

POLICIES, PROCEDURES, AND RULES

| | |
|---|--|
| Subject: 44.1.1 Juvenile Operations | Effective Date: October 11, 2021 |
| Reference: 44.2.4 | Version: 6 |
| CALEA: 44.1.1, 44.2.2, 44.2.1, 1.2.5, 41.2.6, 44.2.3, 61.1.2 | No. Pages: 7 |

I. PURPOSE

The purpose of this directive is to establish policies concerning the department's juvenile programs and the processing of juvenile offenders and victims [CALEA 44.1.1]. Officers of the Fayetteville Police Department (FPD) must recognize that juveniles may not understand their rights, formal police procedures, and may need parental guidance to make some decisions. When encountering a juvenile in any law enforcement capacity, it is of the utmost importance for officers to have patience and understanding of the juvenile's limited knowledge, to consider a juvenile's intelligence, educational background, their understanding of the circumstance, mental capacity and other factors that include nervousness, physical condition, injuries and trauma.

II. DEFINITIONS

- A. Custodial interrogation refers to express questioning, normally associated with detention, arrest and custody that an officer should know are reasonably likely to elicit an incriminating response. Officers shall have a parent or guardian present and Miranda warning shall be read prior to a custodial interrogation.
- B. Non-custodial interview is a voluntary encounter with an officer to obtain statements from complainants, witnesses, victims and suspects. For the purpose of this policy, a parent or guardian does not have to be present during a non-custodial interview of a juvenile.

III. POLICY

- A. **ORGANIZATION AND ADMINISTRATION** - The Fayetteville Police Department is committed to the development and perpetuation of programs designed to prevent and control juvenile delinquency and victimization.
 - 1. The Fayetteville Police Department shall maintain an investigative division with specializations associated with juvenile matters, this division will fall under the command of the Criminal Investigation Division (CID).
 - 2. The responsibility of juvenile operations and delinquency prevention efforts is to be shared by all agency personnel and not just limited to the responsibility of CID. In particular, all patrol officers should familiarize themselves in proper handling of juvenile problems, both criminal and non-criminal.

3. The Fayetteville Police Department will strive to maintain a working relationship with other elements of the juvenile justice system, namely the Washington County Juvenile Court and the Washington County Prosecutor's Office.
4. Additional resources for juvenile operations are the school resource officers in the Special Operations Division (reference can be made to FPD 44.2.4).

B. OPERATIONS

1. Encountering Abuse and Neglect:

- a. Any time an officer encounters a juvenile who has been exposed to neglect or abuse, the officer shall report the neglect and or abuse to the Arkansas State Police Hot Line. Contacting the local Department of Human Services (DHS) office or a local DHS employee does not fulfill the obligation of reporting to the hot line.

2. Taking Juvenile Into Custody - When encountering juveniles, personnel of the Fayetteville Police Department shall ensure the constitutional rights of juveniles are protected in all types of situations [CALEA 44.2.2 c.]. Personnel will follow the following procedures for taking a juvenile into custody. Protecting a juvenile in immediate danger is of the utmost importance. A juvenile may be taken into custody without a warrant for the following:

- a. Pursuant to an order of the court under Arkansas Code § 9-27-301 (Act 273 of 1989); or
- b. By a law enforcement officer without a warrant under circumstances as set forth in Arkansas Rules of Criminal Procedure 4.1 (also see Policy 1.2.1); or
- c. By a law enforcement officer or by a duly authorized representative of the DHS if there are clear, reasonable grounds to conclude that the juvenile is in immediate danger and that removal is necessary to prevent serious harm from his/her surroundings or from illness or injury and if parents, guardians, or others with authority to act are unavailable or have not taken action necessary to protect the juvenile from the danger and there is not time to petition for and obtain an order of the court prior to taking the juvenile into custody. Evidence that the juvenile has already been harmed should be another factor in determining custody [CALEA 44.2.2 b.].
- d. When determining to take a child into protective custody, officers will follow the legal guidelines of Arkansas law. When necessary, officers may seek guidance from a supervisor [CALEA 44.2.2 b.].
- e. When taking a juvenile into custody for protection, the officer is required to report the protective custody situation to the Arkansas State Police Hotline. The officer must arrange for the transfer of custody to the DHS during the hotline call and may also need to coordinate with additional correspondence with the DHS [CALEA 44.2.2 b., d.].
- f. When a juvenile is taken into custody, the officer should always attempt to make contact with the parent(s) or legal guardian and advise them of the situation [CALEA 44.2.2 e.].

3. Alternatives to Arrests of Juveniles for Delinquent Acts – When encountering juvenile offenders, officers shall use the least coercive among reasonable alternatives. Officers making contact with a juvenile who has committed a delinquent act which does not involve a victim, (such as loitering, etc.) or an act whose victim does not wish to press charges may use alternatives to arrest [CALEA 44.2.1 a].
 - a. For minor violations that do not include a victim, officers have the discretion to make an outright release with no further enforcement action [CALEA 44.2.1 a.].
 - b. Alternatives to arrest include: verbal warning, referral to a school resource officer or other juvenile services options, conference with the juvenile's parent(s) or guardian, report and referral to Washington County Prosecutor's Office Juvenile Division, or report and referral to Washington County Juvenile Court [CALEA 44.2.1 d.].
 - c. If alternatives to arrest are employed or referral to another agency for service or diversion is made, it is not necessary to contact any officials with the juvenile court system [CALEA 44.2.1 c.].
4. When encountering juveniles, officers shall determine if a juvenile has engaged in a non-criminal misbehavior status offense. If the offense is non-criminal, officers should employ one of the following non-arrest options [CALEA 44.2.2 a.]:
 - a. Advice to the juvenile on the situation;
 - b. Verbal warning;
 - c. Determination to make a later referral to a school resource officer or juvenile court; or
 - d. A conference with the juvenile's parent or guardian.
5. Investigation of Juvenile Non-Custodial Interview [CALEA 44.2.3]
 - a. An officer can conduct a non-custodial interview with a juvenile if the officer does not have probable cause to believe the juvenile committed the criminal offense, he/she is being questioned about, and the juvenile is not being detained.
 - b. Non-custodial interviews may include, but are not limited to:
 - 1) victim interviews,
 - 2) witness interviews, and
 - 3) field interviews.
 - c. If the officer develops probable cause a juvenile committed a crime, the officer shall follow the protocol for Investigation of Juvenile Offender – Custodial Interrogation in section 9 of this policy (Arkansas Code Annotated 9-27-317).
 - d. Officers shall consider the juvenile's limited knowledge, intelligence, educational background, their understanding of the circumstance, mental capacity, age, or other factors or influences experienced by the juvenile in all non-custodial interviews.
6. Detention of a Juvenile

- a. Officers do not need to notify the parent or guardian of a juvenile if he/she is being detained and being warned or ticketed at the scene of a traffic collision or a traffic stop. If the juvenile is arrested, officers shall follow the protocol for taking a juvenile into custody.
- b. Whenever a law enforcement officer has reasonable cause to believe that any juvenile found at or near the scene of a felony is a potential witness to a criminal offense, he/she may stop that juvenile. The detention shall in all cases be reasonable and shall not exceed fifteen minutes (Arkansas Rules of Criminal Procedure 3.5) In these instances, the officer shall do the following:
 - 1) Identify yourself as an officer;
 - 2) Explain the reason for the stop;
 - 3) Request the juvenile's name and address; and
 - 4) Request information regarding the offense;
- c. A law enforcement officer lawfully present in any place may, in the performance of his/her duties, stop and detain any juvenile who he/she reasonably suspects is committing, has committed, or is about to commit a felony, or a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the juvenile or to determine the lawfulness of his conduct. An officer acting under this rule may require the juvenile to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances. At the end of such period the juvenile detained shall be released without further restraint or arrested and charged with an offense (Arkansas Rules of Criminal Procedure 3.1 and Arkansas Code Annotated 9-27-317).

7. Taking a Juvenile into Custody - With or Without a Warrant

- a. No juvenile shall be incarcerated in the Washington County Jail. An exception to this is afforded to prosecutors under state law, when charging juveniles as adults [CALEA 44.2.2 c.].
- b. The officer should always attempt to make contact with the parent(s) or legal guardian of any juvenile taken into custody and advise them of the situation [CALEA 44.2.2 e.].
- c. When a juvenile is arrested and taken into custody the officer should contact the juvenile intake officer of the Washington County Juvenile Court to discuss terms and conditions of release or detention. Officers will follow the direction of the juvenile intake officer of the Washington County Juvenile Court who will decide if the juvenile is to be released to a parent/guardian or is to be taken to the Washington County Juvenile Detention Center. If the intake officer directs the juvenile to the detention center, the officer will take the juvenile to the detention center without delay, unless the juvenile is in need of emergency medical treatment. If the juvenile is in need of emergency medical treatment, officers will follow FPD 71.1.1. At that point, the juvenile's medical care will receive priority. The intake officer of Washington County Juvenile Court should be notified of the juvenile's condition and assist in

determining how the juvenile is to remain in custody during medical treatment or make additional release determinations [CALEA 44.2.2 d.].

- d. Juvenile requirements are set forth in Arkansas 9-27-320, and requires when a juvenile is arrested for any offense that if committed by an adult would constitute a Class Y, Class A or Class B felony, the juvenile shall be photographed and fingerprinted by the law enforcement agency. These processes will commonly be completed during booking at the Washington County Detention Center [CALEA 1.2.5].
- e. An alternative to taking a juvenile into custody is release of the juvenile through the use of a uniform traffic ticket/citation or an Arkansas Criminal Citation [CALEA 44.2.1 b.]. If the juvenile is to be released on a traffic violation that would go through Fayetteville District Court, it is not necessary to obtain the authorization of the Washington County Juvenile Court Intake Officer. However, if the juvenile is to be released on a criminal violation that would go through Washington County Juvenile Court, the intake officer should be contacted [CALEA 61.1.2 a.b.].
- f. Traffic Offenses - If a juvenile is taken into custody for a warrant on a traffic offense from another jurisdiction, the jurisdiction which issued the warrant should immediately be contacted to determine conditions for release. If the juvenile cannot be immediately released, the juvenile detention center should be contacted [CALEA 44.2.2 d., 61.1.2 a.b.].

8. Taking a Juvenile into Custody - Protective Reasons

- a. An officer may take into custody any "Dependent-neglected juvenile". "Dependent-neglected juvenile" means any juvenile who as a result of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness is at substantial risk of serious harm. When determining to take a child into protective custody, officers will follow the legal guidelines of Arkansas law under Title 12-12-516. When necessary, officers may seek guidance from a supervisor [CALEA 44.2.2 b., 41.2.6].
- b. Any officer taking a juvenile into custody as a "Dependent-neglected juvenile" should immediately contact the Washington County Department of Human Services. Custody of the juvenile will then be transferred to the Washington County Department of Human Services.
- c. Any officer shall take possession of a child who is thirty days old or younger if the child is left with or voluntarily delivered to the Fayetteville Police Department by the child's parent(s) who does not express an intent to return for the child. The law enforcement officer shall take the child into protective custody for seventy-two hours under the Arkansas Child Maltreatment Act. The law enforcement officer shall immediately notify the Division of Children and Family Services of the Department of Human Services.

9. Investigation of Juvenile Offender- Custodial Interrogation [CALEA 44.2.3]

- a. Officers of the Fayetteville Police Department must understand that just like adults, juveniles must be afforded certain constitutional rights in respect to Miranda rights. When a juvenile is taken into custody for a delinquent act or criminal offense, a juvenile may invoke his or her right to speak to a parent or

guardian in addition to standard Miranda. An officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense if the juvenile indicates in any manner that he or she does not wish to be questioned [CALEA 44.2.3 a.].

- b. During a custodial interrogation, the juvenile's parent or guardian must be present in the building; the parent or guardian must be aware the juvenile waived his/her rights; the parent or guardian must have had the chance to speak with the juvenile about the waiver and the parent or guardian shall sign the waiver before an investigator questions a juvenile in custody. Officers should ensure that both the juvenile and the parent or guardian understand the consequences of the waiver or right to counsel. The juvenile and the parent or guardian must be informed of the alleged delinquent act (Arkansas Code Annotated 9-27-366) [CALEA 44.2.3 b.].
- c. When questioning a juvenile in custody for a delinquent act or criminal offense, officers shall provide the juvenile his/her rights using the Juvenile Waiver of Right to Counsel form and answer any questions that may ensure the juvenile understands his/her rights. Officers should refer to Arkansas Statute 9-27-317 that governs Questioning of a Juvenile. If the juvenile wishes to consult counsel before submitting to any questioning, an officer shall not question a juvenile unless counsel is provided and present [CALEA 44.2.3 a.].
- d. No waiver of the right to counsel shall be accepted in any case in which the parent, guardian, or custodian has filed a petition against the juvenile, initiated the filing of a petition against the juvenile, or requested the removal of the juvenile from the home.
- e. The duration of the custodial interrogation, officers or detectives conduct will be reasonable in length. Officers and detectives must understand that the voluntariness of the juvenile's statement will be judged by the totality of the circumstances which may involve a review of several factors: Officers should take into consideration the age, intelligence, educational background, psychological state of the juvenile, mental capacity, including whether the defendant is nervous, physical condition and if an officer with training in youth matters is available or present. Officers should consider the juvenile's prior experience in the criminal system, whether the juvenile is suffering from any injury or pain at the time the statement is given, the time of day, any length of confinement, and whether the juvenile is tired and is desirous of sleep.
- f. During the custodial interrogation, the juvenile should not normally be handcuffed unless they are a danger to themselves or others. Juveniles should not be threatened with bodily harm or made promises of leniency for cooperation.
- g. During custodial interrogation of the juvenile at the Fayetteville Police Department, officers shall not enter the interview room with their firearms but may retain possession of other less-lethal weapons. Firearms shall be locked in departmental provided lock boxes. During the custodial interrogation, there shall be no more than one suspect and two investigators in the interview room. An exception to this rule is that suspects are afforded legal representation, or accompanied by a parent, guardian, or other representative.
- h. Officers/detectives conducting custodial interrogations should ensure that the juvenile is afforded adequate access to restrooms, water, and breaks.

- i. Officers/detectives should ensure the juvenile is familiar with English prior to conducting the custodial interrogation. If the juvenile is not familiar with English and speaks another language, officers/detectives should make arrangements for an interpreter or arrange for an officer to conduct the interrogation in the juvenile's language.
- j. Juveniles who are in the custody of the Department of Human Services, including the Division of Youth Services of the DHS, must be represented by their attorney ad litem before they can be questioned by police.