

# INTERVIEWING VICTIMS AND WITNESSES

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## I. GENERAL CONSIDERATIONS AND GUIDELINES

The interviewing of a victim or witness is a vital part of the criminal investigation procedure. It can lead directly to the identification, subsequent apprehension and conviction of the guilty offender.

It is the task of a police officer to convince witnesses of the need for their testimony by appealing to their sense of civic responsibility and to their duty as citizens to ensure that the purposes of justice are effectively achieved.

Officers conducting the initial investigation and interviews should be aware that some criminals remain at the scene. If the officer begins to suspect that a person who claims to be only a witness or even a victim may actually be the perpetrator, the officer should be cautious in conducting any questioning. If the suspect is placed in custody, further questioning must be preceded by administration of the Miranda warnings. See department policies **1.13 Interrogating Suspects and Arrestees** and **1.07 Stop and Frisk and Threshold Inquiries**

## II. POLICY

It is the policy of this department that:

- A.** Officers shall attempt to identify and interview all witnesses and victims of crimes.
- B.** Officers shall obtain as complete and accurate a record of the witness's or victim's statement as possible.

### **III. DEFINITIONS**

- A. *Victim*:** Any person who suffers direct or threatened physical, emotional, financial or property harm as the result of the commission or attempted commission of a crime or delinquency offense, as demonstrated by the issuance of a complaint or indictment; the family members of such person if the person is a minor, incompetent or deceased.
- B. *Victim-witness advocate*:** An individual employed by a prosecutor or other criminal justice agency to provide necessary and essential services in carrying out policies and procedures under the general laws of the Commonwealth.
- C. *Witness*:** Any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

### **IV. PROCEDURE [1.2.3(A)]**

#### ***A. Conducting Interviews***

##### **1. PRE-INTERVIEW CONSIDERATIONS**

- a. A victim or witness has the right to consent or refuse to be interviewed and may conclude an interview at any time.<sup>1</sup>
- b. Will the interviewer conduct a minor interview, or is a more formal, detailed, recorded interview necessary?
- c. Obtain the services of an interpreter if needed.
- d. Consider the physical and emotional state of the witness/victim.
- e. Determine whether to take notes or tape record the interview.
- f. Will the person being interviewed be asked to make a written statement, or will the interview be transcribed?

##### **2. INTRODUCTION**

- a. The interviewing officer(s) should introduce themselves and show identification credentials (badge and identification) in these circumstances:
  - 1) If not in uniform and the officer(s) are not known to the person being interviewed; or
  - 2) If requested by the person being interviewed.
- b. Establish a rapport with the witness or victim with gentle conversation prior to beginning the interview.

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### 3. TAKING NOTES OR RECORDING THE INTERVIEW

#### a. NOTES

- 1) Explain the role of the notes and the note taking process to the person being interviewed prior to conducting the interview.
- 2) Notes should be taken in a manner that does not interrupt the interviewing process. Some interviewees are reluctant to talk if they notice that the officer is taking down every word they say.
- 3) Brief notes can be made without deterring or distracting the interviewee. However, if a statement appears highly informative due to its nature and content, a verbatim account should be made.

#### b. AUDIO/VIDEO RECORDING

- 1) Before any interview is audio/video recorded, the interviewee must be told that the conversation will be recorded.<sup>2</sup>
- 2) If the person being interviewed refuses to be recorded, revert to note taking.
- 3) If any legal or other questions arise pertaining to the tape recording of an interview, consult with the Middlesex District Attorney's office.

### 4. CONDUCTING THE INTERVIEW

- a. At the beginning of the interview, record preliminary information either in writing or, if the interview is being recorded, verbally at the beginning of the recording. Include the:
  - 1) The name(s) of officers present during the interview;
  - 2) Date and time of the interview;
  - 3) The location of the interview and
  - 4) The name of the witness being interviewed.
- b. Ask the person being interviewed to fully describe the incident.
- c. Ask specific questions to clarify the statement or to fill in any omissions or unknowns.

### 5. OBSERVATIONS

- a. Observe and note any emotional outbursts, inflections of the voice and nervous reactions which may indicate areas requiring further probing or clarification.
- b. Assess each interviewee's objectivity or possible bias.
- c. Note any relationship or connection the witness might have with the victim or perpetrator or the property or premises involved in

the crime; the overall credibility of the witness/victim; his/her opportunity to make observations; and his/her ability to recall details as opposed to general impressions, etc.

## 6. TRANSCRIBED AND WRITTEN STATEMENTS

### a. WRITTEN STATEMENT

- 1) Obtain a written statement from the witness/victim, if appropriate.
- 2) The statement may be written on a "Victim/Witness Statement" EPD-Form 1.06, or on blank paper. If the statement form is used, have the writer fill in the blank spaces. If using blank paper, ask the writer to provide the necessary information:
  - a) Identification of the writer;
  - b) Writer's address;
  - c) Date and time that the written statement was undertaken; and
  - d) Location of the statement.
- 3) The writer should recount the incident in his/her own words. The writer should review the statement, correct any errors and sign the statement.
- 4) The statement should be signed by at least one witness, who may be the officer asking for the statement or another police officer.
- 5) If the person giving the statement cannot write the statement due to injury, illiteracy, or another reason, the statement may be dictated and written, word for word, by a companion or by a police officer.

### b. TRANSCRIBED STATEMENT

- 1) An oral statement may be transcribed:
  - a) By recording the statement in writing as the statement is being dictated; or
  - b) By transcribing the statement from a recorded interview.
- 2) The transcribed statement may be reviewed by the person who gave the statement, have any errors or omissions corrected, and then be signed by that person.

## 7. TERMINATING THE INTERVIEW

- a. Interviews shall be ended in a courteous manner. Do not terminate the interview abruptly or dismiss the witness or victim in a curt manner.

- 1) Summarize what has been covered. Ask the witness or victim if there is anything [s]he wishes to add or emphasize.
  - 2) Inform the witness or victim that it is very important to contact the police if [s]he recalls or uncovers additional information about the crime or the criminal at a later time.
  - 3) Provide information about victim and witness assistance. (See department policy **4.04 Victim/Witness Assistance.**)
  - 4) Where appropriate, inform the victim or witness of the phone number and location of the District Attorney's Victim/Witness Assistance office, especially if the victim or witness has questions of a legal nature.
  - 5) Inform the witness that it is a criminal offense for anyone to threaten or intimidate the witness into altering or changing his or her testimony or into not testifying.<sup>3</sup> If anyone attempts to do so, the witness should be told to contact the police immediately.
- b. Thank the witness or victim for his/her cooperation and impress upon him/her the value of his/her services.

## **B. Interview Locations**

### 1. GENERAL CONSIDERATIONS

- a. The intensity of the interview will be determined by the nature of the incident and the potential weight of the information from the person to be interviewed.
- b. Ideally, interviews should be conducted at the police station. Often times this is not feasible.
- c. Interviews can be conducted successfully at the scene of the incident.
- d. Consideration should be given to the witness's mobility and obligations. It is sometimes necessary to go to the victim or witness, or to a neutral location (other than the police station) where the victim or witness is comfortable.
- e. In all cases, the area of the interview should be relatively free from avoidable distractions and from being overheard by others.

### 2. INCIDENT SCENE

- a. The names, addresses and telephone numbers of all persons interviewed should be obtained.
- b. Witnesses/victims shall be separated, if possible, to prevent them from discussing what has occurred among themselves before they are interviewed. This may taint individual recollections.

- c. Witnesses or victims may be provided with paper and pen to begin writing their descriptions of the incident prior to their interview.

### 3. INTERVIEWS AT OTHER LOCATIONS

- a. Homes: Interviews may be conducted in the home of a victim or witness with his or her consent.
- b. Public Locations: Interviews may be conducted at other locations in consideration of investigative process and the needs of the victim or witness. Such places include public buildings, libraries, and offices.

### 4. POLICE STATION

- a. Ideally, interviews should be conducted at the police station where the best facilities and resources are available to the investigator.
- b. The interview should be conducted in an area which is not prone to distractions or interruptions and where the interview may be recorded if appropriate.
- c. For further information, see the department policy **3.05 *Temporary Holding Facilities***.

### 5. TELEPHONE INTERVIEWS

- a. Officers are discouraged from conducting telephone interviews.
- b. Telephone interviews do not allow officers to:
  - 1) Make a visual confirmation of the identity of the person being interviewed;
  - 2) Observe body language, facial expressions, and other visual clues; or
  - 3) Observe others coaching the person being interviewed.

## **C. Report Writing**

1. All information obtained from witnesses shall be passed on to the follow-up investigator, if any.
2. All pertinent data, including notes, tapes, and written statements shall be included in the officer's official report and submitted in accordance with department practice and procedures.

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## **V. INTERVIEW TECHNIQUES**

### ***A. Use of Interpreters***

#### 1. FOREIGN LANGUAGES

- a. Before using any person at the scene as an interpreter, make sure that the person chosen to serve as interpreter is reliable.
- b. If possible, take the precaution of asking a second person who knows the foreign language to listen to the interpreter and notify the officer if the interpreter fails to translate any question or answer accurately and completely.

#### 2. INTERPRETERS FOR THE DEAF

- a. In any court proceeding where a deaf person is a party or a witness, the court must appoint an interpreter, unless the deaf person makes a knowing and intelligent waiver.<sup>4</sup>
- b. For short interviews the officer may be able to communicate adequately with a deaf person orally or in writing, or with the services of another person serving as an interpreter.
- c. In the event that a detailed interview is needed, or that a deaf victim or witness is likely to become a suspect, the services of an interpreter are advisable.
- d. Interpreter services are available through the Massachusetts Commission for the Deaf and Hard of Hearing:
  - 1) Emergency services any time: call 1-800-249-9949, voice or TTY.
  - 2) Non-emergency services: call 1-617-740-1600 Voice or 617-740-1700 TTY.

### ***B. Physical and Emotional Needs of Witnesses/Victims***

1. Calm the excited and emotionally upset witness or victim. (If necessary, delay the interview until the person has regained composure.)
2. Create a favorable atmosphere for the witness or victim to talk freely.
3. Conduct the interview in a quiet area, if available.
4. Maintain privacy to the greatest degree possible.
5. Do not distract the interviewee or interrupt his/her story unnecessarily.
6. Only one officer should conduct the interview. Any other officers present should remain inconspicuous and not interfere with the interview.

***C. Establish Cooperative Relationship***

1. Display a sincere interest.
2. Be patient, tactful and respectful.
3. Control personal feelings. Do not exhibit surprise or dismay at anything said by a witness or victim.
4. Provide reassurance.
5. Encourage an untalkative interviewee by asking appropriate questions.
6. Encourage witnesses/victims to give a full description of everything that occurred with a minimum of interruption. When the conversation lags or stops, be patient and wait for the interviewee to volunteer additional information.

***D. Conducting the Interview***

1. Do not take anything for granted, and do not jump to conclusions.
2. Listen for and note any obvious omissions or gaps in the statements made by a witness or victim, or for any conflicting or inconsistent statements.
3. Note any extreme nervousness or unusual behavior on the part of a witness or victim or any unguarded or spontaneous remarks.
4. It is important to listen not only to what is said, but also to how it is said. By noting these things, an officer will know what portions of the statement may require further probing or clarification.
  - a. Emotional outbursts and inflections of the voice may give a clue to sensitive areas of the interview.
  - b. Sudden silence, uncertainty or confusion, or the shifting of conversation to an unrelated subject may indicate that information is being withheld.
  - c. Nervous bodily reaction or facial characteristics may also signal that a sensitive area has been reached.

***E. Questioning Victims/Witnesses***

1. Withhold any direct questioning until after the witness or victim has given a complete account, then ask specific questions to clarify earlier statements or to fill in any omissions.
2. Questions should be clear, definite and in plain language.
3. Ask only one question at a time, and wait for a complete reply.
4. Avoid leading questions that imply or suggest a particular answer.



5. Avoid rapid-fire questions that can confuse or bewilder.
6. Avoid questions that can be answered by "yes" or "no," as these limit response.
7. Do not ask questions in a critical or derisive manner, which could deter previously cooperative witnesses or victims.
8. Do not correct the grammar or the language of the witness or victim, which could cause resentment.
9. Do not permit your own emotions, attitudes or opinions to distract the witness or victim or to interfere with your evaluation of his/her response to your questions.

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<sup>1</sup> *Commonwealth v. Adkinson*, 442 Mass. 410, 813 NE2d 506 (2004).

<sup>2</sup> M.G.L c. 272, §99.

<sup>3</sup> M.G.L c. 268, §13B.

<sup>4</sup> M.G.L c. 221, §92A.