by instructions from Black parents that “condition Black youth to comply with police authority,” and the likelihood that youth of color may experience an interrogator’s body language differently, including by “fear[ing] for their physical safety and becom[ing] more compliant in an effort to fend off anticipated violence.” *See id.*, at 903-06; 915-16. “Latinx communities also teach their youth to fear law enforcement and prioritize their own safety by being compliant with police demands,” and Latinx youth may also fear police due to concerns about immigration enforcement. *See id.*, at 905-06. The authors assert that “Black and Latinx youth have the added complication of fear, anxiety, and parental instructions to comply with police to stay alive. They are even more vulnerable than White youth or adults to the blatant and subtle characteristics of the interrogation environment that can coerce consent.” *See id.* at 909.

Deborah Davis & J. Guillermo Villalobos, *Interrogation and the Minority Suspect: Pathways to True and False Confession*, in 1 ADVANCES IN PSYCH. & L. 1-41. (Monika K. Miller & Brian H. Bornstein, B. eds. 2016)

“[E]thnic minorities are at heightened risk of being targeted for arrest and presumed guilty. Once targeted for interrogation, substantial evidence exists to suggest they will be more likely to waive their rights and submit to interrogation, and be more vulnerable to confession when interrogated. Importantly, innocent minority suspects will experience greater vulnerability to false confession.” *Id.*

### Youth and False Confessions

Feld, *supra*, at 415

*See MIRANDA WARNINGS, next page*

*MIRANDA WARNINGS*, from page 14

“Children questioned by authority figures acquiesce more readily to suggestion during questioning.” Children often “seek an interviewer’s approval and respond more readily to negative pressure. Under stress of a lengthy interrogation, they may impulsively confess falsely rather than consider the consequences.” *See id.*

**Tepfer et al.**, *supra*, at 893

This study explains the theory that youth are “particularly likely to react to pressure-filled interrogation by falsely confessing is fast gaining traction, even among law enforcement.” The authors analyzed data from 103 individuals who were wrongfully convicted as teenagers, and found that 32 of these individuals falsely confessed, including 30 individuals who gave self-incriminatory false statements during police questioning. *See id.*, at 904. They noted that “psychologically manipulative” interrogation tactics “eventually overwhelm” many suspects, and cause them to confess, whether guilty or not. *See id.*, at 906-07. Further, “[i]n light of the neurological differences between children and adults, it is not difficult to recognize how such interrogation tactics might pose particular risks to youthful suspects. As documented by the Supreme Court... juveniles are burdened by a natural risk-weighting handicap and a predisposition to comply with external pressure. These characteristics make them particularly apt to be led into falsely confessing in the naïve belief that the risks associated with confessing simply do not outweigh the benefits.” *See id.* at 907.

**Steven A. Drizin & Richard A. Leo**, *The Problem of False Confessions in the Post-DNA World*, 92 N.C. L. REV. 891, 941-42 (2004)

In a study of 113 “proven false confessors,” juveniles (defined as individuals under 18) were over-represented, constituting one-third of false confessors. Moreover, researchers found, “[t]here are good reasons why juveniles may be more vulnerable to police pressure during interrogations. Juveniles are, of course, less mature than adults and have less life experience on which to draw. As a result, they tend to be more naïve and more easily intimidated by police power, persuasion, or coercion. They are thus less equipped to cope with stressful police interrogation and less likely to possess the psychological resources to resist the pressures of accusatorial police questioning. As a result, juveniles tend to be more ready to confess in response to police interrogation, especially coercive interrogation.” *See id.*

**Youth Susceptibility to Deception and Coercion in Interrogations****Baltimore Police Dep’t Policy 1207**, *supra*, at 1

“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.” *Id.*

*In re T.F.*, 223 Cal. Rptr. 3d 830, 837 (Cal. Ct. App. 2017)

In this case, the court found that a youth did not voluntarily waive his *Miranda* rights when law enforcement officer made a “contradictory and confusing” statement by telling the youth that they would “talk,” followed immediately by *Miranda* warnings. The officer “befuddle[ed]” youth by mixing up the *Miranda* warnings with a conversation about an unrelated warrant.

**INT’L ASS’N OF CHIEFS OF POLICE** *supra*, at 7

<https://www.theiacp.org/resources/document/reducing-risks>

Although the use of deceit was “permissible” at that time this document was published, “the changing nature of the legal landscape should make officers think twice before using this technique during juvenile interrogations.” The report explains that “[t]he presentation of false evidence may cause a young person to think that the interrogator is so firmly convinced of his guilt that he will never be able to persuade him otherwise. In that event, the young person may think that he has no choice but to confess—whether guilty or innocent—in an effort to cut his losses.... The use of deception also may cause an innocent juvenile—even one who initially had a clear recollection of not committing a crime—to mistrust his memory, accept that the “evidence” proves his guilt, and eventually confess to a crime that he did not commit.” *See id.*, at 8-9. The report also cautions law enforcement agencies against “promises of leniency and threats of harm,” arguing that even “indirect” promises or threats “can be inappropriate when the suspect is a juvenile. They can trigger involuntary or false confessions by presenting the juvenile with an offer he can’t refuse: Say what the police want to hear or face negative consequences.” *See id.* at 9.

**Tepfer et al.**, *supra*, at 917-18

When police interrogators question youth using “the same leading and manipulative tactics” that would be used for adults, “[t]he result is that statements taken from children and adolescents under aggressive police interrogation are systematically unreliable.” The authors assert that “[t]oo often, young defendants who are already predisposed to yield to their interrogators’ suggestions are able to construct realistic-sounding false statements based on the information included in the very questions posed by police. Additionally, we recommend that police interrogators refrain from making any promises of leniency—even indirect, vague, or implicit promises of the type that many courts currently consider legal—in exchange for a statement from a child, without the presence of a defense attorney able to advise the child about the actual benefits and risk of making a statement...[A] child who is made to believe that he will avoid legal trouble so long as he tells his interrogators what they want to hear is likely to do just that: tell the police what they want to hear, regardless of its truth.” *Id.*

**Nigel Quiroz**, **Five Facts About Police Deception and Youth You Should Know, INNOCENCE PROJECT (May 13, 2022)**,

<https://innocenceproject.org/news/police-deception-lying-interrogations-youth-teenagers/>

This advocacy piece provides information about law enforcement use of deception in interrogations.

**When a Reasonable Youth May Not Feel Free to Terminate and Leave an Interrogation****When Law Enforcement Officers Fail to Tell Youth they are Free to Leave or End the Questioning**

• *Kalmakoff v. State*, 257 P.3d 108, 123 (Alaska 2011)

The court concluded that a youth would not reasonably have felt free to leave an interview where officers did not tell the youth he could leave or that he did not have to answer their questions, and officers repeatedly emphasized that the youth had to tell them the truth.

• *In re I.F.*, 229 Cal. Rptr. 3d 462, 489 (Cal. Ct. App. 2018)

The court stated that detective and F.B.I. agent’s failure to tell a 12-year-old that he was free to leave an interview about the murder of his sister “strongly supports the conclusion” that the youth would not have felt free to terminate the interview and leave.

• *In re Matthew W.*, 281 Cal. Rptr. 3d 156, 169 (Cal. Ct. App. 2021)

The court found that although the officer questioning a youth in his home initially told the youth he was not under arrest, officer never told the youth he could leave the room where questioning took place, suggesting that the youth was not free to end the questioning or to leave.

• *In re D.A.H.*, 857 S.E.2d 771, 786-87 (N.C. Ct. App. 2021)

The court found that a reasonable 13-year-old youth would not have felt free to terminate questioning by the school principal and a School Resource Officer when the youth was not told he did not have to answer questions.

• *In re E.W.*, 114 A.3d 112, 119 (Vt. 2015)

The court concluded that youth would not reasonably have felt free to leave when the officer did not tell the youth that he could end the questioning, and that youth was especially vulnerable because he was a ward of the state in a foster home placement.

**When Law Enforcement Officers Imply or State that the Youth is a Suspect**

• *Kalmakoff*, 257 P.3d at 123

The court concluded that youth would not reasonably feel free to leave when officers’ questions became “pointed and accusatory.”

• *In re I.F.*, 229 Cal. Rptr. 3d at 489

The court found that when a detective and an F.B.I. agent questioning a 12-year-old repeatedly alluded to a belief that the youth was culpable and that they had evidence to prove it, a “reasonable 12 year old, confronted with the possibility that police viewed him as a suspect, would not have felt free to terminate the interview and leave.”

• *In re T.F.*, 223 Cal. Rptr. 3d, 830, 842 (Cal. Ct. App. 2017)

The court found that an officer’s “accusatory interrogation was dominating, unyielding, and intimidating. These overbearing tactics, combined with T.F.’s youth” and increased susceptibility to influence and outside pressures, “support the conclusion that T.F.’s statements were involuntary.”

• *In re D.A.H.*, 857 S.E.2d at 786-87

The court explained that a reasonable 13-year-old would believe he was about to be questioned

*See MIRANDA WARNINGS*, next page

## MIRANDA WARNINGS, from page 15

about criminal behavior, rather than a disciplinary matter, when he knew he was in trouble for allegedly selling marijuana to another student, and was summoned to meet the principal and a School Resource Officer.

- *B.A. v. State*, 100 N.E.3d 225, 234 (Ind. 2018)

The court concluded that the youth was under police interrogation when one officer took a hand-writing sample, and another prompted the youth to “[c]ome on man, just – just tell the truth.”

#### When Law Enforcement Officers Question the Youth without Allowing Youth Access to a Parent

- *In re I.F.*, 229 Cal. Rptr. 3d, at 489-90

The court concluded a reasonable 12-year-old would not have felt free to leave an interview with law enforcement if he knew his father was locked out of the interview room, and had repeatedly sought access before being allowed in.

- *B.A.*, 100 N.E.3d at 234

The court concluded that a youth was in police custody when he was in the principal’s office with law enforcement officers present, and was never told he could call his mother.

- *In re D.A.H.*, 857 S.E.2d at 787

The court held that a reasonable 13-year-old who was not given the opportunity to call his guardian until after he had confessed would not have felt free to terminate questioning by the school principal and a School Resource Officer.

- *In re Matthew W.*, 281 Cal. Rptr. 3d at 170

When 17-year-old was questioned in his home, and officers refused his mother’s request to be present during questioning, the evidence “weighs in favor of finding” the interrogation was custodial.

#### When Law Enforcement Officers Intimidate or Physically Threaten the Youth

- *In re T.F.*, 223 Cal. Rptr. 3d at 842

An officer’s “intimidating” and “overbearing” interrogation, along with the age of the youth and his increased susceptibility to influence and outside pressures, “support the conclusion that [the youth’s] statements were involuntary.”

#### When Parents or Other Adults Direct the Youth to be Interviewed or Cede Control to Law Enforcement Officers

- *In re I.F.*, 229 Cal. Rptr. 3d at 494

“[A] reasonable 12 year old, having been brought to the district attorney’s office under protest and continuously urged to confess by a grieving parent, would have experienced a restraint tantamount to an arrest.... Far from demonstrating that the interview was noncustodial, [the parent’s] participation would have convinced a reasonable 12 year old that he had no choice but to submit to questioning.” The court explained, “[i]t requires no stretch of judicial imagination to see that a parent’s broad authority [over their children] could easily extend into the interrogation room, combining with police authority to produce a coercive atmosphere.” See *id.* at 481.

#### When Law Enforcement Officers and School Officials Work in Tandem to Question a Youth at School

- *B.A.*, 100 N.E.3d at 234

A reasonable youth would have believed he was in police custody after being escorted from the bus to the principal’s office, where officers established a “consistent police presence” while the youth was questioned by the vice-principal.

- *N.C. v. Commonwealth*, 396 S.W.3d 852, 863 (Ky. 2013)

The court found that the questioning of youth by a school administrator in the presence of a School Resource Officer was “state action by law enforcement for *Miranda* purposes” when administrator and School Resource Officer worked “in concert” according to an established protocol for questioning.

#### When the Totality of Circumstances During the Questioning Creates a Coercive Atmosphere

- *In re I.F.*, 229 Cal. Rptr. 3d at 492

The court found that a totality of circumstances—including a youth not being given a choice to participate in an interview, not being clearly informed he was free to leave until the interview was almost over, being interrogated by law enforcement officers who indicated they believed and could prove the youth was culpable—“combined to create a coercive atmosphere that a reasonable 12 year old in [the youth’s] position would have experienced as a restraint tantamount to an arrest.”

- *In re T.F.*, 223 Cal. Rptr. 3d at 844

The court found that a totality of circumstances—a 15-year-old’s age, lack of sophistication, documented intellectual disability, minimal prior contact with police—combined with “aggressive, deceptive, and unduly suggestive” interrogation tactics, support a conclusion that the youth’s inculpatory statements “cannot be deemed a product of free will.”

#### Importance of Attorneys in Youth Interrogations

**H.B. 781, Leg.**, 32nd sess. (Hawaii 2023)

“The legislature notes that custodial interrogation of an individual by the State requires that the individual be advised of the individual’s rights to make a knowing, intelligent, and voluntary waiver of those rights before the interrogation proceeds. However, the legislature believes that children under eighteen years of age, unlike adults, cannot sufficiently comprehend the meaning of their rights and the consequences of a waiver. The legislature therefore finds that children under the age of eighteen lack the requisite mental capacity necessary to waive the assistance of legal counsel prior to speaking to an attorney regarding their legal rights.”

#### N.C. Gen. Stat. § 7B-2101(b)

The North Carolina statute excludes any in-custody admission or confessions of any youth under 16 years old if the confession or admission was not made in the presence of the youth’s parent, or guardian or custodian or attorney; requiring that, in the absence of an attorney, both the parent and youth must be advised of the youth’s rights as specified in statutory language; and prohibiting parents from waiving the youth’s rights.

**Statement of Interest of the United States at 16, 17-18, N.P. v. Georgia**, No. 2014-CV-241025 (Ga. Super. Ct. Mar. 13, 2015)

“A juvenile’s waiver of counsel cannot be knowing, intelligent, and voluntary without first consulting counsel.... The decision to waive one’s right to counsel, like the decision to waive one’s *Miranda* rights, or to confer with prosecutors about a plea, must be well thought-out, with an understanding of present and future ramifications. This poses a particular challenge for young people, who ‘tend to underestimate the risks involved in a given course of conduct [and] focus heavily on the present while failing to recognize and consider the future.’” See *id.* at 17-18 (quoting Kristin Henning, *Juvenile Justice After Graham v. Florida: Keeping Due Process, Autonomy, and Paternalism in Balance*, 38 WASH. UNIV. J. L. & POL’Y 17, 24 (2012).

**Tepfer et al.**, *supra*, at 920

“The best way to ensure the voluntariness and reliability of juvenile interrogations is to require counsel to be present during all custodial interrogations of juveniles. An attorney will be able to advise the child regarding whether to speak to police, intervene if questioning becomes overbearing or too intense, and advise him or her accurately about whether confessing or implicating someone else will, in fact result in leniency. Without the benefit of loyal and knowledgeable legal advice, however, any child faced with police interrogators is at a crippling disadvantage.” *Id.*

**Haley Cleary, 10 Reasons Why Parent Involvement Is Not Enough to Protect Adolescent Suspects During Custodial Police Interrogations**, THE CHAMPION 20, 30 (2022)

This article describes the shortcomings of parental involvement in youth interrogations, and asserts that “an unwaivable right to counsel is currently the best policy mechanism available to protect youth in the interrogation room.”

**Nat’l Juv. Def. Ctr., Commentary, National Juvenile Defense Standards**, NJDC at Standard 10.4 (2012)

“The problem with juvenile waiver of counsel is clear: children require the advice and assistance of counsel to make decisions with lifelong consequences in the highly charged venue of a juvenile court proceeding. As a result of immaturity, anxiety, and overt pressure from judges, parents, or prosecutors, unrepresented children feel pressure to resolve their cases quickly and may precipitously enter admissions without obtaining advice from counsel about possible defenses or mitigation. In order to ensure the client’s due process rights are protected, the client must have meaningful consultation with counsel prior to waiving the right to counsel.” See *id.*

#### Presence of Parents in Interrogations

*In re I.F.*, 229 Cal. Rptr. 3d at 482-84

Although some statutes and cases “generally assume that parents will play a supportive role in custodial interrogations, acting as a buffer between the child, on the one hand, and police, on the other,” and see parents as an advisory and support to a youth, there are factual scenarios in which a parent might have a conflict and thus urge cooperation with police. These scenarios include: if the parent had a relationship to the victim; if the parent was themselves the victim; if the parent was suspect; if the parent urged cooperation to encourage good citizenship or aid in the investigation of a crime;

See *MIRANDA WARNINGS*, next page

*MIRANDA WARNINGS, from page 16*

or if the parent urged cooperation out of a desire to teach the youth a “life lesson” about responsibility or respect for authority. *See id.*

**Henning & Omer, *supra***, at 915

“Very few parents will be able to assist their child with hiring counsel, even if they are aware of the child’s need. There is still no access [to counsel] for children whose parents refuse to help, cannot help because they do not understand the law, are conflicted by their own involvement in their child’s alleged criminal behavior, or for the many children whose parents cannot afford an attorney.”

**Tepper et al., *supra***, at 919-20

The authors assert that parental presence in interrogations is “no panacea; while requiring parents to be present during interrogations of children may be advisable, it does not guarantee children the protections they need. Too often, parents tend to believe that they should instruct their children to cooperate with the police in order to show that their children have nothing to hide. Parents, just like children, may also be poorly informed about the consequences of speaking to police.” *See id.*

**Jennifer L. Woolard et al., *Examining Adolescents’ and their Parents’ Conceptual and Practical Knowledge of Police Interrogation: A Family Dyad Approach***, 37 J. YOUTH & ADOLESCENCE 685, 685-98 (2008)

Research indicated “parents know more than younger adolescents about components of the *Miranda*

warning and its behavioral implications but do not necessarily know more about police strategy or the parameters of parental protection.” The results of this study “suggest that a sizable subset of parents may not have the requisite practical understanding of police practices and youth rights within the context of interrogation to protect their children’s legal interests as the law presumes. In families where the youth also demonstrates compromised understanding, parents’ inability to compensate could potentially have a drastically negative impact on the outcome of the youth’s interrogation and ultimately the outcome of the case. In an interrogation landscape where numerous states’ case law, policies and procedures ascribe to parents the responsibility of youth protection, these results question the effectiveness of policies that assume parents are able and willing to advocate for their children without additional support or intervention.” *See id.* at 696-97.

**Cleary, *supra***, at 21

The author describes several reasons why parents may not be able to act in their children’s legal interest, including: parents’ failure to understand *Miranda*, custody or the interrogation process; parents’ vulnerability to police coercion and deceptions; parents who may be their children’s guardians “in name only;” parents’ potential financial, familiar, legal, or moral conflicts of interest with the youth; the danger that police will exploit the parent-child relationship to obtain a confession from the youth; the potential that a parent’s presence gives confessions an “air of legitimacy” in court; and the danger that parental involvement in interrogations results in a “false sense of

complacency,” where the presence of a parent is seen as a “good enough” substitute[s] for effective representation of counsel.” *See id.*, at 21-28.

**FAIR & JUST PROSECUTION, *supra***, at 4-5

The issue brief asserts that parental involvement in interrogations is not a substitute for legal counsel, describing California law providing youth with a non-waivable right to consult with counsel prior to interrogation, and Illinois law requiring that youth under the age of 15 charged with homicide or sex offenses be represented by counsel during custodial interrogations.

**Conditions for Youth Interrogations****INT’L ASS’N OF CHIEFS OF POLICE, *supra***, at 8

<https://www.theiacp.org/resources/document/reducing-risks>

“Officers should be wary of questioning juvenile suspects, especially younger teens and children, in the middle of the night. Even a few hours of sleep deprivation, combined with the stress of interrogation, can increase the risk of false confession. And courts tend to disapprove of late night interrogations, particularly when children are involved.”

**Custodial Interrogation and Limited English Proficiency****U.S. Dep’t of Just., *Law Enforcement***, LEP.GOV

<https://www.lep.gov/law-enforcement>

This federal interagency website provides information and resources for law enforcement on communicating with individuals with limited English proficiency. ■