



Seattle Office of Inspector General



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Audit Report on SPD Compliance with Youth Access to Legal Counsel Requirements

12/22/2023

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Audit Objective and Scope

Audit Objective

The objective of this audit was to determine whether the Seattle Police Department (SPD) is complying with applicable law for providing an attorney to juveniles who are questioned, detained, or searched based on probable cause of involvement in alleged criminal activity, per the requirements of Seattle Municipal Code 3.28.147 (“the ordinance”), and the Revised Code of Washington (RCW) section 13.40.740 (“the state law”).

Audit Scope

The Office of Inspector General for Public Safety (OIG) reviewed a sample of SPD arrests and *Terry* stops involving youths under 18 years of age conducted between January 1, 2021, and October 24, 2022. OIG chose this period to include all relevant body worn video (BWV) and case files generated after the effective date of the ordinance through the beginning of audit fieldwork for this project.

Audit Standards

OIG conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Executive Summary

OIG initiated this audit at the request of Seattle City Council Member Lisa Herbold to assess SPD compliance with youth attorney access laws that took effect in 2021 and 2022. This audit found that SPD officers generally did not take steps to provide juvenile detainees with access to an attorney when required. In the population of reviewed cases wherein OIG determined SPD officers should have put juveniles in touch with an attorney, it occurred twice. Widespread non-compliance limited the effectiveness of laws designed to protect some of the community's most vulnerable members and steps are needed to address systemic reasons for non-compliance.

OIG would like to acknowledge the full and timely assistance of SPD while conducting this audit. Early in the project OIG identified that rates of non-compliance were high and notified SPD of this pattern. SPD leadership took an immediate, proactive approach by implementing early training to all officers, and have been engaged and collaborative in addressing concerns raised by the audit.

Key findings in this report include:

- Broad Non-Compliance with Attorney Access Requirements: In most cases where OIG assessed that officers should have provided a juvenile with access to an attorney, they did not do so.
- Training and Policy Gaps Related to Juvenile Attorney Access Requirements: Trainings designed to apprise officers of attorney access laws appeared ineffective, and SPD policies have not been updated to reflect state law changes.
- Lack of Supervisory Oversight in Identifying Non-Compliance with Juvenile Access to Attorney Requirements: While SPD policy requires supervisors to screen all arrests and *Terry* stops for conformance with operational expectations, OIG found no record of any similar requirement or effort to require supervisors to screen for or document non-compliance.

Laws Governing Attorney Access for Seattle Youth

SMC 3.28.147

Seattle City Council enacted Seattle Municipal Code 3.28.147, also known as the MiChance Dunlap-Gittens Ordinance,¹ in August 2020. The ordinance requires law enforcement to provide juveniles with access to an attorney (namely a public defender) after an SPD officer provides a juvenile with Miranda warnings and before the juvenile waives their constitutional right to remain silent or talk to an attorney. Officers are also required to provide juveniles access to an attorney whenever requesting consent to search their person, property, or vehicle.²

An exception allows officers to question a youth without first allowing them to speak to an attorney if they reasonably believe that the information sought is necessary to protect someone's life from imminent threat, and the questioning is limited to that purpose.³

At the time of its passing, the ordinance was recognized as one of the strongest youth right to counsel laws in the country.⁴ The law has not been revised since its enactment.

RCW 13.40.740

After Seattle adopted the MiChance Dunlap-Gittens Ordinance, the Washington State Legislature enacted a similar state law. House Bill 1140 was passed by the Washington State Legislature in April 2021 and took effect January 1, 2022.

Among the provisions, the law adds a new section to Chapter 13.40, requiring law enforcement to provide persons under 18 years of age with access to an attorney before waiving any constitutional rights in custodial situations where officers seek to ask possibly incriminating questions (e.g. interrogation), when youths are detained based on probable cause, or when officers seek to ask for consent to an evidentiary search.⁵

¹ MiChance Dunlap-Gittens, in whose honor the ordinance is named, was a 17-year-old teenager who was shot and killed by Des Moines police, and “dreamed of one day going to law school and championing the rights of young people.” Seattle City Council Bill 119840 (Aug. 17, 2020).

² Similar youth protections were enacted in 2020 by the King County Council and are codified under Title 2 of the King County Code, section 2.63.

³ See SMC3.28.147(D). In these exception circumstances, the officer is required to document the details of the stop, including the time of the *Miranda* warning and subsequent questioning and the justification for questioning the youth without prior counsel consultation. Pursuant to code, SPD is required to forward these exception reports to OIG and other City and County law departments. See SMC 3.28.147(E) and (F).

⁴ The Seattle ordinance was modeled after a similar San Francisco law titled “The Jeff Adachi Youth Rights Ordinance” (San Francisco Admin Code Ch. 96C), which expanded on a 2018 California state law mandating that youth 15 years of age or under be afforded legal counsel prior to custodial interrogation or waiver of *Miranda* rights. See Calif. Welf. & Inst. Code § 625.6. The Jeff Adachi ordinance extended those protections to youth 16 and 17 years of age.

⁵ RCW 13.40.740(1).

Application of Criteria

The local ordinance and the state law are expansions of *Miranda* rights established by the Supreme Court decision in *Miranda v. Arizona* (1966)⁶. Under that ruling, law enforcement officers are required to notify a subject in custody of their right to remain silent and to have the assistance of an attorney prior to questioning, if they choose. State law defines “custodial interrogation” as questioning or other actions by a law enforcement officer that could result in an incriminating response from an individual who reasonably believes they are in “custody.”⁷ Determination of whether custodial interrogation has occurred is a matter of legal interpretation and includes considerations such as whether the subject is free to leave and the nature of questions. For simplicity in this discussion, *Miranda* warnings are required to be given if 1) a person is in custody (they do not feel they are free to walk away, and the detention is akin to an arrest) AND 2) they are asked questions by law enforcement that could produce incriminating answers.

SPD Policy 6.150 provides that a determination of whether someone believes they are free to leave an encounter with police is impacted by their age;

“A juvenile’s age is a consideration in determining whether the juvenile would not feel free to leave. A child may be in custody for purposes of the Miranda rule when an adult in the same circumstances would not.”

SMC 3.28.147 and RCW 13.40.740 extend beyond custodial interrogation and require that a juvenile be provided access to an attorney in a broader set of situations that might produce incriminating answers or evidence against the juvenile. Notably, the RCW protects juveniles who are detained based on probable cause, and both SMC and RCW protect juveniles who are asked to consent to a search of property under their control.

Determining officers’ compliance with the RCW is challenging. The law requires that access to an attorney must be provided *before* a juvenile waives their constitutional rights, rather than at the time a juvenile is detained or taken into custody or questioned.

In assessing compliance with both the SMC and RCW for this audit, OIG has an expectation that officers should be proactive and err on the side of caution in providing access to an attorney when an interaction with a juvenile involves custodial interrogation, detainment based on probable cause, or a request for consent to search. “Non-compliance” in this report indicates officers did not take actions to comply with relevant SMC or RCW when they should have, not necessarily that law or policy were violated.

⁶ 384 U.S. 436 (1966).

⁷ RCW 10.122.020 (1)

Audit Findings

SPD officers generally did not provide juveniles with access to an attorney in the course of custodial interrogation, detainment based on probable cause, or before requesting consent to search.

In most cases where OIG assessed that a juvenile should have been provided access to an attorney, SPD did not provide this opportunity.

OIG reviewed body-worn video and relevant case files for a sample of 89 arrests or *Terry* stops where the subject was a juvenile.⁸ From this sample, OIG determined the relevant requirements for access to an attorney were triggered in 50 cases. In these 50 cases, SPD officers placed a call to an attorney in compliance with the youth attorney access laws twice. OIG assessed the remaining 48 instances to be non-compliant. Notably, among the 48 instances, officers asked juveniles potentially incriminating questions prior to giving *Miranda* warning ten times.⁹

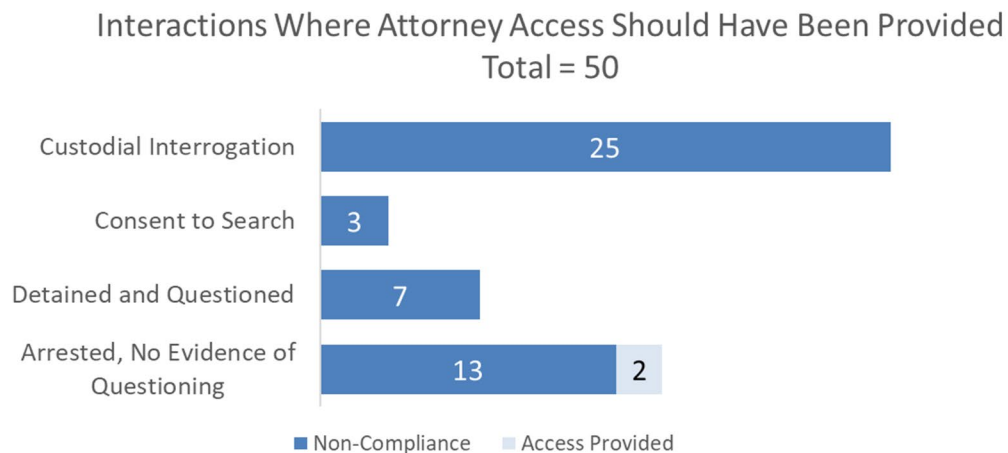


Figure 1

⁸ SPD Manual 6.220 defines a *Terry* stop as “[a] brief, minimally intrusive seizure of a subject based upon articulable reasonable suspicion in order to investigate possible criminal activity. The stop can apply to people as well as vehicles. The subject of a *Terry* stop is not free to leave.” Of note, *Miranda* warnings are generally not required during a *Terry* stop of an adult but may reach a threshold for juveniles where Washington or Seattle laws are triggered.

⁹ Due to the way SMC 3.28.147 was written, in 2021, attorney access was only required after officers provided a *Miranda* warning. While any of the cited instances occurring in 2021 were not technically non-compliant with SMC, they arguably did not meet the intention of the law and are categorized as non-compliance in Figure 1. This issue was resolved with RCW 13.40.740 in 2022.

OIG observed several instances of non-compliance where officers verbally acknowledged restrictions on questioning a juvenile but also did not appear to discuss the requirement or possibility of providing access to an attorney. This indicates that although some officers are aware of restrictions on juvenile questioning, they may be unaware of the full requirements or how to provide meaningful attorney access. OIG identified several potential causes for this lack of knowledge including gaps in policy, Department guidance, training, and tools.

SPD Policy has not been updated to reflect changes in state law.

SPD policy 6.150(11) states the following:

After issuing Miranda warnings, sworn employees will not question any person younger than 18 years of age or request consent from a juvenile to search their person, property, dwelling, or vehicle unless the juvenile has consulted with legal counsel.

This language reflects the language of the 2021 SMC provision but does not address the 2022 RCW law change. Unlike the ordinance, the state law is not based on issuance of a *Miranda* warning and applies to a potentially broader set of circumstances. Namely,

- Questioning of a juvenile during a custodial interrogation, or
- Detainment a juvenile based on probable cause of involvement in criminal activity.

These changes are not reflected in SPD policy and may increase the risk of non-compliance.

1	Recommendation	Update SPD Policy to Reflect State Law
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SPD should update policy 6.150 of the SPD Policy Manual to reflect changes in state youth attorney access law.

Training about attorney access requirements appears to have been ineffective.

SPD policy 6.150 was revised in November 2020 to reflect requirements of the MiChance Dunlap-Gittens Ordinance. In November 2020, SPD issued a directive to all officers highlighting the policy changes and requiring officers to acknowledge reading and understanding the information.

SPD reported that between April – December 2022 (more than a year after the local ordinance came into effect), all officers through the rank of Captain were provided a ‘legal refresher’ training, which included information on juvenile right to counsel and interrogation. These materials listed both SMC and RCW requirements, as well as a phone

number for the King County Department of Public Defense.¹⁰ The legal refresher was not part of a reoccurring training curriculum.

As noted previously, a number of officers appeared aware of restrictions around juvenile questioning but not of requirements to provide attorney access to assist in decision making about waiver of rights. After OIG presented preliminary results of this audit to SPD, the Department's Policy and Research Section emailed a comprehensive policy refresher on youth *Miranda* requirements to all officers.¹¹ SPD reports that an e-learning course is under development.

2	Recommendation	Develop Training
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SPD should complete development and issuance of training on juvenile access to attorney requirements, and include a knowledge assessment sufficient to evaluate understanding.

SPD may not have provided sufficient guidance to officers to promote compliance.

Materials provided in SPD's 2022 legal refresher training did not include additional guidance on practical considerations for applying the law, or what to do if a situation involves a youth in crisis or with mental illness. OIG noted circumstances in which officers may benefit from such additional guidance.

In some cases, officers engaged in custodial interrogation of a juvenile before attempting to inquire about or determine their age. While age determination is not explicitly required in the ordinance or state law, it is a critical part of ensuring meaningful compliance. If officers are not proactive about identifying juvenile status early in an interaction, they may miss the requirement to provide attorney access.

Another circumstance where Department guidance is important, is that in which a juvenile is experiencing behavioral crisis at the time of their detainment or arrest, or they have some impairment that impacts the situation. In one observed case, officers placed a juvenile in crisis in the back of a patrol car and provided immediate access to an attorney. However, based on the juvenile's comments, he did not appear to understand who he was talking to, and may have been further agitated by being compelled to participate in the call. Relevant laws and SPD policy do not provide guidance on what discretion an officer may

¹⁰ According to the Washington State Office of Public Defense (OPD), as of January 2022, SPD officers are expected to call OPD or are forwarded to OPD by King County.

¹¹ Preceding issuance of this audit report, OIG received call data from WA-OPD that reflects SPD provided attorney access in at least 6 cases from May to November 2023.

have in delaying a call until a juvenile has the capacity to meaningfully participate in a discussion with an attorney.

Another other case in which SPD officers provided attorney access to a juvenile took place in a precinct holding cell. Officers kept the juvenile in handcuffs and placed a cellphone on speaker in the holding cell. The conversation was audible on BWV and likely clear to officers standing outside the door. Consistent with state law, SPD policy provides that the juvenile's legal consultation "may be in person, by telephone, or by video conference;"¹² however, relevant policy does not contain guidance regarding where or how the consultation should take place, leading to potential difficulties in ensuring that youth access to an attorney is consistently confidential to respect attorney-client privilege.

3	Recommendation	Modify Policy
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SPD should modify policy 6.150 of the SPD Policy Manual to ensure that, absent exigent circumstances, officers make a good faith effort to determine whether a detained individual is a juvenile.

4	Recommendation	Provide Guidance When Suitability of Consultation is in Question
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SPD should provide guidance around options and discretion officers may exercise when a juvenile appears to lack the capacity to meaningfully participate in the attorney assistance process.

5	Recommendation	Provide Tools to Maintain Confidentiality
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SPD should provide guidance and/or tools to officers so that they can maintain confidentiality of juvenile conversations with attorneys.

SPD did not update the Department-issued *Miranda* warning card to reflect requirements.

Most officers who provided *Miranda* warnings were observed reading them from a yellow, department-issued card that provides standard warning language with an additional juvenile warning. Per SPD, this card was last updated in 2018 and does not include guidance related to providing access to an attorney. Including additional requirements and contact information for the Washington Office of Public Defense (OPD) on the *Miranda* warning card could be an effective reminder to officers of the requirement.

¹² SPD Policy 6.150(11).

SPD should revise the Department-issued *Miranda* card to include a reminder of youth attorney access requirements and contact information for WA-OPD

Black juveniles are disproportionately represented in interactions where attorney access may be required.

The attorney access laws were created to inform juveniles of their rights before they potentially implicate themselves in an alleged crime.¹³ Because SPD did not have a significant rate of compliance in implementing the laws, OIG was unable to assess the potential for disparity in their implementation.¹⁴ However, nearly half of all arrests or *Terry* stops of juveniles over the reviewed period involved a Black or African American youth, as shown in Figure 2:

Race of Juvenile, as Reported by SPD	Count	Percentage
American Indian or Alaska Native	6	1.7%
Asian	11	3.1%
Black or African American	169	47.9%
Native Hawaiian or Other Pacific Islander	2	0.6%
Unknown	55	15.6%
White	110	31.2%
Total	353	

Ethnicity of Juvenile, as Reported by SPD	Count	Percentage
Hispanic or Latino	38	10.8%
Unknown	149	42.2%
Not Hispanic or Latino	166	47.0%
Total	353	

Figure 2

OIG did not assess factors that contributed to disproportionality in the tested population, as such factors are beyond the scope of this audit.¹⁵ However, general non-compliance by

¹³ As part of its rationale for the ordinance, the Seattle City Council cited social science research and caselaw for the premise that juveniles – whose brains are still developing – do not fully understand the consequences of certain actions, such as waiving their *Miranda* rights. Additionally, their comprehension may be further affected by the inherently stressful nature of detention, search, or interrogation. These factors may make juveniles more prone than adults to self-incriminate. See Seattle City Council Ordinance 126132, pp. 1-4 (Aug. 17, 2020).

¹⁴ While OIG did not assess disparity, it is of note that most of the few known calls SPD placed to WA-OPD, concerned White male juveniles. Potential disparity should be examined in future work. See Appendix D for more detail.

¹⁵ These may include the origins, dispatch priority, and incident type for a call, among other potential factors.

SPD has likely meant that a greater number of black youths had interactions with officers that should have been informed by an attorney consultation but were not.

Supervisors do not appear to be regularly screening for or identifying non-compliance with juvenile access to attorney requirements.

SPD policies and procedures contain supervision requirements for arrests and *Terry* stops. SPD manual section 6.220-POL-4(1) establishes that officers will document all *Terry* stops. If a *Terry* stop appears to be contrary to policy, supervisors are to follow prescribed guidance to address the inconsistency:

"If a supervisor concludes that a Terry stop appears to be inconsistent with SPD policy, the supervisor, in consultation with their chain of command, shall address the concern and make the appropriate referral pursuant to Section 5.002. Such action may include PAS documentation and/or referral to OPA. The supervisor shall document these concerns and any actions taken on a Supplement when approving the Report or Field Contact."

According to SPD policy,¹⁶ officers are required to report, and sergeants are required to screen, all arrests. This screening includes reviewing arrest reports. While SPD's arrest policy does not contain specific language on remediating inconsistencies with policy, the department's frontline investigations policy states that, except in cases where the Office of Police Accountability (OPA) is taking over an investigation;

"Supervisors will fully investigate and take corrective action, within their authority, when they witness or receive allegations of an employee's minor policy violations." The same policy provides at multiple points within its procedures that supervisors will; "Document the allegation/violation, any remedial actions taken, and outcome in PAS."¹⁷

OIG reviewed the Performance Appraisal System (PAS) profile for every officer involved in an instance of non-compliance within our sample.¹⁸ The review not find any instances where a supervisor documented non-compliance or provided coaching notes to the officer.

¹⁶ See SPD Policy Manual 6.010(4), 6.010 (6).

¹⁷ See SPD Policy Manual 5.003-POL (1); 5.003-PRO (1).

¹⁸ For the purposes of this audit, 'involved' means that the officer was one of the main participants in an interaction, to the point that OIG drew evidence from their BWV. They may not have been the officer reading a *Miranda* warning or interrogating the juvenile, but they were generally in position to recognize that attorney access should be provided.

All arrest or field contact reports reviewed in this audit included records of sergeant screening in the Mark43 records management system. However, system logs reflect that none of the reports were disapproved by the screening sergeant.

OIG reviewed all OPA complaints over the review period and found only one case related to juvenile access to an attorney. In that instance, OPA discovered the potential violation of policy while reviewing BWV for a different allegation and sent the attorney access issue to the chain of command as a Supervisor Action.¹⁹

An SPD Captain interviewed by OIG about this issue reported that sergeants are not provided official training on how to review reports. As a result, there is no specific expectation that sergeants review reports for juvenile access to an attorney.

Without sufficient supervisory screening, SPD is unable to identify and remediate gaps in training and policy. Recognizing that SPD is constrained by staffing and improving supervisory review is a long-term project, OIG makes the following recommendations;

7	Recommendation	Enhance Arrest Screening Procedures
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SPD should enhance current arrest screening procedures to assess whether an interaction complies with state law relating to youth access to an attorney.

8	Recommendation	Periodically Request Information on Youth Access to Counsel Calls
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SPD should develop a process to periodically request information from the Washington State Office of Public Defender on juvenile attorney access calls originating from the Department.

Matters for Consideration

During audit fieldwork, OIG noted potential issues outside the objectives of this report. These observations are documented here for SPD's awareness and potential OIG follow-up work.

- In addition to *Miranda* warnings, SPD policy requires an additional advisement for youth, which reads:

¹⁹ OPA describes a supervisor action as a complaint generally involving a minor policy violation or performance issue that is best addressed through training, communication, or coaching by the employee's supervisor

"If you are under the age of 18, anything you say can be used against you in a juvenile court prosecution for a juvenile offense and can also be used against you in an adult court criminal prosecution if you are to be tried as an adult."²⁰

OIG observed six instances where the youth advisement was not given as required by policy, despite being printed on the Department-provided *Miranda* card. This indicates officers may need a reminder about the importance of clear and complete advisements to juveniles.

- In cases of domestic violence, OIG observed that current law does not always ensure juveniles have access to an attorney before being questioned when the "custody" element is not present. When officers respond to domestic violence calls, OIG observed officers typically separate and interview all parties involved to understand what occurred and determine a "primary aggressor." These interviews occur before the main triggers of the RCW (interrogating the juvenile while in custody or detaining them based on probable cause of involvement in criminal activity) or the SMC (reading *Miranda* warnings). OIG observed multiple instances in which juveniles incriminated themselves in a "non-custodial" conversation with officers during these interviews without triggering the youth access to counsel requirement.

Conclusion

This audit found broad non-compliance by SPD with attorney access requirements for juveniles, as required by law. While some officers demonstrated partial knowledge of the new legal requirements, most did not appear to be aware of the process for connecting a juvenile with an attorney. OIG observed several causes for non-compliance, including gaps in policy, training, guidance, tools, and supervision.

According to OPD's report on the first year of the Youth Access to Counsel Program, 2,327 youths were provided attorney consultations from more than 180 law enforcement agencies statewide.²¹ While this audit did not compare SPD compliance to other agencies, this data supports a conclusion that higher rates of compliance are achievable.

Additional work should be done to ensure SPD interactions with youth adhere to legal requirements and account for juveniles' cognitive development. Studies suggest that juveniles often do not fully comprehend the potential consequences of their actions, including waiving their rights after receiving *Miranda* warnings. It is important that juveniles have access to an attorney to assist them in making decisions that impact their constitutional rights and have serious consequences in the criminal justice system.

²⁰ See SPD Policy 6.150 (10).

²¹ See Appendix E of this report

Appendix A: Recommendations and Department Response

1	Recommendation	Update SPD Policy to Reflect State Law
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SPD should update policy 6.150 of the SPD Policy Manual to reflect changes in state youth attorney access law.

SPD Response

Concur Do Not Concur

Estimated Date of Implementation: Q1 2024

Implementation Plan: SPD's Policy Unit will draft an updated policy.

2	Recommendation	Develop Training
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SPD should complete development and issuance of training on juvenile access to attorney requirements, and include a knowledge assessment sufficient to evaluate understanding.

SPD Response

Concur Do Not Concur

Estimated Date of Implementation: Q1 2024

Implementation Plan: Alongside policy development, SPD's Education and Training Section will update its e-learning on juvenile access to attorney requirements. A knowledge assessment tool will attach to employees' acknowledgement of policy updates.

3	Recommendation	Modify Policy
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SPD should modify policy 6.150 of the SPD Policy Manual to ensure that, absent exigent circumstances, officers make a good faith effort to determine whether a detained individual is a juvenile.

SPD Response

Concur Do Not Concur

Estimated Date of Implementation: Q1 2024

Implementation Plan: Such provisions will be included in policy revisions.

4	Recommendation	Provide Guidance When Suitability of Consultation is in Question
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SPD should provide guidance around options and discretion officers may exercise when a juvenile appears to lack the capacity to meaningfully participate in the attorney assistance process.

SPD Response

Concur Do Not Concur

Estimated Date of Implementation: Q1 2024

Implementation Plan: Guidance to this effect will be included in policy revisions.

5

Recommendation

Provide Tools to Maintain Confidentiality

SPD should provide guidance and/or tools to officers so that they can maintain confidentiality of juvenile conversations with attorneys.

SPD Response

Concur Do Not Concur

Estimated Date of Implementation: Q1 2024

Implementation Plan: Guidance to this effect will be included in policy revisions. SPD is not in a position to procure/provide additional tools to officers for such purposes.

6

Recommendation

Update Department-Issued Miranda Card

SPD should revise the Department-issued *Miranda* card to include a reminder of youth attorney access requirements and contact information for WA-OPD

SPD Response

Concur Do Not Concur

Estimated Date of Implementation: TBD

Implementation Plan: SPD agrees with the idea of this recommendation. SPD will assess the feasibility of adding this information to the card, given space constraints.

7

Recommendation

Enhance Arrest Screening Procedures

SPD should enhance current arrest screening procedures to assess whether an interaction complies with state law relating to youth access to an attorney.

SPD Response

Concur Do Not Concur

Estimated Date of Implementation: Q1 2024

Implementation Plan: Considerations to this effect will be included in policy revisions.

8

Recommendation

Periodically Request Information on Youth Access to Counsel Calls

SPD should develop a process to periodically request information from the Washington State Office of Public Defender on juvenile attorney access calls originating from the Department.

SPD Response

Concur Do Not Concur

Estimated Date of Implementation: TBD

Implementation Plan: Such an inquiry would fall within the purview of SPD’s Audit Unit, which conducts all internal audits of SPD compliance with policy and law. If it is the intent of the OIG that SPD, rather than the OIG, undertake continued systemic review of compliance in this area, such audits can be added to the Audit Unit workplan at a frequency determined by the Audit Unit commander.



City of Seattle

Seattle Police Department

December 20, 2023

Inspector General Lisa Judge
Office of the Inspector General

Re: Audit of SPD Compliance with Seattle Municipal Code 3.28.147 and RCW 13.40.740

Dear Inspector General Judge:

Please accept this letter in partial response to your recent audit concerning the custodial interrogation of youth and youth access to counsel rights, as governed by city and state law. While our responses to specific recommendations are submitted on the template provided, I am writing separately to ensure that SPD's efforts to implement policy in what can be, in practice, an inherently nuanced determination are not diminished by the brevity of those responses.

As you note, whether or not the laws are triggered depends on two factors: (1) whether a juvenile is "in custody" and (2) whether the questions posed by law enforcement "could" produce an incriminating response. If the answer to both of these questions is "yes," the onus is on officers to provide the juvenile access to counsel *before* the juvenile responds in contravention of their rights. While this may seem a simplistic calculation to some, it is, as you acknowledge, a "challenging" determination even with the benefit of hindsight, for several reasons. For example, whether or not an individual contacted for law enforcement purposes is under the age of 18 is often not immediately apparent; where officers have not reached a probable cause threshold (i.e., the contact is initiated as a social contact or on reasonable suspicion), there is no requirement in law to ascertain that information. Further, it should be remembered that often the purpose of questioning is not to *establish* probable cause, but to determine *whether* a crime has been committed and if so, to *exclude* individuals from criminal involvement. These are generally all considerations prior to establishing probable cause to detain (place "in custody") any one individual. Indeed, we have heard from some in the juvenile justice system that declining to engage with juveniles contacted to make that determination can run counter to the very principles on which the laws are based. And of course, while officers can control the questions they ask and the conditions in which they ask them, they have no control over the nature of responses ("incriminating" vs "informational") or proactive statements offered even in the absence of questioning.

We also note, with recent high-profile surges in violent crimes committed by juveniles (carjackings, street and home invasion robberies, firearms discharges) often under the

Inspector General Judge
December 20, 2023

guidance or direction of adults who are well aware of the heightened protections for juveniles, we owe it not only to the community but also to juvenile perpetrators of crime who are themselves at heightened risk of victimization to ensure that we thread the needle of policy and training in a manner that does not discourage officers from taking appropriate action to keep all members of the community safe.

The above is in no way intended to challenge either the laws or the findings of this audit, but rather to contextualize the difficulty in applying what may seem simple into a complex practice. We likewise reviewed cases included in your audit and agree that in some instances there are clear gaps in officers' understanding of the laws and inconsistencies in practice. Throughout your work on this audit, we have taken steps to clarify requirements in policy, practice, and training, and appreciate your engagement with us as part of the process to allow us to take mitigative measures. We also agree, as documented in the template provided, with *all of your recommendations* to strengthen our work in this area.

So, with the added nuance this letter provides, I want to thank you and your team for your thorough approach to this audit, the collaboration along the way that allowed SPD to tighten up processes as shortcomings were identified, and your continued partnership as we work together to improve processes at SPD.

Sincerely,



Brian Maxey
Chief Operating Officer

Cc: Adrian Diaz, Chief of Police
Eric Barden, Deputy Chief of Police
Rebecca Boatright, General Counsel

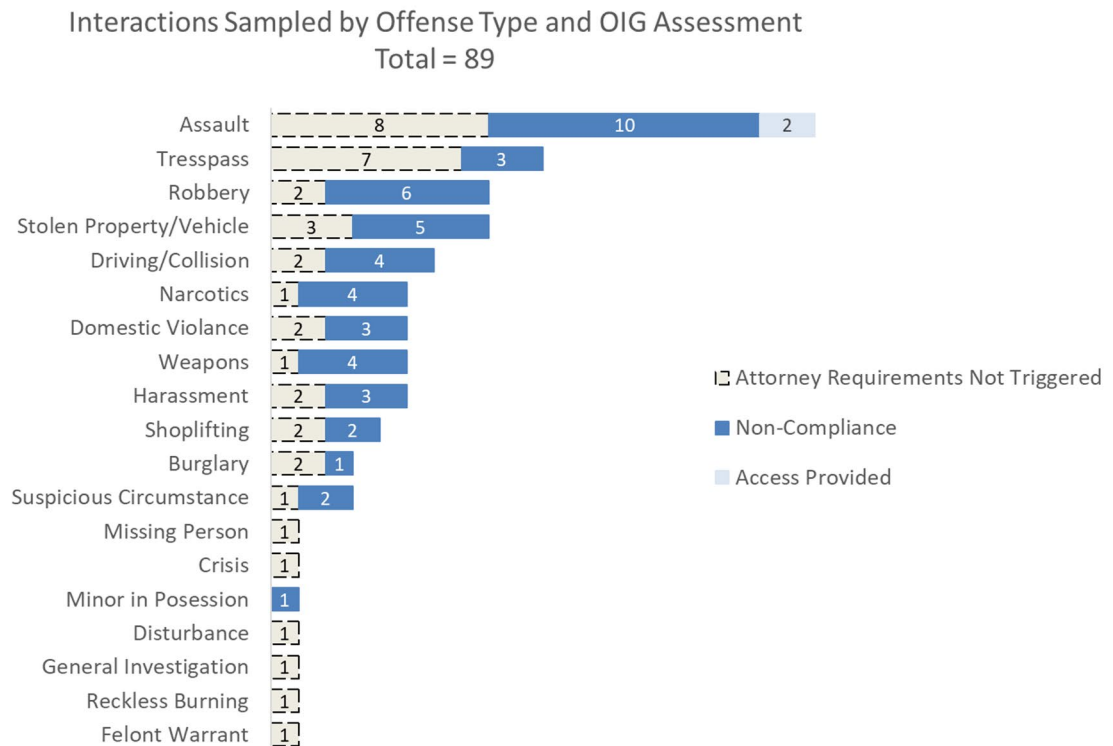
Appendix B: Audit Methodology

OIG strives to make objective, well-informed findings and recommendations as part of the audit process. Audit staff conducted the following investigatory steps to inform audit findings:

- Reviewed SMC 3.28.147, RCW 13.40.740 and SPD Policy 6.150;
- Conducted background research on youth access to counsel laws enacted in other jurisdictions;
- Interviewed Seattle City Council staff to understand the legislative objectives of the ordinance;
- Interviewed SPD personnel including the Chief Operating Officer, General Counsel, Technology Integration Unit, and Education & Training Section to understand SPD's interpretation and implementation of SMC 3.28.147 and RCW 13.40.740;
- Examined relevant training materials related to SMC 3.28.147 and RCW 13.40.740;
- Interviewed several community-based stakeholders, including the CPC, ACLU and Innocence Project, to understand and ensure that their concerns were considered throughout the engagement;
- Selected a random sample of arrests and *Terry* stops for SPD compliance with SMC 3.28.147 and RCW 13.40.740. The sample was drawn from all arrests and *Terry* stops occurring between January 1, 2021, and October 24, 2022, of juveniles under 18 years of age at the time of the interaction with SPD (260 arrests/93 *Terry* stops). OIG developed a sample sufficient to assess SPD compliance; and
- Reviewed BWV of SPD arrest and *Terry* stop interactions involving juveniles.

Appendix C: Sample Composition

OIG randomly selected 89 juvenile interactions for review from a population of 353 arrests and *Terry* stops. All such interactions were coded with offense types by SPD in Mark43. Some interactions had multiple offense types (e.g. 'assault' and 'weapons'). Auditors generally selected the offense code that appeared most relevant to the incident, and grouped offense codes where appropriate (e.g. 'assault 2' and 'assault 4'). This figure is meant to provide an overview of the nature of cases reviewed, not analyze the prevalence of individual offense types.



Appendix D: Known Instances When SPD Made Call to Counsel

OIG requested information from Washington State OPD for calls from SPD personnel during the period of November 2022 to the start of fieldwork in March 2023, including and beyond any cases sampled in this audit.²² To illustrate instances when SPD facilitated youth access to counsel, the following are brief descriptions of cases and where officers contacted WA-OPD. Given the heavy representation of Black youths in interactions that may be governed by attorney access laws, OIG notes that most of the known calls to OPD involved White youth. These limited data points are not determinative of disparity in providing attorney access but suggest that the potential for disparity should be examined as SPD establishes greater rates of compliance.

Automobile Accident

An intoxicated White male youth was involved in a car accident. When questioned by officers, the youth admitted to consuming alcohol and officers observed alcohol bottles in the rear of the vehicle. The youth's parent arrived on the scene and asked officers to release her son. Although the juvenile was not released on scene, the parent was given ample opportunity to converse with officers, as well as engage in discussion with her son prior to his transport to an SPD precinct. Officers telephoned a WA-OPD attorney and the youth spoke with counsel for approximately 10 minutes from a private room to ensure confidentiality.

Domestic Violence Assault

Officers responded to a domestic violence incident involving a parent and their child, a White male, who appeared to be in crisis.²³ After separating the participants and placing the youth in the patrol car, the officers initiated a call to the WA-OPD attorney who spoke with the youth for 10 minutes. The juvenile was later transported to Seattle Children's Hospital for evaluation.

Assault

Officers were called to investigate an alleged assault involving Black juveniles at a high school. During the investigation officers called WA-OPD to gain an understanding of the youth access to counsel process and what safeguards they should be aware of when the

²² To support the implementation of RCW 13.40.740, in January 2022 WA-OPD created the youth access to counsel (YAC) line, as statewide system to ensure that attorney consultations are available to youth on a 24/7 basis. Prior to the YAC line, all youth access calls within King County were directed to the county's Department of Public Defense. The department began directing all YAC calls to WA-OPD in November 2022.

²³ SPD data describes the race of this youth as 'Unknown'. For the purpose of this analysis OIG assessed that this youth is best described as White based on review of BWV and the officer's report.

suspect is located and the call is made. As a reluctant victim, the juvenile declined to testify in a court proceeding against his alleged assailants and the suspects were not arrested or subject to other actions that would trigger youth access to counsel protocols.

Homicide

Two male juveniles (one Black, one White) were arrested on suspicion of homicide. SPD officers recognized that the juveniles should not be questioned at the time of arrest. The juveniles were transported back to SPD facilities where they were provided access to an attorney prior to interviews.

Domestic Violence

A White youth was arrested after allegedly threatening suicide, breaking property, and shoving their mother. The juvenile was taken into custody without incident or questioning, and Mirandized on scene. Their call to counsel took place at an SPD Precinct, where the juvenile spoke with an attorney for approximately 9 minutes from a holding cell.

Appendix E: OPD Youth Access to Counsel Program Information



WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE

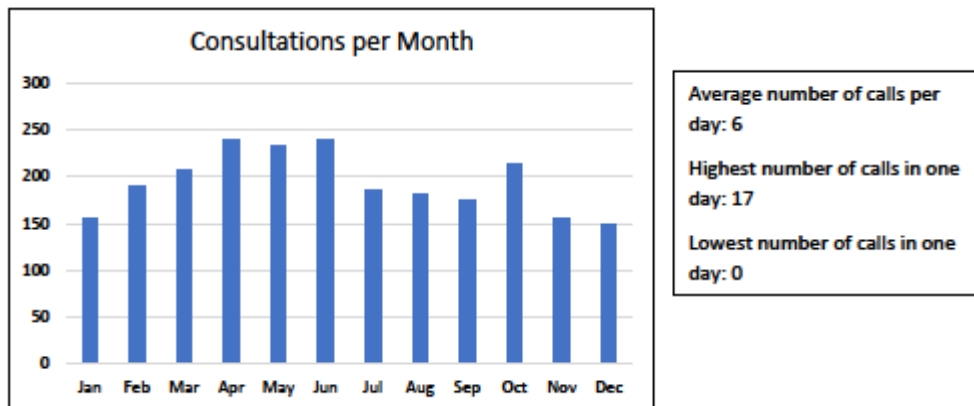
OPD's Youth Access to Counsel Program

Implementation of HB 1140: Fulfilling the Mandates of RCW 13.40.740

The Youth Access to Counsel (YAC) Program was launched on January 1, 2022 as a result of HB 1140. This law created a non-waivable affirmative requirement that law enforcement put youth into contact with an attorney during certain phases of an investigation, such as prior to custodial interrogation or when seeking permission to search. The requirements are laid out in full in [RCW 13.40.740](#). The Office of Public Defense (OPD) created the YAC Line, a statewide system to ensure that attorneys are available 24/7, to provide these consultations. It can be accessed by law enforcement by calling 1-877-JPUB-DEF (1-877-578-2333).

How many calls come into the YAC Line?

As of December 31, 2022¹, the YAC Line provided 2,327 consultations to youth.



How long does it take Law Enforcement to reach a YAC attorney?



- Over 70% of calls that resulted in YAC consultations were answered by an attorney in under one minute.
- About 96% of those calls were answered by an attorney in less than 2 minutes.
- Once in touch with an attorney, about 67% of consultations are completed within 20 minutes.

¹ All data in this document is through December 31, 2022.

What do YAC Attorneys do?

- Gather information from the officer calling into the line in order to provide advice to the youth and then speak with the youth in a confidential setting.
- Provide the youth with information about their constitutional rights and how they apply to the youth’s current situation to help them decide what to do.
- Engage in stated-interest representation, which means they give information and guidance about the law as applied to the youth’s unique situation, but ultimately the youth chooses if they want to assert their rights or not.

How does the YAC Line work?

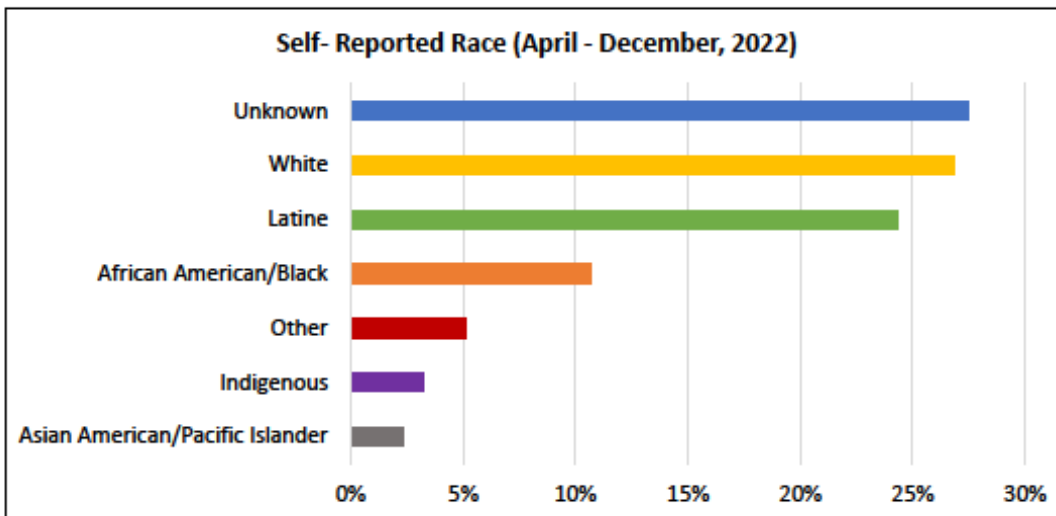
- Seven experienced attorneys from across the state staff the YAC Line.
- The Line is staffed by four of these attorneys at all times. Calls are routed to the attorneys through a sophisticated call chain allowing every call to be answered without requiring a recall by the officer.
- Between 60% and 70% of calls are answered by the attorney in Position A.

Where do the calls come from?

- Calls have come from every county in the state except one.
- The YAC Line has received calls from over 180 law enforcement agencies statewide.

Who are the youth consulting with YAC Attorneys?

- The youth ranged in age from 9 to 17.
- 3% of youth required an interpreter. (The YAC Line provides interpreter services.)
- Based on data collected between April and December, the youth consulted identify as the following races and ethnicities:





Seattle Office of Inspector General

The Office of Inspector General for Public Safety (OIG) was established in 2017 via Ordinance 125315 to help ensure the fairness and integrity of the police system in its delivery of law enforcement services. OIG provides independent auditing of the management, practices, and policies of the Seattle Police Department and the Office of Police Accountability. Additionally, OIG oversees ongoing fidelity to organizational reforms implemented pursuant to the goals of the 2012 Consent Decree and Memorandum of Understanding.

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