

# COLUMBIA POLICE DEPARTMENT

## Policy and Procedure Manual

### CONTACTS, DETENTIONS, INTERVIEWS AND INTERROGATIONS

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**CALEA 6<sup>th</sup> Edition Standard:** 1.2.3; 1.2.4

#### **440 CONTACTS, DETENTIONS, INTERVIEWS, AND INTERROGATIONS**

##### **440.1 PURPOSE AND SCOPE**

The purpose of this policy is to establish guidelines for officers conducting various types of contacts such as:

- Interviews ( including field interviews (FI));
- Interrogations;
- Pat-down search for weapons;
- Obtaining witness identification and statements; and
- Access to Counsel.

##### **440.2 POLICY**

The Columbia Police Department respects the rights of the members of our community to be free from unreasonable detentions, searches and/or seizures. It is the policy of the Columbia Police Department to ensure that the rights of all persons are protected as provided by the United States Constitution and Supreme Court rulings during all contacts, interviews and interrogations.

Due to a variety of situations faced by officers, the decision to conduct an FI, a pat-down search for weapons, or detain a witness refusing to identify shall be left to the officer based on the totality of the circumstances and officer safety considerations.

Interviews and/or interrogations to obtain information, investigative leads, and other details can be very useful so long as all constitutional precautions are taken to ensure the information is admissible in court.

Detailed notes, reports, and/or recordings should be taken of interviews and /or interrogations for court use. When possible and appropriate, reports or recordings should include the date, time, location, officers present, waiver of rights, and the time the interview/interrogation ended.

Statements obtained during an interview or interrogation must not be based on coercion, promises, delays in arraignment, or deprivation of counsel. An officer wishing to ask guilt seeking questions of a person in custody must advise the person of their Miranda rights. To be used in court, the officer must be able to demonstrate the person understood their rights, and having their rights in mind, waived those rights and agreed to provide a statement.

When possible and appropriate, interviews and interrogations should be conducted one on one with a witness, victim, or suspect. There may be times based on circumstances or the type of investigation where this may not be possible or appropriate (e.g. sexual assault investigation where the victim wishes to have someone present while providing a statement).

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Juvenile witnesses, victims and suspects must be given the same constitutional protection as adults.

Victim/Witness Interviews – The trauma/stress to which the victim or witness has been subjected should be considered and the interview conducted in such a manner as to reduce stress and minimize further problems. The age, physical limitations, and credibility of witnesses should also be considered.

#### 440.3 DEFINITIONS

Definitions related to this policy include:

**Detention** - Occurs when an officer intentionally, through words, actions or physical force causes an individual to reasonably believe he/she is being required to restrict his/her movement. Detentions also occur when an officer actually restrains a person's freedom of movement.

**Consensual encounter** - Occurs when an officer contacts an individual but does not create a detention through words, actions or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

**Field Interview (FI)** - The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the officer's suspicions.

**Interrogation** - Interrogation is, in criminal law, the process of questions asked by police to a person arrested or suspected to seek answers to a crime.

**Interview** – An interview is a conversation intended to elicit information. Interviews are generally non-accusatory.

**Pat-down search** - This type of search is used by officers in the field to check an individual for weapons. The search must be based on a reasonable suspicion that an individual is armed and engaged, or about to be engaged, in criminal conduct. It involves a thorough patting down of clothing to locate any weapons or dangerous items that could pose a danger to the officer, the detainee or others.

**Reasonable suspicion** - Occurs when, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

#### 440.4 MIRANDA WARNING (Custodial Advice of Rights)

Any subject placed under arrest, who is to be questioned, will be read their rights as defined in Miranda v Arizona (382 US 436 at 444, 445). Miranda warnings are required before questioning by law enforcement of any subject in custody. They are not required simply because a subject is placed under arrest, and they are not required in the non-investigatory stage of a police prosecution. The Sixth Amendment, right to counsel, attaches at the beginning of formal proceedings against the accused. These critical stages include indictment, arraignment, a lineup, etc.

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In order to achieve uniformity in giving Miranda warnings, police officers will read aloud to the person being interrogated or questioned the following Miranda warnings and waiver information from a CPD Miranda Waiver Form, or from the Miranda card they carry:

- You have the right to remain silent.
- Anything you say can and will be used against you in a court of law.
- You have the right to talk to a lawyer, and have your lawyer present with you while you are being questioned.
- If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
- You can decide at any time to exercise these rights, and not answer any questions or make any statements.

After the warning and in order to secure a waiver, the following questions should be asked and an affirmative reply secured to each question:

- Do you understand each of these rights I have explained to you?
- Having these rights in mind, do you wish to talk to us now?

After the rights have been read, and the subject indicates he/she understands their rights (verbal affirmation and subjects initials next to each line explaining rights), if the person wishes to waive their rights, the officer will have the suspect sign the Miranda Warning and Waiver form which is located on PowerDMS. The subject's signature on each signature line of the form indicates a "YES" answer to the question asked (Most DWI investigations will utilize the Miranda warning included in the Alcohol Influence Report).

For instances where Miranda is delivered verbally by the officer reading out loud from his/her department issued Miranda card, the advice of rights, acknowledgement of understanding, and verbal waiver should be captured on audio, video, or both (body worn camera, MAV, interview room recording, other issued recording devices) when the recording resources are available.

Officers should never assume other officers have already given the Miranda warnings to the subject. It is better to personally give the warnings to any subject before interrogation.

If the subject refuses to waive his/her rights and invokes his/ her right to remain silent, or right to counsel, questioning must **stop** immediately.

If a subject invokes his/her right to remain silent, officers will not attempt a second interview until a significant period of time has elapsed (a two hour period of time has been held to be significant) or the subject requests to be interviewed or provide officers with a statement. In either case, officers will read the Miranda warnings to the subject again and document his/her willingness to answer questions or provide statements.

The right to counsel is not a one-time right to consult counsel but is a continuing right to have counsel present at any interview. For that reason the subject is presumed to have invoked his/her right to counsel

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for all subsequent attempts at interview as long as he/she remains in custody. Arizona v Roberson, 486 U.S. 675 (1988)

An arrested subject cannot, citing Miranda, refuse to answer certain questions asked by law enforcement when the questions are of a neutral nature such as routine booking questions (Pennsylvania v Muniz, 496 U.S. 582, 110 S. Ct. 2638, 1990). Also, general investigatory questions such as asking if there are weapons present and/or other initial, on scene information does not fall under the scope of Miranda.

It has been ruled that the gathering of physical, non-testimonial evidence does not constitute interrogation and therefore, Miranda does not apply. Included in non-testimonial evidence are fingerprints, blood or hair samples, sobriety tests, handwriting samples, or voice exemplars.

When officers can justify the need to secure the safety of themselves and/or others, no Miranda warnings are required to be given prior to asking a question, or limited questions, to accomplish this grave and immediate goal (NY v Quarles, 467 U.S. 649, 1984).

#### **440.5 FIELD INTERVIEWS**

Officers may stop individuals for the purpose of conducting an FI where reasonable suspicion is present. In justifying the stop, the officer should be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to:

- a. The appearance or demeanor of an individual that suggests he/she is part of a criminal enterprise or is engaged in a criminal act.
- b. Actions of the suspect that suggest he/she is engaged in a criminal activity.
- c. Whether the hour of day or night is inappropriate for the suspect's presence in the area.
- d. The suspect's presence in the particular area is suspicious.
- e. The suspect is carrying a suspicious object.
- f. The suspect's clothing bulges in a manner that suggests he/she is carrying a weapon.
- g. The suspect is located in proximate time and place to an alleged crime.
- h. The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.

##### **440.5.1 INITIATING A FIELD INTERVIEW**

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a person when there is articulable, reasonable suspicion to do so. A person, however, should not be detained longer than is reasonably necessary to resolve the officer's suspicions.

Nothing in this policy is intended to discourage consensual contacts. Frequent and random casual contacts with consenting individuals are encouraged by the Columbia Police Department to strengthen community involvement, community awareness and problem identification.

The following guidelines should be followed when initiating a field interview:

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- a. Upon approach, the officer should clearly identify him/herself as a law enforcement officer with the Columbia Police Department.
- b. Officers shall be courteous at all times during the contact while using caution and maintaining an awareness for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions.
- c. Prior to making contact with multiple subjects, determine the need to request and wait for backup assistance.
- d. Focus questions to those concerning the subject's identity, place of residence, and other information necessary to resolve the officer's suspicions. The officer shall not detain a subject longer than is reasonably necessary to make these limited inquiries.
- e. Officers are not required to give subjects Miranda warnings to conduct a field interview unless and until additional information is available and sufficient to establish probable cause for arrest.
- f. Subjects are not required, nor can they be compelled, to answer any questions posed during field interviews. Failure to respond to an officer's questions is not, in and of itself, sufficient grounds to make an arrest although it may provide sufficient justification for additional observation and investigation.
- g. Field contact reports should be completed in the RMS system as appropriate to document field interviews for criminal intelligence and future reference.

**440.5.2 PAT-DOWN SEARCHES**

Once a valid stop has been made, an officer may pat a suspect's outer clothing if they have a reasonable, particularized suspicion that the suspect is armed and presently dangerous. The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue the investigation with less concern of the subject having immediate access to weapons or other dangerous instruments. Circumstances that may establish justification for performing a pat-down search include, but are not limited to:

- a. The type of crime suspected, particularly in crimes of violence where the use or threat of weapons is involved.
- b. Where more than one suspect must be handled by a single officer.
- c. The hour of the day and the location or area where the stop takes place.
- d. Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- e. The appearance and demeanor of the suspect.
- f. Visual indications that suggest the suspect is carrying a firearm or other weapon.

**440.5.3 DURATION OF DETENTION**

A subject may be detained to conduct a field interview, as previously defined, only for the period reasonably necessary to determine the individual's identity and resolve the officer's suspicions. The interview should not extend beyond the immediate vicinity of the place of detention unless the detainee is arrested.

**440.6 WITNESS IDENTIFICATION AND INTERVIEWS**

Because opportunities to interview potential witnesses to an incident may be lost or the integrity of their statements compromised with the passage of time, officers should, **when warranted by the seriousness of**

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**the case**, take reasonable steps to promptly coordinate with an on-scene supervisor and/or criminal investigator to utilize available personnel for the following:

- a. Identifying all persons present at the scene and in the immediate area.
  1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
  2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest.
  3. Officers should attempt to identify a witness prior to his/her departure. **Depending on the seriousness and nature of a crime**, an officer may detain or arrest a witness who refuses to report or falsely reports his or her name and present address (RSMo 575.190).
  
- b. Officers on scene should obtain contact information and statements from all witnesses present. Patrol officers conducting interviews shall record witness statements using body worn cameras and/or in-car cameras. Depending on the nature or circumstances of the incident, a detective(s) from the Criminal Investigations Division may be called in to conduct more formal interviews. Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by department personnel.
  1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in a department vehicle. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transport.

#### 440.7 INTERVIEWS AND INTERROGATIONS

No such statement or confession, verbal or written, shall be purposely obtained except as provided by law within the U.S. Constitution, Federal or State Case Law, or Statutory law.

Statements and/or confessions, verbal or written, will not be purposely obtained until the suspect has been advised of his/her rights under Miranda as outlined above.

Voluntariness remains one of the concerns of the courts in determining whether a confession will be admissible at trial. The State bears the burden of proof that any statement or confession was obtained from the defendant voluntarily. This remains true even when the suspect signs a Waiver of Rights Form (State v Osborne, 392 SE 2nd. 178, 1990).

No form of threat, coercion, promise or any other means of inducement will be used by any officer to obtain a confession or statement (Brown v Mississippi, 297 US 278, 1936 and Harris v South Carolina, 338 US 68, 1949).

Officers will have the suspect sign the Waiver of Rights Form, when appropriate, whenever the subject has waived his/her rights and is willing to make a statement of confession.

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Written statements will be signed by the writer on all pages and at a minimum initialed by the person giving the statement if it is not the writer. The person, who is writing the statement and the person giving the statement, if not the same person, should initial the beginning paragraph and ending paragraph, as well as any corrections on the page(s).

If the suspect, witness or victim is illiterate or physically incapable of handwriting a statement, the statement(s) may be received orally and tape-recorded or videotaped. Statements may include question and answer or narrative form of interview.

The Department will secure an interpreter whenever statements are to be taken from any individual who does not speak English, speaks English as a second language and requests an interpreter for purposes of clarity or other legal considerations, or is hearing impaired (see policy 368 LIMITED ENGLISH PROFICIENCY(LEP) or policy 370 HEARING IMPAIRED/DISABLED COMMUNICATIONS for further).

#### 440.7.1 RECORDING OF INTERROGATIONS AND INTERVIEWS

Recording equipment (body worn cameras, in-car cameras, cell phone recorders etc.) is available to all patrol officers and detectives within CID. Additionally, interview rooms within the police department have recording capabilities. All interrogations and interviews are expected to be recorded unless exigent or special circumstances exist. Examples of special circumstances include but are not limited to:

- a. Recording device not activated due to exigent circumstances.
- b. Spontaneous utterances prior to activation of recording equipment.
- c. Victim or witness refuses to provide a statement if recorded. In such circumstances the officer shall attempt to capture the refusal and conditions in a recording prior to turning the recording device off. The refusal will be documented in the officer's required reports and Blue Team entry.

Recordings of interrogations and interviews may be conducted with or without the knowledge or consent of the subject.

Per policy 447 BODY WORN CAMERAS

#### WHEN AND HOW TO USE THE BWC

1. Officers who are issued a BWC shall activate the BWC to record all contacts with citizens in the performance of official duties while working either regular-duty or extra-duty employment in CPD uniform (official duties does not refer to normal greetings and conversations with citizens that are friendly, non-confrontational, and do not regard a police matter).
2. **All contact includes recording telephone conversations made or received in the performance of official duties.** If possible and feasible for the conditions, the officer may use the speaker phone option to record both parties involved in the conversation. If not feasible, the recording will be used to capture the officer's portion of the conversation. To prevent the unintended recording of sensitive information, the officer should make sure that background noise or nearby conversations of a sensitive nature are not taking place prior to making telephone contact.



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3. If an officer fails to activate the BWC, fails to record the entire contact, interrupts the recording, or experiences an equipment malfunction, the officer shall document, in a Blue Team entry, why a recording was not made, was interrupted, was terminated prior to the end of the contact or describe the circumstances of the malfunction. The Blue Team entry is in addition to any documentation that should be included in an incident, offense or supplemental report.
4. Any other contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording.
5. Any other circumstance where the officer believes that a recording of an incident would be appropriate.

Per 590.701, RSMo. Custodial interrogations of persons suspected of committing or attempting to commit the following crimes will be recorded, when feasible, through the use of audiotape, videotape, motion picture, or digital recording:

- a. Murder in the first degree.
- b. Murder in the second degree.
- c. Assault in the first degree.
- d. Assault of a police officer in the first degree.
- e. Domestic Assault in the first degree.
- f. Elder abuse in the first degree.
- g. Robbery in the first degree.
- h. Arson in the first degree.
- i. Forcible rape.
- j. Forcible sodomy.
- k. Kidnapping.
- l. Statutory rape in the first degree.
- m. Child abuse.
- n. Child kidnapping.

#### **440.8 PROCEDURE MOBILE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM**

Officers sometimes have contact with individuals with whom they cannot positively identify. The Columbia Police Department uses a Mobile Automated Fingerprint Identification System (AFIS) to assist officers in the field with the positive identification of individuals. This procedure is intended to establish the process for obtaining, using and maintaining a department AFIS device to assist in the positive identification of individuals under appropriate circumstances.

##### **440.8.1 MOBILE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM DEVICE**

A Mobile AFIS Device is a handheld wireless-supported scanning device that uses a Mobile Computer Terminal (MCT) connection to access one or more data systems through secure connections provided by the Criminal Justice Information Services Division of the Missouri State Highway Patrol. The Mobile AFIS Device is used to digitally scan fingerprints from an individual and submit them for comparison to existing AFIS records.



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The Mobile AFIS Device is designed to be used to assist in establishing the identity of an unknown subject. The process can be used to identify individuals at crime scenes, disaster areas, roadside, or any other place rapid identification of persons away from a permanent CJIS facility. Enhancements providing access to criminal history and/or wanted person information on individuals checked may be provided.

#### **440.8.2 ISSUANCE OF A MOBILE AFIS DEVICE**

Department Mobile AFIS Devices are assigned to certain vehicles and will be used only by members that have had training on the operation, maintenance and responsibilities of the device. Training will include considerations and requirements for use of the device under various circumstances.

#### **440.8.3 RESPONSIBILITIES AND REQUIREMENTS**

Members assigned a Department Mobile AFIS Device shall follow established guidelines, procedures and manufacturer recommendations for the use and maintenance of the device as provided in training.

Any repairs and/or replacement of damaged or non-functional Mobile AFIS Devices shall be documented.

Any statistical reporting requirements should be completed as required to ensure adequate program evaluation.

On a monthly basis, reports involving cases in which the Mobile AFIS Device played an integral part in the making of an arrest or emergency identification should be forwarded to the Operations Bureau Commander.

#### **440.8.4 USE OF THE MOBILE AFIS DEVICE**

The Mobile AFIS Device may be used in situations where the person to be fingerprinted is not under arrest and has knowingly given voluntary consent/permission for the member to use the device. This may include consent given during lawful encounters (e.g., traffic stop). As with other forms of consent, the consent can be limited or withdrawn at any point by the subject. If consent is withdrawn; use of the Mobile AFIS Device is not authorized and its use must stop immediately. Members shall not force or coerce anyone to submit to the scan.

The Mobile AFIS Device may be used in situations where:

- a. Reasonable suspicion can be articulated that the subject to be printed has committed, is in the process of committing or is about to commit a criminal act AND
- b. When there is a justifiable and reasonable belief that such printing via the Mobile AFIS Device will either establish or nullify the subject's connection with that crime.

The Mobile AFIS device may also be used to verify the identity of an arrested subject prior to fingerprinting on the Livescan device. This may be done in situations where the identity of the arrested subject is

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questionable to prevent entering the person into Livescan under a false name. In these instances, consent of the person is not required.

The Mobile AFIS Device may be used to assist in establishing the identity of deceased or incapacitated persons (e.g., mass casualty incidents and/or traffic homicide investigations when there is no other way of identifying the victim/persons for the purposes of obtaining medical history for providing aid and/or next-of-kin notification).

Any specialized, non-standard use of the Mobile AFIS Device will require notification and authorization by the operator's immediate supervisor.

Use of the Mobile AFIS Device for random or generalized investigative or intelligence gathering, with no focused case or other reason is not authorized. Special care should be taken to ensure the device is not used for purposes that may lend themselves to the inference of improper profiling.

Operators are expected to be able to justify with articulable facts, based on these guidelines, training, experience, and assessment of the circumstances, how they determined that use of the Mobile AFIS Device was justified under the facts and circumstances of the situation.

#### **440.8.5 TRAINING**

The Training and Recruitment Unit will oversee development and administration of the training process for the instructors and operators of the Police Department's Mobile AFIS Devices.

Operators, support personnel, employees, and network administrators will receive appropriate training from qualified Department personnel or vendor representatives prior to using or maintaining Mobile AFIS Devices and related equipment.