

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



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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 44.2 - Juveniles. The OCDM has no objection to the policy as amended.

We believe that the amended Chapter 44.2 - 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*
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CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)
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NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 44.2

TITLE: JUVENILES

EFFECTIVE:

REVISED: (Conversion Replaces P/PR490)

PURPOSE

The purpose of this Chapter is to establish guidelines for incidents where police officers are handling situations involving juveniles. These situations include juveniles as victims or suspects, ill or injured juveniles, detention hearings relative to juvenile cases, situations where individuals who are adult offenders attempt to escape the jurisdiction of the criminal court by posing as juvenile offenders, and those arrested juvenile offenders attempting to escape the jurisdiction of the juvenile court by posing as adult offenders.

POLICY STATEMENT

1. When an officer can lawfully take a juvenile into custody, based upon the officer's finding of probable cause or pursuant to an order of the court, the officer should, whenever possible, rely on the least restrictive and most reasonable alternative consistent with preserving public safety, order, and individual liberty. See **Chapter 44.3 – Juvenile Warning Notice and Summons**.
2. 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**).
3. Investigating officers and supervisors shall properly document the incident involving a child under the age of 10 as the perpetrator and consult the Orleans Parish District Attorney's Office for further action.

DEFINITIONS

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)).

Habitual—A runaway or truant shall be considered habitual when the condition continues to exist after all reasonable efforts by any school personnel, truancy officer, or other law

enforcement personnel have failed to correct the condition after the fifth unexcused absence or fifth unexcused occurrence of being runaway or tardy within a 12-week period.

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.

Runaway—The continued absence of the child from the home of his caretaker without the caretaker's consent (CCH Art. 728).

Secure Detention Facility—A facility that provides a physically restricting environment for the temporary care of children in accordance with the Minimum Standards for Licensure of the Louisiana Detention Association (CCH Art. 116).

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).

Truant—The repeated or habitual unauthorized absence from school by a child who is subject to the compulsory attendance laws of this state. Municipal ordinance further defines truant as any child, below the age of seventeen, who remains in any public place or establishment during the truancy hours, as defined by city ordinance, on any day which said child is required to be in school (Article 728 of the Louisiana Children's Code).

Incarcerated Juvenile Offender—Any arrested juvenile being detained after the initial investigation and processing, who has not been released to the custody of a parent or guardian, pending further Juvenile Court action.

Detention Hearing—A legal proceeding held in a section of Juvenile Court, presided over by a Juvenile Court Judge, where testimony pertaining to probable cause is given by an arresting officer or officer obtaining an arrest warrant for an arrested juvenile offender or where a determination will be made to release the incarcerated juvenile to the custody of his/her parent or guardian or continue incarceration pending further action by the Juvenile Court.

JUVENILES AS VICTIMS RUNAWAY / MISSING CLASSIFICATION

4. The District where a missing juvenile is reported shall be responsible for the investigation of all such cases. The district platoon supervisor shall be consulted on all cases of missing juveniles and shall be responsible for classification of the juvenile as missing, lost, or runaway. The Juvenile Intake platoon commander can be consulted for assistance, if requested, but members of the Juvenile Intake Unit do not make scenes. (See also: **Chapter 41.23 – Missing Person Reporting**).

RUNAWAY JUVENILES

5. A juvenile can be “missing” unless other information is available to the officer to indicate the juvenile ran away. The juvenile shall be presumed to be runaway if:
 - (a) The individual is under the age of 18;
 - (b) The juvenile has a prior history as a habitual runaway;
 - (c) There is evidence of a planned or intentional departure; and/or
 - (d) Information provided by the parent/guardian is sufficient to determine the juvenile has left on his/her own accord and is not the victim of foul play.

6. When a juvenile has been classified as a runaway, the initial investigation, report and bulletin shall be the responsibility of the district officer. The reporting officer shall use the **Form 7 – Affidavit to Missing Person Report** and indicate in all blanks where “Missing Person” is used that it is a “**Runaway Juvenile**.” On the narrative page of the incident report, the investigating officer shall have the reporting person print his/her name and affix his/her signature to indicate he/she is reporting the juvenile missing.
7. If a person refuses to sign, the officer shall note that fact in the narrative and process the report.
8. Bulletins shall include pertinent information, including the name, address and telephone number of a parent or guardian. The NCIC Unit shall enter the runaway information into NCIC upon receipt of the bulletin.
9. Investigating officers shall send a bulletin on return of missing or runaway juvenile who are delivered to the Juvenile Intake Unit for processing.
10. Officers encountering juveniles where it is suspected that the juvenile is a runaway shall make every effort to verify his/her suspicion. Once it is determined the juvenile is in fact a runaway, the investigating officer shall make every effort to notify a parent or guardian. If, after all reasonable efforts of locating the parents or guardian are exhausted and the parent or guardian is unable to be located, the officer shall transport the juvenile to the Juvenile Intake Unit.
11. When the investigation fails to substantiate that a juvenile has run away, the absent juvenile shall be classified as a missing person. When a juvenile is classified as missing, the District Investigative Unit shall assign an investigator to respond to the scene and assume responsibility for the investigation and original offense report.
12. In the event a juvenile is reported lost, or a lost juvenile is turned over to the custody of an officer, the officer shall generate an initial incident report (EPR). The officer shall take the juvenile into protective custody and notify Communications Services to contact the Department of Child and Family Services (DCFS) and the ISB – Special Victims Section – Child Abuse Unit. The officer and juvenile shall remain on the scene until DCFS arrives and assumes custody of the Juvenile.
13. Juveniles are considered dependent if they have no apparent means of supervision, either through the arrest of the parent/guardian or some other condition rendering the parent/guardian incapable of caring for the juvenile. Lost/runaway juveniles or juveniles in protective custody who are **UNDER THE AGE OF 10** are not brought to the Juvenile Intake Unit. The officer must contact the ISB – Special Victims Section – Child Abuse Unit to come to the scene and take custody.
14. Out-of-state runaways have a high probability of involvement in Human Trafficking or the sex trade. The Homeland Security Task Force and the ISB – Sex Crimes – Child Abuse Unit shall be contacted through Communications Services and requested to the scene of any investigation involving an out of state runaway. All out-of-state and out-of-parish runaways must be taken to Juvenile Intake for processing, per the Interstate Compact.
15. No out-of-state runaway will be accepted at the Juvenile Intake Unit without a medical clearance or a forensic interview (see: **Chapter 42.19 – Child Abuse**).

JUVENILE INVESTIGATIONS

16. The investigation and original offense report of simple kidnappings shall be the responsibility of the District Investigative Units. The District Investigative Units (DIU) shall be responsible for the scene and/or follow-up investigations of all state felony and misdemeanor offenses, including narcotics, involving juvenile offenders, unless otherwise directed by the Deputy Chief of the Field Operations Bureau.
17. In cases where a juvenile is kidnapped by a parent/guardian in association with a custody dispute (parental/custodial kidnapping cases), the district officer's primary responsibility shall be to stabilize any on-scene conflicts, to protect the safety of the juvenile when present and to insure there is no attempt by a parent/guardian to flee the jurisdiction of the court with the juvenile.
18. Once the immediate situation is stabilized, the district officer shall contact the District investigative Unit (DIU) to assume the investigation.
19. District Investigative Units shall have the responsibility for investigating all juvenile involved kidnappings, except aggravated kidnappings which will be handled by ISB – Specialized Investigation Section – Narcotics Unit. The Juvenile Intake Unit's supervisors and members shall serve as an information resource to district investigators and officers.
20. The following offenses involving juveniles shall be investigated as listed below:
 - (a) Police Shootings—PIB/Force Investigation team
 - (b) Child Abuse Cases—ISB/Special Victims Section/Child Abuse Unit
 - (c) Sex Offenses—ISB/Special Victims Section/Child Abuse Unit
 - (d) Aggravated kidnapping— ISB/Specialized Investigation Section/Narcotics Unit

JUVENILE INTERVIEWS AND INTERROGATIONS

21. Conditions of Interviews and Interrogations:
 - (a) Officers who have taken a juvenile into custody and who desire to conduct an interview or interrogation of the juvenile in one of the Department's authorized Interrogation / Interview Rooms shall first contact his/her immediate supervisor and obtain permission to transport the juvenile to the location and use the Interrogation / Interview Room. The request and authorizing supervisor shall be documented in all subsequent reports.
 - (b) All the requirements of a custodial interrogation in **Chapter 42.11 – Custodial Interrogations** shall be met when conducting an interrogation of a juvenile. Custodial interrogations shall be conducted in one of the Department's authorized Interrogation / Interview Rooms unless articulable exigent circumstances exist. The exigent circumstances shall be documented in the investigative case file and/or incident report.
 - (c) An interview or interrogation of a juvenile shall not be coercive in nature. This means, among other things:
 - i. Prior to commencing an interview/interrogation, and throughout the interview/interrogation, the questioning officers shall ensure that the following amenities are available to juveniles:
 1. Reasonable access to toilets and washing facilities.
 2. Reasonable access to drinking water or other beverage.
 3. Food if the juvenile has not eaten within four hours.
 4. Privacy during visits with parent/legal guardian and lawyer.
 5. Reasonable access to a telephone to contact parent/legal guardian and lawyer.

- ii. A juvenile shall not be interviewed/interrogated by more than two officers simultaneously. The officers shall not be armed during a custodial interrogation.
 - iii. Normally, the interview/interrogation of a juvenile should not go beyond a two-hour session, and frequent breaks should be taken. The investigator should obtain supervisory approval for extending any interview/interrogation and note the reason for the extension in the investigative report along with the supervisor's name.
 - iv. Juveniles shall not be shackled or otherwise restrained during interrogations/interviews unless the juvenile is engaging in behavior likely to cause injury to themselves or others.
22. All provisions of this Chapter, **Chapters 42.11 – Custodial Interrogations** and **Chapter 42.10 - Interviews** concerning the questioning of juveniles apply to alleged school misbehavior and school-based investigations. NOPD members shall not ask school officials or other non-NOPD members to question a student in an effort to circumvent these protections.
23. Consent and Presence of a Caretaker During Interrogation:
 - (a) Caretaker Notification:
 - i. The officer who intends to conduct an interrogation or interview of a juvenile must take immediate steps to notify the juvenile's caretaker/parent/guardian immediately after arriving at the NOPD facility where the interrogation is to be conducted..
 - ii. Notification to the caretaker may be made by telephone, in person, or by going to the juvenile's home.
 - iii. When a caretaker is contacted, he/she shall be notified of the following:
 1. the juvenile is in custody,
 2. the juvenile's location;
 3. the reason the juvenile is in custody or to be interviewed;
 4. that the officer intends to advise the juvenile of his/her *Miranda* rights;
 5. that the juvenile has a right to consult with the caretaker prior to and during any questioning; and
 6. that questioning cannot proceed in the absence of a caretaker.
 - iv. Prior to commencing any questioning of a juvenile who is in custody, and prior to advising the juvenile of his/her rights, the officer(s) conducting the custodial interrogation shall obtain the consent of the juvenile's caretaker or attorney. Officers shall not interrogate a juvenile outside the presence of the juvenile's caretaker or attorney.
 - (b) The caretaker and the juvenile must be afforded an adequate opportunity to consult, in confidence and outside of the presence or the hearing of any law enforcement officer, in advance of any interview/interrogation.
24. Advice of Rights Prior to Custodial Interrogation
 - (a) Whatever advice of rights has previously occurred, the officer(s) conducting a custodial interrogation of a juvenile must advise the juvenile and the juvenile's caretaker of the juvenile's *Miranda* rights in a manner consistent with the requirements of **Chapter 1.9.1 – Miranda Rights**, and secure a valid waiver from the juvenile and the interested adult present, prior to beginning the custodial interrogation. This advice of rights must be audio-video recorded. (See: **Chapter 1.9.1 – Miranda Rights**).
 - (b) Procedure for Administering Miranda Rights:
 - i. The officer shall provide the juvenile and the caretaker with a copy of the *Miranda* Rights Form.:

1. The officer shall give the juvenile the opportunity to read the form to his or herself.
 2. The officer shall then read the entire form to the juvenile.
 3. After reading each right to the juvenile, the officer shall ask the juvenile to explain, in his or her own words, what that right means.
- (c) The following language or similar language that attempts to convey the underlying meaning of Miranda, or a translation of the following language if an LEP situation exists, into the language understood by the juvenile, should be used when advising a juvenile of his or her *Miranda* rights:
- i. You have the right to remain silent. That means you do not have to say anything to me.
 - ii. Anything you say can be used against you in court. That means anything you tell me could be used to try to show that you are guilty.
 - iii. You have the right to get help from a lawyer right now. If you ask for a lawyer, I have to stop this interview until you talk to a lawyer.
 - iv. If you can't pay a lawyer, the court will get you one for free.
 - v. You have the right to stop this interview at any time.
 - vi. Do you want to have a lawyer help you decide if you want to talk to me?
 - vii. Do you want to talk to me?
25. Juveniles can often misunderstand questions. They also often tell adults whatever the adults want to hear. So, when interviewing/interrogating juveniles the following techniques may be useful in avoiding misunderstandings between the interviewer/interrogator and the juvenile:
- (a) Use open-ended, free-recall questions that ask the child to produce a narrative: "What did you do last night?"
 - (b) Use targeted but open-ended questions to get additional information: "You said you were at home last night. Tell me about that."
 - (c) If officers suspect the juvenile is not being truthful, officers should use probing questions that are truthful and in no way deceptive, and avoid outright accusations: "Can you help me understand why there is a Facebook picture that shows you with your friends at a party?"
 - (d) Avoid leading questions, and instead use questions beginning with "who," "what," "where," "when," and "how" to get more information about specific parts of the juvenile's story: "Where was the victim standing?"
 - (e) Officers shall not provide deceptive or misleading information to the juvenile.
 - (f) Avoid offering the juvenile a limited set of options: "Was the victim standing by the couch or by the door?"

JUVENILE CONSENT SEARCHES

26. Prior to seeking consent from a juvenile to conduct any sort of search of the juvenile's person or property, or any vehicle or premises under the juvenile's control, the officer must receive supervisory approval.
27. If the officer obtains supervisory approval and the juvenile's consent to search, the officer must follow the guidelines of **Chapter 1.2.4 – Search and Seizure** concerning consent to search requirements including his/her right to refuse and to revoke consent at any time.
28. In order to meet the burden of proving the consent is valid, the member seeking consent should use informative language targeted to the juvenile's age, understanding, and cognitive abilities. NOPD members should recognize that in many instances, juveniles may not have the capacity to provide valid consent to search.

29. In making this determination the officer shall consider:
 - (a) The juvenile's age,
 - (b) Education,
 - (c) Mental capacity,
 - (d) Background,
 - (e) Prior experience with the juvenile or criminal justice systems,
 - (f) Whether the juvenile is distraught or mentally agitated,
 - (g) Whether the juvenile is under the influence of any mind-altering substances and
 - (h) the nature or circumstances of the search.
30. The search of a juvenile's person shall be conducted by an officer of the gender requested by the juvenile.
31. NOPD members shall not ask school officials or other non-NOPD members to search a student or a student's property student in an effort to circumvent these protections.

JUVENILE IDENTIFICATIONS

32. Field identifications/Show-Ups, photographic lineups and physical lineups involving juvenile suspects shall follow the same guidelines as for adults. (See: **Chapter 42.8 – Eyewitness Identification**).

ILLNESS OR INJURIES SUSTAINED BY THE ARRESTED JUVENILE

33. Arrested juveniles who are ill or injured shall be immediately brought to an appropriate medical facility for treatment. Depending on the **seriousness of the injuries/illness, juveniles can be transported in a police vehicle or ambulance**. However, the arresting officer shall accompany or follow the juvenile to the medical facility and remain with the juvenile until they are treated and released (see: **Chapter 71.1 – Prisoner Transportation and Guarding**).
34. If the arrested juvenile is refused by the Juvenile Intake Unit for medical reasons / treatment and later returns for processing and booking, the juvenile detective on-duty will notify the parent or guardian of the juvenile's medical condition and status within the first hour of his/her arrival at the Juvenile Intake Unit.
35. Arrested juveniles shall not be left unattended at a medical facility when in custody of the Department. The arresting officer or an officer assigned to guard duty shall remain at the medical facility until a custodial release is obtained, if the incident for which the juvenile is accused permits such release.
36. In the event an arrested juvenile is to be admitted to a medical facility, the arresting officer shall immediately notify his/her immediate supervisor. The arresting officer's supervisor shall be responsible for establishing the guard detail. If the guard detail is cancelled by a supervisor, the supervisor cancelling the guard detail shall insure that a warrant is issued for the juvenile's arrest upon release of the juvenile from the medical facility. Once in custody, the juvenile shall be transported to the Juvenile Intake Unit for processing.

JUVENILE DETENTION HEARINGS

37. Juvenile Court intake personnel (not NOPD Juvenile Intake Unit members) will assess the arrested juvenile and assigns a Risk Assessment Instrument (RAI Score) score to the subject to determine if the juvenile is held for detention or released. The outcome of the assessment shall be relayed to the NOPD Juvenile Intake Unit.

38. Anytime an arrested juvenile is detained in the Youth Study Center (YSC), the arresting officer's appearance at the scheduled detention hearing shall be mandatory.
39. Juvenile offenders held in the Youth Study Center (YSC) shall be brought to a detention hearing the day following his/her arrest, weekends and holidays excluded, in Juvenile Court.

YOUTH STUDY CENTER (YSC)

40. When an arrested juvenile is to be detained, the Juvenile Intake Unit's assigned investigator shall inform the arresting officer(s) of the date, time and section of Juvenile Court where the hearing will be held. Arresting officers shall document this notification by recording the time, date, and court section of the scheduled hearing, along with the name of the Juvenile Intake detective providing this information, in their original offense report.
41. If the arrested juvenile is assigned a detention hearing the next day, the arresting officer must sign the Notification Detention Log, located in the Juvenile Intake Unit, upon completion of the incident report and related paperwork.
42. In arrests involving arrest warrants, the original investigator who issued the arrest warrant shall attend the detention hearing. The Juvenile Intake platoon commander shall contact a supervisor from the officer's unit and request he/she make every effort to notify the issuing officer of the pending detention hearing and the mandatory appearance.
43. If the officer obtaining the arrest warrant cannot be notified, the Juvenile Intake platoon commander shall contact the officer affecting the arrest, who shall be required to appear at the detention hearing.
44. Only one arresting officer, or one officer who obtained the arrest warrant, need attend the detention hearing. However, the officer who attends the hearing must have sufficient knowledge of the incident to provide probable cause for the arrest.

STATUS OFFENSES

TRUANCY

45. Refer to **Chapter 44.3 – Juvenile Warning Notice and Summons** for more information.
46. When an officer observes a person between 7 and 17 years of age, off school property during periods of time when school is in session, the person will be questioned to ascertain the reason for his/her absence from school.
47. There is an exception if the person has already graduated from high school prior to age 17.
48. If there is no valid reason for the absence from school and no criminal charges are involved, the officer shall:
 - (a) Advise Communication Services of the location and nature of the stop.
 - (b) Transport the juvenile to his/her school or the Youth Opportunity Center (1331 Kerlerrec Street) as appropriate (see below).
 - (c) Complete an electronic Field Interview Card.
 - (d) Complete a Juvenile Warning Notice.
 - (e) Convey the Juvenile Warning Notice to the Youth Opportunity Center (with or

without the juvenile as appropriate).

49. When a school absentee is not involved in a criminal offense, the officer shall transport the school absentee to:
- (a) The school if it is in the district of occurrence, or
 - (b) The school if it is in an adjacent district and the officer's supervisor authorizes the transport, or
 - (c) The Youth Opportunity Center when the absentee's school is outside the District of occurrence and a supervisor has not authorized the direct transport to the school.
50. If the school absentee (truant) is being investigated in relation to a criminal offense, he/she is to be handled and processed according to the provisions of this Chapter, **Chapter 44.3 – Juvenile Warning Notice and Summons**, and **Chapter 44.1.4 – Temporary Custody of Juveniles**.

CURFEW

51. If an officer suspects a violation of the city's curfew ordinance (**MCS 54-414**), the officer shall immediately detain and interview the suspected offender.
52. If the suspect is 16 years of age or younger, and is not engaged in one of the exempted activities defined in the municipal ordinance, the officer shall issue a Juvenile Warning Notice and release as appropriate. (See: **Chapter 44.3 – Juvenile Warning Notice and Summons**).
53. Exempted activities include any minor who is:
- (a) Accompanied by the minor's custodian (*Custodian* means a parent as defined in Louisiana Children's Code, Article 116 or a person with legal custody as defined in Louisiana Children's Code, Article 116 to whom the care or supervision of the child has been temporarily and lawfully delegated or assigned.);
 - (b) On a reasonable errand (*Reasonable errand* means the activity of a minor pursuant to a custodian's direction in a public place or establishment in order to accomplish an emergency mission or a legitimate family function in a normal and customary fashion considering the time of day, or going to or returning home from such an activity without any detour or stop.);
 - (c) In a motor vehicle involved in interstate travel;
 - (d) Engaged in an employment activity pursuant to the minor's custodian's direction, or going to or returning home from such an employment activity without any detour or stop;
 - (e) Involved in an emergency (*Emergency* means an unforeseen circumstance or the resulting state that demands for immediate action including, but not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.);
 - (f) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor, with the next-door neighbor's consent; or
 - (g) Attending an official school, religious, or other recreational activity supervised by adults or sponsored by the city or another public body, a civic organization, or other similar entity that takes responsibility for the minor; or going to or returning home from such an activity, without any detour or stop; or exercising First Amendment rights protected by the United State Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly.

CURFEW ENFORCEMENT ACTIONS

54. A juvenile shall not be taken into custody for a status offense. The officer shall issue a **Juvenile Warning Notice** (see: **Code of the City of New Orleans, Section 102-1**) and release the juvenile to the school, parent, guardian or appropriate intervention center as appropriate. See **Chapter 44.3 – Juvenile Warning Notice and Summons**.