

Temporary Custody of Juveniles

426.1 VERSION

Review Date	Effective Date	Approving Authority
04/01/2021	07/09/18	Gabriel Camacho, Interim Chief of Police

426.2 POLICY AND PURPOSE

The purpose of this order is to establish procedure to follow when handling situations involving juveniles. All agency personnel is committed to the development of programs designed to prevent and control juvenile delinquency in the community. This policy provides guidelines consistent with the Juvenile Justice and Delinquency Prevention Act for juveniles taken into temporary custody by employees of the Harrisonburg Police Department (42 USC § 5633).

The Harrisonburg Police Department is committed to releasing juveniles from temporary custody as soon as reasonably practicable and to keeping juveniles safe while in temporary custody at the Department. Juveniles should be held in temporary custody only for as long as reasonably necessary for processing, transfer or release.

In all cases, the officer shall notify the parent or legal guardian by telephone or in person, as soon as possible, that the juvenile is in police custody. School officials are not considered legal guardians for the purposes of this policy.

This policy outlines the care of juveniles while in temporary custody at the Harrisonburg Police Department. Directives on when and how a child may be taken into immediate custody and procedures for processing juvenile non-offenders, juvenile status offenders, and juvenile offenders will be in accordance with Va. Code § 16.1-246., Va. Code § 16.1-247.

426.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

426.4 DEFINITIONS

Child/juvenile/minor - A person who is less than eighteen years of age.

Child in Need of Services or Supervision (CHINS) - A juvenile who is subject to compulsory school attendance but is habitually absent without justification; a juvenile who remains away from or who habitually deserts or abandons the family; and a juvenile who commits an act which is unlawful only if committed by a juvenile. These acts are more commonly known as status offenses.

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Delinquent acts - Acts designated as crimes under the laws of the Commonwealth of Virginia or an ordinance of any City, County, town or service district, or under Federal law, but not acts which would be an offense only if committed by a juvenile.

Juvenile non-offender - An abused, neglected, dependent or alien juvenile who may be legally held for his/her own safety or welfare. This also includes any juvenile who may have initially been contacted for an offense that would not subject an adult to arrest (e.g., fine-only offense) but was taken into custody for his/her protection or for purposes of reuniting the juvenile with a parent, guardian or other responsible person.

Juvenile offender - A juvenile less than 18 years of age who is alleged to have committed an offense that would subject an adult to arrest (a non-status offense). It also includes unlawful possession or transportation of a handgun or assault firearms under Va. Code § 18.2-308.7 (28 CFR 31.303).

Sight and sound separation - Located or arranged to prevent physical, visual or auditory contact.

Status offender - A juvenile suspected of committing a criminal violation of the law that would not be a criminal violation but for the age of the offender. Examples may include running away, underage possession of tobacco, curfew violation and truancy. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender. The term status offender includes a child in need of supervision and a child in need of services as defined in Va. Code § 16.1-228.

426.5 JUVENILES WHO SHOULD NOT BE HELD

Juveniles who exhibit certain behaviors or conditions should not be held at the Harrisonburg Police Department. These include:

- (a) Unconsciousness or having been unconscious while being taken into custody or transported.
- (b) Serious injuries or a medical condition requiring immediate medical attention.
- (c) A suspected suicide risk or showing obvious signs of severe emotional or mental disturbance (see the Civil Commitments Policy).
 - 1. If the officer taking custody of a juvenile believes that he/she may be a suicide risk, the officer shall ensure continuous direct supervision until evaluation, release or transfer to an appropriate facility is completed.
- (d) Significant intoxication or showing signs of having ingested any substance that poses a significant risk to their health, whether or not they appear intoxicated.
- (e) Extremely violent or continuously violent behavior.
- (f) Afflicted with, or displaying symptoms of, a communicable disease that poses an unreasonable exposure risk.

Officers taking custody of a juvenile exhibiting any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and should notify a supervisor of the

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situation. These juveniles should not be held at the Department unless they have been evaluated by a qualified medical or mental health professional, as appropriate for the circumstances.

426.6 TEMPORARY CUSTODY OF JUVENILES

Officers should take custody of a juvenile and temporarily hold the juvenile at the Harrisonburg Police Department when there is no other lawful and practicable alternative to temporary custody. Refer to the Child Abuse Policy for additional information regarding detaining a juvenile who is suspected of being a victim.

No juvenile should be held in temporary custody at the Department without authorization of the arresting officer's supervisor or the Patrol Commander. Juveniles taken into custody at the Department shall be monitored at all times by Department personnel until released.

Any juvenile taken into custody shall be released to the care of the juvenile's parent, legal guardian or other responsible adult to include release with no further action, release on summons, etc., or transferred to a juvenile custody facility or to other authority as soon as practicable. In no event shall a juvenile be held beyond six hours from the time of his/her entry into the Department (42 USC § 5633).

426.7 TEMPORARY CUSTODY REQUIREMENTS

Members and supervisors assigned to monitor or process any juvenile at the Harrisonburg Police Department shall ensure:

- (a) The appropriate Commander is notified if it is anticipated that a juvenile may need to remain at the Department more than four hours. This will enable the Commander to ensure no juvenile is held at the Department more than six hours.
- (b) Significant incidents/activities are noted in the incident report.
- (c) A member of the same sex will supervise personal hygiene activities and care, such as changing clothing or using the restroom.
- (d) There is reasonable access to toilets and wash basins.
- (e) There is reasonable access to a drinking fountain or water.
- (f) Food is provided if a juvenile has not eaten within the past four hours or is otherwise in need of nourishment, including any special diet required for the health of the juvenile.
- (g) There are reasonable opportunities to stand and stretch, particularly if handcuffed or otherwise restrained.
- (h) There is privacy during attorney visits.
- (i) Juveniles are generally permitted to remain in their personal clothing unless it is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody.
- (j) Adequate shelter, heat, light and ventilation are provided without compromising security or enabling escape.

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- (k) Adequate furnishings are available, including suitable chairs or benches.
- (l) Juveniles have the right to the same number of telephone calls as adults in temporary custody (see the Temporary Custody of Adults Policy).
- (m) Discipline is not administered to any juvenile, nor will juveniles be subjected to corporal or unusual punishment, humiliation or mental abuse.

426.8 NO-CONTACT REQUIREMENTS

Sight and sound separation shall be maintained between all juveniles and adults while in custody at the Harrisonburg Police Department (42 USC § 5633). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

In situations where brief or accidental contact may occur (e.g., during the brief time a juvenile is being fingerprinted and/or photographed in booking), a member of the Department shall maintain a constant, immediate, side-by-side presence with the juvenile or the adult to minimize any contact. If inadvertent or accidental contact does occur, reasonable efforts shall be taken to end the contact.

426.9 ADVISEMENTS

Juveniles are entitled to *Miranda* warnings in the same circumstances as adults. However, officers should consider whether the age, mental capacity, education or experience warrant explaining these rights in the presence of a parent or other responsible adult.

426.10 INTERVIEWING OR INTERROGATING

No interview or interrogation of a juvenile should occur unless the juvenile has the apparent capacity to consent, and does consent, to an interview or interrogation.

In the event of a custodial interrogation:

- (a) The duration of the interrogation shall be reasonable and police personnel present should be limited to those assigned to the case and/or whose technical expertise is required.
- (b) As with any interrogation, a child shall be advised of his or her constitutional rights prior to a custodial interrogation. When possible, the Waiver of Rights Form should be executed prior to interrogation to document that the rights advisory was given.
- (c) Officer(s) will use their discretion when determining if a parent or legal guardian should be contacted before a juvenile is interrogated. Things the officer will take in to account should include, but are not be limited to; juvenile's age, mental capacity, education, medical conditions, and past experience with the juvenile system.
- (d) The officer conducting the interrogation explains the agencies and juvenile justice system procedures.
- (e) If available and practical, all interrogations should be recorded via audio or video recording. There may be times when an officer is faced with interrogating a juvenile in the field and these tools may not be available.

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426.10.1 PARENTAL NOTIFICATION AND CONTACT

Prior to a custodial interrogation of a juvenile offender taken into custody under Va. Code § 16.1-246(C), (C1), or (D), an officer shall notify the juvenile's parent, guardian, or custodian and allow the juvenile to have contact with that parent, guardian, or custodian, unless (Va. Code § 16.1-247.1):

- (a) That parent, guardian, or custodian:
 - 1. Is a co-defendant with the juvenile in the offense.
 - 2. Is a suspect for a crime against the juvenile.
 - 3. Cannot be located or refuses contact with the juvenile.
- (b) The information sought is necessary to protect persons or property from imminent danger and the questions are limited to that information.

426.11 REPORTS/DOCUMENTATION

Any time a juvenile is in temporary custody at the Harrisonburg Police Department, the custody shall be promptly and properly documented in the incident report, including:

- (a) Identifying information about the juvenile.
- (b) Date and time of arrival and release from the Department.
- (c) Appropriate Commander notification and approval to temporarily hold the juvenile.
- (d) Any charges for which the juvenile is being held and classification of the juvenile as a juvenile offender, status offender or non-offender.
- (e) Any changes in status (e.g., emergency situations, unusual incidents).
- (f) Any medical and other screening requested and completed.
- (g) Any other information that may be required by other authorities, such as compliance inspectors or a local juvenile court authority.

426.12 NOTICE TO SCHOOLS

If an officer reasonably believes disclosure is necessary for the protection of the juvenile, other students and school personnel, the officer may request that the Chief of Police approve disclosure to the school principal that a juvenile is a suspect or has been charged with any of the following (Va. Code § 16.1-301):

- (a) A violent juvenile felony specified in subsections B and C of Va. Code § 16.1-269.1
- (b) A violation of any of the provisions of Va. Code § 18.2-77 et seq. (arson-related crimes)
- (c) A violation of law involving any weapon as described in subsection Va. Code § 18.2-308(A)

The member making the disclosure is responsible for ensuring notice is provided to the principal within the time frames provided in Va. Code § 16.1-301.

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426.13 USE OF RESTRAINT DEVICES

A juvenile offender may be handcuffed when the juvenile presents a heightened risk. However, non-offenders and status offenders should not be handcuffed unless they are combative or threatening.

Other restraints should only be used after less restrictive measures have failed and with the approval of the Patrol Commander. Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others.

Juveniles in restraints shall be kept away from other unrestrained individuals in custody and monitored to protect them from abuse.

426.13.1 PREGNANT JUVENILES

Juveniles who are known to be pregnant should be restrained in accordance with the Handcuffing and Restraints Policy.

426.14 PERSONAL PROPERTY

The personal property of a juvenile shall be processed in the same manner as an adult in temporary custody.

426.15 RELIGIOUS ACCOMMODATION

Juveniles have the right to the same religious accommodation as adults in temporary custody.

426.16 FINGERPRINTING AND PHOTOGRAPHING

Fingerprints and photographs shall only be taken if the juvenile is charged with a delinquent act which, if committed by an adult, is required to be reported to Central Criminal Records Exchange (CCRE) pursuant to Va. Code § 19.2-390(A) or if the juvenile is 14 years of age or older and charged with a violent juvenile felony under Va. Code § 16.1-228 (Va. Code § 16.1-299).

426.16.1 MAINTENANCE OF FILES

Fingerprints and photographs of juveniles shall be separately and securely maintained. Access to these records will be restricted to official use, and may be viewed by the public and other law enforcement agencies only on the authority of a court order pursuant to Code of Virginia Section 16.1-301.

The Support Services Commander, or designee, shall monitor the file containing fingerprints and photographs of juveniles to ensure their security and shall oversee the destruction of fingerprints and photographs as directed by the Chief of Police.

426.17 TRANSPORTING JUVENILES

No juvenile should be transported with an adult accused of any criminal act (Va. Code § 16.1-254).

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426.18 TRAINING

Department employees should be trained on and familiar with this policy and any supplemental procedures.