



# UW-Madison Police Department

## Policy: 44.1

### SUBJECT: JUVENILE OPERATIONS

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#### POLICY:

The University of Wisconsin–Madison Police Department shall provide guidelines for dealing with juveniles consistent with the authority and limits imposed by state and federal laws.

#### DEFINITIONS:

“Child” as defined in Wis. Stat. § 48.02(2) means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, “child” does not include a person who has attained 17 years of age.

“Delinquent” as defined in Wis. Stat. § 938.02(3m) means a juvenile who is 10 years of age or older who has violated any state or federal criminal law, except as provided in §§ 938.17, 938.18, and 938.183, or who has committed contempt of court, as defined in § 785.01(1), as specified in § 938.355(6g).

“Juvenile” according to Wisconsin State Statute 938.02(10m) refers to a person who is less than 18 years of age except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, “juvenile” does not include a person who has obtained 17 years of age.

“Newborn” refers to a child who is reasonably believed to be less than 72 hours old, pursuant to Wis. Stat. § 48.195.

“Non-offender” refers to a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, and for reasons other than legally prohibited conduct of a juvenile. (See Wis. Stat. § 938.13 Jurisdiction over juveniles alleged to be in need of protection or services.) This may include any juvenile brought into a facility for questioning or investigation, but who has not been charged with a crime.

“Safe harbor” refers to a means to safely and anonymously surrender custody of a newborn child to a law enforcement officer, emergency medical technician, or hospital member, as provided in Wis. Stat. § 48.195(2).

“Status offender” refers to a juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if the crime was committed by an adult. Examples of status offenses include truancy, curfew violations, underage possession or use of tobacco products..

#### PROCEDURE:

##### 44.1.1 DEALING WITH JUVENILES

The following describes the Department’s juvenile operations function:

- A. The Department is committed to the development and continuation of programs designed to prevent and control juvenile delinquency. The responsibility for participating in or supporting the Department’s juvenile operations function is shared by all agency components and personnel.

- B. Officers shall handle juveniles consistent with the authority and limits imposed by state and federal laws. Officers dealing with juvenile offenders shall use the least coercive method among reasonable alternatives, consistent with preserving public safety, order, and individual liberty.
- C. The Day Shift Patrol Sergeant shall act as a liaison with other departments and the University community to develop appropriate prevention and control of juvenile crime measures.
- D. When dealing with juvenile offenders, officers shall ensure a juvenile's rights are protected. The juvenile shall receive all constitutional and statutory protections afforded.

#### **44.1.2 REASONABLE ALTERNATIVES**

The following requires that personnel dealing with juveniles use the least coercive among reasonable legal alternatives:

- A. Officers should consider the victim's demands, nature and circumstances of the offense committed, and the age and record of the offender when considering diversionary tactics.
- B. When dealing with juvenile offenders, officers shall consider the following factors when referring juvenile(s) to another agency or service for potential diversion for whom legal proceedings would be inappropriate or ineffective:
  1. The nature of the alleged offense;
  2. The age and background of the alleged offender;
  3. The alleged offender's police records, if any;
  4. The availability of community-based rehabilitation/diversion programs;
  5. Recommendations for diversion made by a complainant or victim.
- C. In the event, officers refer juveniles to a diversion alternative, it shall be documented in an incident report.
- D. In cases where the facts indicate a juvenile has committed a minor offense and counseling and/or parental involvement will address the matter, the officer may issue a written or verbal warning while advising the parents of the situation.
- E. Other informal alternatives, including release to a parent, legal guardian or responsible adult, with no further action, may be used if they are in the best interest of the juvenile, his or her family, and the community.
- F. A juvenile may be issued a uniform traffic citation or an administrative code violation rather than being taken into custody when the officer feels that this action is in the best interest of the juvenile and the community. The following guidelines exist for juvenile citations under Wisconsin State Statute 938.17(2) :
  1. A juvenile must be at least 12 years of age in order to be issued a citation, whether a non-uniform traffic citation or a uniform traffic citation.
  2. Under Wisconsin State Statute 938.20 (2)(c) a juvenile must be at least 15 years or older to be released, unaccompanied and on his or her own recognizance, by the officer. If the juvenile is 14 years of age or younger, he or she can only be released to a responsible adult, preferably a parent. Release will not occur if the officer feels that the juvenile may pose a danger to him- or herself or others.
  3. Juveniles 12 through 15 years of age who receive a citation for a traffic offense shall be under the jurisdiction of the juvenile court. A juvenile court date, rather than standard traffic court date, shall be assigned for these violations. In the bond section of the citation, the officer shall list "must appear."
  4. Juveniles 12 through 15 years of age who commit a traffic crime shall be referred to the appropriate juvenile intake. A juvenile referral form shall be completed. A uniformed traffic citation shall be completed and attached to the referral form. No court date or bond amount is required. A copy of the citation should be attached to the referral.
  5. Juveniles aged 11 and under who commit any violation must be referred to the appropriate juvenile intake office, if appropriate.
  6. Juvenile 12 through 16 years of age who have been cited for an alcohol-related offense or criminal offense shall have a mandatory appearance.
  7. Juveniles 12 through 16 years of age cited for UW code violations shall have a non-mandatory appearance and officer(s) shall follow citation procedures established in Wisconsin State Statute 778.25
  8. Juveniles 16 or 17 years of age shall be treated as adults when receiving uniform traffic citations. The bond and court schedules that apply to adults shall apply to these juveniles. These juveniles may be taken into custody for

- traffic crimes under Section 2 of the Uniform Traffic Bond Schedule. The case should then be referred to the appropriate district attorney's office.
9. Juveniles 17 or older shall be referred to circuit court for alcohol-related and criminal offenses. A court date shall be mandatory.
  10. Juveniles 17 years of age shall be given a non-mandatory court appearance date for UW code violations.
- G. Agency referral of alleged juvenile offenders for formal legal proceedings should be restricted to those cases involving serious criminal conduct or repeated criminal violations. In general, delinquent acts requiring referral to the juvenile justice system include:
1. All delinquent acts that if committed by an adult would be felonies
  2. All delinquent acts involving weapons or that are gang related
  3. All delinquent acts involving aggravated assault and battery
  4. All delinquent acts committed by juveniles under a court order or by those with pending case
  5. All delinquent acts involving controlled substances under Chapter 961
  6. All repeated delinquent acts within the preceding twelve months excluding tobacco violations.
  7. Any other violation an officer feels requires a referral in light of special or unusual circumstances
- H. If the juvenile has committed a misdemeanor violation, the officer may arrest, cite, and release the juvenile offender using the same arrest procedures as for adults.
- I. A recommendation for exclusion from diversion can be made for offenses that, if committed by an adult, would be classified as felonies. Crimes involving weapons, gang-related crimes, acts of violence to another person, crimes committed by juveniles on parole, probation, or with cases pending, and incidents of repeated offenses within the past 12 months should also be excluded.
- J. A juvenile for whom a referral is appropriate shall be referred to the intake office in the county where the incident occurred. A referral to juvenile intake must be received at the intake office within a reasonable period of time after completion of the investigation if the juvenile is not in custody. A referral to the juvenile intake must be received at the intake office by the morning of the next business day if a juvenile is held in custody at the JRC.
- K. If a referral case is sent back to an assigned officer for further investigation, the assigned officer shall complete a follow-up investigation without delay. If the assigned officer is unavailable for the follow-up investigation, the case shall be transferred to another officer to ensure it is completed within 20 days per Wisconsin State Statute 938.25(2)(a).

#### **44.1.3 TAKING JUVENILES INTO CUSTODY**

The following shall govern procedures for taking juveniles into custody:

- A. An officer shall determine whether or not a juvenile is alleged to have engaged in non-criminal misbehavior or in an act deemed delinquent by Wisconsin state statute before deciding to take the juvenile into custody. An officer may only take a juvenile into custody for non-criminal behavior when the officer believes on reasonable grounds that the juvenile is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary.
- B. A juvenile offender, who has been charged with a status offense or a juvenile who is a non-offender, may not be left unattended at any time while in custody.
- C. An officer temporarily detaining a juvenile will notify the Communications Center as soon as possible and will advise them of the juvenile's name and reason for detention. Status offenders and non-offenders may not be placed in any secure room.
- D. All juveniles taken into custody will not be left unattended at any time and must be continuously monitored until their release.
- E. Officers are authorized under Wis. Stat. §§ 48.19 and 938.19 to take a child or juvenile into custody when the following circumstances are present:
  1. An order was issued by a judge based upon the welfare of a child to take him or her into custody.
  2. The officer has reasonable grounds to believe that a capias or a warrant for the child's apprehension has been issued in this state or that the child is a fugitive from justice.

3. The officer has reasonable grounds to believe that a *capias* or warrant for the child's apprehension has been issued in another state.
  4. The officer has reasonable grounds to believe that the child has committed or is committing an act which is a violation of state or federal criminal law.
  5. The officer has reasonable grounds to believe that the child has run away from his or her parents, guardian, or legal or physical custodian.
  6. The officer has reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary.
  7. The officer has reasonable grounds to believe that the child has violated the terms of court-ordered supervision or after-care supervision administered by the department or a county department.
  8. The child has violated the conditions of an order under Wisconsin State Statutes 48.21(4) or the conditions of an order for temporary physical custody by an intake worker.
  9. The child is an expectant mother and there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the child expectant mother is taken into custody.
  10. The officer has reasonable grounds to believe that the child has violated a civil law or a local ordinance punishable by a forfeiture provided that in such cases the child shall be released as soon as reasonably possible under Wisconsin State Statutes 48.20(2) or 938.20(2).
  11. The juvenile has violated a condition of court-ordered supervision, community supervision, or aftercare supervision; a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth; or a condition of the juvenile's participation in the intensive supervision program under s. 938.534.
  12. The juvenile has violated the conditions of an order under s. 938.21 (4) or of an order for temporary physical custody issued by an intake worker.
  13. The juvenile has violated a civil law or a local ordinance punishable by a forfeiture, except that in that case the juvenile shall be released immediately under s. 938.20 (2) (ag) or as soon as reasonably possible under s. 938.20 (2) (b) to (g).
  14. The officer has reasonable grounds to believe that the juvenile is absent from school without an acceptable excuse under Wisconsin State Statute 118.15.
- F. When an officer takes a juvenile into physical custody under the circumstances above, the officer taking the juvenile into custody shall immediately attempt to notify the parent, guardian, legal custodian, and Native American custodian of the juvenile by the most practical means. The person taking the juvenile into custody shall continue such attempt until the parent, guardian, legal custodian, or Native American custodian of the juvenile are notified, or the juvenile is delivered to an intake worker, whichever occurs first.
- G. When a juvenile is taken into custody, a search shall be conducted in the same manner as with adults. Juveniles will be handcuffed in instances where the officer believes the juvenile may attempt to escape from custody or is a risk for the safety of the officer, him- or herself, or anyone else.
- H. Officers may encounter juveniles who are in need of protection from their surroundings or are suffering from illnesses or injury and not receiving proper care. If an officer takes custody of a juvenile under these circumstances, the officer shall, as soon as practical, contact the appropriate child protection unit. If a juvenile is incapacitated by alcohol or drugs, mentally ill, or developmentally disabled to the point that he or she represents a danger to him- or herself or others, officers shall take the juvenile to an emergency room for evaluation. If the problem is related to mental illness or developmental disability, the contracted Dane County mental health provider shall assist with an assessment of the juvenile and appropriation of the affidavit of emergency detention and the officer shall proceed with emergency detention guidelines under department directives and Wisconsin Statute 51.15.
- I. If the juvenile is not going to be transported to the Dane County Juvenile Reception Center and the parent(s) or guardian(s) cannot be notified, the officer shall contact Child Protective Services.
- J. If the juvenile is to be charged for an offense:
1. Advise the juvenile of the reason for the arrest or temporary detention, and the procedures of the Department and Dane County Juvenile Court concerning juveniles.
  2. Officers will explain the consequences of the arrest.

- K. Upon taking a juvenile into custody, officers should, without undue delay, deliver the juvenile to the individual or agency having ultimate authority of the juvenile under given circumstances. Once in custody, the juvenile shall be brought to the department or intake facility without undue delay unless he or she is in need of emergency medical treatment. The following procedures apply:
1. Adult and juvenile detainees will not be transported in the same vehicle.
  2. Officers transporting juveniles will advise the Communications Center of destination and starting/ending mileage.
  3. Juveniles will remain out of the sight and hearing range of adult detainees.
  4. Juveniles must be accused of a criminal act in order to be placed in a secure area, and if they are placed within a secure area, they must be released or transported to a juvenile detention facility within six hours of being secured.
- L. Wisconsin State Statute 48.195 was created to protect the wellbeing of newborn children and to create a “safe harbor” for relinquishing custody of newborns. If a person surrenders a newborn child to any department member, the officer assigned should consult Wisconsin State Statute 48.195 and follow all statutory requirements in addition to:
1. Attempt to obtain as much voluntary information as possible. The person legitimately relinquishing custody is not required to provide any information.
  2. Provide the person with the toll-free maternal and child health phone number 1-800-722-2295. The person is not required to take the number or call.
  3. Attend to any immediate needs of the child or seek medical attention if needed.
  4. Notify the Manager on Call and Dane County Social Services.
  5. Complete an incident report prior to ending tour of duty. The report should include notification of the Dane County Social Services and the status of the child.
  6. Wisconsin State Statute 48.195(1) requires, within five days, the law enforcement officer, emergency medical technician, or hospital staff member who takes child into custody to file a birth certificate under Wisconsin State Statute 69.14(3). The officer assigned shall seek assistance from DCSS or hospital staff in meeting this requirement.

#### **44.1.4 CUSTODIAL INTERROGATION(S)**

The following governs procedures for the custodial interrogation of juveniles:

- A. Any custodial interrogation of a juvenile shall be recorded by means of video and audio. A juvenile who is in custody and will be interrogated should be brought to the Department prior to interrogation to best facilitate the recording requirement. If it is not feasible to bring the juvenile to the Department, the officer shall advise Dispatch that they are in need of an officer with a functioning body worn camera and/or squad with video recording capabilities.
- B. Custodial interrogations of juveniles shall be conducted in accordance with Wisconsin State Statute 938.195 which requires the following:
- 1) All custodial interrogations of juveniles that are conducted at the department shall be audio and video recorded by the officer(s) unless one or more of the following conditions under Wis. Stat. § 938.31(3)(c) apply:
    - a. The juvenile refused to respond or cooperate in the custodial interrogation if an audio or audio and visual recording was made of the interrogation so long as the officer(s) made a contemporaneous audio or audio and visual recording or written record of the juvenile's refusal.
    - b. The statement was made in response to a question asked as part of the routine processing after the juvenile was taken into custody.
    - c. The officer(s) conducting the interrogation in good faith failed to make an audio or audio and visual recording of the interrogation because the recording equipment did not function, the officer(s) inadvertently failed to operate the equipment properly, or, without the officer's knowledge, the equipment malfunctioned or stopped operating. Such conditions will be documented in the incident report.
    - d. The statement was made spontaneously and not in response to a question by the officer(s).
    - e. Exigent public safety circumstances existed that prevented the officer(s) from video and audio recording the interrogation.
  - 1) Custodial interrogations that are conducted outside of the department, if feasible, should be audio and video recorded unless the following conditions under Wis. Stat. § 938.31(3)(c) apply (listed above.)

- C. When conducting a custodial interrogation, the officer shall advise the juvenile of his or her rights. Juveniles may waive their Miranda rights, and may do so without a parent being present, however reviewing courts will closely examine the facts and circumstances of the waiver to ensure it was voluntary. Many factors will be considered, including the juvenile's age, education, intelligence, emotional characteristics, experience with criminal justice system, time of day, and the presence of a parent or other adult concerned about the juvenile's welfare. Officers must take steps to ensure the juvenile understands his or her rights and the gravity of the situation. The officer must demonstrate that the juvenile has the mental capacity to comprehend the significance of Miranda and the rights waiver.
- D. If an investigation is not of an emergency nature, a reasonable effort should be made to notify the parent or legal guardian of a juvenile who has been taken into custody and is a suspect in a criminal matter. If the parent or guardian cannot be reached, the officer may advise the juvenile of his or her rights and proceed with the investigation. If a parent is contacted, they may desire or demand to be present during the juvenile interrogation. Officers may have the discretion to exclude the parents from an interview if their presence would hinder the investigation.
- E. When questioning a juvenile, officers shall not prolong the interview beyond what is needed in order to complete the investigation. The interview should be handled by one officer if at all possible so as to lessen the chance of a juvenile feeling intimidated or pressured.

#### **44.1.3 NON-CUSTODIAL INTERVIEWS**

- A. Officer(s) conducting a non-custodial interview of juvenile(s) shall record the interview at a minimum by means of audio recording.
- B. Interviews of juveniles should be done with consideration of the juvenile's age, mental state, or other factors or influences experienced by the juvenile.

#### **44.1.6 COMMUNITY BASED YOUTH PROGRAMS**

The following governs the participation in community recreational youth programs:

- A. The Department actively promotes positive interaction between youth and its employees. On-going recreational programs should be established to facilitate this positive interaction.
- B. The Infrastructure Security Sergeant or designee participates in and/or organizes community recreational youth programs as part of his or her job function.

#### **44.1.7 EXTERNAL REVIEW**

The following outlines the cooperative external review of juvenile justice policies and procedures:

- A. The Department shall encourage review and comment by other elements of the juvenile justice system in the development and modification of agency policies and procedures pertaining to juveniles. Allowing juvenile justice representatives to participate in the review process helps foster a cooperative working relationship between entities and provides an opportunity for departmental personnel to receive valuable input regarding this important function.
- B. The Day Shift Patrol Sergeant shall be responsible for contacting area agencies at least once during an assessment cycle for the purpose of eliciting juvenile justice-related feedback.

#### **44.1.8 INTERNAL REVIEW**

The following outlines procedures for internal review of juvenile enforcement and juvenile crime and delinquency prevention programs:

- A. The Field Services Captain or designee shall review and prepare a written evaluation of all enforcement and prevention programs relating to juveniles, at a minimum, annually. The report shall be submitted to the Chief of Police for approval.

- B. Written evaluation of juvenile prevention and enforcement programs shall consider both the quantitative and qualitative elements of each program offered by the Department. Based upon the evaluation, a decision shall be made regarding whether or not a specific program should function as is, be modified, or be discontinued.