



Training Key® #652

Interview and Interrogation of Juveniles

Juveniles, due to their age and development differences, must be treated differently from adults when they become involved with the legal system. This *Training Key*® contains best practices to ensure fairness and compassion when conducting juvenile interviews and interrogations.

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

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

Fortunately, the officer knows that, in the words of one top child interviewing trainer, children and teenagers are “not merely miniature adults – they think, understand, and communicate differently than adults.” He recognizes that because young people are developmentally different than adults, special care must be used when interviewing child victims in order to ensure that the statements they give are both voluntary and reliable. Because of those developmental differences,

moreover, the officer knows that special protocols have been developed for interviewing child victims.

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

Careful interviewing style has insulated Thomas' statement against later voluntariness and reliability challenges.

Now a different scenario. In the new scenario, Thomas is the same boy; he is still 13 years old, wearing that dirty jersey, and slouching in that chair. He is still staring at the floor, refusing to make eye contact; he is still extremely reluctant to communicate; and he still reacts at the outset with vehement denials. But instead of being in a small, private office at the school, the meeting is taking place in an interview room at the police department. Instead of securing the principal's permission to talk to Thomas, the officer has secured his mother's permission. And instead of suspecting that Thomas is a victim of sex abuse, this time it is suspected that he played a part in a gang-related shooting that happened last weekend in a neighborhood near his school. The officer starts asking him some questions, and he claims ignorance. Since the officer believes that he is not telling the truth, the task is to procure an admission through interrogation.

How should this questioning session be approached? Should the officer turn to the child interview protocols described above that prescribe rapport-building, open-ended questions, scrupulous honesty, and avoidance of even the most subtle forms of influence? Or should the officer rely on a Reid-style approach that could involve isolating Thomas from supportive influences, accusing him of guilt, cutting off his denials, telling him that there is certain evidence of his guilt (even if there is no such evidence), and minimizing the seriousness of his offense, only producing a tape recorder after Thomas admits his guilt and is persuaded to make what is believed to be a full, detailed admission?

The best answer is that valuable lessons can be imported from the child victim interview context into the child witness and suspect interview context. Regardless of whether the child being questioned is a victim, an innocent witness, or even a seemingly guilty suspect, he or she is first and fundamentally still a child. This means that, regardless of how clever or defiant a pose he or she strikes, his brain development and emotional maturity is still different from that of an adult. Youth under the age of 18 are categorically more impulsive and less mature, less able to weigh risks and long-term consequences, more vulnerable to external pressures, and more compliant with authority figures than are adults. These traits can make any youth – whether school dropout or honor roll student, victim or perpetrator – more prone to making involuntary or unreliable statements during interviews and interrogations, particularly if certain questioning techniques are used. For this reason, many of the careful techniques prescribed by child victim interview protocols are equally useful when questioning any youth.

What are the risks if children are not interviewed using sensitive techniques? First, a court may find that a statement was involuntary and throw it out of evidence. Certain courts are increasingly applying the voluntariness standard more stringently to the statements of youth under age 18, meaning that they are becoming more willing to throw out their statements. If officers do not go the extra mile to ensure that a parent is present during a child's interrogation, if the evidence against a youth is misrepresented or exaggerated, or if statements are made that might imply lenient treatment in exchange for a statement – such as “the truth will set you free” –

then officers run the risk of a court tossing out the ensuing statement as involuntary.

Second, there is a real risk that an officer might end up with a factually unreliable statement. In the victim context, several infamous cases have emerged in which children who were interviewed using poor techniques made fantastic allegations of sex abuse. For instance, in one well-known preschool sex abuse case,¹ children interviewed using leading and coercive questions came to say not only that they had been sexually abused, but also that they saw witches fly, traveled in hot-air balloons, and were flushed down toilets to secret underground rooms. Sadly, these and other similar allegations – which, with the benefit of hindsight, are now considered totally incredible – gave rise to many wrongful prosecutions and convictions. Similar risks exist in the suspect context, as youthful suspects have responded to inappropriate interviewing techniques by making false confessions at an alarming rate. In fact, youth are between two and three times as likely as adults to falsely confess during a law enforcement interrogation.² Stories abound of children giving proven false confessions to the most heinous crimes imaginable, such as the premeditated stabbing of their own parents or the abduction, rape, and murder of little girls. And, of course, the same is true for youthful witnesses, who may give false statements implicating others if inappropriate questioning techniques are used. One recent study of proven wrongful convictions of youth found that a child's false statement contributed to 55 percent of the convictions that were studied.³

Of course, the twin problems of involuntary and false statements from children are not entirely attributable to law enforcement's use of problematic questioning techniques. Other factors contribute, too, including the child's age and any mental limitations that may exist. But the use of inappropriate questioning techniques can and often does contribute to these problems. If law enforcement officials want a child's statement to hold up in a court system that is growing increasingly aware that youth are more likely to make involuntary and false statements, they must learn from child victim interviewing protocols. Officers must take special care when questioning any child, in order to safeguard their statements from later claims of involuntariness and unreliability.

Memorializing Child Interviews

Perhaps the most important lesson from the victim interview context is that recording a child's statement benefits everybody – whether that child is a victim, witness, or suspect. Indeed, almost every child victim interview protocol requires that the interview be recorded. It is easy to understand why this is recommended; when a questioning session is recorded from start to finish, officers will have a complete record that allows attorneys, courts, and other law enforcement personnel to objectively review the entire statement. The recording also makes it unnecessary for officers to take notes during questioning, so that they can focus exclusively on the interview. Most importantly, the recording protects officers from false claims of coercion, leading to fewer pre-trial suppression motions, more guilty pleas, and less time spent in court defending themselves on the witness stand.

For exactly the same reasons, interviews of child witnesses and suspects should also be recorded. Time has shown that the most common law enforcement objection to recording – that it

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

Who Should Be Present?

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

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

While the presence of a parent or guardian is an important part of ensuring that a statement will be admissible in court, care should be taken that the parent does not exert too much pressure on the child. A well-meaning parent can actually help procure a false statement by discounting the child’s adamant denials and demanding that the child tell the police “the truth.” The child may then admit false guilt in order to comply with the orders of the parent. If a parent appears to be overreaching, the interview should be paused for a moment so that the parent can calm down, rather than letting the parent create a pressure-filled and problematic environment.

Many departments also require the presence of a youth officer in the interview room whose job is to ensure that the child’s rights are adequately protected. The presence of a youth officer, however, is not an adequate substitute for a friendly adult. In some instances, the youth officer – who is frequently a fellow law enforcement official – does not do enough to fulfill his duty to the child. An Illinois appellate court, for instance, recently threw out a confession obtained from a 16-year-old boy after the youth officer privately encouraged him to make admissions during breaks in the interview.⁴ If departments rely on youth officers, accordingly, those officers must be present in addition to rather than in lieu of an interested adult.

Juvenile-Appropriate *Miranda* Rights

Victim and suspect interview styles, of course, should not be identical; in certain respects, at least, victim interviews necessarily have different dynamics than suspect interviews. One obvious example is that certain legal requirements, like the administration of the *Miranda* rights, must be followed in sus-

pect interviews. However, administering the rights in a clear and understandable way – and obtaining a knowing and voluntary waiver of those rights – can become thorny when dealing with a juvenile.

Even otherwise intelligent youths often do not fully understand their *Miranda* rights. The landmark study on juveniles and *Miranda* rights found that well over half of those juveniles surveyed did not understand at least one of the *Miranda* rights, compared to less than a quarter of adults.⁵ And even if a juvenile is able to build some understanding of his rights, he may have difficulty applying those rights to his own situation. While some children understand that they are allowed to consult with an attorney, for example, they may not understand how an attorney could be helpful to them during an interview or interrogation. Because of these problems, youths may not fully understand the significance of their rights or what it really means to waive them.

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

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

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

Building Rapport

The best thing an officer can do at the outset of the interview to ensure that reliable information is obtained is to develop a mutually respectful and honest relationship with the child. An officer should never attempt to build a rapport that mistakenly conveys to the child that he or she is not a police officer or is on the child’s side; to do so is to open the interview to legal challenges down the road. However, the officer should indicate to the child the purpose of the interview and the subject matter to be discussed. The officer should explain that the interview is being recorded and place the recorder in

plain sight. While the officer must not create a false appearance of friendship or trust, it will be beneficial to create a sense of honesty, fairness, and openness.

A critical part of rapport-building is to avoid a threatening, accusatorial, or antagonistic questioning style. As victim interview protocols note, the use of such a style can make children shut down – or, worse, it can make them offer up false information in an effort to bring an uncomfortable interview to an end. By using an accusatorial or intimidating questioning style, moreover, officers expose themselves to later claims of coercion.

Questioning Style

This arena is where many lessons from the victim interview context can readily be applied. Officers should start by using open-ended, free-recall questions that produce a narrative answer. These types of questions have been repeatedly shown to elicit the most accurate and the largest amount of information from children. After the child provides a full narrative, the officer should next ask targeted but still open-ended questions about specific portions of the narrative: “You mentioned that you were out with your friends last night. Tell me about that.” If the officer believes that the child is lying, he or she should probe that area of the story further without outright accusations: “Can you help me understand why you told me earlier that you were at home last night?”

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

It is also essential that, during the entire interview process, the officer never uses leading questions. Leading questions are those that suggest the answer to the child, as in “Weren’t you standing close to the porch?” or “You had just come from the party, right?” Leading questions can also include questions like “Where on the porch were you standing?” when the child has not previously stated that he or she was on the porch. These questions are off-limits because they contain information that will educate the child about the theory of how the incident took place. As one basic example, a child who is asked, “You were standing on the porch, weren’t you?” will know that it is important to tell a story in which he or she is standing on the porch. When an interview is contaminated in this way, it becomes impossible to know whether the information provided during the interview ultimately came from the child or from the questioner. By contaminating an interview with leading questions, in short, officers expose themselves to later claims that the child’s statement is false or unreliable.

Finally, although officers can and should preserve a healthy skepticism with respect to a child suspect’s claims of innocence, they must also keep an open mind as to the possibility

that the child may actually be innocent. Studies have consistently shown that even experienced detectives are no better than the average person at telling when someone is lying. Nonverbal cues such as posture and eye contact are far too nebulous, especially with children. A child who appears uneasy might be nervous because of guilt, or he or she might simply be uncomfortable being asked about such serious topics. Consider Thomas, who would not make eye contact and seemed nervous; while these cues could indicate that he was hiding something, they could also be indicative of his victimization, his lack of comfort with the questioning process, or something else altogether. If a child suspect consistently tells the officer a story of innocence during an interview, accordingly, the officer should always allow for the possibility that he or she may in fact be innocent.

Avoiding Coercive Statements

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

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

For this reason, law enforcement officers should carefully avoid making any statement that could be misconstrued by a child. Indeed, one of the top child victim interview protocols recommends point-blank that all forms of coercive statements should be avoided, even when the coercion is only subtle or implicit. It also recognizes that the use of any coercion during interviews can influence the statements of children in an unacceptable way. The same is true for the child suspect and child witness. Not only does the use of even subtle coercion increase the risk that any child’s statement will be found involuntary, but it also increases the risk that the child will give a false statement.

Interview Length

Child victim interview protocols recognize that children can endure only about an hour of questioning before a substantial break should occur. If an interview drags on for hours, the risk of eliciting a false or involuntary statement rises exponentially with each passing hour. The same is true for child suspects and witnesses, too; the average interrogation, after all, lasts only an hour and a half. In fact, prolonged question-

ing is strongly associated with involuntary and false confessions. More than 80 percent of interrogations that produced proven false confessions lasted longer than 6 hours and 50 percent lasted 12 hours or longer.⁶ Breaks should provide the child with a legitimate opportunity to clear his or her mind and, if possible, get some rest; a 10-minute period during which an officer leaves a child alone in a stationhouse room is unlikely to actually benefit the child in any real way.

Post-Interview Actions

Getting a confession should never be the last thing an officer does in a case. Just as the officer would consider it essential to corroborate a suspect's alibi, he or she must also take steps to corroborate a child suspect's confession. Did the child provide information that was not previously known? That is a great start, but the officer must make sure this information is provably consistent with the crime scene, other witness statements, and the physical evidence. If it is inconsistent, then the confession may not be reliable. Officers should also be wary when the only corroboration is a statement from another child: examples abound of multiple children making false statements and confessions in the same case.

Did the child give information about the crime that only the true perpetrator would know? Before wrapping the case up, the videotape should be reviewed. Officers must be absolutely certain that the child was not simply repeating information that may have been accidentally revealed to him or her through leading questions.

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

Acknowledgment

Laura H. Nirider and Joshua A. Tepfer are staff attorneys at the Center on Wrongful Convictions of Youth, the first organization in the country dedicated to exonerating young people who were convicted of crimes that they did not commit. Together with Lynda Tricarico, they are the authors of *Arresting Development: Convictions of Innocent Youth*, the first-ever study of wrongfully convicted youth.

Endnotes

¹ See Paul Eberle and Shirley Eberle, *The Abuse of Innocence: The McMartin Preschool Trial* (Buffalo, N.Y.: Prometheus Books, 1993).

² Joshua A. Tepfer, Laura H. Nirider, and Lynda Tricarico, "Arresting Development: Convictions of Innocent Youth," *Rutgers Law Review* 62, no. 4 (2010): 887–941.

³ *Ibid.*

⁴ *People v. Sanchez*, No. 2—08—1243 (Illinois Appellate Ct. 2011).

⁵ Thomas Grisso, "Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis," *California Law Review* 68, no. 6 (December 1980): 1134–1166.

⁶ Steven A. Drizin and Richard A. Leo, "The Problem of False Confessions in the Post-DNA World," *North Carolina Law Review* 82 (2004): 891–1007, 907.

questions

The following questions are based on material in this *Training Key*®. Select the one best answer for each question.

1. Which of the following are traits that make youths more prone to involuntary or unreliable statements during interviews and interrogations?

- (a) *They are more compliant with authority figures than adults.*
- (b) *They are more impulsive and less mature.*
- (c) *They are less able to weight risks and long-term consequences.*
- (d) *All of the above.*

2. Which of the following statements is false concerning the recording of child interviews and interrogations?

- (a) *It makes it unnecessary for officers to take notes and allows them to focus exclusively on the interview or interrogation.*
- (b) *It deters victims or suspects from speaking freely.*
- (c) *It protects officers from false claims of coercion.*
- (d) *It provides a complete record that allows attorneys, courts, and other law enforcement personnel to objectively review the entire statement.*

3. Which of the following is not recommended when conducting a juvenile interview or interrogation?

- (a) *Use an age-appropriate Miranda warning that is read to the child slowly and one item at a time.*
- (b) *Allow several law enforcement officers to be present.*
- (c) *Avoid coercive statements such as promises of leniency or threats of harm.*
- (d) *Limit interview length to approximately one hour. If the interview must extend past an hour, a substantial break should occur before questioning continues.*

answers

- 1. (d) All of the above.
- 2. (b) It has been shown that recording an interview or interrogation does not deter suspects from speaking freely.
- 3. (b) The number of law enforcement personnel present should be limited to one. However, additional individuals, such as a parent, guardian, or attorney may be present to ensure that the juvenile's best interests are protected.

have you read.....?

“Juvenile Custody” *Training Key*® #408, International Association of Chiefs of Police, Alexandria, VA.

This document discusses the federal regulations for the proper handling of juveniles in custody.

