

BALTIMORE CITY PUBLIC SCHOOLS

GENERAL ORDER 10-25 SECTION G-2

MIRANDA WARNINGS Revisions Approved: June 12, 2018

This General Order contains the following numbered sections:

- I. Directive
- II. Purpose
- III. Definitions
- IV. General
- V. Juveniles
- VI. Effective Date

I. DIRECTIVE

It is the intent of the Baltimore City School Police Force (BCSPF) to ensure all persons shall be advised of their constitutional rights to remain silent and to have a lawyer present prior to the conduct of any custodial interrogation.

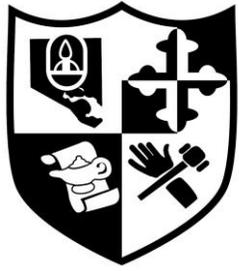
II. PURPOSE

The purpose of this directive is to provide officers with legally sound procedures for conducting interviews and custodial interrogations in compliance with all applicable laws.

III. DEFINITIONS

- A. **Custodial Interrogation-** exists when questioning is initiated with a suspect who has been placed under arrest or who has otherwise been deprived of their freedom of action by the authorities in any significant way.
- B. **Field Interview-** is a general on-the-scene questioning of a person other than a suspect about a crime or incident; or a general questioning of a witness in the fact finding process. An interview may become an interrogation if the officer begins to consider the person a suspect and asks incriminating questions.
- C. **Interrogation-** exists when questioning is initiated with a suspect who has been placed under arrest or who has otherwise been deprived of their freedom of action by the authorities in any significant way.

The term deprived of “freedom of action” can include, but is not limited to, such police actions



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as not allowing a person to leave the presence of the officer(s) or the immediate area of a field interview.

IV. GENERAL

A. Custodial Statements and Confessions

1. *Miranda* (Miranda v. Arizona, 384 U.S. 436 (1966)) warnings are required and shall be administered prior to “custodial interrogation” as defined in this General Order.
2. The following represent examples of situations that are not “custodial interrogations” and do not require issuance of *Miranda* warnings:
 - a. Investigatory stop and frisk.
 - b. Field interviews
 - c. Questioning during a traffic stop.
 - d. During routine questioning at the scene of an incident or crime of a person not considered a suspect when the questions are not intended to elicit incriminating responses.
 - e. When a person who is not considered a suspect of a crime voluntarily makes an appearance at a police facility.
 - f. When information or statements are made spontaneously, voluntarily, and without prompting by the police. (Note: follow-up questions that exceed simple requests for clarification of initial statements may require *Miranda* warnings.)

B. Administering *Miranda*

1. *Miranda* warnings **shall be read by officers from the card** (10-25 Annex B) containing this information to all persons subjected to custodial interrogation. Freelancing, recitation from memory or paraphrasing the warning is prohibited as it precludes officers from testifying in court as to the precise wording used.

Before the “interrogation” of an individual who is in custody or who is in any way being deprived of their freedom of movement and action, the person must be expressly warned of their Constitutional rights in clear and unequivocal words as follows:

- a. **You have the right to remain silent.**
- b. **If you choose not to remain silent, anything you say can and will be used against you in a court of law.**



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- c. **You have the right to consult an attorney before any questioning and you have a right to have an attorney present with you during any questioning.**
- d. **If you cannot afford an attorney, one will be provided to you.**
- e. **You have the right to remain silent and the right to consult with an attorney at any time during the questioning.**

These warnings must be stated orally by the police officer and not merely read by the person to be questioned.

Officers shall ensure that suspects understand their right to remain silent and their right to an attorney. Suspects may be interrogated only when they have knowingly, voluntarily and intelligently waived their rights. Threats, false promises or coercion to induce suspect statements is prohibited.

After all of the warnings have been orally recited, the person to be questioned will be asked:

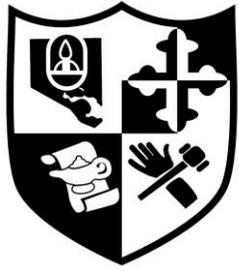
- a. **Do you understand each of these rights?**
- b. **Do you wish to answer questions at this time?**

An express statement by the person to be questioned that they understand the meaning of what has been said and that they wish to answer questions without having an attorney present is also absolutely required.

Waivers of one or both of the *Miranda* rights must be performed affirmatively.

Oral waivers may be sufficient but written waivers, particularly in felony charges, are preferred and should be obtained whenever possible using the attached Waiver of Rights Form (0067).

Officers arresting deaf suspects or non-English speaking suspects shall notify their immediate supervisor and make arrangements to procure the assistance of an interpreter in accordance with BCSPF policy and state and federal law and the *Miranda* rights must be given via an interpreter and affirmatively waived prior to any interrogation.



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If the person to be questioned requests advice as to whether or not they should decide to answer questions, a police officer is not permitted to advise the person.

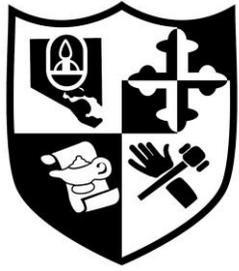
Any circumstances of lengthy incommunicado custody, deception, promises or suggestions of benefits, or other forms of psychological pressure will invalidate the waiver of the person's *Miranda* rights and may render any statements made by the person inadmissible in court.

C. Invoking the Right to Silence

1. When a suspect invokes their right to remain silent, all interrogation shall terminate immediately.
2. Suspects who are not represented by an attorney may not be interrogated for at least 90 minutes after invoking their right to silence and then, only after officers have re-administered *Miranda* warnings and obtained a waiver.
3. Officers may interrogate a suspect who has previously invoked their right to silence, if, after the passage of time, the suspect initiates communication with officers. However, prior to questioning *Miranda* warnings shall be re-administered and a waiver obtained.

D. Invoking the Right to Counsel

1. If a suspect waives their right to counsel, a waiver shall be obtained prior to questioning. When a suspect makes reference to counsel but their intentions are unclear, officers may question the suspect further to clarify their intentions but may only further question the subject regarding their reference to counsel. The interrogation shall immediately end if the intentions are unclear and or if the suspect clearly expresses their desire to have an attorney.
2. When a suspect invokes their right to counsel, all interrogation shall cease immediately. The suspect may not again be interrogated during that same interrogation session about the crime for which they are charged, other crimes, or by other officers (from other agencies) unless:
 - a. The suspect's attorney is present at the questioning; or
 - b. The suspect initiates new contact with the police. In this case, *Miranda* rights must again be administered and a waiver obtained before any questioning may take place. Officers shall also document and, if possible, obtain written verification that the suspect initiated the communication.
3. Officers should reasonably cooperate with efforts by counsel to contact or meet with suspects in custody.
4. The person to be questioned should be informed if at any time an attorney appears (or



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a parent, guardian, or a custodian in cases involving a juvenile) and requests to see them, regardless of the fact that rights have been waived. In addition, the person to be questioned shall have the opportunity to have the attorney (or parent, guardian, or custodian in cases involving juveniles) present during any subsequent questioning, if the person in custody requests the presence of an attorney.

E. Documenting the Statements and Confessions

1. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes but is not necessarily limited to:
 - a. Location, date, time of day and duration of interrogation;
 - b. The identities of the offenders or others present;
 - c. *Miranda* warnings given, suspects responses and waivers provided, if any; and
 - d. The nature and duration of breaks in questioning provided the suspect for food, drink, use of lavatories or for other purposes.
2. Investigative officers should use the agency's video and audio taping capabilities for the purposes of recording statements and confessions in an overt or covert manner consistent with department policy, state, and federal law.
3. The lead investigative officer may decide in which cases audio or video tape recordings may be appropriate and whether covert or overt procedures should be used. Tape recordings designated as evidence shall be handled in the following manner:
 - a. Original tape recordings shall be duplicated and each copy stored separately.
 - b. The tab on the tape housing of both the original and the duplicate copies shall be removed to preclude the possibility of erasure or tampering.
 - c. Tape recordings shall be stored in a secure location under controlled access as designated by the officer-in-charge of criminal investigations.
 - d. All tape recordings shall be inventoried on a routine basis.

V. JUVENILES

A. Constitutional Rights

Juveniles are entitled to the same Constitutional rights as adults as they related to police interrogations, and officers should take reasonable steps to ensure that a juvenile's



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Constitutional rights are protected while a juvenile is in custody and/or during an interrogation. This includes their right to remain silent and their right to counsel.

B. Conferring with parent/guardian/custodian

Whenever a law enforcement officer takes a child into custody the officer shall immediately notify the child's parent, guardian, or custodian pursuant to Maryland Code Annotated, Courts and Judicial Proceedings, § 3-814.

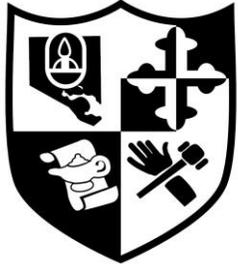
The above parent/guardian/custodian should be present, if possible, when the juvenile is read their rights and at any custodial interrogation so the juvenile may confer with this person for guidance.

If a parent/guardian/custodian refuses to respond to the facility where the interrogation will take place, or refuses to be with the juvenile during the interrogation and the juvenile does not appear to understand their rights, the juvenile may be transported to a Court Commissioner's Office to be re-advised of their rights in the presence of a District Court Commissioner.

C. Special interrogation procedures

When juveniles are taken into custody, they will be immediately advised of their rights per *Miranda* if they are to be questioned or interrogated concerning their involvement in a delinquent act.

1. Utilize form 10-25 Annex B when advising juveniles of their *Miranda* rights.
2. Particular care must be taken to ensure that the juvenile fully comprehends their *Miranda* rights. Such factors to be considered, but not limited, the juvenile's age, mental/emotional state, and maturity level.
3. A juvenile's parents or guardian do not have to be present for officers to interrogate a juvenile in custody; however, discretion should be used when weighing the severity of the offense and whether or not to have a parent or guardian present. If a juvenile requests a parent/guardian, questioning should be delayed until the parent/guardian arrives and the parent(s) will be allowed to be present during the interrogation.
4. If a juvenile or their parent requests the presence of an attorney, interrogating officers shall discontinue the interrogation and shall afford the juvenile the same rights as those afford adults.



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5. No more than two officers should be present during an interrogation of a juvenile.
 6. Interrogation should be of reasonable duration, with regular breaks for use of facilities or consultation with counsel or parent/guardian.
 7. The duration of the interrogation session shall generally be limited to one (1) hour.
 8. After a 15 minute break, a second one hour session may be attempted depending upon the severity of the offense committed and/or the significance of the investigation. The time limits may be extended if the juvenile wishes to continue to talk to the interrogators.
 9. An officer interrogating a juvenile should explain the department's and DJS's procedures regarding custody, detention, release, etc.

VI. EFFECTIVE DATE

This Order shall be effective on the date of publication.

I certify that I have read and fully understand this Order.

Signature _____ Date _____