

**Comments from the Maryland Office of the Public Defender for Baltimore City
Proposed In-Person Training Curriculum: Stops, Searches, Arrests and Fair
Impartial Policing; December 2019**

The Office of the Public Defender (OPD) provides these comments to the Baltimore Police Department (BPD) on its proposed in-person training curriculum for stops, searches, arrests and fair and impartial policing. As we noted in our comments to the e-learning modules covering the same topics, these policies and practices go to the heart of many violations underlying the consent decree and we are eager for the BPD to roll out training.

A representative from our agency attended the pilot training, which informed these comments and provided helpful context for the BPD's learning approach. Based on the discussion at the training, it is our understanding that the e-learning modules are intended to focus on the specific policy requirements, while the in-person training is an opportunity for more in-depth discussion and application of key concepts. This is a sound approach, which underscores our concerns with the e-learning curriculum as initially drafted. We did not find that it sufficiently addressed all of the policies' requirements and expectations, particularly longstanding requirements that have not been uniformly followed. We hope that the modules have been revised to better serve their intended role. Our comments here focus on the in-person curriculum with the framework described in mind and the expectation that the e-learning modules clearly lay out the policy specifics.

Recommendation 1: Ensure that the scenarios reinforce appropriate practices, or explicitly address the ways in which they do not.

We commend the BPD for incorporating scenarios that are realistic and either take place in Baltimore or involve actual body camera footage or other video to highlight the real-world application. In doing so, however, it is important to make sure that all practices displayed conform with the policies and approach being established, and not reinforcing problematic components of prior BPD culture.

Suggested action:

The draft curriculum provided did not allow for us to watch the "Trash Guy" scenario in Day 1 Lesson 3, Fair and Impartial Policing (pages 38, 216/slide 9). However, the discussion on page 38 repeatedly notes that the individual questioned provided identification. The instructor should clarify that, in a field interview, the individual does not have to provide identification - and refusing to do so does not amount to RAS to justify a stop.

In the discussion of the scenarios at the conclusion of Day 1 Lesson 3 Fair and Impartial Policing (pages 46-47), provide specific information the instructor should ensure is covered, including: ways the partner could have tried to deescalate Officer Patten's behavior, how to respond to a request to lodge a citizen complaint, and the duty to report violations of law and serious acts of misconduct under Policy 320.

In Day 1, Lesson 4 Least Intrusive Charging Activity 1(pages 64, 73) either change the scenario so that Officer Henderson is not responding to a call for increased arrests, or explicitly incorporate into the discussion the impropriety of the shift commander's priority of increasing arrest numbers in ComStat.

Day 2, Lesson 5 Police Interaction Scenario 2 includes a voluntary encounter where identification is collected. The discussion should make clear that the individual is not required to provide identification.

Recommendation 2: Include clarifying examples in the discussion to help define what is reasonable and appropriate.

Overall, the BPD does a good job encouraging discussion of reasonableness to help illustrate and clarify the standard in context. However, there are a few places where additional attention is warranted.

Suggested action:

In Day 1 Lesson 5 Custody Transport and Booking, after quoting Policy 1114's restriction on use of force against someone who is handcuffed (page 83), clarify what could potentially be an objectively reasonable and necessary use for force (e.g. suspect kicks or tries to head butt officer) and what is not (e.g. suspect is verbally derogatory or fidgeting without posing physical threat).

In Day 2 Lesson 1 Review and Crime Scenes discussion of reasonableness (age 101), include the size of the crime scene and the area of the freeze. For example, an entire block may not be cordoned off due to a shooting in an apartment.

Recommendation 3: Clarify distinctions between verbal warning, civil citation, criminal citation, court commissioner and diversion, explaining their hierarchy of intrusiveness.

At the pilot training on Day 1, Lesson 4 Least Intrusive Charging, in response to a participant question about diversion being at the bottom of the list of Slide 4 (page 227), the instructors concluded that the interventions provided were the tools available but not a formal hierarchy. In fact, there is a hierarchy to the options provided and they should be considered as such to determine what is most appropriate, and least intrusive for a specific individual. . While diversion may be the best solution and desired by someone seeking services, it is limited to instances in which an arrest would be lawful (i.e. not for citable offenses) and generally requires participation in an appropriate program, which may be a greater imposition on someone's liberty than a citation. Likewise going to the Court commissioner, while it does not result in immediate detention generally does result in a criminal proceeding, which is inherently more intrusive than all of the other options listed.

Suggested action: On slide 4 (page 227) move Diversion to above Court Commissioner, and explain the options as a clear hierarchy of least intrusive to most intrusive.

Provide an explanation of the level of intrusion for each of the options listed on slide 4, adding a slide for verbal warning, noting that it is the least intrusive and addressing when it is appropriate, and a slide that explains the diversion option, when it is appropriate and what is required.

Recommendation 4: Acknowledge the distinctions of youth and individuals with behavioral health issues; ensure that the instructors are prepared to provide more detail when those policies are finalized.

The sequencing of policy and training development has been a challenge throughout the consent decree implementation efforts. The special issues regarding youth and individuals with behavioral health needs have been particularly challenging, as they relate to the policies and practices being established before these special population components are fully addressed.

Suggested action:

In Day 1 Lesson 2 Police Interactions, provide a reminder about de-escalation (already addressed in the use of force training) and note that behavioral and mental health concerns will be addressed in more detail in its own training.

In Day 1 Lesson 5 Custody, Transport and Booking when addressing the post-arrest considerations (page 84-85), note that there will be additional policies relating to crisis intervention and mental and behavioral health issues. Include overdose and other drug-related concerns in factors to consider, reminding that medical attention must take priority over arrest for drug use, as it would for any other medical emergency. Also note that mental health considerations do not justify arrest over a less intrusive option and that de-escalation practices should have been incorporated to minimize likelihood of arrest for minor offenses.

Day 2 Lesson 2 Interviews and Interrogations' discussion of Scenario 2 (page 111-12) should note that there will be a dedicated training relating to youth, with particular attention to youth interviews and youth interrogations. Unless and until the final policy provides other guidance, the training should instruct that the member cannot interview a child until the parent or another trusted adult has been reached; efforts to contact an adult are not an enough. For children who are suspects (or become suspects) the instructor should also highlight that there is a youth-specific Miranda form and increased access to counsel.

In the Miranda Procedure Special Circumstances (page 115), in addition to noting that specific policies and trainings are being developed, highlight that some factors will weigh against

attempting any interrogation, such as intellectual disability and substance abuse, as it may be impossible to determine if the person has the capacity to knowingly waive their rights. In addition, the instructor should reference the Youth waiver form in development that will be required for any interrogation of a young suspect under the age of 18.

In the Use of Deception discussion (pages 118, 283) note that deception is not permitted with youth (under age 18 or under age 15 depending on final policy) and the problems with using deception with someone who may have limited intellectual capacity.

Recommendation 5: Clarify that Miranda rights are required whenever the suspect may not feel free to leave and simplify the slide on clarifying whether the right to counsel is being invoked.

Day 2 Lesson 2 Interviews and Interrogations states that Miranda warnings are required once someone is under arrest or likely to believe they are under arrest and not free to leave. Regardless of whether the individual is or believes they are arrested, any situation where a reasonable person may not feel free to leave requires a Miranda waiver to establish that any statement is knowing and voluntary.

While most of the PowerPoint slides accompanying the in-person training use direct language concisely instructing the learner what they should do, the slide addressing when it is unclear if a suspect is invoking the right to counsel is written in the third person and is more dense than a participant can read from one slide.

Suggestions action: Revise the language on page 114 and 275 (slide 10) as follows:

Custodial Interrogations

Custodial interrogation happens ANY TIME you are posing questions about the crime to someone who **has may reasonably feel like they are not free to leave, such as if they have** been arrested or are likely to believe that **he is they are** under arrest **and not free to leave.**

Slide 10:

Arrest Not Free to Leave + Interrogation = Miranda

- Miranda is required whenever a suspect **reasonably believes they cannot leave, such as when they are is**-under arrest or the equivalent of arrest.
- AND police are trying to get them to make a statement related to the crime that would incriminate them.

Revise slide 16 (Page 281) as follows:

What if you can't tell **whether the suspect seeks counsel?**

- If a suspect makes reference to counsel or is silent, but their intentions are unclear, ~~members shall specifically determine whether the suspect wishes to have counsel present or wishes to remain silent.~~
- ~~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?
- Where the suspect does not answer with a clear “yes” or “no”, ~~the member shall~~ ask again.
- ~~The member shall~~ **Do** not decide how to proceed until **they** receive a clear “yes” or “no” from the suspect.

Recommendation 6: Discuss all four warrantless search justifications before addressing strip searches.

Day 2 Lesson 3 Searches 1 identifies the four types of warrantless searches but then only discusses searches incident to arrest, incorporating strip searches into the discussion, with the remaining types of searches in the next lesson. To keep focused on the warrantless search exceptions, and to provide them in a clearer order related to when probable cause is required, search incident to arrest should be discussed after consent.

Suggested action: Move the discussion on searches incident to arrest and strip/body cavity searches that may be included (pages 131-35, 296-309) to Lesson 4, and the discussion on consensual searches (pages 144-48, 311-15) to Lesson 3, with a reference at the end of that session that the remaining types of searches will be discussed in the next lesson.

Recommendation 7: In the Fair and Impartial Policing lesson, define LGBTQ and the appropriate terms to use.

As noted above, the BPD's emerging policies and practices to improve relations with the LGBTQ community is a significant change for many officers. Some officers may not be familiar with all of the terminology, and may use language that is offensive and not appropriate under BPD policy.

Suggested action: Incorporate the definition slides from the eLearning module on Policy 720 to provide a review of the concepts and appropriate terms to use with the LGBTQ community.

In the LGBTQ bathroom scenario on page 222/slide 14, change “transgendered woman” to “transgender woman” to use the more commonly accepted terminology.

Recommendation 8: Provide specific language for members to use on new concepts/requirements and an opportunity to practice.

At the pilot training, a participant mentioned the value of providing specific language to use in certain situations and an opportunity to practice using that language, to allow for comfortable application in the field and to develop muscle memory. While the BPD training team in attendance took note, we wanted to highlight specific areas where language and practice are particularly important.

Establishing gender identity when it may not match the assigned gender at birth and/or gender listed on identification is a new concept for the BPD and likely for most officers. To further the BPD's goals to treat people with dignity and respect and to establish trust with the LGBTQ community, it is crucial that BPD members inquire about gender identity in a neutral, respectful manner that does not make the officer or the individual uncomfortable. As the curriculum already includes scenarios in which gender identity may not be clear, this component can easily be added.

Similar to establishing gender identity, other situations that warrant role playing practice include ones in which the policy has changed (and habits may need to be broken) and potentially awkward situations. These include: informing individuals during a field interview that they are free to leave; focusing a Terry frisk on weapons, even when drugs may be present; asking someone if they wish to waive their Miranda rights (at the conclusion of the form warnings), and allowing someone to refuse consent to a search of their person or belongings.

Suggested action:

Add a scenario to the discussion of field interviews in Day 1 Lesson 2 Police Interactions (page 16), so that participants can get in the practice of letting someone know they are free to leave and to accept a refusal to consent to a search.

Have training participants role play the group case study at the end of Day 1 Lesson 5 Custody, Transport and Booking (pages 91-92) to practice asking someone's gender identity, determining the appropriate officer for searching the detainee, and how they should be transported.

In Day 2, Lesson 2 Interviews and Interrogation (pages 113-17) incorporate at the end of scenario 3, practice reading the Miranda warnings and then asking the individual if they choose to waive those rights.

In the discussion of searches and gender in Day 2 Lesson 3 Searches 1 (pages 129, 293), include a role play with Officer Jones determining the gender identity of Carey Smith and the appropriate officer to conduct the pat down.

In scenario 2 of Day 2, Lesson 5 Police Interactions (pages 161-63), have the first part of the pat down include feeling something that may be drugs (i.e. soft baggie) so that they continue the pat down to recover only the weapon.

Recommendation 8: Continue highlighting BWC use throughout all lessons.

Many of the modules appropriate include the need for an officer to record the interaction on their BWC. However, there are a few places where it is warranted but omitted.

Suggested action: Day 2 Lesson 1 Review and Crime Scene Management should include activating BWC in its initial discussing of crime scene management and freezing the scene (pages 100, 258-59).

Day 2 Lessons 3 and 4 Searches 1 and 2, should include activating BWC where feasible for all search types.

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The curriculum provides a nice array of interactive activities with the desired answers to the scenarios and questions posed. However, there is no discussion of how to address incorrect responses or concerns regarding and resistance toward the culture change sought. The trainers should be prepared with consistent responses that address why certain practices among BPD's recent history did not promote safety, professional, or best police practices.

In our comments to the underlying policies, we noted the importance of training to ensure that the written policies are properly implemented in practice. In addition to the general training provided here, there needs to be guidance and talking points for all levels of supervision, management and leadership. With early dedicated attention to upper level members, it will be exceedingly difficult for line officers to effectively incorporate the training.

Finally, to ensure that the training and underlying policies reflect current law, there needs to be a process for regular review of these materials and dissemination of changes and clarifications in the new law as they develop.