I. INTRODUCTION

A. Purpose of the Document

This paper is designed to accompany the Model Policy on Interviewing and Interrogating Juveniles established by the IACP National Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements for the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their communities and their law enforcement agencies.

B. Background

Children and teenagers are not miniature adults; they think, understand, and communicate differently than adults. Because young people are developmentally different than adults, special care must be taken when interviewing child victims, witnesses, and suspects in order to ensure that the statements they give are both voluntary and reliable. Because of their developmental differences, special protocols have been developed for interviewing and interrogating juveniles.

Consider the following scenario. A counselor at a local inner-city school has contacted the police department to share suspicions that a 13-year-old boy in that school is being sexually abused by a family member. After some initial investigation, the department decides that the counselor’s suspicions appear credible enough to justify contacting the boy. The department dispatches an officer trained in conducting juvenile forensic interviews to find out whether the counselor’s suspicions are true.

The officer goes down to the school and asks to speak with the boy. He arrives and, after bringing him into a small office to facilitate private conversation, the officer introduces himself and makes a few initial observations. The boy – call him Thomas – is wearing a dirty-looking jersey and looks exhausted. When the officer identifies himself as a law enforcement official, he becomes clearly uncomfortable. Even after the officer asks him to sit down, Thomas slouches in his chair, folds his arms, and stares at the floor. He doesn’t stand up and leave, but he seems wary and, after the officer tells him the purpose of the meeting, appears nervous and unwilling to engage. The officer tells Thomas that he does not have to stay and talk, but he’d really like to help Thomas if he’s experiencing some abuse at home. Thomas instantly denies any abuse – but the officer can tell from his nonverbal behavior that he is hiding something. The officer’s task, it seems, is going to be a very difficult one.

Based on training and experience, accordingly, the officer knows that genuine rapport building is a critical first step in the relationship with Thomas; and so the officer begins by not only asking Thomas questions about school and other neutral topics, but also sharing information about himself. To build trust, the officer is honest about the purpose of the interview, but also assures Thomas that
the interview will be conducted in a way that respects his feelings. Once a rapport has been established, the officer asks Thomas a series of open-ended questions in order to elicit narrative answers. The officer scrupulously avoids leading questions that could telegraph the desired answer, knowing that children may try to guess the answer the adult wants to hear rather than provide the truth, as well as guarding against later claims that Thomas’ statement might be unreliable. For the same reason, the officer also avoids saying anything that could be interpreted as even subtly coercive, such as “tell me what happened and I can keep you safe,” or “this isn’t going away until you tell me what happened.” And perhaps most importantly – at the very beginning of the interview, the officer explains to Thomas that the conversation will be recorded, places a small video recorder on the table so that it captures both parties onscreen, and hits the record button. After the officer spends an hour with Thomas, the original suspicions are vindicated: Thomas opens up and reveals in detail that his mother’s boyfriend has been abusing both him and his younger sister for two years – the revelation is captured on tape. Steps are taken to ensure the safety of Thomas and his sister, and charges are brought against the mother’s boyfriend. The prosecutor is confident that those charges will hold up in court, primarily because the officer’s careful interviewing style has insulated Thomas’ statement against later voluntariness and reliability challenges.

Consider a different scenario involving the same teenager, not as a victim, but as someone suspected of playing a part in a gang-related shooting. He still wears a dirty jersey, slouches in the chair, stares at the floor, refuses to make eye contact, is extremely reluctant to communicate, and vehemently denies involvement. Instead of being in a small, private office at his school, the meeting takes place in an interview room at the police department. The boy is read his juvenile-appropriate Miranda rights and signs a waiver. The officer starts asking some questions, and he claims ignorance. Since the officer believes that he is not telling the truth, the task is to procure an admission through interrogation techniques specifically tailored to his age, maturity, intelligence, and other related factors.

Valuable lessons can be taken from the child victim or witness interview context into the child suspect interrogation context. Regardless of whether the child being questioned is a victim, witness, or a seemingly guilty suspect, he or she is fundamentally still a child. This means that, regardless of how clever or defiant a pose he or she strikes, his or her brain development and emotional maturity is still different from that of an adult.

The term “juvenile” or “youth” covers children in a broad age range, generally up to 18 years of age. As such, there are significant differences between individuals collectively referred to using these terms. But, it can be said, that youths as a whole are typically more impulsive and less mature, less able to weigh risks and long-term consequences, more vulnerable to external pressures, and more compliant with authority figures than are adults. These traits can make any youth – whether school dropout or honor roll student, victim or perpetrator – more prone to making involuntary or unreliable statements during interviews and interrogations, particularly if certain questioning techniques are used. For this reason, many of the careful techniques prescribed by child victim interview protocols are equally useful when questioning any youth.

It should be noted however, that the younger the child, the more likely he or she is to reflect the lack of emotional maturity and development noted above. Older juveniles who have lived outside the bounds of normal juvenile experiences, such as those who have participated in or witnessed violent acts, lived in high crime areas, been part of an illegal subculture or who have been involved in the juvenile justice or criminal justice system as suspects or offenders are more likely to be attuned to police interview and interrogation practices and techniques and will normally have a better understanding of the likely consequences of their actions. They may not as yet have developed mentally or emotionally as an adult, but their life experiences may give them coping mechanisms that a younger person without the same or similar background, may not have. Therefore, interviews and interrogations of youth should, to some degree, be tailored to meet these individual differences.

With the foregoing in mind, it can generally be said that age-sensitive interview and interrogation techniques should be followed in order to avoid certain risks. Some courts increasingly are applying voluntariness standards more stringently to the statements of youth and are more willing to disallow these statements as evidence.4 If officers do not make a reasonable effort, for example, to ensure that a juvenile fully understands his or her rights and the consequences of waiving those rights, if the evidence against a youth is misrepresented or exaggerated, or if comments are made that might imply lenient treatment in exchange for a statement – such as “the truth will set you free” – then officers run the risk that the statement may be deemed involuntary. Some jurisdictions may also consider the involvement of a parent as a factor in voluntariness.

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4 See Gallegos v. Colorado, 370 U.S. 49 (1962); In Re Gault et al., 387 U.S. 1 (1967); J.D.B. v. North Carolina, 564 U.S. ___ (2011). In J.D.B. v. North Carolina, the Court ruled that the age of a juvenile is now also relevant to determining whether the encounter is “custodial” for Miranda purposes.
Second, there is a real risk that an officer might end up with a factually unreliable statement. In the victim context, several infamous cases have emerged in which children who were interviewed using improper techniques made fantastic allegations of sexual abuse. For instance, in one well-known preschool sex abuse case, children who were interviewed using leading and coercive questions stated not only that they had been sexually abused, but also that they saw witches fly, traveled in hot-air balloons, and were flushed down toilets to secret underground rooms. Sadly, false allegations have led to many wrongful prosecutions and convictions. Similar risks exist in the suspect context, as youthful suspects may respond to inappropriate interviewing techniques by making false confessions.

Of course, the twin problems of involuntary and false statements from children are not entirely attributable to law enforcement’s use of problematic questioning techniques. Other factors contribute, too, including the child’s age and any mental limitations, developmental disabilities, or related factors that may exist. The use of inappropriate questioning techniques can and often does contribute to these problems, and, accordingly, the use of proper techniques can mitigate some of these issues.

II. PROCEDURES

A. Preparing for the Interview

To properly conduct a juvenile interview or interrogation, it is best to have as much advance information about the youth as is reasonably possible. At a minimum, information should be obtained on the juvenile’s family composition, particularly the identity of the child’s parents, legal guardians, or the person responsible for his or her well-being; the juvenile’s age, education level and mental ability; language(s) spoken; and any information on prior law enforcement contacts or records. The more information that is available, the easier it is for an officer to create an interview plan—a conceptual approach to develop the best strategies for establishing rapport, presenting questions that are appropriate to the child’s mental and intellectual capacities, accommodating language or learning difficulties, and related matters.

Where time and circumstances permit, it is also prudent to identify the most appropriate place for conducting the interview or interrogation. When and if it appears that a statement needed for prosecution or confession may occur, arrangements should be made to hold the interview at the police department where it can be recorded. Statements made in custody and confessions should always be recorded in their entirety, as will be noted later. When a juvenile is interrogated in the office of a school official, it should be assumed that the juvenile is in custody for purposes of Miranda since most courts will rule under these conditions that the youth was not free to leave.

B. Recording Interviews and Interrogations

Recording a child’s statement benefits everybody—whether that child is a victim, witness, or suspect. Almost every child victim interview protocol requires that the interview be recorded. The model policy makes this recommendation whenever circumstances and equipment availability permit. It is easy to understand why this is recommended; when a questioning session is recorded from start to finish, officers have a complete record that allows attorneys, courts, and other law enforcement personnel to objectively review the entire statement. The recording also makes it unnecessary for officers to take notes during questioning, and allows them to focus exclusively on the interview. The recording protects officers from false claims of coercion, leading to fewer pre-trial suppression motions, more guilty pleas, and less time spent in court defending themselves on the witness stand. Finally, recordings can help guard against the false confessions previously mentioned. With a video-and audiotape recording, officers and others can review the interrogation for any signs of statements made or actions taken by police that could have resulted in a false confession. The statement can also be reviewed repeatedly where verification of facts made by the juvenile need to be made.

Experience over time has shown that the most common law enforcement objection to recording—that it would deter suspects from speaking freely—is unfounded. In fact, law enforcement agencies that have instituted mandatory recording of custodial interrogations have overwhelmingly come to embrace the practice. Therefore, the recorder should be turned on the moment an officer begins talking to any child victim, witness, or suspect and should not be turned off until the last question is answered.6

C. Who Should Be Present?

Just as in the victim interview process, it is important not to overwhelm child suspects or witnesses with the presence of law enforcement officers. If the child feels intimidated or trapped by authority figures, then there is a risk that he or she might not answer questions truthfully, but with whatever he or she believes those authority figures want to hear. The best way to conduct juvenile victim, witness or suspect interviews and interrogations is to

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limit the number of law enforcement personnel to just one interviewer or interrogator.

However, that does not mean that no one else should be present during the interview. To the contrary, it can be beneficial to involve a “friendly adult” in the process of questioning a juvenile – whether that person is a parent, guardian, or attorney. Many courts have thrown out *Miranda* waivers and statements that are obtained from children who are not given the opportunity to consult with an adult who has an interest in protecting that child before or during the interrogation. Furthermore in some states, it is the law that officers must notify a child’s parent or guardian before questioning him or her; and even when that is not the case, courts may view the absence of a parent or guardian negatively when determining whether a child’s statement was given voluntarily.

While the presence of a parent or guardian may be a factor in ensuring that a statement will be admissible in court, care should be taken that the parent does not exert too much pressure on the child. A well-meaning parent can even inadvertently encourage a false statement by discounting the child’s adamant denials and demanding that the child tell the police “the truth.” The child may then admit false guilt in order to comply with the orders of the parent. If a parent impedes the interview, he or she may be removed from the room.

**D. Juvenile-Appropriate Miranda Rights**

Victim and suspect interview styles, of course, should not be identical; in certain respects, at least, victim interviews necessarily have different dynamics than suspect interviews. These differences are highlighted in the model policy as sample questions and approaches for both custodial interrogations and noncustodial interviews. Custodial interrogations of suspects, for example, carry certain legal requirements that must be followed, like the administration of the *Miranda* rights. However, administering the rights in a clear and understandable way – and obtaining a knowing and voluntary waiver of those rights – can become thorny when dealing with a juvenile.

Even otherwise intelligent youth often do not fully understand their *Miranda* rights. Assuming a juvenile is able to understand his or her rights, he or she may have difficulty applying those rights to his or her own situation. While some children understand that they are allowed to consult with an attorney, they may not understand how an attorney could be helpful to them during an interview or interrogation. Because of these problems, youth may not fully understand the significance of their rights or what it really means to waive them.

When reciting *Miranda* warnings to a child, the best practice is to read each warning slowly and one at a time. After each warning, the child should be asked to explain it in his or her own words. This is the only way that an officer can be satisfied that the child has a solid understanding of his or her rights. It is not sufficient if the child merely repeats the same words back; in fact, that may indicate that he or she is inappropriately focused on saying things in an effort to please. Further, the same terminology used with a seasoned adult suspect is probably not suitable for a juvenile; rather, the following model, which uses short sentences and language understandable to children who can read at the third-grade level, can be utilized:

1. You have the right to remain silent. That means you do not have to say anything.
2. Anything you say can be used against you in court.
3. You have the right to get help from a lawyer right now.
4. If you cannot pay a lawyer, the court will get you one for free.
5. Do you want to have a lawyer with you while you talk to me?
6. (If required by local or state law) You have the right to have one or both of your parents here.
7. (If required by local or state law or departmental policy) Do you want your mother, father, or the person who takes care of you here while you talk to me?
8. You have the right to stop this interview at any time.
9. Do you want to talk to me?

If this model is followed and the child is asked to explain each warning back in his or her own words, an officer should feel confident that the child understands the rights. In addition, the juvenile and the parent or legal guardian, if present, should be asked to sign a juvenile *Miranda* acknowledgment and rights waiver. If the conversation about the *Miranda* rights is preserved for posterity on tape, the *Miranda* waiver process will be nearly bulletproof in court.

**E. Questioning Style**

Officers should attempt at the outset to develop a mutually respectful and honest relationship with the child. This will go far in efforts to gather reliable information. This is not to say that an officer should build a rapport that mistakenly conveys to the child that he or she is not a police officer or is on the child’s side; to do so could open the interview to legal challenges at a later date. Rather, the officer should be straightforward in explaining the purpose of the interview and the subject matter to be discussed. The officer should avoid a false appearance of friendship or trust, but simply attempt to create a sense of honesty.

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7 *See Gallegos v. Colorado, 370 U.S. 49 (1962).*
8 *See for example, J.D.B. v. North Carolina, 564 U.S. ___ (2011)*
9 Id.
consequences, and openness. For example, the fact that the interview is being recorded should be clearly stated and the recorder placed in plain sight.

A critical part of rapport-building is to avoid a threatening, accusatorial, or antagonistic questioning style. This form of questioning can make children shut down – or, worse, it can make them offer up false information in an effort to bring an uncomfortable interview to an end. Moreover, by using an accusatorial or intimidating questioning style, officers expose themselves to later claims of coercion.

Officers should start by using open-ended, free-recall questions that produce a narrative answer. These types of questions elicit not only the most information from children, but also the most accurate information. After the child provides a full narrative, the officer should next ask targeted but still open-ended questions about specific portions of the narrative. For example: “You mentioned that you were out with your friends last night. Tell me about that.” If the officer believes that the child is lying, he or she should probe that area of the story further without outright accusations, such as “Can you help me understand why you told me earlier that you were at home last night?”

Only after exhausting the child’s ability to provide information through the free-recall process – which could take a considerable amount of time – should an officer proceed to use direct questions, or questions beginning with “who,” “what,” “where,” “when,” and “how.” These questions should be used only to elicit specific information that is still needed, rather than to obtain a second telling of the entire narrative. When posing these types of questions, the officer should refrain from offering the child options, such as, “Where were you standing, on the sidewalk or on the porch?” Questions presented in this way suggest to the child that one of those two answers will be acceptable. As such, the child could then attempt to guess the “right” answer in order to please, rather than simply tell the truth.

Throughout the interview process, officers should be careful not to use leading questions, such as “Weren’t you standing close to the porch?” or “You had just come from the party, right?” Leading questions can also provide information to the child that he or she did not offer previously. For example, one may ask “Where on the porch were you standing?” when the child had not previously stated that he or she was on the porch. These questions are off-limits because they contain information that will educate the child about the theory of how the incident took place. As one basic example, a child who is asked, “You were standing on the porch, weren’t you?” will know that it is important to tell a story in which he or she is standing on the porch. When an interview is contaminated in this way, it becomes impossible to know whether the information provided during the interview ultimately came from the child or from the questioner. By contaminating an interview with leading questions, officers expose themselves to later claims that the child’s statement is false or unreliable.

Finally, although officers can and should preserve a healthy skepticism with respect to a child suspect’s claims of innocence, they must also keep an open mind as to the possibility that the child may actually be innocent. Nonverbal cues such as posture and eye contact may not be indications of untruthfulness, especially with children. A child who appears uneasy might be nervous because of guilt, or he or she might simply be uncomfortable being asked about such serious topics. While failure to make eye contact, appearing nervous, or other cues could suggest that a child is being evasive or lying, these behaviors could also be the result of his or her victimization, lack of comfort with the questioning process, or something else altogether. If a child suspect consistently tells the officer a story of innocence during an interview, accordingly, the officer should always allow for the possibility that he or she may in fact be innocent.

F. Avoiding Coercive Statements

Under the law, coercion is generally defined to include both promises of leniency and threats of harm. For example, if a law enforcement officer were to tell a child, “If you confess, you can go home,” that would constitute an impermissible promise of leniency and any ensuing confession would likely be found involuntary in court. For that reason, officers should take care not to make explicit promises or threats.

However, sometimes that very same message is sent to children during interviews, albeit in different, more indirect words. In some cases, children who gave proven false confessions later explained that they did so because they understood their questioners to say that they could go home if a statement is made, but officers do more frequently make “indirect” or “implied” promises. Examples of indirect promises include: “Everything will be okay, but I need you to talk to me,” and “if you’re honest with me, I’ll do everything I can to make this easy on you.” Children, who tend to think concretely and literally, can and often do interpret such phrases to mean that if they just say what the officer wants to hear then everything really will be okay – which, to the child, often means getting to go home.

Consequently, law enforcement officers should carefully avoid making any statement or acting in a way that could be misconstrued by a child or otherwise deemed coercive—regardless of whether the child is a suspect, victim, or witness. Not only does the use of even subtle
coercion increase the risk that any child’s statement will be found involuntary, but it also increases the risk that the child will give a false statement.

G. Interview Length

It is generally recognized that most juveniles cannot endure long periods of questioning without a substantial break. If an interview drags on for hours, the risk of eliciting a false or involuntary statement rises exponentially. Breaks should provide the child with a legitimate opportunity to clear his or her mind and, if possible, get some rest; a 10-minute period during which an officer leaves a child alone in a stationhouse room is unlikely to actually benefit the child in any real way.

H. Post-Interview Actions

Just as an officer should consider it essential to corroborate a suspect’s alibi, he or she must also take steps to corroborate a child suspect’s confession. The officer should start by considering whether the child provided information that was not previously known or information about the crime that only the true perpetrator would know. From there, investigators must make sure this information is provably consistent with the crime scene, other witness statements, and the physical evidence. If it is inconsistent, then the confession may not be reliable. Officers should also be wary when the only corroboration is a statement from another child; examples abound of multiple children making false statements and confessions in the same case.

Before concluding the investigation, the videotape should be reviewed. Officers should feel confident that the child was not simply parroting back information that may have been accidentally revealed to him or her through leading questions.

Finally, when reviewing the videotape, officers should pay special attention to determine if the child gave objectively inaccurate information that is contradicted by the crime scene or other factors. A child suspect or witness who provides wrong information may be guessing at the right answer. If the child consistently has to be corrected about the “facts,” there is a strong chance that his or her statement is not accurate.