

Policy 1105



Subject

CUSTODIAL INTERROGATIONS

Date Published

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Page

1 of 12

By Order of the Police Commissioner

POLICY

It is the policy of the Baltimore Police Department (BPD) to safeguard and ensure respect for the constitutional rights of all persons. All persons shall be advised of their constitutional rights prior to Custodial Interrogation. Whenever practical, members shall use the Explanation and Waiver of Rights, Form 69 (Appendix A), to advise persons of their constitutional rights.

CORE PRINCIPLES

Constitutional Enforcement. Statements by suspects and witnesses are only lawful if they are knowingly and voluntarily made. The BPD is dedicated to preserving all persons' constitutional right to silence and right to counsel. As people in custody are not free to leave on their own, protecting these rights requires additional precautions when conducting Custodial Interrogations. Consistent with *Miranda v. Arizona*, before questioning a person in police custody, they must be told of the Fifth Amendment right not to make any self-incriminating statements, including the right to remain silent and the right to an attorney and that anything they say can be held against them. The individual must then be asked and confirm that they voluntarily waive these rights. The manner in which a person is Interrogated must respect the need to ensure that only voluntary statements are obtained and must conform to guidelines established under state and federal law.

Courtesy and Professionalism. All Interrogations shall be conducted with courtesy and professionalism, keeping in mind that an Interrogation is a search for the truth and not an exercise in hostility against the suspect.

Integrity and Transparency. Custodial Interrogations (including advisements and completion of waiver forms) shall be video- and/or audio-recorded and carefully documented, unless not practicable to do so.

Duty to Provide Medical Attention. Prior to, during, or after a Custodial Interrogation, when there is an obvious injury, complaint of injury, signs of medical distress, withdrawal or overdose, or when any person request medical attention, members shall immediately render aid consistent with their training and notify their supervisor and the Communications Section. The member shall then request a medic to the scene or transport the person directly to the nearest hospital emergency room.

DEFINITIONS

Custodial Interrogation – Interrogation of a person in custody.

Custody – A person who is either under formal arrest or would reasonably believe that they are under arrest.

- Circumstances that may make it more likely that a reasonable person would think that they are under arrest include: being handcuffed, being confronted with evidence of criminal activity, hearing an officer express belief in the person's guilt, being held in a police facility or vehicle, being transported against their will, being Interrogated for an extended period of time, and whether the suspect was ultimately free to leave after the Interrogation.
- Circumstances that may make it less likely that a reasonable person would think that they were under arrest include: being told that they are not under arrest, being told that they are free to leave, being interviewed in an open or clearly unlocked space, not being guarded during pauses in Interrogation, having transported themselves to the Interrogation, being allowed to leave at the conclusion of the Interrogation.

Interrogation – Words or action on the part of a police officer that are reasonably likely to result in an incriminating statement by the suspect. Interrogation includes direct questioning about a crime as well as indirect questioning involving anything where the officer knows or should know that their actions are reasonably likely to result in an incriminating response by the suspect. Routine booking questions and informing the suspect of charges against them are not generally considered to be Interrogation.

REQUIRED ACTION

1. In order to ensure that questioning is conducted in a constitutional and professional manner, it is essential that persons Interrogated understand their rights and it is made clear that these rights will be respected.
2. It is generally preferred that a Custodial Interrogation occur in a controlled environment that contains audio/video recording equipment to memorialize the Interrogation. Members shall make all reasonable efforts to make an audio and visual recording of all Custodial Interrogations (including advisements and completion of waiver forms) whenever practicable. Recording preferences are as follows:
 - 2.1. The preferred method is to record the interview in a controlled environment with audio/video equipment.
 - 2.2. The second preference is to use a higher quality video and audio recording device than the BWC.
 - 2.3. Third preference is recording via BWC.
 - 2.4. Fourth preference is to utilize an audio recorder, either one provided by the BPD, or use of the member's Departmental cell phone.
 - 2.5. In general, a member's BWC should be activated throughout their interactions with a suspect, unless they are in a controlled environment with other audio/video equipment activated. In the rare circumstance when a member is with a suspect without any recording, upon the occurrence of an excited utterance by the suspect that prompts the member to desire to ask follow up questions, the member must turn on their BWC or Departmental cell phone's audio recorder prior to asking any follow up questions. The member must also document in their written report the circumstances of the excited utterance and the reason why their BWC was not

activated.

- 2.6. Under exigent circumstances where none of the above recording capabilities are available, the member must notify their supervisor as soon as practical, either before or after the unrecorded Custodial Interrogation. Following that notification, Members must also document in their written report that 1) the Interrogation was not recorded; 2) when they notified their supervisor; 3) the reason why the Interrogation was not recorded; 4) the efforts taken to obtain recording capabilities; and 5) the substance of the Interrogation.
3. If encountering a person who displays signs that their ability to understand is impaired by: a behavioral health or intellectual disability (including use of alcohol or other drug use, suicidal ideation, mental illness, or a developmental disability), language barriers, deafness/hearing impairment, illiteracy (in the case of a written advisement) or youth, refer to the section below entitled **Special Circumstances**, before proceeding with the Explanation and Waiver of Rights.
 - 3.1. If the member has reason to believe that one of these categories applies, but is uncertain whether it affects the person's ability to understand, the officer should inquire about whether the person is under the influence of any substance, has a mental health disability, developmental disability, language barrier, or physical disability that may affect the person's ability to understand or engage in this process.
 - 3.2. Interrogations of youth must always follow special guidance for youth, regardless of perceived maturity or comprehension of the youth.

Member

Explanation and Waiver of Rights, Form 69

4. Complete the Explanation and Waiver of Rights, Form 69 (Appendix A), to provide a written record of the explanation of constitutional rights and a waiver of counsel for each suspect subject to Custodial Interrogation, unless unpractical to do so.
 - 4.1. Determine whether the suspect can read the Explanation and Waiver of Rights Form. If not, see Special Circumstances below.
 - 4.2. Read each sentence (numbers 1-5) aloud to the suspect.
 - 4.3. Ask suspect if they understand each right and, have them initial after each statement, unless not practicable to do so, such as when a suspect is physically unable to initial, unable to read or write, or where unsafe to obtain the suspect's initials (i.e., a physically combative suspect or a suspect who may try to harm themselves).
 - 4.4. Read the waiver statement (in bold) to the suspect.
 - 4.5. Ask if the suspect is willing to sign the waiver statement. If the suspect refuses to sign, they may still waive their rights orally or by implication. Refusal to sign as well as the decision to provide an oral waiver must be documented on the form.
 - 4.6. Fill out all requested information in the appropriate lines.

- 4.7. Complete the Suspect Activity Sheet, Form 429 (Appendix C), if appropriate.
5. The Explanation and Waiver of Rights, Form 69, should be used whenever possible. The limited circumstances when it may not be practical are when the suspect has a visual impairment, language barrier (and the form is not available in their primary language), is illiterate, or physical disability prevents them from signing the form.
6. In the event that it is not practical to use the Explanation and Waiver of Rights, Form 69:
 - 6.1. Prior to Custodial Interrogation members must ensure that the person to be interrogated has been advised the following (or its equivalent):
 - 6.1.1. You have the right to remain silent,
 - 6.1.2. Any statement that you make can be used against you in court,
 - 6.1.3. You have the right to speak to an attorney before and during questioning,
 - 6.1.4. You have the right to be appointed an attorney if you cannot afford one, and to speak with that attorney before and during questioning. If you agree to answer questions, you can stop answering at any time and request an attorney, and no more questions will be asked of you.
 - 6.2. The suspect must understand and waive these rights prior to giving a statement, and so the following questions (or their equivalent) should be asked:
 - 6.2.1. Do you understand the rights that I've just read to you?
 - 6.2.2. Do you want to waive these rights and talk to me?
 - 6.3. Complete the Suspect Activity Sheet, Form 429, if appropriate, and fully document (a) the basis for not using Form 69, and (b) the questions asked and the responses elicited pertaining to any waiver given.

Conducting the Interrogation

7. When conducting a Custodial Interrogation:
 - 7.1. All statements to the police must be knowingly and voluntarily given. Consider the age, education, and mental/physical condition of the person in custody in determining whether they understand what is happening and whether or not they are capable of making a choice to speak with police. For youth, those exhibiting physical or mental impairment or disabilities, and those with limited English comprehension, see section entitled "Special Circumstances" below. Where appropriate, also see Policy 1103, *Communicating with Individuals who are Deaf or Hard of Hearing*, Policy 1739, *Special Considerations for Persons with Behavioral Health or Developmental Disabilities*, or Policy 1207, *Youth Interrogations*.
 - 7.2. Persons in custody must fully understand their constitutional rights as explained and unambiguously waive those rights prior to giving a statement. Officers doubting whether

a person has waived their constitutional rights shall confirm that waiver pursuant to this policy.

7.3. Members shall ensure the safety and security of custodial suspects/arrestees during Interrogations. See Policy 1114, *Persons in Police Custody*.

7.4. Immediately stop an Interrogation if a suspect clearly expresses a desire to exercise their constitutional rights to silence and/or an attorney.

7.4.1. Any statement or conduct that clearly conveys that the suspect is invoking their right to remain silent and does not wish to answer questions requires that the Interrogation be terminated. No specific statement is required, but examples of how the right to silence may be invoked include (but are not limited to), "I want to remain silent," "I want to stop at this point," "I don't want to talk to you, and I am not signing anything," "I want to use my 5th Amendment Rights," "I don't want to say anything," "I want to speak with a lawyer," or any similar statement. If a suspect makes reference to counsel or silence, including by refusing to respond to questions, but their intentions are unclear, members shall specifically determine whether the suspect wishes to have counsel present or wishes to remain silent.

7.4.1.1. To make this determination, the member shall ask the suspect a "yes" or "no" question, such as:

- *Are you invoking the right to remain silent, yes or no? or*
- *Are you invoking the right to an attorney, yes or no?*

7.4.1.2. Where the suspect does not answer with a clear "yes" or "no", the member shall ask again.

7.4.1.3. The member shall not continue with the Interrogation until they receive a clear "yes" or "no" from the suspect.

7.4.2. Invocation of the right to silence during a single Interrogation session is not offense-specific. The right to silence, once invoked, applies to questioning about any and all crimes during that Interrogation session, not just the crime the person has been charged with committing.

7.4.3. If the suspect later initiates communication, re-administer the *Miranda* advisement before resuming any additional questioning. If a suspect has invoked their *Miranda* rights, a member may not make any attempt to influence or encourage a suspect to re-initiate Interrogation.

7.5. If a suspect requests an attorney, the member must cease the Interrogation immediately. Once the suspect has stated that they would like an attorney, the only question the member may ask is whether the person has their own attorney and, if so, the contact information for that attorney. No further Interrogation may take place until counsel is physically present, unless the suspect initiates further communication related to the investigation.

7.5.1. If the suspect provides the name and contact for a private attorney, the member

should promptly contact that attorney and continue to make efforts to contact the attorney until they are reached. If the suspect only provides the name of an attorney, the member shall locate contact information and make the same efforts to contact the attorney.

- 7.5.2. If the suspect does not provide the name of an attorney, the member should contact the Public Defender's Office.
- 7.5.3. If the attorney or a voicemail is reached, convey that the suspect has been arrested, has been Mirandized, and has requested an attorney. If the attorney's presence is requested so that the interrogation may occur, coordinate the location to meet.
- 7.6. Threats of harm, threats of improper conduct, threats to violate the constitution, or other improper forms of coercion to induce a confession or incriminating statements are prohibited. A member shall not state or imply that in exchange for a statement, the person may get a benefit from the criminal justice system such as: being released from custody, not being charged with a crime, being charged with a lesser crime, getting a lower bail, or getting special treatment such as drug court.
- 7.7. Normally, no more than two (2) officers should simultaneously actively participate in an interview or Interrogation. Exceptions must be approved by a commanding officer or designee.
- 7.8. The duration of a continuous Interrogation should take into consideration the seriousness of the crime, the suspect's age and maturity level, the suspect's previous experience with law enforcement, and the person's physical and mental condition. The member should not prolonging the Interrogation to use withdrawal, post-partum condition, or post-witnessing traumatic event to induce a statement.
- 7.9. Custodial suspects/arrestees shall have access to a restroom, water, breaks or other such amenities as needed.
- 7.10. Maintain the original forms in the case folder or electronic case file, if applicable.

Prohibited Actions

8. Members shall not delay a custodial suspect's/arrestee's arraignment solely to re-initiate Interrogation after a custodial suspect/arrestee has invoked their right to silence.
9. Members shall not give legal advice or attempt to answer any legal questions. (e.g., "Do you think I need an attorney?" or "What kind of deal can I get if I cooperate?") If asked, you should inform the person that you cannot give them legal advice, and that if they have questions they can speak with an attorney. This does not conflict with the duty to advise persons in custody of their constitutional rights, or of the circumstances for which they have been arrested or detained.

Interrogations Conducted in an Interview/Interrogation Room

10. Custodial suspects/arrestees shall not be left unmonitored in an interview room. A member shall remain inside of the interview room with the custodial suspect/arrestee, or a member shall have visual contact with the custodial suspect/arrestee through a window or via electronic monitoring

equipment.

11. Custodial suspects/arrestees shall be searched prior to interview or Interrogation and all items found shall be documented on the Supplement Report, Form 7.

NOTE: The suspect shall be searched by a member of the same gender, based on the gender identity stated by the detainee, or the detainee's stated preference for the gender of the member conducting the search. See Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*; Policy 1109, *Warrantless Searches*; Policy 1013, *Strip Searches and Body Cavity Searches*, and Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) Individuals* for further guidance.

12. The interview room/temporary detention room shall be searched before and after each Interrogation.
13. Members shall secure their firearms and any other such item(s) that may be used as a weapon (e.g., batons, OC sprays, CEW, etc.) in designated areas before entering an occupied interview room/temporary detention room.
14. Members shall notify a supervisor that they will be conducting an Interrogation and the room they are using.
15. Members shall not Interrogate a suspect/arrestee of the opposite gender identity/sex alone in the interview room/temporary detention room unless another member is in the room, there is visibility into the room through a window or open door, or the Interrogation is being videotaped.
16. Panic or duress alarms shall be used in occupied interview rooms/temporary detention rooms, if available. If no panic or duress alarms are available, officers shall use portable radios with a designated signal and procedures to follow in the event of distress in the occupied interview room/temporary detention room. Live streaming video, as long as it is constantly monitored, may be used instead of portable radios.

Using Deception During Interrogation

17. Investigators may use reasonable forms of deception or subterfuge, including verbal trickery, during a Custodial Interrogation.
 - 17.1. Caution shall be exercised in utilizing deception during an Interrogation and it shall not be used to the extent that it would overbear the person's ability to make a voluntary decision regarding whether to speak or to the extent that it is likely to induce a false confession.
 - 17.2. Investigators intending to use deception as a part of an Interrogation shall discuss their Interrogation plan with their supervisor prior to conducting the Interrogation.
18. Whether the pressure resulting from the use of deception would make a statement involuntary or likely to produce a false confession cannot be reduced to a single factor and is likely to be based upon a number of considerations. When deciding whether deception would be appropriate, the member shall consider the following: the age, background, criminal experience, education, and intelligence of the subject; the mental and physical condition of the subject; whether the subject was given Miranda warnings; where the Interrogation was

conducted; the length of the Interrogation; how aggressively the Interrogation was conducted; and whether the subject was otherwise intimidated or pressured into making a statement.

19. The manufacturing and use of false documents or reports by a member conducting a Custodial Interrogation is strictly prohibited.
20. False and misleading statements regarding a suspect's constitutional rights (e.g., right or access to legal representation, admissibility of self-incriminating statements made "off the record") are likewise strictly prohibited.
21. The use of deception prior to administering the Explanation and Waiver of Rights is strictly prohibited.

Special Circumstances

Members must keep in mind that all of these below special circumstances are all important factors to consider when deciding whether a person is knowingly and voluntarily waiving their rights and giving a statement.

Language Barriers

If there is a language barrier, request a Qualified Bilingual Member to assist in providing language access. If a Qualified Bilingual Member is unavailable, the member can request an in-person interpreter from an outside vendor or can use the Language Line when the need is immediate. See Policy 1735, *Language Access Services for Limited English Proficient (LEP) Persons*.

NOTE: The Explanation and Waiver of Rights, Form 69, is available in PowerDMS in the following languages: Spanish, French, Korean, Chinese, Russian, and Arabic.

Deaf/Hard of Hearing Persons

If the person requires an American Sign Language interpreter, request an interpreter through the Communications Section. See Policy 1103, *Communicating with Individuals who are Deaf and Hard of Hearing*.

Illiterate Persons

22. If a written Explanation and Waiver of Rights form is used and the person indicates that they cannot read or write, or if upon presenting the person with the form that person appears to be struggling to understand the text or to sign the document, ask the person if they require the member to read the forms aloud.
23. When the circumstances require a verbal reading of the Explanation and Waiver of Rights, the member must record the exchange either on their BWC or via other recording equipment.
24. The member must ensure that both their reading of the form is properly recorded, as well as the person's verbal response of whether they understand and agree to the forms read to them.

Interrogations of Persons with Behavioral Health Disabilities or Intellectual Disabilities

25. Persons experiencing the symptoms of a behavioral health disability, or who have an

intellectual disability may have limited reasoning and the inability to effectively communicate their thoughts.

26. In addition, people in crisis and all persons encountered in the field who exhibit unusual behaviors commonly referred to as irrational, bizarre, or unpredictable may have diminished capacity to reason and communicate.
27. These outward observable symptoms could be the result of intoxication, drug use, suicidal indication, behavioral health disability, developmental disability, or medical complications. Members shall follow the procedures outlined in Policy 1739, *Special Considerations For Persons with Behavioral Health Disabilities or Developmental Disabilities* for all persons who appear to have a diminished capacity to reason and communicate.

NOTE: Policy 1739 is currently under development.

Interrogations of Youth

28. Unique legal and practical considerations apply when conducting interrogations of youth. When a member has grounds to believe that there is a substantial likelihood that a youth lacks the capacity to understand the warnings given to them, the nature of their Fifth Amendment rights, and/or the consequences of waiving, the member should ensure that a parent or guardian is present for the advisement of rights and available during the Interrogation of the youth.
29. When advising a youth of their *Miranda* rights, simplified warnings should be used when administering warnings to youth. The member must evaluate the youth's age, experience, education, background, and intelligence, to determine whether the youth has the capacity to understand the warnings given to them, the nature of their Fifth Amendment rights, and the consequences of waiving those rights. For more detailed guidance, see Policy 1207, *Youth Interrogations*.

NOTE: Policy 1207 is currently under development.

Supervisor

30. The supervisor or their designee will maintain contact or conduct periodic safety checks with the interviewing member.
31. The supervisor shall be available for consultation with the interviewing member, if needed.
32. When discussing an Interrogation plan involving deception, the supervisor shall provide proper guidance to ensure the plan is sound and does not overstep the limitations on deception set forth by this policy.
33. The supervisor will review reports of Interrogations that were not recorded to ensure that the explanations are sufficient, prior to signing/approving them.
34. The supervisor will review all reports required by this policy related to Interrogations to ensure compliance with this policy.

APPENDICES

- A. Explanation and Waiver of Rights, Form 69.
- B. Notice and Waiver of Right to Prompt Presentment, Form 107.
- C. Suspect Activity Sheet, Form 429.

ASSOCIATED POLICIES

- Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) Individuals*
- Policy 1002, *Securing and Interviewing Witnesses*
- Policy 1013, *Strip Searches and Body Cavity Searches*
- Policy 1103, *Communicating with Individuals Who Are Deaf and Hard of Hearing*
- Policy 1109, *Warrantless Searches*
- Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*
- Policy 1114, *Persons in Police Custody*
- Policy 1207, *Youth Interrogations (Under Development)*
- Policy 1735, *Language Access Services for Limited English Proficient (LEP) Persons*
- Policy 1739, *Special Considerations For Persons with Intellectual Development Disabilities (IDD)(Under Development)*

RESCISSION

Remove and destroy/recycle Policy 1105, *Custodial Interrogations*, dated 1 August 2016.

COMMUNICATION OF POLICY

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

APPENDIX A

Explanation and Waiver of Rights, Form 69

Explanation and Waiver of Rights
Form 69/04

POLICE DEPARTMENT
BALTIMORE, MARYLAND

EXPLANATION AND WAIVER OF RIGHTS

CC# _____

NAME: _____

DATE/TIME: _____

LOCATION: _____

YOU ARE ADVISED THAT:

1. You have the right to remain silent. _____
2. Anything you say or write may be used against you in a court of law. _____
3. You have the right to talk with an attorney before any questioning or during any questioning. _____
4. If you agree to answer questions, you may stop at any time and request an attorney and no further questions will be asked of you. _____
5. If you want an attorney and cannot afford to hire one, an attorney will be appointed to represent you. _____

I have been advised of and understand my rights. I freely and voluntarily waive my rights and agree to talk with the police without having an attorney present.

Signature

_____ Officer's Printed Name	_____ Officer's Signature	_____ Rank	_____ Unit	_____ Seq. #
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Witnesses: _____

APPENDIX B

Suspect Activity Sheet, Form 429

Suspect/Witness Activity Sheet
Form 429/04

POLICE DEPARTMENT
BALTIMORE, MARYLAND

SUSPECT/WITNESS ACTIVITY SHEET

Date: _____ CC# _____

Name of Suspect/Witness: _____ DOB: _____

Address: _____

Name of Primary Detective/Officer: _____ Sequence No. _____

Transported by: _____ Sequence No. _____

Transported to: _____ Time: _____

Transported from: _____ Departure Time from above Location: _____

CRIME LABORATORY (when applicable)

Name of Technician: _____ Unit No. _____

Activities Performed (List):

1. _____ Time: _____

2. _____ Time: _____

3. _____ Time: _____

Description of Evidence/Clothing Recovered from Witness/Suspect: _____

STATEMENT OF WITNESS/SUSPECT

Location Statement Taken: _____

Time Statement Began: _____ Time Statement Concluded: _____

Type of Statement (circle one or both): (WRITTEN / TAPED)

Witnessed by: _____

Food/Snacks (Describe / Times): _____

Restroom breaks (Times): _____

Notes / Remarks (Continue on Reverse)

