

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



202.747.1904 direct
ddouglass@sheppardmullin.com

March 6, 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 44.3 – Juvenile Warning Notice and Summons. The OCDM has no objection to the policy as amended.

We believe that the amended Chapter 44.3 – Juvenile Warning Notice and Summons, 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)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 44.3

TITLE: JUVENILE WARNING NOTICE AND SUMMONS

EFFECTIVE:

REVISED:

PURPOSE

The purpose of this Chapter is to provide officers of the New Orleans Police Department with guidelines regarding when to take juveniles into custody and when to issue a juvenile warning notice or juvenile summons only.

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.

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)).

Juvenile Warning Notice—An oral notice issued to a juvenile, following an officer's finding of probable cause, in lieu of taking the juvenile into custody and referring the juvenile for prosecution.

Juvenile Summons—An instrument used to counsel and release a juvenile to the care of his parents guardian or caretaker upon his/her parents', guardians' or caretakers' written promise to bring the juvenile to court at such time as may be fixed by the court, pursuant to La. Ch. Code article 814(B)(1).

Juvenile Habitual Offender—An individual with a criminal history of two or more felony convictions or five or more felony or misdemeanor arrests for any offense. (See: **Section 102-1 of the Code of the City of New Orleans.**)

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

STATUS OFFENSE

2. Except as required by paragraph 8, below, a juvenile shall not be taken into custody for a status offense, alone. 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, caretaker or appropriate intervention center as appropriate.

DELINQUENT ACTS

3. A juvenile who has not been arrested or received a Juvenile Warning Notice for a delinquent act in the prior 365 days shall be issued a Juvenile Warning Notice when an officer finds probable cause for any of the following misdemeanor-grade delinquent act, or attempts thereof, and shall be released to the school, parent, guardian, caretaker or appropriate intervention center as appropriate:
 - (a) Criminal mischief;
 - (b) Criminal trespass;
 - (c) Disturbing the peace;
 - (d) Misdemeanor illegal possession of stolen things;
 - (e) Misdemeanor obstruction of justice;
 - (f) Misdemeanor theft or theft of goods;
 - (g) Obstruction of public passages;
 - (h) Simple assault;
 - (i) Simple battery; or
 - (j) Simple possession of marijuana.

JUVENILE WARNING NOTICE

4. When issuing a Juvenile Warning Notice, the investigating officer shall:
 - (a) Obtain an Item Number from Communications Services for an appropriate police signal and supply a disposition of “**N.A.T., one juvenile warning notice**” when completed.
 - (b) Document the stop and juvenile warning notice in an FIC. (See: **Chapter 1.2.4.1 – Stops / Terry Stops**).
 - (c) Instruct the juvenile to immediately advise his/her parent, guardian or caretaker of the juvenile warning notice.
 - (d) Release the juvenile to the school, parent, guardian, caretaker or appropriate intervention center.
5. When an officer finds probable cause for any of the enumerated offenses listed in this Chapter and the juvenile has previously been arrested or already received a Juvenile Warning Notice for any delinquent act in the prior 365 days, the officer may exercise his discretion to issue a Juvenile Warning Notice or summons in lieu of custodial arrest, bearing in mind that the officer should rely on the least restrictive and most reasonable alternative consistent with preserving public safety, order, and individual liberty.
6. Prior Juvenile Warning Notices can be found in the Departmental FIC database.

JUVENILE SUMMONS AND RELEASE

7. Juvenile summons shall be issued when the juvenile is:
 - (a) Engaged in misdemeanor grade delinquent act not listed in this Chapter for **Juvenile Warning Notice**;
 - (b) Engaged in misdemeanor grade offenses that are listed herein for **Juvenile Warning Notice** when the juvenile has previously been arrested or already

received a Juvenile Warning Notice for any delinquent act in the prior 365 days and the circumstances warrant that the officer exercise his discretion to issue a summons; or

- (c) Has an outstanding warrant for misdemeanor grade delinquent act or for "Failure to Appear" unless a judge has ordered that the juvenile be detained.

8. When citing a juvenile solely for one of the violations described herein for summons and release, an officer shall issue a summons and may not make a custodial arrest, except when one of the following circumstances exists:
- (a) The juvenile's parent, guardian or caretaker cannot be located after reasonable efforts have been made;
 - (b) The juvenile's parent, guardian or caretaker does not possess identification issued by municipal, state, territorial, federal, or other governmental authority;
 - (c) The juvenile's parent, guardian or caretaker makes a statement that indicates an intent to disregard the summons, or his/her parent, guardian or caretaker refuses to sign the summons;
 - (d) The juvenile acts in a violent or destructive manner or makes a statement indicating that he/she intends to inflict injury to self or another or damage to property;
 - (e) The juvenile is a Juvenile Habitual Offender;
 - (f) The offense for which the officer stopped the juvenile is one involving weapons;
 - (g) The offense for which the officer stopped the juvenile is one involving domestic violence pursuant to R.S. 14:35.3 and the officer deems that the child poses a threat to another household member or family member (See: **Chapter 42.4 – Domestic Violence**); or
 - (h) Based on the circumstances, the officer determines that it is **absolutely necessary** to make a custodial arrest and the arrest decision is concurred by the officer's supervisor.
9. If one of the circumstances listed immediately above (other than 7(h)) does exist, the officer may still use discretion to issue a Juvenile Summons instead of making a custodial arrest. The officer must document the reason(s) for the exercise of discretion in the FIC, summons, or initial incident report (EPR).
10. Notwithstanding the provisions of the prior paragraphs regarding summons and release, above, an officer may use his/her discretion to take a juvenile into lawful, protective custody, instead of issuing a summons if:
- (a) The juvenile has no identification and refuses to cooperate in locating a parent, guardian or caretaker, but the officer will first make an independent reasonable effort to locate a parent, guardian or caretaker before taking the juvenile into custody;
 - (b) The juvenile requires medical examination or medical care, or if he or she is unable to care for his/her own safety (including self-harm); however, the officer shall ensure the juvenile is examined by a medical professional and provided treatment before taking the juvenile into custody; or
 - (c) The juvenile is so intoxicated that he/she could be a danger to himself/herself or to others.
11. If the officer exercises discretion as outlined above, the officer must document the reason(s) for the exercise of discretion in the FIC, affidavit or EPR. The officer shall notify Communications Services to contact the Department of Child and Family Services (DCFS) if such a custody occurs.

SUMMONS REQUIREMENTS FOR JUVENILES

12. Any summons issued **shall** (see: C. Cr. P. 208; C. Cr. P. 211.1) meet the requirements of **Chapter 41.8 – Affidavits and Summons** and must be signed by the parent, guardian or caretaker.
13. After determining that a summons may be issued in lieu of custodial arrest, officers shall ensure that the parent, guardian or caretaker acknowledges that his/her signature is his/her written promise to appear with the juvenile on the date, time and place specified for appearance.
14. Cases involving felony and misdemeanor charges will not be separated into different cases. If a misdemeanor charge is part of a felony arrest, the misdemeanor will be charged as a state law violation. (Example: If a juvenile is arrested for armed robbery (a felony) and is in possession of a small amount of marijuana (misdemeanor), the officer shall book with RS14:64 and RS40:966.)
15. All summonses that are issued to a juvenile as a “stand alone” **municipal charge** (no felony charges or state misdemeanor charges) shall be documented in an electronic Field Interview Card (FIC). (Refer to **Chapter 1.2.4.1 – Stops / Terry Stops** for completion of documentation.)
16. All summonses that are issued to a juvenile that are issued as a **state misdemeanor** charge with no additional or related felony or municipal charges shall be documented in an EPR.

JUVENILE SUMMONS CASES FOR MUNICIPAL OFFENSES

17. Juvenile summons (summons and release) cases shall be set by the Juvenile Court Judges. The eCitation system will indicate “To Be Set” on the form, and the issuing officer does not need to determine a date.

JUVENILE ARREST CASES FOR MUNICIPAL OFFENSES

18. Officers shall handle juvenile custodial arrests on municipal charges pursuant to **Chapter 44.1.4 – Temporary Custody of Juveniles**.

DISTRIBUTION OF SUMMONS AND CITATIONS

17. All juvenile summons and traffic citations that do not involve an arrest and processing at the Juvenile Section shall be conveyed to Juvenile Court by the administrative person assigned by each District or Division Commander to perform those duties.
18. The electronic version (eCitation) is automatically routed to Juvenile Court but ANY paper summons or traffic citations shall be conveyed to Juvenile Court by the member assigned during the first daytime shift after issuance, absent weekends and court holidays.

REPORTING

19. The issuing officer shall record the issuance of the juvenile warning notice or juvenile summons in an FIC. The juvenile offender information, along with the offense for which it was issued, shall be recorded and retained in the Departmental FIC database in such a fashion as to be accessible to officers in the future.

20. When an officer issues a juvenile summons, the officer must document and report details of the incident in accordance with La. Ch. Code article 814(E) and (F). The officer must also secure a written promise from the juvenile's parent, guardian or caretaker to bring the child to court, pursuant to La. Ch. Code article 814(B)(1). At a minimum, the FIC or EPR must contain the following information:
- (a) The name, address, date of birth, sex, and race of the juvenile.
 - (b) The name and address of the parent, guardian, caretaker, or spouse, if any, of the juvenile.
 - (c) A plain and concise statement of the facts and circumstances of the officer's 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 indicating whether the juvenile was released, or escorted to a juvenile detention center, or placed in a shelter care facility.
 - (f) An explanation of the reasons whenever an officer exercises discretion for issuing a summons or making a custodial arrest as allowed above.
21. When an officer effectuates a custodial arrest of a juvenile, the officer shall appropriately document all information, including specifying the circumstances justifying the custodial arrest in an EPR or FIC as appropriate pursuant to **Chapter 44.1.4 – Temporary Custody of Juveniles**.
22. NOPD shall prepare quarterly reports, which shall include the following data from the preceding quarter:
- (a) The number of juvenile custodial arrests and reasons for those arrests;
 - (b) The number of unique juveniles under custodial arrest;
 - (c) The number of juvenile warning notices and reasons for those notices;
 - (d) The number of unique juveniles issued a juvenile warning notice;
 - (e) The number of juvenile summonses and reasons for those juvenile summonses;
 - (f) The number of unique juveniles issued a juvenile summons;
 - (g) The number of juvenile custodial arrests made in instances where the juvenile was eligible to receive a juvenile warning notice and the reasons for those custodial arrests;
 - (h) The number of juvenile summonses issued in instances where the juvenile was eligible to receive a juvenile warning notice and the reasons for those juvenile summonses;
 - (i) The number of juvenile summons issued where the juvenile was eligible for a custodial arrest;
 - (j) The number of juvenile custodial arrests made in instances where the juvenile was eligible to receive a juvenile summons and the reasons for those custodial arrests; and
 - (k) The number of juveniles under custodial arrest who previously received a juvenile warning notice or juvenile summons.