

TEXARKANA POLICE DEPARTMENT

GENERAL ORDERS MANUAL

SUBJECT	Juvenile Offenders		
NUMBER	1106.09	EFFECTIVE DATE	July 12, 2017
Scheduled Review Date	August 30, 2018	ISSUE DATE	July 12, 2017
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APPROVED BY		ALEAP Standards	10.02; 10.03; 10.04

I. Purpose and Scope

- A. The purpose of this policy is to establish procedures for dealing with juvenile offenders. The elements of this policy shall apply to all members of the Texarkana Police Department.

II. Policy [ALEAP 10.02](#)

- A. By law, police officers have certain duties and responsibilities pertaining to juveniles. The police role in juvenile justice and delinquency prevention must be responsive to the needs of the community. Officers must focus on both enforcement and prevention functions, realizing neither role should be performed at the expense of the other. The Texarkana Police Department is committed to the development and implementation of programs designed to prevent and control juvenile delinquency within the community.
- B. Every officer shall remain familiar with the unique requirements of juvenile matters and respond to those requirements by ensuring the constitutional rights of the juvenile are protected, as provided by procedure or statute. Supervisors shall ensure compliance with this policy wherever practicable.

III. Definitions

- A. Custodian — A person, other than a parent or legal guardian, who stands in *loco parentis* to the juvenile or a person, agency or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order.
- B. Delinquent Juvenile — Any juvenile who meets the following criteria:
1. Ten (10) years old or older who has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor or violation under the applicable criminal laws of this state or a juvenile who has violated A.C.A. § 5-73-119 (see section V Paragraph D4, subsection a and b); or
 2. Any juvenile charged with capital murder (A.C.A. § 5-10-101), or murder in the first degree (A.C.A. § 5-10-102), subject to extended juvenile jurisdiction;
- C. Extended Juvenile Jurisdiction Offender — A juvenile designated to be subject to juvenile disposition and an adult sentence imposed by the court;
- D. Guardian—Any person, agency or institution, as defined by A.C.A. § 28-65-101 et seq., whom a court of competent jurisdiction has appointed;

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- E. Juvenile—An individual who is from birth to eighteen (18) years-of-age, whether married or single;
- F. *Miranda* Rights—The requirement set-out in *Miranda v. Arizona, 384 U.S. 436 (1966)* for law enforcement officers to clearly inform an accused, including a juvenile taken into custody for a delinquent act or a criminal offense, that the juvenile has the right to remain silent, that anything the juvenile says will be used against him or her in court, that the juvenile has the right to consult with a lawyer and to have the lawyer with him or her during interrogation and that, if the juvenile is indigent, a lawyer will be appointed to represent him or her.
- G. Parent—A biological mother, and adoptive parent or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgement of paternity pursuant to *A.C.A. §9-10-120* or who has been found by a court of competent jurisdiction to be the biological father of the juvenile.

IV. Internal Review Process

- A. The Criminal Investigation Division commander, or his designee, will conduct an annual review of all policies and procedures dealing with juveniles. The review shall include input and collaboration from other elements comprising the juvenile justice system including, but not limited to, the following:
 - 1. Miller County Juvenile Courts;
 - 2. Miller County Juvenile Intake/Probation Office; and
 - 3. Miller County Prosecuting Attorney’s Office.

V. Procedures [ALEAP 10.02 A](#)

- A. Commissioned officers dealing with juvenile offenders shall use the least forceful of available alternatives, consistent with preserving public safety, order and individual liberty. When taking a juvenile into custody, commissioned officers should select the least restrictive course of action appropriate to the situation and needs of the juvenile from the following alternatives:
 - 1. Divert the juvenile from the courts by release to parent, guardian or custodian with no further action.
 - 2. Divert the juvenile from the courts by counseling and released to a parent, guardian or custodian.
 - 3. Release the juvenile to a parent, guardian or custodian and later seek a petition or a warrant through the Juvenile Court. The Juvenile Division of Miller County Circuit Court does not authorize the issuance of a summons or citation in lieu of physical arrest.
 - 4. After consideration of the seriousness of the offense(s), circumstances and previous history, the officer may elect to make a custodial arrest and transport the juvenile to the Miller County Juvenile Detention Center. If this enforcement action is selected, an automatic referral of the juvenile must be provided to the juvenile intake officer of the Juvenile Court regardless of the type of the offense.
- B. When considering a course of action to be taken with a juvenile offender, officers should consider the following factors:
 - 1. Nature of the offense — The character of an incident or conditions surrounding the juvenile’s involvement;
 - 2. Age of the juvenile — Involvement may have been precipitated by an older juvenile’s influence or other factors;
 - 3. Officer’s access to a parent, guardian or custodian;

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4. Knowledge of previous records may be indicative of the juvenile’s attitude, causing the officer to be more forceful in alternative placement and decisions;
 5. Complainant/victim comments may be taken into account, especially where repetitive incidents are reported for the first time; and
 6. Direction received by juvenile authorities.
- C. Pursuant to A.C.A. § 9-27-309(i)(1), if a juvenile is arrested for unlawful possession of a firearm under A.C.A. § 5-73-119, an offense involving a deadly weapon under A.C.A. § 5-1-102, or battery in the first degree under A.C.A. § 5-13-201, the juvenile detective assigned the case shall as soon as practical and with all reasonable haste cause written notification of the arrest to be given to the superintendent of the school district in which the juvenile is currently enrolled.
- D. Taking a Juvenile into Custody
1. A juvenile may be taken into custody without a warrant before service upon him or her of a petition and notice of hearing or order to appear as set out under A.C.A. § 9-27-312:
 - a. Pursuant to an order issued by a circuit court;
 - b. By a law enforcement officer without a warrant under circumstances provided within Rule 4.1 of the *Arkansas rules of Criminal Procedure*;
 - c. By a law enforcement officer if there are reasonable grounds to conclude the juvenile is in immediate danger and removal is necessary to prevent serious harm from his surroundings or from an illness or an injury, and if parents, guardian or others with the authority to act are unavailable or have not taken the necessary action to protect the juvenile from danger and there is not time to petition for an obtain an order of the court prior to taking the juvenile into custody.
 - d. All juveniles taken into physical custody shall be separated from adult offenders—in terms of sight and sound—throughout the period in which the juvenile remains in custody of the Texarkana Police Department. In addition, male and female juveniles who are taking into custody shall remain separate throughout the period in which the juvenile remains in custody of the Texarkana Police Department. ^{ALEAP 10.04}
 2. When any juvenile is taken into custody without a warrant, the officer taking the juvenile into custody shall immediately make every effort possible to notify the custodial parent, guardian or custodian of the juvenile's location.
 3. When any juvenile is taken into custody pursuant to a warrant, the officer taking the juvenile into custody shall immediately take the juvenile before the judge of the division of circuit court out of which the warrant was issued and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile’s location.
 4. A law enforcement officer shall take a juvenile to detention, immediately make every effort to notify the custodial parent, guardian or custodian of the juvenile’s location, and notify the Juvenile Intake Officer within twenty-four (24) hours so that a petition may be filed whenever a juvenile is taken into custody for a suspected violation of the following statutes:
 - a. Unlawful possession of a handgun in violation of A.C.A. § 5-73-119(a)(1);
 - b. Possession of a handgun on school property in violation of A.C.A. § 5-73-119(b)(1);
 - c. Unlawful discharge of a firearm from a vehicle in violation of A.C.A. § 5-74-107;
 - d. Any felony offense committed while armed with a firearm; or

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- e. Criminal use of prohibited weapons in violation of A.C.A. § 5-73-104.
5. If a juvenile is taken into custody for an act that would be a felony if committed by an adult, other than a felony listed in subdivision “4.” of this section, the officer shall immediately make every effort possible to notify the custodial parent, guardian or custodian of the juvenile's location and may perform either of the following options:
 - a. Take the juvenile to detention; or
 - b. Return the juvenile to his/her home.
 6. If a juvenile is taken into custody for an act that would be a misdemeanor if committed by an adult, the officer shall immediately make every effort possible to notify the custodial parent, guardian or custodian of the juvenile's location and may perform either of the following options:
 - a. Notify the Juvenile Intake Officer who shall make a detention decision pursuant to A.C.A. § 9-27-322; or
 - b. Return the juvenile to his/her home.
 7. Whenever a juvenile is taken into custody, the officer taking the juvenile into custody shall, transport the juvenile to the Miller County Juvenile Detention Center or if the juvenile is in need of medical attention, the juvenile should be transported to a medical facility.
 8. In addition, an officer may take a juvenile into custody if there is probable cause leading an officer to believe the juvenile has committed a status offense, such as a curfew violation, a runaway or minor in possession of alcohol. For additional information surrounding curfew violations and runaway reports, refer to *General Order 1102.06---Juvenile Curfew Enforcement* and *General Order 1105.07---Juvenile Runaways*.
 9. In order to facilitate appropriate processing and determine the juvenile’s appropriate disposition, a juvenile may be held in the administrative areas located within the Bi State Criminal Justice Center pending the juvenile’s release to his or her parent, guardian, custodian or the Department of Human Services.
 - a. A juvenile shall not be left unattended while in custody at the Bi State Criminal Justice Center.

E. Juvenile Right to Counsel (A.C.A. § 9-27-316)

1. In delinquency and family in need of services cases, a juvenile and his or her parent, guardian or custodian shall be advised by the law enforcement official taking a juvenile into custody that the juvenile has the right to be represented at all stages of the proceedings by counsel.
2. A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense until the law enforcement officer has advised the juvenile of his or her rights pursuant to subdivision “3.” of this section in the juvenile's own language.
3. A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense if the juvenile has indicated in any manner that he or she:
 - a. Does not wish to be questioned;
 - b. Wishes to speak with his or her custodial parent, guardian or custodian or to have that person present; or
 - c. Wishes to consult counsel before submitting to any questioning.

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F. Juvenile Waiver of Right to Counsel — Questioning (A.C.A. § 9-27-317)

1. A juvenile's waiver of his/her right to counsel shall only be accepted under the following conditions:
 - a. The juvenile understands the full implications of the right to counsel;
 - b. The juvenile freely, voluntarily and intelligently wishes to waive his/her right to counsel; and
 - c. The juvenile's parent, guardian, custodian or counsel for the juvenile has agreed with the juvenile's decision to waive the right of counsel.
2. The agreement of the parent, guardian, custodian or attorney shall only be accepted under the following conditions:
 - a. The person has freely, voluntarily, and intelligently made the decision to agree with the juvenile's waiver of the right to counsel;
 - b. That person has no interest adverse to the juvenile; and
 - c. That person has consulted with the juvenile in regard to the juvenile's waiver of the right to counsel.
3. In determining whether a juvenile's waiver of the right to counsel was made freely, voluntarily and intelligently, the officer shall consider all the circumstances of the waiver, including:
 - a. The juvenile's physical, mental and emotional maturity;
 - b. Whether the juvenile understood the consequences of the waiver;
 - c. In cases in which the custodial parent, guardian or custodian agreed with the juvenile's waiver of the right to counsel, whether the parent, guardian or custodian understood the consequences of the waiver;
 - d. Whether the juvenile and his or her custodial parent, guardian or custodian were informed of the alleged delinquent act;
 - e. Whether the waiver of the right to counsel was the result of any coercion, force or inducement;
 - f. Whether the juvenile and his or her custodial parent, guardian or custodian had been advised of the juvenile's right to remain silent and to the appointment of counsel and had waived such rights; and
 - g. Whether the waiver was recorded in audio or video format and the circumstances surrounding the availability or unavailability of the recorded waiver.
4. No waiver of the right to counsel shall be accepted in any case in which the parent, guardian or custodian has filed a petition against the juvenile, initiated the filing of a petition against the juvenile, or requested the removal of the juvenile from the home.
5. No waiver of the right to counsel shall be accepted in any case in which counsel was appointed due to the likelihood of the juvenile's commitment to an institution under A.C.A. § 9-27-316(d).
6. No waiver of the right to counsel shall be accepted when a juvenile has been designated an extended juvenile jurisdiction offender.

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7. No waiver of the right to counsel shall be accepted when a juvenile is in the custody of the Department of Human Services, including the Division of Youth Services of the Department of Human Services.
8. All waivers of the right to counsel shall be in writing and signed by the juvenile.
9. When a custodial parent, guardian or custodian cannot be located or is located and refuses to go to the place where the juvenile is being held, counsel shall be appointed for the juvenile. Procedures shall then be the same as if the juvenile had invoked counsel.
10. After the parent, guardian, custodian or appointed attorney arrives at the Police Department, the officer will conduct the interview in the following manner:
 - a. Confer with the parent, guardian, custodian or attorney and explain the circumstances of the custody and request permission to question the juvenile;
 - b. Advise the juvenile of his or her *Miranda* rights in the presence of the parent, guardian, custodian or attorney. A Texarkana Police Department Juvenile Advice of Rights form should be completed with this advice of rights;
 - c. In order to reduce the possibility of duress, no more than two officers shall be present during the interview and the duration of the interview should be limited as much as possible;
 - d. If at any time the juvenile, parent, guardian, custodian or attorney requests the interview be stopped, the officers conducting the interview must terminate the interview immediately; and
 - e. Explain to the juvenile and the parent, guardian, custodian or attorney the procedures that will be followed as they relate to the custody, transportation to the detention center, and the detention hearing.

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