

Law Enforcement Interactions with Juveniles

Best Practice Guidelines and Considerations

*Oregon Law Enforcement
Juvenile Issues Advisory Committee*

OREGON ASSOCIATION CHIEFS OF POLICE AND
OREGON STATE SHERIFFS' ASSOCIATION



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FOREWORD

In communities all across the State of Oregon, Chiefs and Sheriffs have continued to demonstrate their long-standing commitment to serving our children. Police officers and deputies should be incredibly proud of the relationships created with youth in school hallways, and around our communities. We know that these encounters may lead to positive life changes, a sense of direction, longstanding friendships and perhaps save a life. Each and every day these positive relationships are making a difference and are making our communities safer. The law enforcement community is also very aware that the relationship we share with our youth is incredibly fragile. Missteps and misunderstandings may leave a child with unintentional trauma that may be difficult to recover from. It is our duty to make sure that these impacts are minimized, if not eliminated.

With an intense focus on juvenile interactions, the Oregon Association of Chiefs of Police and Oregon State Sheriffs Association have collaborated on a set of guidelines that will assist agencies with their own policy review and development. These best practices are the product of several exchanges between law enforcement executives, supervisors, School Resource Officers, Juvenile Department Directors and District Attorneys from across the state. Recognizing the diverse, and sometimes minimal resources that are available to law enforcement agencies statewide, the intent of these guidelines is to bring agencies under a common set of principles or values.

The guidelines begin to explore scientific evidence around the juvenile brain and give officers some considerations to trauma-informed decision making. We offer some best practices around juvenile interviews and give some attention to the School Resource Officer position. With our commitment to ensuring that every law enforcement agency in the State of Oregon has access to these guidelines, we can be assured that the intersection between law enforcement and our youth will be healthy and more productive. We are confident that law enforcement officers who lead encounters towards a positive outcome will ultimately lead to a safer Oregon.



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Oregon State Sheriffs' Association



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INTRODUCTION

In communities around the State of Oregon attention is being directed towards the law enforcement community and the spotlight focused upon the negative interactions that sometimes occur between the police and our youth. Now more than ever, we understand the impact of these encounters and are working diligently to make improvements. In 2017 the Oregon Association of Chiefs of Police (OACP) and the Oregon State Sheriffs Association (OSSA) assembled a workgroup to discuss juvenile issues in policing. This diverse group of professionals identified four key areas of concern; current research regarding the juvenile brain, trauma-informed decision making, interviewing juveniles and the School Resource Officer. Thoughtful conversation around these issues led to the workgroup to the following recommendations that should guide executives through the development of agency policy.

It should be understood that no “model” policy can meet all of the needs of any given law enforcement agency. While this document will rely heavily on recommendations from the International Association of Chiefs of Police and the National Association of School Resource Officers, the suggestions need to be thoroughly vetted before implementation. The Oregon law enforcement community is influenced by a diverse blend of court rulings, state law, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements. The development of an agency policy should consider local political and community perspectives, prerogatives, and demands. To that end, policies relative to juvenile interactions with the justice system should be developed with feedback from criminal justice and community partners. Naturally, consultation with your District Attorney and Prosecuting Attorneys will be absolutely critical to the success of your policy.

These best practices identify areas of emerging research that the law enforcement community should consider when developing their annual training plans. While collaboration with community partners around these issues is strongly encouraged, a few resources related to these topics are highlighted in the reference section of this report.

THE JUVENILE BRAIN

A broader understanding of the juvenile brain has the potential to inform and transform the criminal justice system response to juvenile behavior. An improved response to juveniles may lead to a reduction in recidivism and enhance relationships with those that we encounter. It is also important to note that several recent criminal cases highlight the importance of understanding developmental and situational effects on the brain and behavior during adolescence.

Scientists know that the adolescent brain is still developing, that it is highly subject to reward- and peer-influence, and that its rate of development varies widely across the population. They have developed basic tools that offer data with which to judge the potential for juvenile dissonance, recidivism, and rehabilitation. (Center for Law, Brain and Behavior 2019)

As a society we now understand that the juvenile brain is evolving and growing, reaching adult maturity in the mid-'20s. Neuroimaging research by the Center for Law, Brain and Behavior faculty (Somerville, 2010) clarifies that it is teenagers' heightened vulnerability to reward that drives risky behavior. They can often recognize risks, but incomplete development of brain mechanisms related to modulation of impulsive behavior reduces their tendency to heed those risks. As portions of the brain are still under construction, scientists believe that this incomplete development might be responsible for immature and impulsive behavior and neurobehavioral excitement during adolescent life. (Arain et. al., 2013)

As challenging as the teenage years can be, they are more complicated when the teen is a trauma survivor. In a time in our lives when the brain is the most powerful in terms of learning capacity, it is also the most vulnerable. The developmental processes that occur in the brain are impacted by exposure to trauma which can cause significant negative responses. When a teen experiences trauma it can reduce activity in the developing frontal lobe. Trauma

may then interfere with motivation, impulse control, the ability to focus, remember and learn. Studies have shown that teens who are emotionally neglected show decreased activity in the areas of the brain that regulate emotion. Teens who are physically abused show decreased activity in the areas of the brain connected to impulse control and substance use. (Child Welfare Information Gateway, 2015).

The Adverse Childhood Experiences (ACE) Study (Felitti et al, 1998) revolutionized how we understand the relationship between childhood and long-term health as adults. Led by researchers Dr. Vincent Felitti and Dr. Robert Anda, the ACE Study surveyed more than 17,000 adults, between 1995 and 1997, who were patients of Kaiser Permanente in San Diego, California. Participants were asked to complete a questionnaire reporting traumatic experiences during childhood, and the responses were analyzed jointly with the participants' medical histories. Notably, the vast majority of the participants were white (74.8%) and had attained a college-level education or higher (75.2%). It is reasonable to assume that the study results would be different in communities with a higher risk of trauma exposure.

The results of the ACE Study were astonishing. Almost two-thirds (63.9%) of participants reported having one or more adverse childhood experience. One in eight participants (12.5%) reported having four or more ACE. The most commonly reported ACEs were physical abuse (28.3%), substance abuse by a household member (26.9%), and parental separation or divorce (23.3%).

Research has demonstrated that an ACE score can be correlated with behaviors observed in the criminal justice system. For example, people with an ACE score of four are seven times more likely to be alcoholic. Studies have shown that an ACE score of four increases the risk of attempted suicide by 1200 percent. People with high ACE scores are more likely to be violent, to have more marriages, more broken bones, more drug prescriptions, and more depression.

The study is important to the criminal justice system because these problems may be presented in negative behavioral issues that appear to align with criminal thinking. For example, a child experiencing a traumatic response may be aggressive, defiant, distrusting of adults and authority figures, experience difficulty processing information, be impulsive and have a heightened fight, flight or freeze response.

To a professional without proper training, these behaviors can also be interpreted as combative. Because the interventions by a police officer in this scenario are diverse and potentially life-altering, it is important for officers to receive training on understanding the impact of trauma on brain development, behavioral warning signs and how to approach and assess the situation. To that end, the OACP and OSSA suggest that law enforcement agencies include training on the juvenile brain, the ACE study, and how to use this emerging research to improve interactions and increase legitimacy in our communities, particularly with juveniles.

It is understood that some of our interactions with youth may require immediate action to address safety issues. Nothing in this document is meant to minimize officer and community safety. It is understood that in many circumstances, officers must make quick decisions with little thought given to how they are perceived. Considerations in this document should be focused on interactions with youth where imminent safety issues are not present.

TRAUMA-INFORMED DECISION MAKING

Criminal justice professionals are aware that some of the young people they come into contact with have mental health conditions, substance abuse problems, developmental disabilities, or trauma histories. These youth present distinct challenges in terms of their needs and how they interact with law enforcement. Law enforcement officers need training and protocols to enable them to better understand these issues and respond effectively.

Law enforcement policies, practices, and training should enable officers to respond appropriately to youth with mental health and substance abuse disorders and trauma histories by empowering officers to:

- understand the impact of these disorders and background on youth behavior;
- recognize and interpret the needs of youth during the first contact;
- respond appropriately with the aid of crisis intervention techniques to de-escalate conflicts and maximize the safety of officers, youth, and others; and
- make appropriate referrals to community-based services and minimize justice system involvement whenever possible.

Training on youth with trauma histories should include information on:

- the powerful and lasting effects trauma has on young people and their behavior;
- ways arrest and detention can contribute to youth trauma; and
- the critical role of law enforcement in helping children recover from traumatic experiences by reinforcing safety and security.

As the first point of contact with many young people and their families, law enforcement officers have a unique vantage point to recognize unmet needs for behavioral health services and to collaborate with local government agencies and community-based providers to address systemic gaps in services. Recognizing that children from minority and underserved communities are particularly at risk of exposure to trauma and that these

communities are often the subject of law enforcement intervention, police officers will be able to minimize the risk and better serve those they come in contact with.

In June of 2014, the Oregon Health Authority, Health Systems Division, contracted with Portland State University, in partnership with Oregon Health & Science University (OHSU) and the Oregon Pediatric Society (OPS), to initiate a statewide collaboration to promote and sustain trauma-informed care throughout the state. Now recognized as Trauma Informed Oregon, the organization serves as a valuable and centralized source of information, resources, training, and technical assistance. Agencies evaluating their current policy against best practices should consider Trauma Informed Oregon (<https://traumainformedoregon.org>) a stakeholder in their review processes.

INTERVIEWING JUVENILES

When compared to adult interviews, should juvenile interrogations be evaluated differently? This question has been the subject of review by the United States Supreme Court for decades. Throughout the years, decisions have placed the law enforcement community on both sides of the issue.

In *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011), a 13-year-old suspected of two burglaries was interrogated in a school conference room by police officers and school officials. He was not Mirandized, however, because officers believed he was not “in custody” during questioning. In other words, they would have allowed him to end questioning and leave the conference room at any time. In holding that he should have been Mirandized, the United States Supreme Court concluded that when police decide whether a child has been taken into custody and whether they are entitled to the Miranda warnings, the police must take age into account: “It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave.” The court, however, went a step further, finding that the risk of false confession is “all the more troubling, and recent studies suggest, all the more acute when the subject of custodial interrogation is a juvenile.” It supported this conclusion by relying both on advances in brain science and on common sense: “These observations restate what any parent knows, indeed what any person knows about children generally.” The *J.D.B.* decision drew on and gave new relevance to several older U.S. Supreme Court cases relating to juvenile interrogations that are discussed below.

These three decisions expressed deep skepticism concerning the voluntariness and reliability of juvenile confessions:

- “That which would leave a man cold and unimpressed [during an interrogation] can overawe and overwhelm a lad in his early teens.” (*Haley v. Ohio*, 332 U.S. 596 (1948).)
- “A 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of

what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights.... A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not.” (Gallegos v. Colorado, 370 U.S. 49 (1962).)

- “Authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children.” (In re Gault, 387 U.S. 1 (1967).)

Stopping short of establishing a blanket decision, local cases show that the facts of each case and the circumstances around each interview must be carefully considered. In a 2001 Washington County case, the Oregon Court of Appeals decided that “in juvenile cases, we consider, among other circumstances, the juvenile's age, experience, education, background, and intelligence and whether the juvenile has the competency to understand the Miranda warnings and the consequences of waiving them. (State ex rel Juvenile Dept. of Washington County v. Deford (2001))

When considering policy implications, law enforcement agencies should avoid broadly worded policies that create a “one size fits all” approach to juvenile interviews. A 2010 Marion County case suggests that “Overreaching by a law enforcement officer is not necessary for us to find that the waiver was not “knowing and intelligent.” (State ex rel Juvenile Department of Marion County v. L.A. W. (2010)

The legal landscape establishes that a juvenile interview policy should ensure maximum protection of a juvenile's constitutional rights. A juvenile interview policy should consider the child’s physical condition, age, intelligence, educational level, level of intoxication and their ability to comprehend the meaning and effect of their statements. The policy should expect that officers carefully evaluate these conditions in each case.

Changes in the legal landscape mean that police officers must adapt to their interview environment. In particular, officers who interrogate juveniles must not only observe the same precautions they take with adults – providing food and water, allowing the suspect to take bathroom breaks and rest when tired, – but they must use different and more appropriate interrogation tactics that reflect the differences between adults and juveniles. This is true even when the juvenile is an older teenager. These recommendations apply equally to interviews and interrogations of youth for both serious crimes and minor delinquent acts or status offenses.

Even intelligent children and teenagers may not fully understand their Miranda rights. This reality has been demonstrated around the country, as courts have been increasingly willing to throw out a child's confession even after they appear to validly waive their Miranda rights. To ensure that a juvenile's statement is admissible in court, officers should read each warning slowly, stopping to ask the child after each individual warning to explain it back in his or her own words.

When appropriate, law enforcement should also inform young suspects that speaking to police may subject the child to adult criminal consequences. Importantly, police should make sure that the juvenile understands the concept of "adult criminal consequences" – along with any other concepts that the child may not grasp – before proceeding with questioning.

An effective interviewing policy should also include some direction about the length of questioning and suggest that adolescents should not be questioned for prolonged periods of time without substantial or significant breaks. Officers should be wary of questioning juvenile suspects, especially younger teens and children, in the middle of the night. The courts may not look favorably at an interrogation that involved a few hours of sleep combined with the stress of an interrogation.

Emphasis should also be given to ORS 133.400 and the expectation that a custodial interview conducted by a peace officer in a law enforcement facility shall be electronically

recorded if the interview is conducted with a person under 18 years of age in connection with an investigation into a felony, or an allegation that the person being interviewed committed an act that, if committed by an adult, would constitute a felony.

In 2012 the International Association of Chiefs of Police (IACP) created a model policy around Interviewing and Interrogating Juveniles. The IACP and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) also collaborated on a project titled “Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation.” The document provides some direction and policy considerations for Chiefs and Sheriffs as they navigate through the issues around juvenile interrogation. With consult and support from the affected District Attorney and Prosecutors, law enforcement officials will increase the opportunity for successful investigations and prosecutions, while decreasing the risk of trauma, liability to the agency, and damage to their reputation.

During the 2021 Oregon Legislative Session, two measures were passed that directly relate to law enforcement interactions with juveniles. SB 386 requires all police agencies to develop comprehensive policies regarding parental notification of the interview of a child witness and SB 418 identifies statements made by a juvenile in a custodial interview as involuntary if a peace officer intentionally uses information known by the officer to be false to elicit the statement. Best practices guidelines during juvenile interviews that include the provisions in SB 386 and SB 418 are included in the appendix (Page 18)

SCHOOL RESOURCE OFFICERS (SRO)

School Resource Officers (SRO) and other police personnel who work closely with schools need training and clear expectations among their agencies and school officials. With proper support, officers can improve school safety, foster understanding of the role of law enforcement and positive relationships between students and police, and coordinate with school personnel to proactively address the needs of troubled students before a crisis occurs.

SRO responsibilities should prioritize a broad range of roles including developing positive relationships with youth, modeling excellence in law enforcement and fostering understanding of police functions and procedures, and coordinating with school officials and others to identify youth and families in need of support and develop strategies to meet their needs. The SRO should be considered a mentor to youth and become a part of the overall school community.

SRO positions should be filled mainly with experienced officers who have demonstrated a commitment to youth. The appropriately suited officer will be a mentor and will become a part of the overall school community. Law enforcement agencies should consider including the school administration in the selection of any officers placed in their school.

The National Association of School Resource Officers (NASRO) suggests that the SRO be grounded in the principles of the “triad” concept of school-based policing. The triad concept divides the SRO’s responsibilities into three areas: teacher, counselor, and law enforcement officer. The goal of NASRO and SRO programs is to provide safe learning environments in our schools, provide valuable resources to school staff, foster a positive relationship with our youth, and develop strategies to resolve problems affecting our youth with the objective of protecting every child so they can reach their fullest potential. (NASRO, 2019)

NASRO has adopted Standards and Best Practices for the School Resource Officer Programs and supports the need for the standards to be used as a guide for new and existing SRO units and for the best practices to be reviewed and adopted by all law enforcement,

school safety agencies and school boards. Oregon law enforcement agencies are encouraged to use these best practices when implementing an SRO, or when modifying an existing program. In addition, NASRO (2019) recommends the following important steps for a successful SRO program:

- A clear and concise Memorandum of Understanding (MOU).
- The SROs must receive training regarding children with special needs.
- Use of physical restraint devices is rarely necessary.

Regarding the first step, NASRO recommends that all law enforcement agencies with SROs sign an MOU between their leaders and that of the educational institutions. First, the MOU should require that the SROs be carefully selected and should have received “specialized SRO training in the use of police powers and authority in a school environment.” Next, the MOU should define the SROs’ roles as an officer, a teacher, and an informal counselor. Last, the MOU should “prohibit SROs from becoming involved in formal discipline situations that are the responsibility of school administrators.”

In regards to training, NASRO offers law enforcement agencies SRO courses that cover the education of children with special needs. NASRO’s training teaches SROs how children with special needs have different behaviors than children without such needs. Importantly, the training focuses on “proactive school policing,” which highlights building relationships with children to help prevent the need for SRO interventions.

As for the third step, NASRO agrees with the U.S. Department of Education’s position that “restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff.” (NASRO, 2019) In addition, when an SRO is not used as an agent of discipline in the school setting, an SRO should use a physical restraint device such as handcuffs upon a student only when that student is being placed under arrest for referral to the criminal justice system.

CONCLUSION

Decades of experience tell us that the relationship between police and our youth can be difficult. Even with the best of intentions, officers may approach young people in ways that contribute to their anxiety. Young people often associate police with punishment. If the only place youth and police interact with one another is on the street, this dynamic is difficult to change.

Bridging this divide is a priority for the OACP and OSSA. These professional associations are committed to increasing understanding, cooperation, and trust between law enforcement and our youth. Recognizing ways in which we have contributed to this disconnect, and finding ways to make it better will contribute to a healthy police-community relationship and make our communities safer. The OACP and OSSA have identified six key areas that every Oregon law enforcement agency should consider when evaluating department policy and training plans:

- Agencies should evaluate their current policy regarding juvenile interviews against current case law and best practices.
- Training should focus on practices that de-escalate conflict among and with juveniles.
- Officers should receive training in trauma-informed practices and techniques that will allow officers to more accurately evaluate situations involving juveniles.
- Officers should evaluate the decision to detain youth and the long term impact of those decisions.
- When possible, officers should consider a referral to services rather than the use of arrest and detention.
- Agencies are encouraged to create a culture of flexibility that will allow officers the opportunity to engage youth in a non-enforcement setting, thereby increasing the opportunities for positive and proactive interaction with youth.

REFERENCES

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RECOMMENDED RESOURCES

ACES Too High News www.acestoohigh.com

Trauma Informed Oregon <https://traumainformedoregon.org>

The National Association of School Resource Officers <https://nasro.org/>

Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation.

International Association of Chiefs of Police www.thiacp.org

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APPENDIX – BEST PRACTICE GUIDELINES DURING JUVENILE INTERVIEWS

CUSTODIAL INTERVIEWS OF JUVENILE SUSPECTS OR OFFENDERS:

Implementing SB 386 and SB 418 – 2021 Oregon Legislative Session

- A. Pursuant to ORS 133.402(8)(a) a “custodial interview means an interview in which the person questioned is in custody and is required to be advised of the person’s constitutional rights.” However, any time a juvenile is in custody, or may otherwise feel he or she is not free to leave the interview or is compelled to speak, the officer will advise the juvenile of his or her constitutional rights.
- 1) The officer should take steps to make sure the information provided by the juvenile is voluntary considering the “totality of the circumstances.”
 - 2) The officer should take into consideration the juvenile’s age, intelligence, experience, education, background, any recent drug and alcohol use, sleep deprivation, and whether the juvenile has the competency to understand the Miranda warnings and/or the consequences of waiving these constitutional rights.
 - 3) The officer should not make any promises or threats to the juvenile during the interview.
 - 4) During custodial interviews at a police facility, the officer should consider, if feasible, concealing their duty weapon and wearing plain clothes.
 - 5) The interaction between the officer and juvenile should not be antagonistic or oppressive.
 - 6) The officer should see that the juvenile is allowed to discuss the matter with a reasonable degree of comfort. Reasonable requests for food, drink and use of a restroom should be honored.
 - 7) Juvenile interviews should be reasonable in duration with appropriate breaks.

- 8) The officer should not intentionally use information known by the officer to be false to elicit a statement from the juvenile. Pursuant to SB418 (2021), a statement made by a juvenile in connection with a misdemeanor or felony will be “presumed to be involuntary ... if the court determines that the peace officer intentionally used information known by the officer to be false to elicit the statement.”
- B. If at any time during an interview the juvenile asks to speak with his/her parent or guardian before answering questions, the officer should discontinue questioning until the juvenile has been given this opportunity. Unless the juvenile specifically invokes the right to remain silent, the officer may continue questioning after a parental consultation, but should give advice of rights again before resuming the questioning. The officer should take care that the parent is not asked to be an agent of the police during the parental consultation.
- C. If at any time a juvenile is in police custody or is being interviewed by police, and the juvenile’s parent or guardian contacts the police to invoke the juvenile’s right to remain silent; the youth shall be informed of his/her/their parent’s request that he/she/they remain silent, then re-read his/her/their Miranda rights and asked if he/she/they wish to continue with the interview, without first making contact and seeking advice from the District Attorney’s Office.
- D. Pursuant to ORS 133.402, custodial interviews conducted “in a law enforcement facility” of persons “under 18 years of age in connection with an investigation into a misdemeanor or a felony” or into “an act that, if committed by an adult, would be a misdemeanor or a felony” shall be recorded. If the officer is equipped with a Body Worn Camera, the interview shall be recorded outside of a law enforcement facility. An agency should review subsection ORS 133.402(2) for exclusions to this rule.
- E. In order to minimize disruption at school and cooperate with school officials, officers who interview or arrest a student at school should comply with procedures established by the school district involved, so long as those procedures do not conflict with law enforcement’s statutory authority. Officers shall ensure parental notification is made within a reasonable

amount of time when a child is interviewed as a suspect in a criminal investigation. This notification can be made before or after the interview depending on the circumstances surrounding the investigation.

- F. Pursuant to SB386 (2021), unless the child's safety would be compromised, officers who interview a child as a witness (not a victim or suspect) to a child welfare, criminal, or delinquency investigation are required to notify the child's parents of the interview. "Child witness' means an unmarried person who is under 18 years of age and who is not the victim of, the suspect in, or related to the suspect in a child welfare, criminal, or delinquency investigation."

JUVENILE IMPLEMENTATION WORKGROUP – SB 386 & SB 418 (2021 SESSION)

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