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MAYOR

CITY AND COUNTY OF SAN FRANCISCO
Department of Police Accountability
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SAN FRANCISCO, CA 9410



PAUL DAVID HENDERSON
EXECUTIVE DIRECTOR

December 9, 2019

Hon. Bob Hirsch, President
Hon. Damali Taylor, Vice-President
Members, San Francisco Police Commission

Re: Department of Police Accountability's Suggested Edits to Youth Interrogation and SFPD's Refusal to Provide DPA The Draft Department Bulletin in Violation of Department General Order 3.01.10

Dear President Hirsch, Vice-President Taylor and Commissioners:

I am writing to address both substantive revisions to the proposed Department Bulletin on youth interrogations and to alert you that the Department refused to provide my agency a copy of this proposed Department Bulletin, despite Department General Order 3.01's mandate to discuss with our agency substantive changes the Department makes after our agency provides recommendations on a Department Bulletin. Having reviewed the Department Bulletin on Friday afternoon that contains problematic language and deleted provisions without any explanation from the Department, I file this letter today to express concerns about the Department's process which undermines our agency's ability to address this Department Bulletin in a timely manner.

I provide five suggested revisions to SFPD's proposed Department Bulletin on 19-175 (New Requirements When Members Interrogate or Question Youth 17-Years Old or Younger). For consistency with California Welfare and Institution Code §625.6, San Francisco Administrative Code §96 (c), and mandatory interrogation requirements under Department General Order 7.01, the DPA recommends that SFPD's proposed Department Bulletin 19-175 (second paragraph) be revised in the following manner (DPA edits are in underlined red):

1. Officers may not interrogate or obtain a Miranda waiver or engage in "unnecessary conversation" with detained (not free to leave) Youth unless the following two conditions are first met or an exemption for exigent circumstances applies:
 - a.) The juvenile is allowed to talk to the on-call juvenile attorney in person, by telephone, or video conference with the Public Defender's office, 415-583-273. (This consultation with an attorney cannot be waived.)
 - b.) The juvenile is allowed to request a responsible adult to be present during questioning. (~~this~~ The presence of a responsible adult can be waived by the youth's objection.)
2. Members shall ensure that youth are provided the right to privacy when talking with legal counsel.

3. Members shall record the *Miranda* admonition and interrogation absent exigent circumstances.
4. **Documentation:** All members shall document in the incident report the name of the attorney consulted by the juvenile and the date and time the legal consultation occurred. The member shall also document in the incident report the name and contact information of the responsible adult present during custodial interrogation or questioning, or the youth's waiver to the presence of a responsible adult, and any attempts to reach a responsible adult on behalf of the youth.
5. Members are reminded to provide interpreter services for Limited English Proficient youth in compliance with Department General Order 5.20 (Language Access Services for Limited English Proficient Individuals). (Also see Attached Exhibit A, DPA's Suggested Revisions to DB 19-125, dated 12/08/19).

Despite our agency's suggested written edits to this Department Bulletin in June 2019 and frequent inquiries over the last six months into the progress and status of this proposed Department Bulletin, and our specific request to review SFPD's final draft, SFPD filed this draft Department Bulletin with the Commission without providing the DPA its final draft which contains significant changes from the draft Department Bulletin the DPA reviewed and edited in June 2019. The Department's refusal to provide the DPA a copy of the draft Department Bulletin violates Department General Order 3.01.10 which requires SFPD to 1) inform the DPA of SFPD's additions or amendments that resulted from Command staff and the Chief's review (SFPD concurrence process) after DPA's suggested revisions to a Department Bulletin, 2) meet with the DPA to exchange views about those additions or amendments, and 3) when there is not consensus, provide the DPA an opportunity to discuss the DPA's recommendations with the Chief.

Below, I discuss the state and local ordinance requirements concerning interrogations of youth and the basis for our suggested revisions. Last, I discuss the Department's denial of our agency's request to review the proposed Department Bulletin which not only violates DGO 3.01 but undermines the effectiveness of the Police Department's collaborative reform process.

A. Background to State and Local Interrogation Laws: SB 395 and SF Administrative Code Chapter 96C

In 2017, the California legislature enacted Senate Bill 395 that requires youth 15 years of age or younger to consult with an attorney in person, by telephone or by video conference prior to custodial interrogation and before the waiver of any *Miranda* rights. The consultation cannot be waived.

SB 395 permits an exigent circumstance exception if both of the following criteria are met:

1. The officer who questioned the youth reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat; and
2. The officer's questions were limited to those questions that were reasonably

necessary to obtain that information. (See Attached Exhibit B, California Welfare and Institution Code §625.6.)

In enacting SB 395 which became effective January 1, 2018, the Legislature specifically acknowledged the United States Supreme Court's recognition of well-established principles within developmental and neurological science that children and adolescents often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them and are more vulnerable or susceptible to outside pressures than adults. (See e.g. *Roper v. Simmons* (2005) 543 U.S. 551, 569 which declared that the execution of individuals who were under the age of 18 at the time of their crimes violates the Eighth and Fourteenth Amendments.) The Legislature specifically found that "[p]eople under 18 years of age have a lesser ability as compared to adults to comprehend the meaning of their rights and the consequences of waiver." The Legislature also declared that "[t]he law enforcement community now widely accepts what science and the courts have recognized: children and adolescents are much more vulnerable to psychologically coercive interrogations and in other dealings with the police than resilient adults experienced with the criminal justice system." (See Attached Exhibit B, California Welfare and Institution Code §625.6, Historical and Statutory Notes, Section 1.)

Effective April 15, 2019, San Francisco Administrative Code Chapter 96C establishes additional requirements when San Francisco Police Department officers seek to interrogate, question, or engage in unnecessary conversation with youth 17 years or younger who are not free to leave. Chapter 96C expands SB 395's requirement that youth consult with legal counsel before the waiver of any *Miranda* rights and custodial interrogation to include 16 and 17-year-old youth. (SB 395 applies to youth 15 years and younger). Chapter 96C also requires SFPD to permit a responsible adult (defined by 96C) to be present during interrogation, questioning or unnecessary conversation with youth not free to leave. The Responsible Adult provision codifies Department General Order 7.01 (III)(D)(3)(a) & (b)'s requirements that an officer inform a juvenile that a parent or guardian can be present before and during interrogation and permit the parent or guardian's presence.¹

Chapter 96C states that SFPD "may not subject a person 17 years of age or younger (Youth) to a custodial interrogation or question or engage in unnecessary conversation with Youth who are not free to leave, unless and until the following two conditions are met":

1. "The Youth consults with legal counsel in person, by telephone, or by video conference, which consultation must occur before the waiver of any *Miranda* rights. This consultation with legal counsel may not be waived."

¹ See Department General Order 7.01 (III)(D)(3)(c): If a juvenile expresses a wish to have a parent/guardian present during the interrogation, this will be allowed unless the parent/guardian is a witness or suspect to the crime for which the juvenile is being interrogated or exigent circumstances exist (e.g., unduly hampered by the delay or in an emergency exists.)

See Department General Order 7.01 (III)(D)(3)(a): Immediately prior to questioning a juvenile, members shall again advise the juvenile of the *Miranda* admonishment. Such admonition shall be given in the language appropriate to the age and sophistication of the juvenile and in accordance with General Order 5.10. In addition to the *Miranda* admonishment, the officer shall tell the juvenile that he or she may have a parent/guardian present before and during an interrogation.

2. Following the consultation with legal counsel, SFPD shall allow a Responsible Adult (defined by Chapter 96C) to be present either in person, by telephone, or by video conference during the interrogation and when SFPD questions or engages in unnecessary conversation with the Youth who is not free to leave if the youth does not object to the identified Responsible Adult's presence.

Chapter 96C defines unnecessary conversation as "communications with the Youth that are not designed to address the Youth's physical needs or to give the Youth directions relating to operation of the facility where the Youth is detained." Chapter 96C includes SB 395's exigent circumstance exception as discussed above. (See Exhibit C, San Francisco Administrative Code Chapter 96C)

B. Summary of Department Bulletin 18-006 (SB 395 Interrogation Requirements)

Following the enactment of SB 395, the Department issued Department Bulletin 18-006 on January 18, 2018 to address the new state law interrogation requirements. This Department Bulletin informs officers that prior to custodial interrogation and waiver of *Miranda* rights of youth 15 years old or younger, youth shall consult with legal counsel in person, by telephone or video conference, a requirement that could not be waived. The Department Bulletin states that the San Francisco Public Defenders Office would be on call 24/7 to consult with all youth 15 years and younger prior to custodial interrogation or a *Miranda* waiver. It includes the dedicated phone number for the Public Defender juvenile attorney and also states that the Public Defender will "try to provide legal counsel for in person consultation." It also includes the exigent circumstance exception and information for procedures for Airport Bureau officers.

Department Bulletin 18-006 also includes critical provisions about the right to privacy during the youth's conversation with legal counsel, documentation and language access requirements—provisions that the DPA incorporated into SFPD's proposed DB 19-125 in June 2019 which SFPD subsequently deleted from DB 19-125 without any explanation. Below are these provisions from DB 18-006 that were deleted from SFPD's proposed Department Bulletin 19-125, despite their inclusion and importance in DB 18-006 which will be subsequently superseded² by DB 19-125's adoption:

- Officers shall ensure the location of the call affords the juvenile the right to privacy in the contents of the conversation.
- Members are reminded to use language line interpreter services in compliance with Department policy and Department General Order 5.20 (Language Access Services for LEP).
- All Members shall document in the incident report the name of the attorney consulted by the juvenile and the date and time the contact was made. (See Attached Exhibit D, Department Bulletin 18-006, page two, last three sentences.)

C. DPA Suggested Revisions to Proposed DB 19-125

The DPA recommends five key revisions to the proposed Department Bulletin on interrogations.

² Department Bulletin 19-125 specifically states that it will supersede DB 18-006. The Department's General Order Change Request also states that DB 19-125 will supersede DB 18-006.

- ***Amend the Department Bulletin to Explicitly Require That A Detained Youth Speak with the On-Call Juvenile Attorney and Be Informed That A Responsible Adult May Be Present During Police Questioning Before an Officer Can Interrogate or Obtain a Miranda Waiver.***

As currently written, the proposed Department Bulletin does not explicitly state that the two conditions—attorney consultation and request for a responsible adult’s presence—must be met before interrogation or a *Miranda* waiver can occur. Both state and local law include specific language requiring the satisfaction of these conditions. Chapter 96C prohibits SFPD custodial interrogation or questioning or unnecessary conversation with detained youth “unless and until the following two conditions have been met”—1) consultation with a lawyer which cannot be waived and 2) allowing the presence of a responsible adult unless the youth objects. (See 96C.2 (a)(1) and (2).) Welfare and Institution Code 625.6 explicitly requires a youth’s consultation with legal counsel “[p]rior to a custodial interrogation, and before the waiver of any Miranda rights...” (See Welfare and Institution Code §625.6 (a)). SFPD’s proposed Department Bulletin leaves out “obtaining a *Miranda* waiver” and that consultation can occur in person, by telephone or video conferencing—critical language from state and local law. DPA also suggests that the Department Bulletin incorporate Chapter 96C explanation that the presence of a responsible adult can be waived by the youth’s objection. (See Exhibit C, 96C.2(a)(2).)

For clarity and consistency with state and local law, the DPA suggests the following revisions to the second paragraph of proposed Department Bulletin 19-125:

~~Procedure under 96C~~ Requirements under State and Local Law³

Officers may not interrogate or obtain a *Miranda* waiver or engage in “unnecessary conversation” with detained (not free to leave) Youth unless the following two conditions are first met or an exemption for exigent circumstances applies:

- 1) a) The juvenile is allowed to talk to the on-call juvenile attorney in person, by telephone, or video conference with the Public Defender’s office, 415-583-273. (This consultation with an attorney cannot be waived.)
- 2) b) The juvenile is allowed to request a responsible adult to be present during questioning. (this The presence of a responsible adult can be waived by the youth’s objection.)

- ***Amend the Department Bulletin to Require Officers to Provide Youth the Right to Privacy When Talking with Legal Counsel.***

On June 18, 2019, the DPA reviewed and suggested written revisions to the Department proposed Department Bulletin that included the following provision: “Members shall ensure that youth are provided the right to privacy when talking with legal counsel.” As previously discussed, SFPD acknowledged the importance of this provision when it included this provision in Department Bulletin

³ Because SFPD intends to rescind DB 18-006 that addresses state law requirements, proposed DB 19-125 should address both state and local law requirements. Thus, DPA’s suggested revision that “Procedure under 96C” be replaced with “Requirements under State and Local Law.”

18-006 on SB 395 state law interrogation requirements. Without notice or explanation to the DPA, the Department deleted the right to privacy provision.

Courts acknowledge that “[t]he attorney-client privilege is the oldest of the privileges for confidential communications known to the common law.” *United States v. Yielding* (8th Cir.2011) 657 F.3d 688, 706–07 quoting *Upjohn Co. v. United States* (1981) 449 U.S. 383, 389 (1981)). Its purpose is “to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” (*Upjohn*, 449 U.S. at 389). The attorney-client privilege “is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed of when free from the consequences or the apprehension of disclosure.” (*Hunt v. Blackburn* (1888) 128 U.S. 464, 470.) Eavesdropping on privileged communication between a criminal defendant and attorney by prosecutors or law enforcement potentially violates the privilege against self-incrimination, right to counsel, right to due process, and right to privacy under California and Federal Constitutions. (See e.g. *Morrow v. Superior Court* (1995) 30 Cal.App.4th 1251; *People v. Shrier* (2010) 190 Cal.App.4th 400, 408, footnote 2, “No prosecutorial agents should position themselves so they can intentionally eavesdrop upon attorney-client conversations.”)

To protect the confidentiality of the attorney-client relationship and to provide officers clarity about their responsibilities when youth consult with an attorney pursuant to SB 395 and Chapter 96C, the DPA recommends that the proposed Department Bulletin include the following provision:

Members shall ensure that youth are provided the right to privacy when talking with legal counsel.

- ***Amend the Department Bulletin to Require Officers to Record the Miranda Admonition and Interrogation as Currently Required by Department General Order 7.01.***

Department General Order 7.01 requires that interrogations of youth be recorded absent exigent circumstances.⁴ To ensure that officers know of and comply with the recording requirements of DGO 7.01 (especially because the recording requirement of DGO 7.01 is unique⁵), the DPA recommends that the proposed Department Bulletin include the following provision:

Members shall record the *Miranda* admonition and interrogation absent exigent circumstances.

- ***Amend the Department Bulletin to Require Officer to Document In their Incident Report Their Compliance with the Department’s Interrogation of Youth Procedures.***

On June 18, 2019, the DPA reviewed SFPD’s draft that stated “[a]ll members shall document in the incident report the name of attorney consulted by the juvenile and the date and time the contact was

⁴ Department General Order 7.01 (III)(D)(3) (d) states, “Interrogations shall be audio recorded absent exigent circumstances.”

⁵ SFPD does not mandate the recording of interrogations of adult suspects except for those who are Limited English Proficient. (See DGO 5.20).

made.” This language is also included in Department Bulletin 18-006. Considering Chapter 96C’s requirements concerning both attorney consultation and presence of an adult representative unless objection by the youth, the DPA recommended the following provision to document officer’s compliance with state and local law.

Documentation: All members shall document in the incident report the name of the attorney consulted by the juvenile and the date and time the legal consultation was made. The member shall also document in the incident report the name and contact information of a responsible adult present during custodial interrogation or questioning or the youth’s waiver to the presence of a responsible adult and any attempts to reach a responsible adult on behalf of the youth.

Without notice or explanation to the DPA, the Department excluded the DPA’s suggested documentation provision, and deleted its original documentation requirement that is also contained in DB 18-006, a Department Bulletin that will be superseded by adoption of the currently proposed Department Bulletin. Compliance with the newly enacted interrogation laws is crucial and documentation of an officer’s compliance is central to holding officers accountable.

- ***Amend the Department Bulletin to Remind Officers of Language Access Requirements Under DGO 5.20 When Interrogating LEP Youth.***

On June 18, 2019, the DPA reviewed SFPD’s draft that stated “Members are reminded to use language line interpreter services, in compliance with Department policy and Department General Order 5.20 (Language Access Services for LEP). This language is also included in Department Bulletin 18-006. Without notice or explanation to the DPA, the Department excluded the language access provision. The DPA has investigated and found sustained misconduct concerning officers’ failure to provide language access services involving Limited English Proficient suspects as required by Department General Order 5.20. The DPA suggests the proposed Department Bulletin include the following provision:

Members are reminded to provide interpreter services for Limited English Proficient youth in compliance with Department General Order 5.20 (Language Access Services for Limited English Proficient Individuals).

D. DGO 3.01 Compliance

On June 10, 2019, the DPA received a copy of SFPD’s proposed Department Bulletin on Youth interrogations for review and input⁶. On June 28, 2019, the DPA provided written suggested revisions that provided enumerated steps for officers to follow and included the aforementioned provisions concerning right to privacy when talking with legal counsel, language access and documentation requirements.⁷ During the DPA’s monthly meetings with the Department, the DPA orally and often in writing requested a status update on the proposed Department Bulletin and expressed its concern that

⁶ See attached Exhibit E (06/07/19 SFPD’s Proposed Department Bulletin 19-125).

⁷ See attached Exhibit F DPA’s Suggested Edits to Department Bulletin 19-125 (06/18/19).

Chapter 96C law had gone into effect on April 15, 2019 and officers had no written instructions about their responsibilities under the new law.

On November 20, 2019 the Police Department sent an email to the DPA “advising the Department of Police Accountability that SFPD will be providing the attached General Order Change Request to the Police Commission. SFPD determined that Department Bulletin 19-125 New Requirements When Members Interrogate or Question Youth 17-Years Old or Younger, amends DGO 7.01.” The General Order Change Request was attached. The email did not include the actual proposed Department Bulletin. It included language from DGO 3.01.06 (D) concerning Bulletins that amend a General Order.

Upon receipt of the email on November 20, 2019, the DPA requested in writing a copy of the proposed Department Bulletin. In a responding email, the Department stated, “...I understand that you may have been expecting to receive the DB associated with this change form, however per the newly-adopted version of DGO 3.01, our providing it to you at this time would put us out of compliance. The DB will of course be posted 72 hours prior to the meeting at which it is calendared for discussion.”

At the next in person meeting with the Department on Thursday, December 5, 2019, the DPA again requested a copy of the proposed Department Bulletin and information about any of the substantive changes since the DPA’s revisions in June 2019, and also explained that without reviewing the proposed Department Bulletin, the DPA could not file in a timely manner with the Police Commission the DPA’s support or any outstanding concerns the DPA might have had about the proposed Department Bulletin. Again, the Department stated it could not provide the DPA the proposed Department Bulletin. On the afternoon of Friday, December 6, 2019, the DPA learned by checking the Police Commission’s website, that proposed Department Bulletin 19-125 had been calendared for Police Commission adoption for Wednesday, December 11. The DPA was finally able to obtain and review a copy of the proposed Department Bulletin by downloading it from the Commission website. Subsequent to the DPA retrieving the proposed Department Bulletin from the website on Friday afternoon, a SFPD officer called the DPA to state the matter was on calendar before the Commission. Having finally obtained a copy of the proposed Department Bulletin from the Commission’s website on Friday afternoon, the DPA prepared these materials over the weekend for filing on Monday morning.

Department General Order 3.01.10 specifically addresses the Department’s communication obligations with the DPA concerning proposed General Orders and Bulletins. Section 3.01.10 requires after Command Staff and the Chief’s review (the Department’s internal concurrent process) that the Department “inform the Department of Police Accountability of any substantive addition or amendments,” “meet with the Department of Police Accountability to exchange views as outlined in the Police Commission Resolution 27-06,” and “[i]f consensus is not obtained, parties shall have an opportunity to discuss their recommendations with the Chief of Police and/or designee.”⁸ The

⁸ Department General Order 3.01.10 Concurrence of General Orders and Bulletins states in pertinent part: During the concurrence process, if a substantive addition or amendment to the draft direct is recommended, the Commanding Officer of the Strategic Management Bureau will be notified. The Commanding Officer of the Strategic Management Bureau, shall review the proposed amendment, reconcile any changes with the initiating member and inform the Department of Police Accountability of any substantive addition or amendment.

Department refused to provide the proposed Department Bulletin to the DPA, did not inform the DPA that the Department had deleted several substantive provisions that the Department had included in the draft the DPA reviewed in June 2019 and did not explain why it had deleted the DPA's suggested revisions. Although the DPA met with the Commanding Officer and requested a copy of the proposed Department Bulletin, there was "no exchange of views, as outlined in the Police Commission Resolution 27-06" (Sparks' Resolution) because the Department refused to disclose the contents of the proposed Department Bulletin. Without a copy of the actual proposed Department Bulletin, the DPA had no idea whatsoever whether the Department had made any substantive additions or amendments that required "an exchange of views" and a DPA meeting with the Chief as provided by DGO 3.01.10.

The Department's refusal to share with the DPA the Department Bulletin the DPA had assisted in drafting violates DGO 3.01.10 mandate, undermines the collaborative working relationship the DPA has steadfastly fostered with the Department on numerous projects, and ultimately thwarts the effectiveness of the Department's collaborative reform goals. I urge you to adopt the DPA's recommendations and order the Department to comply with DGO 3.01's mandates.

Sincerely,



Paul Henderson
Executive Director

enclosures

cc: Chief William Scott, Assistant Chief Bob Moser, Deputy Chief David Lazar, Director Catherine McGuire

Exhibit A

Department of Police Accountability's 12/08/2019 Suggested Revisions to SFPD's Proposed
Department Bulletin 19-125

19-125
12/XX/19

New Requirements When Members Interrogate or Question Youth 17-Years Old or Younger

(Supersedes DB 18-006, Amends DGO 7.01)

Effective April 15, 2019, San Francisco Administrative Code Chapter 96C establishes new requirements when members seek to interrogate or question or engage in unnecessary conversation with detained Youth who are 17- years old or younger ("Youth").

~~Procedure under 96C~~ Requirements under State and Local Law¹

1. Officers may not interrogate or obtain a *Miranda* waiver or engage in "unnecessary conversation" with detained (not free to leave) Youth unless the following two conditions are first met or an exemption for exigent circumstances applies:
 - a.) The juvenile is allowed to talk to the on-call juvenile attorney in person, by telephone, or video conference with the Public Defender's office, 415-583-273. (This consultation with an attorney cannot be waived.)
 - b.) The juvenile is allowed to request a responsible adult to be present during questioning. (~~this~~ The presence of a responsible adult can be waived by the youth's objection.)
2. Members shall ensure that youth are provided the right to privacy when talking with legal counsel.
3. Members shall record the *Miranda* admonition and interrogation absent exigent circumstances.
4. **Documentation:** All members shall document in the incident report the name of the attorney consulted by the juvenile and the date and time the legal consultation occurred. The member shall also document in the incident report the name and contact information of the responsible adult present during custodial interrogation or questioning, or the youth's waiver to the presence of a responsible adult, and any attempts to reach a responsible adult on behalf of the youth.
5. Members are reminded to provide interpreter services for Limited English Proficient youth in compliance with Department General Order 5.20 (Language Access Services for Limited English Proficient Individuals).

¹ Because SFPD intends to rescind DB 18-006 that addresses state law requirements, proposed DB 19-125 should address both state and local law requirements. Thus, DPA's suggested revision that "Procedure under 96C" be replaced with "Requirements under State and Local Law."

Definitions (in order of appearance):

Youth: Juvenile 17-years old or younger

Unnecessary conversation: communications with the detained Youth that are not designed to address the Youth's physical needs or to give the Youth directions relating to operation of the facility where the Youth is detained.

Responsible Adult:

- a. The Youth's parent
- b. A person, 18 years old or over who is related to the Youth by blood or adoption including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons even if the marriage was terminated by dissolution or death
- c. A person 18 years of age or over who has a mentoring or an established familial relationship with the Youth or a relative of the Youth
- d. The Youth's teacher, medical professional, clergy, neighbor, social worker, or mental health clinician
- e. An employee of a non-profit or community organization whose primary focus is assisting Youth.

Exceptions for Imminent Threat to Life or Property

1. The above procedures do not apply when the member reasonably concludes that the information is necessary to protect life or property from an imminent threat and when the questions are limited to those that are reasonably necessary to obtain that information.
2. Once a member has obtained the necessary information to protect life or property from imminent danger, members are required to follow the requirements of Section 96C.2 (a).

Procedural Information relating to arrest and transportation: Members are allowed to provide procedural information to Youth about transportation to CARC or JJC. Members are prohibited from answering any other questions the juvenile may have if they have not spoken to the Public Defender.

Members assigned to the Airport Bureau shall follow San Mateo County procedures for Youth detentions. San Mateo County Private Defender Program can be reached at 650-331-3401.

Guidance Examples:

Scenario #1: Members respond to a call for service of a noise complaint. Members respond to the scene and observe a group of Youth sitting on property owners steps, prohibiting passage.

Members may engage in a consensual encounter and ask the Youth to disperse. It is not necessary to call the Public Defender's Office in this case.

Scenario #2: Members respond to a call for service of an assault on a muni train. Witnesses point out three juveniles as the suspects. Once members determine that juveniles were involved in the assault through questions that are reasonably necessary to obtain that determination, Miranda Warnings must be issued. Members are prohibited from questioning the juveniles further.

Scenario # 3: A member makes contact with a Youth that is believed to be a victim of trafficking and prostitution activity (3AM, the clothing is not appropriate for the weather condition, loitering, area known for high volume of prostitution and other criminal activity). The member learns that the Youth has a 300 W&I protective custody order from another county. The SFPD officer must call the Public Defender's hotline so the youth may speak with counsel before being questioned by officer or the SVU-human trafficking team. The officer transports the Youth to the police station and contacts SVU-human trafficking team to respond based on the incident.

References:

SF Administrative Code Chapter 96C

DGO 5.20, Language Access Services for Limited English Proficient

Individuals DGO 7.01, Policies and Procedure for Juvenile Detention, Arrest, and Custody

WILLIAM SCOTT

Chief of Police

Any questions or clarification regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional guidance about the directive.

Exhibit B

California Welfare and Institution Code §625.6

West's Annotated **California Codes**

Welfare and Institutions Code (Refs & Annos)

Division 2. Children

Part 1. Delinquents and Wards of the Juvenile Court (Refs & Annos)

Chapter 2. Juvenile Court Law (Refs & Annos)

Article 15. Wards--Temporary Custody and Detention (Refs & Annos)

West's Ann.Cal.Welf. & Inst.Code § **625.6**

§ **625.6**. Custodial interrogation; consultation with legal counsel; application of section; effect on probation officers; expert panel

Effective: January 1, 2018

Currentness

(a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 15 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.

(b) The court shall, in adjudicating the admissibility of statements of a youth 15 years of age or younger made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a).

(c) This section does not apply to the admissibility of statements of a youth 15 years of age or younger if both of the following criteria are met:

(1) The officer who questioned the youth reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat.

(2) The officer's questions were limited to those questions that were reasonably necessary to obtain that information.

(d) This section does not require a probation officer to comply with subdivision (a) in the normal performance of his or her duties under Section 625, 627.5, or 628.

(e)(1) The Governor, or his or her designee, shall convene a panel of at least seven experts, including all of the following:

(A) A representative of the **California** Public Defenders Association.

(B) A representative of the **California** District Attorneys Association.

(C) A representative of a statewide association representing law enforcement.

(D) A representative of the judiciary.

(E) A member of the public possessing expertise and experience in any or all of the following:

(i) The juvenile delinquency or dependency systems.

(ii) Child development or special needs children.

(iii) The representation of children in juvenile court.

(F) A member of the public who, as a youth, was involved in the criminal justice system.

(G) A criminologist with experience in interpreting crime data.

(2)(A) The panel shall be convened no later than January 1, 2023, and shall review the implementation of this section and examine the effects and outcomes related to the implementation of this section, including, but not limited to, the appropriate age of youth to whom this section should apply.

(B) No later than April 1, 2024, the panel shall provide information to the Legislature and the Governor, including, but not limited to, relevant data on the effects and outcomes associated with the implementation of this section. A report submitted to the Legislature pursuant to this subparagraph shall be submitted in compliance with Section 9795 of the Government **Code**.

(3) Members of the panel shall serve without compensation, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties on the panel.

(f) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

Credits

(Added by Stats.2017, c. 681 (S.B.395), § 2, eff. Jan. 1, 2018.)

Editors' Notes

REPEAL

<For repeal of this section, see its terms.>

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

2017 Legislation

Section 1 of Stats.2017, c. 681 (S.B.395), provides:

“SECTION 1. The Legislature finds and declares all of the following:

“(a) Developmental and neurological science concludes that the process of cognitive brain development continues into adulthood, and that the human brain undergoes ‘dynamic changes throughout adolescence and well into young adulthood’ (see Richard J. Bonnie, et al., *Reforming Juvenile Justice: A Developmental Approach*, National Research Council (2013), page 96, and Chapter 4). As recognized by the United States Supreme Court, children “‘generally are less mature and responsible than adults’” (J.D.B. v. North Carolina (2011) 131 S.Ct. 2394, 2397, quoting *Eddings v. Oklahoma* (1982) 455 U.S. 104, 115); ‘they “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them’” (J.D.B., 131 S.Ct. at 2397, quoting *Bellotti v. Baird* (1979) 443 U.S. 622, 635); ‘they “are more vulnerable or susceptible to... outside pressures” than adults’ (J.D.B., 131 S.Ct. at 2397, quoting *Roper v. Simmons* (2005) 543 U.S. 551, 569); they ‘have limited understandings of the criminal justice system and the roles of the **institutional** actors within it’ (Graham v. Florida (2010) 560 U.S. 48, 78); and ‘children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them’ (J.D.B., 131 S.Ct. at 2397).

“(b) Custodial interrogation of an individual by the state requires that the individual be advised of his or her rights and make a knowing, intelligent, and voluntary waiver of those rights before the interrogation proceeds. People under 18 years of age have a lesser ability as compared to adults to comprehend the meaning of their rights and the consequences of waiver. Additionally, a large body of research has established that adolescent thinking tends to either ignore or discount future outcomes and implications, and disregard long-term consequences of important decisions (see, e.g., Steinberg et al., “Age Differences in Future Orientation and Delay Discounting,” *Child Development*, vol. 80 (2009), pp. 28-44; William Gardner and Janna Herman, “Adolescents’ AIDS Risk Taking: A Rational Choice Perspective,” in *Adolescents in the AIDS Epidemic*, ed. William Gardner et al. (San Francisco: Jossey Bass, 1990), pp. 17, 25-26; Marty Beyer, “Recognizing the Child in the Delinquent,” *Kentucky Children’s Rights Journal*, vol. 7 (Summer 1999), pp. 16-17; National Juvenile Justice

Network, "Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates," September 2012, pp. 1-2; Catherine C. Lewis, "How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications," *Child Development*, vol. 52 (1981), pp. 538, 541-42). Addressing the specific context of police interrogation, the United States Supreme Court observed that events that "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens" (*Haley v. Ohio* (1948) 332 U.S. 596, 599 (plurality opinion)), and noted that "'no matter how sophisticated,' a juvenile subject of police interrogation 'cannot be compared' to an adult subject" (*J.D.B.*, 131 S.Ct. at 2403, quoting *Gallegos v. Colorado* (1962) 370 U.S. 49, 54). The lawenforcement [sic] community now widely accepts what science and the courts have recognized: children and adolescents are much more vulnerable to psychologically coercive interrogations and in other dealings with the police than resilient adults experienced with the criminal justice system.

"(c) For these reasons, in situations of custodial interrogation and prior to making a waiver of rights under *Miranda v. Arizona* (1966) 384 U.S. 436, youth under 18 years of age should consult with legal counsel to assist in their understanding of their rights and the consequences of waiving those rights."

RESEARCH REFERENCES

Encyclopedias

- 19A **Cal. Jur. 3d Criminal Law: Rights of the Accused** § 15, **Police Interrogations, Generally.**
- 19A **Cal. Jur. 3d Criminal Law: Rights of the Accused** § 53, **Waiver of Miranda Rights, Generally.**
- 27A **Cal. Jur. 3d Delinquent and Dependent Children** § 205, **Privilege Against Self-Incrimination as Applicable to Minors in Juvenile Proceedings.**
- 27A **Cal. Jur. 3d Delinquent and Dependent Children** § 209, **Waiver of Rights.**
- 27A **Cal. Jur. 3d Delinquent and Dependent Children** § 215, **Generally.**

Treatises and Practice Aids

- Rutter Group-**California Criminal Procedure**, The § 7:17, **Interrogation Requirement--Questioning Juveniles.**
- 16 Witkin, **California Summary 11th Juvenile Court Law** § 619 (2018), **Rights of Minor.**

West's Ann. **Cal. Welf. & Inst. Code** § 625.6, **CA WEL & INST § 625.6**
Current with all laws through Ch. 870 of 2019 Reg.Sess.

End of Document

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Exhibit C

San Francisco Administrative Code Chapter 96C

CHAPTER 96C:
POLICE INTERROGATION OF YOUTH - JEFF ADACHI YOUTH RIGHTS ORDINANCE

- Sec.
96C.1. Title of Chapter 96C.
- Sec.
96C.2. Restrictions on Interrogation.
- Sec.
96C.3. Provision of Counsel.
- Sec.
96C.4. Undertaking for the General Welfare.
- Sec.
96C.4.¹ Severability.

CODIFICATION NOTE

1. So in Ord. 41-19.

SEC. 96C.1. TITLE OF CHAPTER 96C.

This Chapter 96C shall be known as the Jeff Adachi Youth Rights Ordinance.

(Added by Ord. 41-19, File No. 181217, App. 3/15/2019, Eff. 4/15/2019)

SEC. 96C.2. RESTRICTIONS ON INTERROGATION.

(a) The Police Department ("SFPD") may not subject a person 17 years of age or younger ("Youth") to a custodial interrogation or question or engage in unnecessary conversation with Youth who are not free to leave, unless and until the following two conditions have been met:

(1) The Youth consults with legal counsel in person, by telephone, or by video conference, which consultation must occur before the waiver of any Miranda rights. This consultation with legal counsel may not be waived.

(2) Following the consultation with legal counsel, SFPD shall allow a Responsible Adult, defined as: (A) the Youth's parents; (B) a relative 18 years of age or over who is related to the Youth by blood or adoption, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons described in this subsection (a)(2)(B) even if the marriage was terminated by death or dissolution; (C) a person 18 years of age or over who has a mentoring or an established familial relationship with the Youth or a relative of the Youth; (D) the Youth's teacher, medical professional, clergy, neighbor, social worker, or mental health clinician; or (E) an employee of a non-profit or community organization whose primary focus is assisting youth. The Responsible Adult may not be a person of interest or a suspect in the incident or subject matter giving rise to the custodial interrogation or questioning of the Youth. If the Youth does not object to the identified Responsible Adult's presence, the Responsible Adult may be present either in person, by telephone, or by video conference during the custodial interrogation and when SFPD questions or engages in unnecessary conversation with the Youth who is not free to leave. But while this subsection (a)(2) allows attendance by the Responsible Adult while SFPD subjects the Youth to a custodial interrogation or when SFPD questions or engages in unnecessary conversation with the Youth who is not free to leave, this subsection (a)(2) also recognizes that the Responsible Adult may not violate California Penal Code Section 148, which forbids willfully delaying or obstructing a police investigation,

(3) For purposes of this subsection (a), "unnecessary conversation" means communications with the Youth that are not designed to address the Youth's physical needs or to give the Youth directions relating to operation of the facility where the Youth is detained.

(b) The restrictions imposed by subsection (a) do not apply to a custodial interrogation or when SFPD questions a Youth who is not

free to leave, when:

(1) An SFPD officer questions a Youth after reasonably concluding that the information the officer is seeking is necessary to protect life or property from an imminent threat; and

(2) The SFPD officer limits the questions to those reasonably necessary to obtain that information. Other questions to the Youth, if any, are subject to the restrictions imposed by subsection (a).

(Added by Ord. 41-19, File No. 181217, App. 3/15/2019, Eff. 4/15/2019)

SEC. 96C.3. PROVISION OF COUNSEL.

The Public Defender's Office shall provide legal advice limited in scope for the Youth during the consultation and custodial interrogation referenced in subsection (a) of Section 96C.2. The Youth may instead retain private counsel, but not at the expense of the City, absent appointment by the court.

(Added by Ord. 41-19, File No. 181217, App. 3/15/2019, Eff. 4/15/2019)

SEC. 96C.4. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Chapter 96C, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(Added by Ord. 41-19, File No. 181217, App. 3/15/2019, Eff. 4/15/2019)

SEC. 96C.4.¹ SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Chapter 96C, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

(Added by Ord. 41-19, File No. 181217, App. 3/15/2019, Eff. 4/15/2019)

CODIFICATION NOTE

1. So in Ord. 41-19.

Exhibit D

San Francisco Department Bulletin 18-006

(addresses SB 395/Welfare & Institution Code §625.6 Interrogation of Youth)

Cal. Welf. & Inst. Code section 625.6

Members are advised that, as of January 1, 2018, SB 395 takes effect, enacting revision to Cal. Welf. & Inst. Code section 625.6. The statutory section is revised to mandate that prior to custodial interrogation and waiver of *Miranda* rights a youth **15 years of age, or younger** shall consult legal counsel in person, by telephone, or video conference. The consultation shall not be waived.

However, there is an exception provided that the following two criteria are met:

1. The Officer who questioned the youth reasonably believed that the information he or she sought was necessary to protect life or property from imminent threat; **and**
2. The Officer's questions were limited to those questions reasonably necessary to obtain that information.

This section of Cal. Welf. & Inst. Code shall remain in effect only until January 1, 2025, and as of that date is repealed.

Text of the law:

SEC. 2.

Section 625.6 is added to the Welfare and Institutions Code, to read:

(a) Prior to a custodial interrogation, and before the waiver of any *Miranda* rights, a youth 15 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.

(b) The court shall, in adjudicating the admissibility of statements of a youth 15 years of age or younger made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a).

(c) This section does not apply to the admissibility of statements of a youth 15 years of age or younger if both of the following criteria are met:

(1) The officer who questioned the youth reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat.

(2) The officer's questions were limited to those questions that were reasonably necessary to obtain that information.

Members are advised that the San Francisco Public Defender will provide 24- hour availability of qualified and trained youth legal defenders to consult by phone with all youth age 15 years and under, prior to a custodial interrogation or a *Miranda* waiver. The Public Defender will also try to provide legal counsel for in person consultation.

Public Defender Deputy on call 24/7 for pre-interrogation consultation.

Members shall contact the Public Defender's Office on the dedicated phone line for the on-call juvenile attorney at 415-583-2773.

Airport Bureau members are advised that the San Mateo County Private Defender Program (PDP) will provide services for qualifying juveniles contacted by the San Francisco Police Department Airport Bureau, 24 hours a day, 365 days a year. Officers assigned to the Airport Bureau shall contact PDP at 650-331-3401 and provide the name, date of birth, and reason for the contact to the on-call attorney. The on-call attorney will either respond to the Airport, or consult with the juvenile via phone. Officers shall ensure the location for the call affords the juvenile the right to privacy in the contents of the conversation.

Members are reminded to use language line interpreter services, in compliance with Department policy and Department General Order 5.20 (Language Access Services for LEP).

All Members shall document in the incident report the name of the attorney consulted by the juvenile and the date and time the contact was made.

WILLIAM SCOTT
Chief of Police

Per DB 17-080, sworn members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS.

Exhibit E

06/07/19 draft San Francisco Department Bulletin 19-125

Provided to Department of Police Accountability on 06/10/19

Restrictions on Interrogation of Youth

(Supersedes DB 18-006)

The purpose of this bulletin is to inform members of the San Francisco Police Department of the newly enacted legislation affecting the custodial interrogations or questioning of suspects 17 years of age or younger who are not free to leave.

Chapter 96C of the San Francisco Administrative Code places conditions on when a member may conduct a custodial interrogation or question a suspect 17 years of age or younger when that youth is not free to leave.

Section 96C.2 reads:

(a) The Police Department ("SFPD") may not subject a person 17 years of age or younger ("Youth") to a custodial interrogation or question or engage in unnecessary conversation with Youth who are not free to leave, unless and until the following two conditions have been met:

(1) The Youth consults with legal counsel in person, by telephone, or by video conference, which consultation must occur before the waiver of any Miranda rights. This consultation with legal counsel may not be waived.

(2) Following the consultation with legal counsel, SFPD shall allow a Responsible Adult, defined as: (A) the Youth's parents; (B) a relative 18 years of age or over who is related to the Youth by blood or adoption, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons described in this subsection (a)(2)(B) even if the marriage was terminated by death or dissolution; (C) a person 18 years of age or over who has a mentoring or an established familial relationship with the Youth or a relative of the Youth; (D) the Youth's teacher, medical professional, clergy, neighbor, social worker, or mental health clinician; or (E) an employee of a non-profit or community organization whose primary focus is assisting youth. The Responsible Adult may not be a person of interest or a suspect in the incident or subject matter giving rise to the custodial interrogation or questioning of the Youth. If the Youth does not object to the identified Responsible Adult's presence, the Responsible Adult may be present either in person, by telephone, or by video conference during the custodial interrogation and when SFPD questions or engages in unnecessary conversation with the Youth who is not free to leave. But while this subsection (a)(2) allows attendance by the Responsible Adult while SFPD subjects the Youth to a custodial interrogation or when SFPD questions or engages in unnecessary

conversation with the Youth who is not free to leave, this subsection (a)(2) also recognizes that the Responsible Adult may not violate California Penal Code Section 148, which forbids willfully delaying or obstructing a police investigation,

(3) For purposes of this subsection (a), "unnecessary conversation" means communications with the Youth that are not designed to address the Youth's physical needs or to give the Youth directions relating to operation of the facility where the Youth is detained.

It is important to note that the restrictions of Section 96C.2.(a) do not apply to the custodial interrogations or the questioning of a person 17 years of age or younger by a member of the department when that youth is not free to leave for the purposes of obtaining information reasonably necessary to protect life or property from an imminent threat. The officer must limit the questions to those that are reasonably necessary to obtain that information. Once the necessary information to protect life and property from imminent danger or threat is obtained, the restrictions of Section 96C.2.(a) are back in effect.

For further information, please review [Administrative Code Chapter 96 C.1 through 96 C.4](#) added by Ordinance number 41-19, effective date April 15, 2019. If one has any questions regarding the application of this ordinance, consult with a supervisor prior to any custodial interrogation or questioning of a person 17 years of age or younger who is not free to leave.

Members are advised that the San Francisco Public Defender will provide 24- hour availability of qualified and trained legal defenders to consult by phone with all youth age 17 years and under, prior to a custodial interrogation or a *Miranda* waiver. The Public Defender will also try to provide legal counsel for in person consultation.

Members shall contact the Public Defender's Office on the dedicated phone line for the on-call juvenile attorney at 415-583-2773.

Airport Bureau members are advised that the San Mateo County Private Defender Program (PDP) will provide services for qualifying juveniles contacted by the San Francisco Police Department Airport Bureau, 24 hours a day, 365 days a year. Officers assigned to the Airport Bureau shall contact PDP at 650-331-3401 and provide the name, date of birth, and reason for the contact to the on-call attorney. The on-call attorney will either respond to the Airport, or consult with the juvenile via phone. Officers shall ensure the location for the call affords the juvenile the right to privacy in the contents of the conversation.

Members are reminded to use language line interpreter services, in compliance with Department policy and Department General Order 5.20 (Language Access Services for LEP).

All Members shall document in the incident report the name of the attorney consulted by the juvenile and the date and time the contact was made.

The Know Your Rights for Youth brochure, SFPD 535 has been updated as of June 2019 to be in compliance with this new legislation. A copy of the revised form is attached and can be located in the SFPD Forms folder.

WILLIAM SCOTT
Chief of Police

Per DB 19-070, both sworn and non-sworn members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS. Any questions or clarification regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional guidance about the directive.

Key Terms

CARC: Huckleberry Community Assessment and Referral Center: A community based alternative, CARC provides youth, on the day of arrest, with an assessment and crisis intervention as well as a case management plan that may include community service requirements and educational development. CARC is located at 44 Gough Street, San Francisco, CA 94102; Tel: 415-437-2500.

Juvenile Justice Center (JJC): Formerly called the Youth Guidance Center (YGC), the Juvenile Justice Center includes Juvenile Hall (a locked facility for juveniles), Juvenile Court, the Juvenile Probation Department and community organizations. JJC is located at 375 Woodside Avenue, San Francisco, CA 94127; Tel: 415-753-7800.

Consensual Contact: An encounter with police where you are free to leave at any time. You can ask an officer if you are free to leave or being detained. You are free to answer or ignore an officer's request for information.

Detention: If an officer believes you are involved in criminal activity, you can be temporarily "detained" while the officer investigates. You are not free to leave during a detention. If the officer cannot confirm their suspicion, you will be released. *(Detention is also used to describe being held in secured custody at juvenile hall.)

Booking: After an arrest, you may be taken to juvenile hall or a police station, searched, photographed, fingerprinted and asked for information such as name, address, and parent's phone number.

Miranda Warnings: If you are arrested and under the age of 18, an officer needs to inform you of your Miranda Warnings:

1. **You have the right to remain silent.**
Do you understand?
2. **Anything you say can be used against you in court.**
Do you understand?
3. **You have the right to the presence of an attorney before and during any questioning.**
Do you understand?
4. **If you cannot afford an attorney, one will be appointed for you free of charge, before any questioning, if you want.**
Do you understand?

Definition of Terms

1. **Afford:** Able to pay for.
2. **Anything:** Doesn't matter what.
3. **Attorneys:** Lawyer, provide legal opinion and services.
4. **Before:** Earlier in time.
5. **May:** Is likely to.
6. **Say:** To tell or speak.
7. **Questioning:** What is asked.
8. **Right(s):** Legal claim(s).
9. **Used:** Made use of.
10. **Court:** Where judge rules.

In San Francisco, prior to a custodial interrogation (custody), and before the waiver of any Miranda Warnings, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. (San Francisco Administrative Code Chapter 96 C.1 through 96 C.4 added by Ordinance number 41-19) This consultation may not be waived until the youth has consulted with a lawyer. If the youth cannot hire a lawyer one will be provided free of charge. If you aren't sure if you should talk, tell the officer you would like to speak to a lawyer before answering questions.

WHAT IF I DON'T UNDERSTAND ENGLISH?

You have the right to talk with the police in your own language. If you are not comfortable speaking English, you can ask to speak with a bilingual officer or an interpreter. The Police Department provides FREE language assistance.

For more info: See SFPD DGO 5.20 or the Guide to Language Assistance Services brochure available at your local police station or <http://sf-police.org/index.aspx?page=1581>

Issued by
The San Francisco Police Department in collaboration with
The Juvenile Justice Coalition

The Juvenile Justice Coalition is a network of advocates that includes: Asian Law Caucus, Bayview Hunters Point Foundation Youth Services Program, Bernal Heights Neighborhood Center (BHNC), Young Women's Freedom Center, Center on Juvenile and Criminal Justice (CJCJ), Central American Resource Center (CARECEN), Chinatown Child Development Center (SFDPH/CBNS), Community Youth Center of San Francisco (CYC), Each One Reach One (EORO), Huckleberry Community Assessment & Referral Center (CARC), Institute Familial De La Raza, Inc., Legal Services for Children (LSC), Mission District Re-entry Center for Youth (MDRCY), Department of Police Accountability (DPA), SAGE Project, Inc., San Francisco Department of Children, Youth and Families, San Francisco Juvenile Probation Department, San Francisco Public Defender's Office, San Francisco Wraparound Project, San Francisco Youth Commission, Sunset Youth Services, United Playaz, Youth Guidance Center Improvement Committee, Youth Law Center (YLC).

QUESTIONS/COMMENTS/CONCERNS?

SFPD Community Engagement Division
3401 17th Street
San Francisco, CA 94110
Tel: (415) 558-5500

If you have questions or concerns, please ask the police officer or ask to speak to the officer's supervisor. If your concern is not addressed, you can file a complaint with the Police Department or the Department of Police Accountability (DPA). The DPA is an independent city agency that will investigate your complaint.

Department of Police Accountability
25 Van Ness Ave. Suite 700
San Francisco, CA 94102
Tel: (415) 241-7711
Fax: (415) 241-7733
<https://sf.gov.org/dpa/>

Know Your Rights for Youth In San Francisco



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The San Francisco Police Department seeks partnership with families, schools, and youth providers to prevent and solve problems affecting children and youth.



Safety with Respect

For JUVENILES detained, arrested, or taken into custody, the SFPD follows the guidelines of Department General Order 7.01 and Chapter 96C of the San Francisco Administrative Code

You can read the SFPD Department General Order 7.01 on our website at:
sanfranciscopolice.org

JUNE 2019

SFPD 535 (Rev. 06/19)

MUTUAL RESPECT AND SAFETY

For your own safety, remember to:

- Stay calm. Even if you are scared or upset, losing your temper may only make a situation worse.
- Keep your hands where the officer(s) can see them at all times, so it is clear that you do not pose a danger. AND
- Do not run.

When a crime is first reported, police officers are often provided with limited information. Unfortunately, this means that sometimes officers might question people who are not involved.

You are able to file a complaint later if you feel your rights were violated, but getting upset can make matters worse. The more you are able to show restraint and respect, the safer you and those around you will be.

WHAT HAPPENS IF I AM STOPPED ON THE STREET?

GET HOME SAFELY TIPS....Safety with Respect

- If you are inside a vehicle at night turn your interior dome lights in the "on" position. Have your license and registration ready to provide to the officer. If the vehicle registration is inside the glove box, advise the officer of your intention to retrieve the document(s). Remain calm and be respectful. If you are being issued a citation, sign the citation. You can protest the ticket later. You may also request the citing officer's name and star/badge number.
- The officer may ask you for basic information (name, age, etc.) prior to reading you your Miranda Warnings. Although it is not required by law, by providing basic identification information, you may be released or identified as a juvenile more quickly.
- If the officer has "reasonable suspicion" that you have committed a crime, you can be "detained" temporarily while the officer investigates, and you are not free to leave.
- If the officer finds that you were not involved in criminal activity, you will be released.
- If an officer has "probable cause" to believe you committed a crime, you may be handcuffed and arrested.

WHAT HAPPENS DURING A SEARCH?

- If officers think you are armed or dangerous, they may pat down your clothing and search you for weapons.
- You will be searched by an officer of your same gender unless it is an emergency. In non-emergency situations, you will be searched by an officer of your same gender; if you identify as transgender, gender-variant, and/or nonbinary, you may request an officer of your preferred gender to perform the search.



WHAT HAPPENS IF I AM ARRESTED?

- You may be handcuffed depending on the type of crime you are charged with, your age and size, and if the officer determines that you may pose a security risk.
- If you are arrested, you will be brought to the Community Assessment and Referral Center (CARC) or the Juvenile Justice Center. In an emergency, you may be brought to a police station.
- Within 30 minutes of being taken into custody, an officer will read you your Miranda Warnings (see *Key Terms & Definition of Terms*).
- Once you are brought to CARC, juvenile hall (33C), or a police station, the police will notify your parent/guardian that you are in custody.

WILL MY PARENTS BE NOTIFIED?

- If you are taken into custody, the police will notify your parent or guardian and tell them:
 - ✓ Where are you being held
 - ✓ The reason for your custody
 - ✓ That you have been read your Miranda Warnings.
 - ✓ That you and your parent can speak with one another

- Barring exigent circumstances, within 1 hour of custody, you have the right to make two phone calls to reach a parent, an adult guardian/caretaker, and/or a lawyer.

WHAT IF POLICE WANT TO QUESTION ME?

- Before FORMAL questioning, police must inform you of your Miranda Warnings (see *Key Terms & Definition of Terms*). Only if you give up your Miranda rights, can police question you. You can choose not to be questioned or to be questioned with a lawyer present.
- If you are not comfortable speaking English, Miranda Warnings will be read to you in your primary or preferred language by a certified and/or qualified bilingual member or interpreter. (This also applies to all written forms.)
- The officer will also tell you that you can have a parent or guardian present during questioning unless they are a suspect or witness in the crime or if it's an emergency.
- Make sure you tell the officer if you want your parents to be present during questioning.
- Only two officers at any given time will question you.
- All interrogations will be audiotaped, except for those in the field and in exigent circumstances.

Exhibit F

DPA's 06/18/19 Suggested Edits to 06/07/19 draft of Department Bulletin 19-125

New Requirements When Members Interrogate or Question Youth 17-Years Old or Younger
(Supersedes DB 18-006)

Effective April 15, 2019, San Francisco Administrative Code Chapter 96C establishes new requirements when members seek to interrogate or question or engage in unnecessary conversation with youth who are 17- years old or younger and not free to leave.

Requirements Before Custodial Interrogation or Questioning or Engaging in Unnecessary Conversation with Youth Not Free to Leave

1. Prior to custodial interrogation or questioning of a person 17 years old or younger who is not free to leave, the youth shall consult with legal counsel in person, by telephone or video conference.
2. This consultation must occur before the waiver of any *Miranda* rights.
3. This consultation with legal counsel may not be waived.
4. Members shall contact the San Francisco Public Defender's office at 415-583-2773 for the on-call juvenile attorney who is available 24-hours to enable the youth to speak with an attorney before custodial interrogation or the waiver of any *Miranda* rights. The Public Attorney will try to provide legal counsel in-person.
5. Members assigned to the Airport Bureau shall contact the San Mateo County Private Defender Program at 650-331-3401 and provide the name, date of birth and reason for the contact to the on-call attorney. The on-call attorney will respond to the Airport or consult with the youth via phone.
6. Members shall ensure that youth are provided the right to privacy when talking with legal counsel.
7. Members are reminded to provide interpreter services for Limited English Proficient youth in compliance with Department General Order 5.20 (Language Access Services for Limited English Proficient Individuals).
8. Members are also prohibited from engaging in "unnecessary conversation" with youth 17 years old or younger who are not free to leave unless the youth has consulted with legal counsel under the same conditions described above. "Unnecessary conversation" is defined as "communications with the Youth that are not designed to address the Youth's physical needs or to give the Youth directions relating to operation of the facility where the Youth is detained."
9. **Documentation:** All members shall document in the incident report the name of the attorney consulted by the juvenile and the date and time the legal consultation was made. The member shall also document in the incident report the name and contact information of a responsible adult present during custodial interrogation or questioning or the youth's objection to the presence of a responsible adult and any attempts to reach a responsible adult on behalf of the youth.

Exception: Imminent Threat to Life or Property

1. Members can question a youth without following the above procedures when the officer reasonably concludes that the information is necessary to protect life or property from an imminent threat.
2. Members shall limit such questions to those reasonably necessary to obtain that information.
3. Once a member has obtained the necessary information to protect life or property from imminent danger, members are required to follow the above-outlined requirements of Section 96C.2(a).

Requirement That Member Permit Youth's Parent or Responsible Adult's Presence During Custodial Interrogation, Questioning or Unnecessary Conversations with Youth

1. Unless a youth objects, members shall allow a responsible adult be present either in person, by telephone or by video conference during custodial interrogation of the youth or when members question or engage in unnecessary conversation with the youth who is not free to leave.
2. Responsible adults include the youth's parent, relatives 18 years old or over who are related to the youth by blood or adoption, mentors, teachers, neighbors, clergy, social workers, employees of youth organizations. (See 96C.2 (a)(2) below for the complete list).
3. The responsible adult may not be a person of interest or suspect in the incident or subject matter giving rise to the custodial interrogation or questioning of the youth.
4. The responsible adult may not willfully delay or obstruct a police investigation (PC 148).

SF Administrative Code Section 96C.2 reads:

(a) The Police Department ("SFPD") may not subject a person 17 years of age or younger ("Youth") to a custodial interrogation or question or engage in unnecessary conversation with Youth who are not free to leave, unless and until the following two conditions have been met:

(1) The Youth consults with legal counsel in person, by telephone, or by video conference, which consultation must occur before the waiver of any Miranda rights. This consultation with legal counsel may not be waived.

(2) Following the consultation with legal counsel, SFPD shall allow a Responsible Adult, defined as: (A) the Youth's parents; (B) a relative 18 years of age or over who is related to the Youth by blood or adoption, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons described in this subsection (a)(2)(B) even if the marriage was terminated by death or dissolution; (C) a person 18 years of age or over who has a mentoring or an established familial relationship with the Youth or a relative of the Youth; (D) the Youth's teacher, medical professional, clergy, neighbor, social worker, or

mental health clinician; or (E) an employee of a non-profit or community organization whose primary focus is assisting youth. The Responsible Adult may not be a person of interest or a suspect in the incident or subject matter giving rise to the custodial interrogation or questioning of the Youth. If the Youth does not object to the identified Responsible Adult's presence, the Responsible Adult may be present either in person, by telephone, or by video conference during the custodial interrogation and when SFPD questions or engages in unnecessary conversation with the Youth who is not free to leave. But while this subsection (a)(2) allows attendance by the Responsible Adult while SFPD subjects the Youth to a custodial interrogation or when SFPD questions or engages in unnecessary conversation with the Youth who is not free to leave, this subsection (a)(2) also recognizes that the Responsible Adult may not violate California Penal Code Section 148, which forbids willfully delaying or obstructing a police investigation,

(3) For purposes of this subsection (a), "unnecessary conversation" means communications with the Youth that are not designed to address the Youth's physical needs or to give the Youth directions relating to operation of the facility where the Youth is detained.

