

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



202.747.1904 direct
ddouglass@sheppardmullin.com

July 24, 2018

File Number: 37PA-191555

Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans. LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor (“OCDM”) has reviewed and provided comments on the amended Chapter 44.1.4 – Temporary Custody of Juveniles. The OCDM has no objection to the policy as amended.

We believe that the amended Chapter 44.1.4 – Temporary Custody of Juveniles, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD’s obligation to review this policy after a year of implementation to ensure it “provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law.” Consent Decree at ¶ 8.

We appreciate your team’s effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
2099 PENNSYLVANIA AVE., N.W., SUITE 100
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)
SUNNI LEBEOUF, CITY ATTORNEY (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 44.1.4

TITLE: TEMPORARY CUSTODY OF JUVENILES

EFFECTIVE:

REVISED: (Conversion Replaces P/PR 324)

PURPOSE

This Chapter provides guidelines and requirements consistent with the Juvenile Justice and Delinquency Prevention Act for juvenile offenders taken into custody by members of the New Orleans Police Department (42 USC § 5633). Respect for the rights of juveniles who are the subject of police investigations requires special procedures to ensure that any evidence gathered is reliable and legally obtained.

DEFINITIONS

Caretaker—Any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster home parent, an employee of a public or private day care center, or other person providing a residence for a child (Louisiana Children's Code Art. 603).

Curfew—The municipal ordinance restricting persons less than 17 years of age, who are not fully emancipated pursuant to Louisiana civil law, from being in a public place or certain establishments during the hours specified in the ordinance.

Delinquent Act—An act committed by a child of ten years of age or older which if committed by an adult is designated an offense under the statutes or ordinances of this state, or of another state if the offense occurred there, or under federal law, except traffic violations. (See: CHC Art. 804). "Delinquent act" shall not include a violation of R.S. 14:82, 83.3, 83.4, 89, or 89.2 for a child who, during the time of the alleged commission of the offense, was a victim of trafficking of children for sexual purposes pursuant to R.S. 14:46.3(E)).

In Loco Parentis—A legal doctrine describing a relationship similar to that of a parent to a child. It refers to an individual who assumes parental status and responsibilities for another individual, usually a young person, without formally adopting that person. For example, legal guardians are said to stand in loco parentis with respect to their wards. The most common usage of in loco parentis relates to teachers and students.

Juvenile—A person under the age of 18 years who has not been judicially emancipated or emancipated by marriage as provided by law.

Juvenile Offender—A person under the age of 18 years, who is alleged to have committed an offense that would subject an adult to arrest (a non-status offense), i.e., a Delinquent Act, or who is alleged to have illegal possession of a handgun by a juvenile (R.S. 14:95.8), to have

sexted (R.S. 14:81.1.1A (2)), or have committed a direct contempt of court.

Juvenile Non-Offender—An abused, neglected, or dependent juvenile who may legally be held for his/her own safety or welfare.

Non-Secure Custody—The status of a juvenile who is in the presence of an officer or other custodial employee at all times, and who is under direct personal supervision through visual monitoring and audio two-way communication, but who is not restrained or placed in a locked room. Direct visual monitoring may occur through a transparent barrier as long as two-way communication is still possible. Juveniles in non-secure custody may be handcuffed but not to a stationary or secure object.

Secure Custody—The status of a juvenile offender who is held in a locked room, set of rooms or a cell, or being cuffed to a stationary object.

Sight and Sound Separation—Located or arranged to prevent physical, visual, or auditory contact.

Status Offender—A juvenile suspected of committing a status offense.

Status Offense—Those acts that would not be a violation if not for the age of the offender (e.g., running away, underage drinking, curfew violation, truancy).

Truancy—The repeated or habitual unauthorized absence or tardiness from school by a child who is subject to the compulsory attendance laws of this state (Louisiana Children's Code Art. 728).

Ungovernable— A child's behavior where he/she habitually disregards the lawful and reasonable demands of his/her caretaker(s), and the child is beyond their control (Louisiana Children's Code Art. 728).

POLICY STATEMENT

1. NOPD shall investigate any incident involving a juvenile as defined in this Chapter, whether the juvenile is the victim of a crime or the perpetrator of a delinquent act.
2. NOPD is committed to releasing juveniles offenders from temporary custody as soon as reasonably practicable and keeping them safe while they are in temporary custody. (See also: **Chapter 44.3 – Juvenile Warning Notice**).
3. All officers shall utilize the least coercive action among reasonable alternatives, consistent with NOPD regulations, when dealing with juvenile offenders. (See also: **Chapter 44.3 – Juvenile Warning Notice**).
4. Any juvenile offender taken into custody shall be immediately transported directly to the Juvenile Intake Unit for processing, unless promptly released to the juvenile's caretaker, or taken to a medical or mental health treatment facility.
5. When releasing a juvenile offender from its custody, NOPD shall only release a juvenile to the Juvenile Intake Unit, medical or mental health treatment facility, or the juvenile's caretaker, as defined above.
6. NOPD is committed to the use of standardized and valid risk assessment tools, such as the New Orleans Juvenile Detention Alternatives Initiative's "Risk Assessment Instrument" (RAI) to determine whether a juvenile offender should be released or held in custody after being apprehended by police.

7. The NOPD Juvenile Intake Unit will not accept or process ANY child under the age of 10 years charged with ANY felony or misdemeanor offense. Those who have not reached the age of 10 years are exempt from criminal responsibility (see: RS 14:13 – Culpability and **Chapter 42.19 – Child Abuse**).

NON-DETAINABLE JUVENILES

8. If a juvenile offender exhibits any of the following conditions, members shall not hold the juvenile in custody at the Juvenile Intake Unit unless or until they have been evaluated by a qualified medical and/or mental health professional (see: **Chapter 44.2 – Juveniles**):
 - (a) Unconsciousness;
 - (b) Serious injury;
 - (c) A known suicide risk or obviously severely emotionally disturbed;
 - (d) Intoxication; or
 - (e) Extremely violent or continuously violent behavior.
9. In-custody juvenile offenders who exhibit the above-listed conditions shall be immediately brought to an appropriate medical facility for treatment and/or evaluation. Depending on the **seriousness of the condition/injuries/illness, juveniles can be transported in a police vehicle or ambulance**. However, the officer who has custody of the juvenile offender shall accompany or follow the juvenile to the medical facility and remain with the juvenile until they are treated and released, or the officer is relieved by their supervisor (see: **Chapter 71.1 – Prisoner Transportation and Guarding**.)
10. If the officer taking custody of the juvenile believes the juvenile may be a suicide risk, the juvenile shall remain under constant supervision until evaluation, release, or a transfer is completed.
11. In the event of an emergency medical situation for a juvenile in NOPD custody, the involved NOPD officer on the scene shall summon an ambulance immediately. NOPD shall notify the juvenile's caretaker as soon as possible in the event that a juvenile requires any medical attention.

CUSTODY OF JUVENILES - TRANSPORT

12. Officers shall transport juveniles consistent with the requirements of **Chapter 71.1 - Prisoner Transportation and Guarding, Chapter 44.2 – Juveniles** and this Chapter. Whenever an NOPD officer transports any juvenile, the officer shall announce to dispatch the starting time, odometer mileage, and location before beginning the transportation, and the officer shall announce to dispatch the ending time, odometer mileage, and location for each destination. Transporting officers shall proceed directly to the destination.

CUSTODY OF JUVENILE NON-OFFENDERS

13. Juvenile non-offenders taken into protective custody in compliance with **Chapter 42.19 – Child Abuse** should, absent extenuating circumstances and only with permission of the member's supervisor, not be held at an NOPD facility. Specific circumstances must be thoroughly investigated. With the exception of a subject being from out of state, Orleans Parish DCFS (Social Services) must be called to the scene to take custody of the juvenile subject. If DCFS recommends the juvenile subject needs to be housed at Youth Study Center (YSC) until a parent or caretaker arrives, the Juvenile Section will

make the necessary arraignments with the Youth Study Center to temporarily house the subject. If the subject is from out of state, the subject will be held for Court.

14. Custodial arrangements shall be made for juvenile non-offenders as soon as reasonably possible. Parents and caretakers should be directed to check with the NOPD Juvenile Intake.
15. **Juvenile non-offenders may not be held in secure custody.**

WARNING OF JUVENILE STATUS OFFENDERS

16. Upon an officer's finding of probable cause, a juvenile shall not be taken into custody for a status offense, and instead shall be issued a Juvenile Warning Notice and released as appropriate, including to his school, parent, guardian, or to the appropriate intervention center. (See: **Chapter 44.3 – Juvenile Warning Notice and Summons**).

CUSTODY OF JUVENILE OFFENDERS OTHER THAN FOR A JUVENILE WARNING NOTICE OR JUVENILE SUMMONS

17. Juvenile offenders may be taken into custody under the following circumstances (Ch. C. 812):
 - (a) When the juvenile is the subject of an order of the court requiring detention; or
 - (b) When an officer has probable cause to believe that a juvenile qualifies as a juvenile offender and has committed a felony-grade offense or a state misdemeanor and the arrest would comply with **Chapter 44.3 – Juvenile Warning Notice and Summons**.
18. Officers shall not consider of any of the following characteristics of the juvenile and his/her family in discretionary decision-making:
 - (a) Race and ethnicity;
 - (b) Gender, gender identity, and sexual orientation; or
 - (c) Economic status (absent a clear affirmative duty to act or report instances of neglect).
19. Juvenile offenders should be held in non-secure custody unless another form of custody is authorized by this Chapter or is necessary due to exigent circumstances.
20. An officer who takes a juvenile offender into custody other than for a Juvenile Warning Notice or Juvenile Summons (See also: **Chapter 44.3 – Juvenile Warning Notice and Summons**) shall immediately submit a sworn written statement (GIST) justifying the custody to the juvenile court. It is first submitted to the officer's immediate supervisor for form and content concurrence and approval. It is then submitted to Juvenile Intake Unit at the time of the juvenile's intake.
21. Juvenile Intake members should take immediate steps to advise the juvenile's attorney or an informed caretaker or other adult interested the juvenile's welfare that the juvenile is in custody and the location of the juvenile (Ch. C. 813; Ch. C. 814).
22. An officer who takes a juvenile offender into custody for a felony or state misdemeanor offense shall promptly prepare a report of the custody (EPR) and submit the report to the Juvenile Intake Unit and the District Attorney or the officer designated by the court to receive such reports. The report should contain the following (Ch. C. 814):
 - (a) The name, address, date of birth, sex and race of the juvenile.
 - (b) The name and address of the parents, caretaker, or spouse, if any, of the

- juvenile.
- (c) A plain and concise statement of the facts and circumstances of the officer's reasons for taking the juvenile into custody.
 - (d) A plain and concise statement of facts and circumstances showing probable cause that the juvenile committed a delinquent act.
 - (e) A statement describing the disposition of the juvenile, such as indicating whether the juvenile was released to a parent or caretaker, escorted to a juvenile detention facility (YSC), or placed in a shelter care facility.
23. Persons, regardless of age, who are arrested **solely** on a juvenile court warrant shall never be transported to the Orleans Parish Prison for a "courtesy hold" and shall never be held in custody at the Orleans Parish Prison. Such persons are subject to the exclusive jurisdiction of the juvenile court and are juveniles under the law.
24. If there is any doubt about whether a person who is taken into custody is a juvenile or adult, NOPD shall undertake all reasonable efforts to confirm the person's age and shall never transport a person to Orleans Parish Prison where there is any credible reason to believe that the person is a juvenile.

ADVISEMENTS OF MIRANDA RIGHTS

25. In any case where a juvenile is taken into custody, the officer should advise the juvenile of his/her constitutional (see: **Chapter 1.9.1 – Miranda Rights; Chapter 44.2 – Juveniles**).

NO-CONTACT REQUIREMENTS

26. There shall be sight and sound separation between each juvenile and adults in custody (42 USC § 5633). There should also be sight and sound separation between non-offenders and juvenile and status offenders.
27. If inadvertent or accidental contact does occur or when separation is not possible, reasonable efforts shall be taken to minimize contact (e.g., when the juvenile is being fingerprinted or photographed). In situations where brief or accidental contact may occur, a member of the New Orleans Police Department shall maintain a constant, side-by-side presence with the juvenile or the adult to prevent sustained contact.

TEMPORARY CUSTODY REQUIREMENTS

28. A Juvenile Intake Unit member of the same gender as the juvenile shall supervise the personal hygiene activities and care, such as changing clothes or using the restroom.
29. A juvenile offender should remain in the temporary custody of the NOPD no longer than four hours. If the parent or caretaker makes notification of a protracted delay, DCFCS will be notified by Juvenile Intake members and arraignments will be made with the YSC for bedding and lodging of the juvenile.
30. Visual checks of juveniles in custody and significant incidents or activities involving the juveniles in custody shall be noted on the juvenile intake log.
31. There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware. A Juvenile Intake Unit member should inform a juvenile under his/her care that the juvenile will be monitored at all times, except when using the toilet. This does not apply to surreptitious and legally obtained recorded interrogations.

32. Juveniles shall have reasonable access to toilets and wash basins.
33. Juveniles shall have reasonable access to a drinking fountain or water and to food, if the juvenile is in need of nourishment.
34. Juveniles shall have reasonable opportunities to stand and stretch, particularly if handcuffed or restrained in any way.
35. Juveniles shall have reasonable access to a telephone.
36. Juveniles should have privacy during visits with caretaker or lawyer.
37. Blankets and clothing should be provided as reasonably necessary to ensure the comfort of a juvenile. For example, clothing should be provided if the juvenile's clothing is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody.
38. Adequate shelter, heat, light and ventilation should be provided without compromising security or enabling escape.
39. Juveniles shall have adequate furnishings, including suitable chairs or benches.
40. No form of discipline may be administered to any juvenile. Juveniles shall not be subjected to corporal or unusual punishment, humiliation, or mental abuse.

USE OF RESTRAINT DEVICES

41. The use of restraints, other than handcuffs, is an extreme measure and generally should not be used for juveniles in temporary custody at the New Orleans Police Department, unless the juvenile presents a heightened risk, and it is only a temporary measure pending transportation to another facility or until other custodial arrangements can be made.
42. Restraints, other than handcuffs, shall only be used after less restrictive measures have failed and with the approval of the supervisor. Any restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others.
43. Juveniles who are handcuffed and/or restrained must be isolated to protect them from abuse and shall be directly observed by an NOPD officer at least once every 15 minutes to ensure the safety and well-being of the juvenile.
44. When handcuffing and/or restraining is permitted by this Chapter, it must be done in accordance with **Chapter 1.3.1.1 – Handcuffing and Restraint Devices**.

PERSONAL PROPERTY OF JUVENILE OFFENDERS

45. The officer taking custody of a juvenile at the Juvenile Intake Unit shall ensure a thorough search of the juvenile's property is made and all property is removed from the juvenile, especially those items that could compromise safety, such as pens, pencils and belts.
46. The personal property of a juvenile should be placed in a property bag. The property

shall be inventoried in the juvenile's presence and sealed into the bag. The property should be kept in a monitored or secure location until the juvenile is released from the custody of the New Orleans Police Department.

SECURE CUSTODY

47. NOPD shall not use secure custody for children under 10 years of age.
48. Members of this department shall not use secure custody for convenience when non-secure custody is, or becomes, a reasonable option.
49. NOPD may hold a juvenile in secure custody if necessary for safety and/or to prevent flight, in consideration of the following criteria:
 - (a) The juvenile's physical and emotional age, maturity, and history of delinquency;
 - (b) The juvenile's behavior; and
 - (c) Availability of staff to adequately supervise the juvenile.
50. Officers shall follow Juvenile Intake facility procedures for inspection of any secure custody locations.

CONTACTING JUVENILE SUSPECTS

51. Officers may not interview or interrogate a juvenile suspect except in the presence of the parent, caretaker or attorney (see: **Chapter 42.11 – Custodial Interrogations; Chapter 44.2 – Juveniles**).
52. As long as the juvenile is in NOPD custody (booking & processing), Juvenile Intake remains the main point of contact for parents and caretakers. Once the juvenile is remanded, the juvenile becomes the responsibility of Orleans Parish Juvenile Court to disseminate information on status, cases and court dates.

RESTRICTION ON FINGERPRINTING AND PHOTOGRAPHING

53. A juvenile offender may be photographed or fingerprinted in connection with being taken into custody. The fingerprints and photographs of juveniles will be maintained and indexed separately from those of adults (Ch. C. 818).

STRIP SEARCHES AND BODY CAVITY SEARCHES OF JUVENILES

54. All searches of a juvenile offender shall conform to the requirements of **Chapter 1.2.4 – Search and Seizure**. A juvenile shall only be subjected to a strip search or physical body cavity search (any search that would reveal his/her underclothing, breasts, buttocks, anus, or vagina) upon the authority of a search warrant requested by the arresting officer. A copy of any search warrant and the result of the strip search or physical body cavity search shall be included with the related reports and made available, upon request, to the juvenile's caretaker or attorney (see: **Chapter 1.2.4 – Search and Seizure**).
55. A body cavity search **shall only** be conducted at a medical facility by authorized medical personnel.
56. Completed documentation should be placed in the juvenile's file. A copy of the search warrant shall be retained and made available to the juvenile or other authorized representative upon request.

57. All contraband and weapons should be processed in accordance with the department's current evidence procedures.
58. The Juvenile Intake Unit member requesting the search shall complete an incident or supplemental report.

INSTRUCTIONS - JUVENILE ARRESTS

59. When probable cause for an arrest of a juvenile is established, the investigating officer shall make the arrest within the guidelines of **Chapter 44.3 – Juvenile Warning Notice and Summons**.
60. If the juvenile cannot be located, the officer shall obtain an arrest warrant in accordance with current procedure. (See also: **Chapter 1.9.2 – Arrest Warrants and Wanted Subjects**).
61. Juvenile arrest warrants may be signed by a CDC - Magistrate Judge or a Juvenile Court Judge. **Officers shall make every effort to obtain a Juvenile Judge's signature on a juvenile arrest warrant before resorting to a Magistrate Judge.**
62. In cases where an arrest warrant is necessary, the investigating officer's unit shall be responsible for forwarding a copy of the completed and approved incident report and warrant to the NOPD – NCIC Unit and the Juvenile Intake Unit.
63. Custodial arrests of a juvenile offender shall be made in all felony cases, as well as misdemeanor cases within the guidelines of **Chapter 44.3 – Juvenile Warning Notice and Summons**. **Under no circumstance shall an arrested juvenile offender be transported to a district station without prior approval of the officer's supervisor and notification of the Juvenile Intake Unit.** (See: **Chapter 44.2 – Juveniles**).
64. Should transport be delayed due to investigative reasons, the arresting/investigating officer shall notify his/her supervisor.
65. The Juvenile Intake Unit shall inform the arrested juvenile offender's parent or caretaker of the facts of the investigation, the location where the juvenile offender is being held, and the officer conducting the investigation if the is in police custody but not at the Juvenile Intake Unit.
66. Basic questions may be asked relative to the juvenile offender's name, address, age, date of birth, identity of a caretaker, etc., without the presence of a caretaker or attorney.
67. If the offense is one in which the juvenile offender can be charged as an adult, he/she will still be processed as a juvenile offender according to this Chapter.
68. Photographs of arrested juvenile offenders in detention shall be taken for:
 - (a) All felony arrests;
 - (b) All misdemeanor arrests involving weapons;
 - (c) All arrests involving drugs; and
 - (d) Orders of the Juvenile Court.

TRAFFIC-RELATED ARRESTS INVOLVING JUVENILES

69. If a juvenile is arrested for violation of R.S. 14 article 98, relative to driving while intoxicated, the juvenile offender shall be physically arrested and transported directly to the hospital prior to transport to the Juvenile Intake Unit.

70. All juvenile traffic violations and subsequent citations shall be handled in the same manner as adult violations, including the offenses that require custodial arrest and transport to Juvenile Intake (see: **Chapter 61.3 – Traffic Citations**); however, NOPD members must comply with this Chapter and **Chapter 44.2 – Juveniles** for any offenses that require custodial arrest and transport to Juvenile Intake.
71. The original copies of all citations issued to juveniles shall be turned in at the officer's place of assignment and forwarded to the Ticket Processor unless a custodial arrest was made, in which case the citation shall be turned in to Juvenile Intake with any related arrest documentation.

ARRESTS INVOLVING JUVENILES WITH ELECTRONIC MONITORING

72. Officers arresting a juvenile offender under a signal 21-E (Electronic Monitor Violation) shall transport the juvenile offender to the Juvenile Intake Unit for processing.
73. The incident shall be documented in an incident report (EPR) as an arrest for a Violation of Electronic Monitoring (RS 14:000).

TRUANCY ARRESTS

74. Officers detaining truant juveniles shall follow the guidelines of **Chapter 44.3 – Juvenile Warning Notice and Summons**.

CURFEW ARRESTS

75. If an officer suspects a violation of the city's curfew ordinance, the officer shall follow the guidelines of **Chapter 44.3 - Juvenile Warning Notice and Summons**.

INCIDENT REPORTS

76. Arresting officers shall complete his/her original incident report, if required, and supply a copy of the report to the Juvenile Intake Unit prior to transferring custody of the arrested juvenile offender. All juvenile reports, including incomplete reports, shall contain a Gist page covering the probable cause for arrest. When the complexity of a particular investigation renders the immediate generation of an incident report inappropriate, (i.e. Homicide or Rape cases) the on-duty Juvenile Intake Unit supervisor shall be consulted. After reviewing the circumstances, the Juvenile Intake Unit's supervisor may grant the investigating officer permission to forward a completed and approved copy of the offense report to the Juvenile Intake Unit at a later date.
77. In all cases, parents and caretakers are provided with a brief explanation surrounding a juvenile offender's arrest by Juvenile Intake staff. In those cases involving felonies or capital offenses, the parents and caretakers of juvenile offender arrested subjects are normally briefed on the details by the case investigator prior to the juvenile offender's arrest.
78. In certain misdemeanor offenses covered in **Chapter 44.3 - Juvenile Warning Notice and Summons**, no EPR is required. But, if required, the original offense report may consist of a single face sheet and a gist page, provided the information required for prosecutorial review and acceptance is contained in the document. Single face sheet and gist page reports shall only be generated with the approval of the on duty Juvenile Intake Unit supervisor.
79. **All required offense reports (EPR) submitted to the Juvenile Intake Unit, in**

conjunction with a custodial arrest, shall be reviewed for form and content and approved by the investigating officer's supervisor prior to the Juvenile Intake Unit accepting custody of the offender unless the Juvenile Intake Unit supervisor grants and documents an exception.

80. It is the responsibility of the arresting officer's supervisor to forward a copy of any approved supplemental report involving the custodial arrest of a juvenile offender to the Juvenile Intake Unit as soon as possible after supervisory approval. This can be done by informing the Juvenile Intake supervisor of the supplemental by an email with a delivery and read receipt.

JUVENILE WARNING NOTICE

81. When utilizing a Juvenile Warning Notice, the investigating officer shall follow the guidelines of **Chapter 44.3 - Juvenile Warning Notice and Summons.**