

Comments from the Maryland Office of the Public Defender for Baltimore City
Proposed E-Learning Modules: Stops, Searches & Arrests/Fair & Impartial
Policing; December 2019

The Office of the Public Defender (OPD) provides these comments to the Baltimore Police Department (BPD) on its proposed e-learning modules for stops, searches and arrests and fair and impartial policing.

Stops, searches, and arrests are central to law enforcement practices, and their policies and practices go to the heart of many violations underlying the consent decree. As we noted in our comments to the relevant policies, training is critical to ensuring that BPD members adopt and embrace appropriate practices.

The e-learning modules released for comment appear to be mostly lecture-style PowerPoint slides, potentially without audio, that highlight specific points without a comprehensive overview of the policies at hand and with minimal multimedia or interactive elements.

Prior BPD training materials reviewed by our office during a public comment period included both in-person and e-learning materials. This type of instruction provided a clear curriculum on the full scope of materials to be addressed with the e-learning serving as a supplemental update. Since there was no in-person curriculum provided, that needed context was missing for this review¹.

Recommendation 1: Establish a comprehensive curriculum that encourages a full understanding of the policies, practices and key concepts, and relies on best practices for adult learning.

E-Learning must be developed in tandem to the in-person training and treated as a unified curriculum intended not just to check the boxes of items to be covered, but to encourage comprehension of the policies, practices, and underlying constitutional principles. To be effective, this training must also follow adult learning best practices and rely on interactive, experiential materials, filled with real-world application tips.

Suggested action:

- Develop an in-person training that completely addresses all of the applicable policies, with the e-learning serving as a supplement to reinforce the key principles. The in-person

¹ As these comments were being completed for submission, the proposed in-person training curriculum was released for comment. With more than 300 pages and only two business days (six calendar days) before these comments were due, we could not sufficiently review them to incorporate here. We will be providing additional comment regarding that curriculum before the conclusion of its comment period. In the future, we recommend that the BPD release the e-learning and in-person curricula together so the entire training on the subject matter can be effectively and efficiently reviewed in context.

training should involve practical application components, including a hands-on practicum for conducting lawful searches.

- Sequence the materials to have a logical progression that highlights the most critical subject areas and generally follows the order of events (i.e. stops then arrests/citations then searches).
- Require e-learning participants to answer questions throughout the training and/or at the end of each module to ensure that they are engaged and understand the materials.
- Plan to review all curricula at least annually to incorporate changes in the law and emerging best-practices.

Recommendation 2: Provide the actual policies and key definitions and concepts at the start of each module.

Several of the modules highlight the updates to the relevant policies, but do not consistently include each corresponding policy. To orient each section of the training, and ensure that every component of the policy is addressed, each module (or section of module discussing said policy) should start out with a copy of the actual policy that participants can read and refer back to. Using the actual policies to frame each section may also help with their organization.

Key concepts should also be defined at the start of each section. In particular, some of the policies include definitions for reasonable articulable suspicion (RAS) and probable cause (PC) midway through the presentation; while others do not include RAS and PC definitions at all, despite discussing these terms. RAS and PC are central to virtually every policy addressed in these modules and consistent definitions should be reiterated throughout.

Suggested action: Provide the policy at the beginning of each module (or relevant section of module) and the following definitions and concepts either just after the policy or when first introduced in each section:²

- Policies 906 (Traffic Citations) and 1108 (DUI/DWI Arrest Procedures): RAS; PC; least intrusive response; elements for DUI v. DWI.
- Policy 1106 (Warrantless Arrest...): RAS, PC, Least Intrusive Response.
- Policy 1104 (Arrest Warrants): PC, critical decision making, exigent circumstances.
- Policy 1013 (Strips Searches & Body Cavity Searches): PC, strip search, body cavity search.
- Policy 1114 (Persons in Police Custody): PC, custody, duty to provide medical attention.
- Policy 1002 (Securing and Interviewing Witnesses): field interviews, voluntariness, body attachments.
- Policy 1105 (Custodial Interrogation): Interrogation, custody; lawful statement (knowing, intelligent, voluntary).

² These are provided in the order they are currently presented in the e-learning modules, not the order that OPD would recommend.

- Policy 1007 (Search and Seizure Warrants): PC, types of warrants (knock and announce, no knock).
- Policy 1109 (Warrantless Searches): PC, RAS, exigent circumstances, least intrusive response.
- Policies 1112 (Field Interviews Stops, Pat Downs, Searches) and 1505 (Foot Pursuits): RAS, PC, field interviews, investigative stops.
- Policies 317 (Fair & Impartial Policing) and 720 (Interactions with LGBTQ individuals): procedural justice, discriminatory policing, LGBTQ, transgender, intersex.

Recommendation 3: Incorporate more practical examples, with both do’s and don’ts.

There are five videos provided across the six modules – three of which provide examples of bad practices and two discuss what was required before/after the clip shown in order for the police action to be lawful. A sixth example is provided in a scenario described in the traffic citations, that also asks what is needed for a citation to be issued.

BPD rightly includes examples of unlawful practices to clearly address actions previously taken by members that are prohibited. However, these should be complimented with visual representation of what constitutes proper action. Bad practices are at risk of being replaced with other bad practices without clear discussion and illustration of appropriate behavior.

Beyond the visual display of do’s and don’ts, the BPD should try to incorporate interactive elements. Rather than rely solely on PowerPoint slides that allow the learner to remain passive while the training states everything that is needed, the learners should have to manually answer questions related to that scenario to allow for more active learning and an assessment of how much the material is being understood and absorbed.

Suggested action: Provide additional examples on topics, such as:

- The distinction between a stop based on RAS and an arrest based on PC;
- The execution of a warrant at a primary residence;
- Proper and improper searches;
- Appropriate transport procedures
- Distinction between a field interview and an interrogation
- Obtaining a Miranda waiver
- Proper protocol for a weapons pat-down
- Life cycle of a traffic stop

Recommendation 4: Consistently include body-worn camera (BWC) obligations and reporting requirements.

In accordance with Policy 824, members are generally required to activate their BWC, among other times, when responding to a call, when a voluntary encounter becomes a field interview or

an investigative stop, when attempting to conduct a stop; when transporting a detainee; when searching for evidence or taking inventory of a vehicle. Likewise, all police activity needs to be documented, and the BPD has forms and processes for doing. These are central practices both to the consent decree and good policing that should be consistently and clearly addressed and reiterated throughout the policies.

Suggested action: Include the requirement that members activate their BWC each time a police activity is discussed where BWC is mandated under Policy 824. The section in Module 3 discussing Custodial Interrogations (Policy 1105) includes the “preference for audio/visual recording of interrogations.” This slide should make clearer that recording of interrogations is required (not merely preferred) and then provide the hierarchy of recording efforts.

At the conclusion of each section, consistently address the reporting requirements for that policy, including an image of the forms to be completed.

Recommendation 5: Address distinctions related to youth

As well established by law, and discussed more fully in our last set of comments addressing the recently released youth policies, children are different and often require different law enforcement responses. The consent decree requires that “the BPD provide[] officers with guidance on developmentally appropriate responses to, and interactions with, [y]outh ... including for appropriate officer conduct during voluntary interactions, stops, searches, arrests, uses of force, and custodial detentions and interrogations.” Consent Decree ¶ 220. While BPD interactions with youth warrants specialized attention, the distinctions of youth interactions must also be addressed in the relevant policy areas and fully incorporated into training.

Suggested action: Incorporate the following principles and requirements into the relevant training modules:

- The reasonable child standard, and the increased likelihood that a child will be considered in custody, *see J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011);
- Limiting searches of youth conducted pursuant to probable cause for arrest to a routine non-cavity, non-strip search; and requiring any strip search to be conducted in private by DJS, and be based on an individualized reasonable, and articulable suspicion that the child is secreting something in a body cavity, *see Safford Unified School Dist. # 1 v. Redding*, 557 U.S. 364, 375 (2009) (“adolescent vulnerability intensifies the patent intrusiveness of the exposure”);
- Specialized practices regarding the interrogation of children, including requiring attorney consult, parental notification, the prohibition on deception, and the use of Youth Miranda Warning Form 85, *see* OPD comments on Draft Policies Pertaining to Youth, submitted November 15, 2019;

- The preferred practice of issuing a citation and releasing juveniles accused of misdemeanors and non-violent felonies;
- Prompt parental notification of all police interactions.

Recommendation 6: Clarify that statements must be knowing, intelligent and voluntary – and discuss the limited use of deception in this context, with prohibitions for identified vulnerable populations.

Module 3’s coverage of custodial interrogations (Policy 1105) provides no discussion of the most important underlying principle: that all statements must be voluntary and all waivers must be knowing, voluntary, and intelligent. Without this important context, the discussion on Miranda waivers and deception provides no explanation of when, how, and, most importantly, why they are limited.

Rather than a mechanical discussion of how to secure a waiver, ensuring that the waiver is lawful should be prioritized – emphasizing the need to ensure that the suspect understands the rights that they are waiving. The special provisions for youth interrogations related to Miranda waivers should be included in this portion.

Regarding the use of deception, the slides should make clear the factors listed that are more likely to result in an involuntary incriminating statement weigh against using deception. Moreover, deception should never be used with minors and individuals with behavioral health or intellectual disabilities as they are at greatest risk of providing a false confessions due to the coercive nature of deceptive techniques. According to the to the National Registry of Exonerations, 36% of crimes allegedly committed by youth and 69 % of crimes allegedly committed by people with a reported mental illness or developmental disability involved false confessions; while the proportion of false confessions overall was 12%.³ BPD’s proposed youth interrogations policy recognized that deception is not appropriate for children under the age of 16; this protection soul deb provided to all youth.

Suggested action: In the section of Module 3 covering custodial interrogations (Policy 1105), include:

- A discussion of the constitutional requirements for a lawful statement toward the beginning of the section;
- The distinct requirements and protections for youth interrogations, including the specialized Miranda form, heightened attorney and parent contact, and the prohibition on deceptive techniques;
- The limited capacity of people with behavioral health or intellectual disabilities to provide a knowing and voluntary waiver and which weighs against any interrogation and should preclude deceptive techniques.

³ National Registry of Exonerations, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess – 26 February 2019.

Recommendation 7: Clarify the full requirements for each type of police contact in the chart provided in Module 5.

At the start of Module 5, in the discussion of Policy 1112, a chart is provided of different types of contact and the justification required for each one. By providing only the standard of proof needed, it is confusing as to . For example, the chart suggests that searches only require probable cause, when in fact, an arrest (based on probable cause) is required. *See State v. Funkhouser*, 140 Md. App. 696, 724–25 (2001) (“That the police have probable cause for a lawful arrest of a person does not in and of itself justify a warrantless search of that person. The search must be incident to an arrest itself. It may not be incident merely to good cause to make an arrest.”); *see also Knowles v. Iowa*, 525 U.S. 113 (1998) (holding that search incident to citation with probable cause did not meet the search incident to arrest exception for warrantless searches).

Suggested action: Add a column to the chart that provides context to the justification required, as follows:

TYPE OF CONTACT	JUSTIFICATIONS		ADDITIONAL REQUIREMENTS
	Reasonable Articulable Suspicion	Probable Cause	
Voluntary Contact			Person is free to leave
Field interview			Person is free to leave
Investigative Stop	X		RAS that the person is committing, is about to commit or has committed a crime
Weapons Pat-Down	X		RAS that the person is armed and dangerous
Searches		X	Must be incident to a lawful arrest
Arrest		X	PC that the person is committing, is about to commit or has committed a crime
Vehicle Stop – Traffic Violation		X	PC that the person has committed a traffic violation
Vehicle Stop – Criminal Investigation	X		RAS that the person is committing, is about to commit or has committed a crime

Recommendation 8: In the section on Persons in Police Custody (Module 2), address the medical attention and arrest procedures detailed in the Policy 1114.

The discussion of Policy 1114 in Module 2 focuses almost exclusively on the transport of someone in custody. While an important component to include, it is not the only area of the policy. The duty to provide medical attention is an important concept and should be addressed with at least the level of weight it is provided in the policy.

Suggested action: Incorporate slides that address the medical attention procedures and the arrest procedures.

*

*

*

As discussed at the start of these comments and in our first recommendation, e-learning should not be developed out of the context of the entire curriculum relevant to that subject matter. In addition to adopting the recommendations above, we urge the BPD to hold a public comment period on its full curriculum, with the in-person training script that allows for a second round of comment on these e-learning modules with the recommendations adopted incorporated.