

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



December 11, 2020

202.747.1904 direct

File Number: 37PA-191555

Deputy Superintendent Otha Sandifer
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

Dear Deputy Superintendent Sandifer:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 44.3 – Juvenile Warning Notice and Summons. The OCDM has no objection to the policy as written.

We believe that 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*
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WASHINGTON, DC 20006

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

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NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 44.3

TITLE: JUVENILE WARNING NOTICE AND SUMMONS

EFFECTIVE: 8/26/2018

REVISED: 10/07/2018 11/18/2018

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.
2. Juveniles may only be charged with State criminal charges, whether by summons or in an EPR for custodial arrest and booking, not the municipal equivalent.

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

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/her parent or guardian upon his/her parent's or guardian's 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—A juvenile 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.**)

Juvenile Offender—A person under the age of 19 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.

Protective Custody—Taking a child into custody without a court order based on reasonable grounds to believe that the child's surroundings are such as to endanger the child's welfare and immediate removal appears to be necessary for the child's protection (La. Ch.C. art. 621).

Status Offense—Those offenses 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

3. 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 as appropriate, including to the:
 - (a) Juvenile's school administrator if during school hours;
 - (b) Juvenile's parent or guardian; or
 - (c) The appropriate intervention center such as the Youth Opportunity Center during working hours.

DELINQUENT ACTS

4. A juvenile who has not been previously 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 acts, or attempts thereof, and shall be released as appropriate, including to the juvenile's school administrator if during school hours, parent, guardian, or appropriate intervention center:
 - (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.
5. A juvenile who does not meet the guidelines above for a Juvenile Warning Notice for a simple assault or simple battery offense, or attempts thereof, [(4(h) and 4(i) cannot be issued a summons and released. He/she shall be custodially arrested, booked, and processed at the Juvenile Section under an affidavit for the offense as DNA sampling and testing may be required. (see: RS 15:603(10) and RS 15:609).

JUVENILE WARNING NOTICE

6. 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 or guardian of the Juvenile Warning Notice.
 - (d) Release the juvenile as appropriate, including to the juvenile’s school administrator if during school hours, parent, guardian, or appropriate intervention center.
7. 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, unless otherwise restricted by this Chapter, the officer may exercise his/her discretion to issue a Juvenile Warning Notice or Juvenile Summons in lieu of a custodial arrest, in all cases, the officer should rely on the least restrictive and most reasonable alternative consistent with preserving public safety, order, and individual liberty.
8. Prior Juvenile Warning Notices can be found in the Departmental FIC database.

JUVENILE SUMMONS AND RELEASE

9. Juvenile Summonses 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.
10. When citing a juvenile solely for one of the violations enumerated herein for summons and release, an officer shall issue a Juvenile Summons and may not make a custodial arrest, except when one of the following circumstances exists:
- (a) The juvenile’s parent or guardian cannot be located after reasonable efforts have been made;
 - (b) The juvenile’s parent or guardian does not possess identification issued by municipal, state, territorial, federal, or other governmental authority;
 - (c) The juvenile’s parent or guardian makes a statement that indicates an intent to disregard the Juvenile Summons, or his/her parent or guardian refuses to sign the Juvenile 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 simple battery or simple assault pursuant to R.S. 14:35 or R.S. 14:38.
 - (g) The offense for which the officer stopped the juvenile is one involving weapons;
 - (h) 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
 - (i) 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.

11. If one of the circumstances listed immediately above (other than 9(i)) does exist, the officer may still use discretion to issue a Juvenile Summons instead of making a custodial arrest.
12. Notwithstanding the provisions of the prior paragraphs regarding Juvenile Summons and release, above, an officer may use his/her discretion to take a juvenile into lawful, protective custody, instead of issuing a Juvenile Summons if:
 - (a) The juvenile has no identification and refuses to cooperate in locating a parent or guardian, but the officer will first make an independent reasonable effort to locate a parent or guardian 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.
13. If the officer exercises discretion as outlined above in taking a juvenile into protective custody, rather than issuing a Juvenile Summons, 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 and immediately transport the juvenile to Juvenile Intake Unit unless medical attention is required. The Juvenile Intake Unit member will contact DCFS for follow-up as well.
14. Members who believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or that abuse or neglect was a contributing factor in a child's death shall notify the Child Abuse Unit (La. Ch.C. arts. 609-610). (See also: **Chapter 42.19 – Child Abuse** for protective custody requirements).
15. For purposes of notification of a parent or guardian and obtaining the required signature for a Juvenile Summons, officers may:
 - (a) Wait on the scene for a reasonable amount of time, including the time necessary to have the juvenile call his/her parent or guardian, have the officer call the parent or guardian, have the officer transport the juvenile to the residence to contact the parent or guardian to obtain the required signature or request another police unit to go to the residence to contact the parent or guardian to obtain the required signature;
 - (b) Transport the juvenile to his/her parent or guardian if he/she is within a reasonable travel distance to obtain the signature; or
 - (c) Transport the juvenile to Juvenile Intake if the officer cannot obtain the necessary signature within the guidelines of (a) or (b) above.
16. Juvenile Intake will accept the juvenile and continue to attempt to contact the parent or guardian after the juvenile is turned over to Juvenile Intake.
17. In cases where a Juvenile Summons or Affidavit is issued as covered in this Chapter, an EPR by the original officer(s) **is required** and must contain the details of the attempts by the officer(s) to contact the parent or guardian if a signature was not obtained.
18. The required EPR, the signed summons, and all required paperwork and documents, along with all supervisory approvals and signatures, shall be completed and submitted

to the Juvenile Section prior to the issuing and reporting officer's ETOD. In addition, the officer shall notify a member of the on-duty Juvenile Section at 504-658-5265 whenever a juvenile summons is issued.

SUMMONS REQUIREMENTS FOR JUVENILES

19. Any Juvenile 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 or guardian.
20. After determining that a Juvenile Summons may be issued in lieu of custodial arrest, officers shall ensure that the parent or guardian acknowledges that his/her signature is his/her written promise to appear with the juvenile on the date, time and place specified by Juvenile Court for appearance.
21. 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.)
22. All summonses that are issued to a juvenile as a “stand alone” **misdemeanor charge** (no felony charges) shall also be documented in an electronic Field Interview Card (FIC). (Refer to **Chapter 1.2.4.1 – Stops / Terry Stops** for completion of documentation.)
23. Juvenile Summons (summons and release) cases shall be set by Juvenile Court. The eCitation system will indicate “To Be Set” on the form; the issuing officer does not need to determine or set a date.
24. The electronic version (eCitation) and any hard copy paper Summon shall be conveyed to the Juvenile Section, along with all related ERPs, by the issuing and reporting member prior to the member's ETOD. All required documents must be approved / signed by the member's supervisor prior to the member's ETOD.
25. The Juvenile Section is responsible for the processing of the Summons, Affidavits, and related paperwork (EPR) with the Orleans Parish District Attorney's Office – Juvenile Division for screening.

JUVENILE ARREST CASES FOR MISDEMEANOR OFFENSES

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

The required EPR, the affidavit (eCitation or hard copy), and all related paperwork and documents, along with all required supervisory approvals and signatures shall be conveyed to the Juvenile Section when the juvenile is delivered for booking and processing.

REPORTING

27. The issuing officer shall record the issuance of the Juvenile Warning Notice, Juvenile Summons, or Juvenile Affidavit in an FIC. (See also: **Chapter 41.12 – Field Interview Card**). 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.

28. 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 or guardian to bring the child to court, pursuant to La. Ch. Code article 814(B)(1). At a minimum, the summons 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 or guardian, 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 or issuing the Juvenile Summons.
 - (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 placed in a shelter care facility (YOC).
 - (f) An explanation of the reasons whenever an officer exercises discretion for issuing a Juvenile Summons in lieu of issuing a Juvenile Warning Notice or making a custodial arrest as allowed above.
29. 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 for all charges as appropriate pursuant to **Chapter 44.1.4 – Temporary Custody of Juveniles**.
30. In all cases involving domestic violence, including those where the juvenile is issued a summons in lieu of custodial arrest, an EPR shall be written. (See **Chapter 42.4 – Domestic Violence**.)
31. NOPD shall prepare and submit quarterly reports to the Criminal Justice Committee of the City Council. Such reports 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 Summonses 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.