

Maryland Office of the Public Defender for Baltimore City
Comments on Policy 1202: Interactions with Youth
November 2020

Policy 1202, like draft Policy 1207 (Youth Interrogations) released for comment last year, recognize that youth are different from adults, and require special protections and precautions. Children are easily persuaded by persons in positions of authority, even if it against their interests. They seek support from peers. They lack the knowledge to effectively understand their rights. These are among the myriad reasons law enforcement members need to approach interactions with youth through a lens of caution, patience, respect, and care.

Law enforcement must treat children like children. While sometimes this requires different behavior and greater protections, it remains important to always treat youth fairly and with respect. Youth have a keen sense of procedural fairness. Research shows that youth who feel they are treated fairly by authority figures are more likely to comply than those who believe they will be treated unfairly. *See* National Research Council, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 192 (2013).

Recommendation 1: Strengthen the discussion of Adverse Childhood Experiences by explicitly addressing how trauma among youth is impacted by law enforcement.

Adverse Childhood Experiences (ACEs) are important for members to consider in two ways: (1) how prior ACEs may impact a current interaction with a youth and (2) how the current interaction may impact ACEs. As it stands, Policy 1202 already effectively defines Adverse Childhood Experiences, but does not address the ways in which law enforcement can cause and impact ACEs.

Studies have shown that negative and/or repeated police contact increases anxiety and can cause post-traumatic stress disorder symptoms, effectively serving as their own ACE. *See, e.g.,* Dylan B. Jackson et al., *Police Stops among At-Risk Youth: Repercussions for Mental Health*, 65 *J. OF ADOL. HEALTH* 627 (2019); J. E. DeVlyder, et al., *Prevalence, Demographic Variation and Psychological Correlates of Exposure to Police Victimization in Four US Cities*, 26 *EPIDEMIOL. PSYCHIATR. SCI.* 466 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6998899/>; Amanda Geller, et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 *AM. J. PUB. HEALTH* 2321 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4232139/>. In fact, the police killings of Black Americans has been found to be causally linked to negative mental health consequences among Black American men in the general public, consistent with vicarious trauma. *See* Jacob Bor et al., *Police Killings and Their Spillover Effects on the Mental Health of Black Americans: A Population-Based, Quasi-Experimental Study*, 392 *LANCET* 302 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6376989/>. The policy should incorporate these concerns in how it advises members to interact with you.

Suggested Action: Amend Background § iii. as follows:

Many Youth in Baltimore have experienced Adverse Childhood Experiences and trauma. The BPD recognizes that the existence of this trauma – often multi-generational – has contributed to a general distrust of law enforcement among some Youth. **Interaction with law enforcement alone may be traumatic or trigger past traumatic events for youth. Law enforcement must remain aware of this.** Research has shown also that law enforcement and the general public (e.g., witnesses or complainants) perceive Youth of color as significantly older than they actually are, leading to differential treatment of these Youth. The BPD is committed to the pursuit of equitable policing practices to build positive relationships and trust between law enforcement and Baltimore’s Youth and families.

Recommendation 2: Recognize that peer presence can be appropriate and beneficial, while also being sure not to hold child responsible for the behavior of their peers.

Suggested Action: Revise 6.7 as follows:

Separating Youth from one another ~~may be~~ is important to remove “audiences” that may escalate encounters. **Do not allow the behaviors of a youth’s peer to reflect on the youth and your treatment of anyone. However, keep in mind that youth may become scared, angry, and less cooperative if they are separated from others. Peers may actually assist in the deescalation of a situation. In addition, peers can act as necessary supports where youth have had past traumatic/ACE and for whom interactions with police may compound and aggravate that trauma.**

Recommendation 3: Require consultation with an attorney before a youth can consent to a search.

Consent searches are a limited exception to the general legal and constitutional requirements for a search, and this exception generally is not appropriate to apply to youth. Because youth are unfamiliar with their rights and are easily coerced, youth are not in a position to consent to any searches of their persons or belongings without proper advisement and legal counseling. Consent given by youth to law enforcement members is invalid. “If the law recognizes that certain juveniles inherently cannot consent to sexual acts due to the coercive nature of the relationship, then it makes little sense that they suddenly gain the requisite mental capacity to grant consent for a search.” Bryce Anderson, *The Costs of Youth: Voluntary Searches and the Law's Failure to Meaningfully Account for Age*, 62 ARIZ. L. REV. 241, 267 (2020).

Children and adolescents lack the experience, perspective, developmental maturity, and judgment to recognize and avoid choices that could be detrimental to them. They are especially prone to intimidation and likely to acquiesce to a point that belies voluntariness. An attorney is needed to explain the potential consequences of a search and to ensure that the young person's consent is knowing and voluntary.

As discussed in our recent comments to draft Policy 1109 (warrantless searches), as well as last year's comments regarding draft Policy 1207 (Youth Interrogations), we stand committed and ready to provide counsel for youth being subject to search or interrogation.

Suggested action: Revise ¶ 17 as follows:

Consent Searches: **Youth are not able to independently provide consent.** When seeking consent to search a Youth or their belongings for contraband or evidence of a crime, members shall **provide the youth with an attorney to consult and** make reasonable, Developmentally Appropriate, accommodations in addition to the requirements of Policy 1109, Warrantless Searches to include:

17.1. Requesting permission from a permanent-rank supervisor to seek consent to search from a Youth.

17.2. Arranging for the Youth to consult with an attorney prior to seeking their consent to search. The consultation with an attorney shall be confidential and outside the presence or hearing of a member. The Attorney Consult may take place in person, by telephone, or by video conference. The confidential Attorney Consult may not be waived.

[Current provisions 17.2-17.4 should remain and be renumbered accordingly.]

Recommendation 4: Emphasize the Importance of Minimizing Interactions with Represented Youth.

Youth are impulsive and will often say whatever they feel they need to escape a situation with law enforcement and appease adult figures. Moreover, a young person represented currently or previously by an attorney will be especially wary of law enforcement encounters. Rather than applying unnecessary pressure to these young people, officers need to use these opportunities to stand up for the rights of children, serving to increase the bonds connecting communities with law enforcement. This is particularly crucial in the interview context.

As discussed more fully in our comments on draft Policy 1207 (Youth Interrogations) last year, and noted above, consultation with counsel is particularly important for youth who lack the judgement, experience, or maturity to make informed voluntary decisions on their own. While

young witnesses do not have an absolute right to counsel, youth who are already represented should be afforded consultation with their attorney prior to any questioning.

Suggested Action: Revise ¶ 7 as follows:

For interviews with Youth, **the initial responding member must inquire of the youth if they currently have a lawyer, public defender, or attorney, or have ever had one. If the youth responds affirmatively, the member must make concerted attempts to contact the attorney. The member must further inform the youth that it is possible, and even likely, that an attorney would advise the young person not to talk to the member unless an attorney was present.** The initial responding member must **also** contact and receive consent of the Youth's parent or guardian before proceeding with the interview unless one of the below-listed exceptions applies. The member shall also inform the Youth that they can have a parent, guardian or other supportive adult present during the interview, and if the Youth wants such a person present, the member shall not conduct the interview until the person is present.

Recommendation 5: Provide more examples of charges in which arrest is prohibited for adolescent behavior in response to a police stop.

The policy notes, in both the Background section and the provisions on Standards for Contacts & Youth-Specific De-Escalation Techniques that heightened diversion efforts are needed to avoid criminalizing developmentally appropriate behavior and exacerbating trauma and youth vulnerabilities. Paragraph 15 seeks to embrace this concern by prohibiting members from arresting a youth for disorderly conduct when they are merely reacting to a police stop in an expectable manner based on adolescent development, ACEs, and trauma history. While the intent of this provision is laudable, for it to be truly meaningful, it needs to incorporate a broader range of offenses that are typically charged based on an adolescent response to a police interaction.

Suggested Action: Revise ¶15 as follows:

Members shall not arrest Youth for disorderly conduct, **resisting arrest, assault in the second degree without injury to the officer,** and similar discretionary offenses when the arrest is based solely on the Youth's response to the stop instead of the behavior justifying the initial contact.

Recommendation 6: Decriminalize Youthful Indiscretions

Kids will be kids. They make mistakes. They learn from mistakes. Some mistakes are worse than others. Some mistakes can be quite serious. Law enforcement members ought to be giving young people the benefit of the doubt whenever possible. Research tells us that the vast majority of juvenile offenders—regardless of offense committed—grow out of antisocial activity as they age into adulthood. *See* Laurence Steinberg, Elizabeth Cauffman, & Kathryn C. Monahan, *Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders*, OJJDP Juvenile Justice Bulletin (March 2015), available at <http://www.ojjdp.gov/pubs/248391.pdf>. No additional sanctions or services are needed to assist with the natural course of brain development and aging.

The Diversion Coordinator is provided with decision-making power under the policy. The assessment process used by the Diversion Coordinator should be consistent with the recommendations of Center for Children’s Law & Policy’s Diversion Assessment and not be made by law enforcement. The five-tiered assessment, with greater stratification of alternatives to arrest, provides greater guidance and encourages diversionary efforts to the greatest extent possible.

Suggested Action: Amend ¶ 21 as follows: For instances of Delinquent Offenses where a member has probable cause to arrest, members shall select the most appropriate option proportionate to the alleged offense (See Appendix A, Youth Offense and Resolution Categories) which least restricts the Youth’s freedom and provides an alternative consistent with public safety and this policy.

Note: Consistent with Policy 1106, youth may not be arrested for misdemeanors committed outside the presence of the officer, unless a statutory exception applies.

...

21.3 Seeking a court summons **where these offenses cannot be resolved on scene or by speaking to a youth’s parent or guardian.**

Revise Appendix A to adopt the Center for Children’s Law & Policy (CCLP) Tiered Diversion Framework:

Category 1 – Warn and release (no further contact)

Category 2 – Pre-arrest Diversion Mandatory

Category 3 – Pre-arrest Diversion Eligible

Category 4 – Arrest by Complaint (processed out of custody).

Category 5 – Mandatory Arrest.

Whether applying its current 3-category pyramid or CCLP's Tiered Diversion Framework, Appendix A must be more comprehensive in the applicable offenses included. For example, drug offenses should be considered for diversion, and included in this framework to achieve transparency of the policy and officer guidance.

Recommendation 7: Minimize the treatment of children as adult perpetrators.

Suggested Action: Revise the following provisions to conform to appropriate practices for youth:

¶ 18: Field Strip Searches of Youth are prohibited except in the case where a member has probable cause to believe that the Youth is concealing a deadly weapon, the Youth is a threat to themselves or others, and the Youth cannot be transported safely to a private location (e.g., district station or headquarters). **A handcuffed youth does not pose an imminent threat to warrant a field strip search.** Members must obtain express approval from a permanent-rank supervisor, lieutenant or above, unless taking the time to seek approval would pose an imminent threat to the safety of the Youth, the member, or the public.

¶ 32.3: Only transport Youth in prisoner transport wagons if they are charged or will be charged with a Delinquent Act or as an adult. **Even in those circumstances, youth should be transported in police cars, as opposed to transport wagons, whenever possible.**

Recommendation 8: Clarify the application of Lost and Abandoned Youth or Children in Need of Assistance (CINA).

For many children, particularly teenagers, members may believe they are on the street inappropriately, but these children might not be lost or abandoned. They may be separated from their parents for a variety of legitimate appropriate reasons and living with a friend, or other family member and doing fine, without any need for law enforcement involvement. Moreover, the trauma of being taken into police custody may cause more harm than help lost or abandoned children, who are in fraught situations such as abusive parents or sex trafficking victimization, Law enforcement members must remain always mindful about minimizing their presence in the lives of young people. Older children in particular are

Suggested Action: Add the following to the Definitions section:

Lost and Abandoned Youth: A youth who identifies as involuntarily separated from their caretaker or being left without provision for reasonable and necessary care or supervision

has been lost or abandoned. Not all children who are alone meet this criteria or are appropriate for intervention as a lost and abandoned youth. In particular, youth who are over the age of 13 years old may choose to be independent or otherwise estranged from the parents without requiring police involvement.

Children in Need of Assistance (CINA) is the Maryland legal proceeding for responding to allegations of child abuse or neglect. While only a judge can determine if a child is in need of assistance, consideration of whether CINA proceedings may be appropriate require abuse or neglect as well improper care and attention to a child's needs by their parent, guardian or custodian. A street encounter will rarely provide sufficient information for a child to be determined in need of assistance.

Revise the first sentence of the Lost and Abandoned Youth or Children in Need of Assistance section (prior to ¶48) as follows:

Youth may be taken in to custody because they are lost, unattended, abandoned, or otherwise in need of assistance. It is the responsibility of members to reconnect these Youth with their families, guardians, or to protective custody. **This section predominantly applies to children under the age of 13. Recognizing the trauma that can result from police custody, and the potential risks of police involvement for older children in abusive households, children ages 13 and older must self-identify as lost, abandoned or in need of assistance for this section to apply.**