

# TELEMASP BULLETIN

## TEXAS LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS PROGRAM

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### Written Policy Directives: Juvenile Offenders

In recent years, the rising rate of violent juvenile crime has been evident throughout the juvenile justice system in Texas. In 1985, the arrest rate for violent offenses per 100,000 juveniles in Texas was 145. In 1990, the arrest rate had risen substantially to 231 (Texas Youth Commission). In a six year period, the arrest rate for violent offenses among juveniles increased 59.3 percent. From 1989 to 1991, there was an 89.9 percent increase in offenders who were committed to the Texas Youth Commission and classified upon admission as violent offenders. This combines with a 67.4 percent increase, in the same time frame, in offenders classified as chronic, serious offenders.

#### Purpose of the Bulletin

This bulletin provides a review of model policies and current Texas police department policies for juvenile offenders. Better juvenile policy covers a wide range of circumstances and situations. Examples from several Texas agencies are given to highlight the areas that a departmental policy on juveniles should cover.

The major areas of police involvement which directly involve juveniles include: disturbances, family violence, home burglaries, vandalism, elderly complaints, traffic enforcement, and offenses against children. These major areas of demand account for at least 50 percent of the total requirement for police service (OJJDP). This figure grows significantly when informal contacts and general order maintenance are added. It is clear that juvenile related law enforcement matters constitute a major portion of police time.

*"To the greatest feasible extent, police departments should formulate policy guidelines for dealing with juveniles"*  
(President's Commission on Law Enforcement and Administration of Justice).

All police departments have a variety of duties and responsibilities when dealing with juveniles. The Office of Juvenile Justice and Delinquency Prevention concludes that police responsibilities include removing juveniles from school, detention at a youth home, interacting with the parents or guardians, and taking the juvenile into custody. Duties also include all booking and record keeping responsibilities, investigations, and handling abused and neglected children (OJJDP).

#### *Police responsibilities as listed by OJJDP:*

- 1) Taking of the juvenile into custody.
- 2) Removal of the juvenile from school.
- 3) Notification of parents, guardian, or custodian.
- 4) Release to the custody of parents or guardian.
- 5) Detention at a youth home.
- 6) Fingerprints and photographs.
- 7) Polygraph procedures.
- 8) Juvenile record procedures.
- 9) Abused and neglected children.
- 10) Investigating officer.



The police response to juvenile matters has become specialized in response to judicial pressures and social attitudes. For example, special gang units, school units, and juvenile units themselves have all grown significantly in recent years. This shift of attention away from the patrol officer has resulted in a diminishing concern for sheer bulk of services and activities involving juveniles. In other words, there is a tendency to pass the buck rather than address the problem. Organizational competency is reduced which results in few individuals in the department who are confident in their understanding of the juvenile problem and how to handle it.

One response to organizational incompetence is having clear policy guidelines that reduce confusion and offer an effective response to juvenile-related matters within a police agency. Throughout the evolutionary process of juvenile justice there have been increased pressures for appropriate policy and procedural guidelines for law enforcement agencies. Unfortunately, even with better training, education, and equipment, many police agencies still do not have any written policies for even the most basic responsibilities faced by its officers.

Law enforcement responsibilities regarding juveniles have increased in scope in recent years. Police agencies have had to rely on dispositions other than formal arrest in handling juveniles. Several jurisdictions across Texas have implemented formal programs to deal with issues of record keeping, information sharing, and the disposition of serious habitual juvenile offenders (Austin, El Paso, Bell County, Victoria and others). Information-sharing is possible across juvenile agencies. The criteria for sharing is spelled out in the Texas Family Code. Several jurisdictions have obtained court orders that allow them to share such information as probation and parole conditions, informal contacts, crime analysis, and juvenile records across agencies.

***Additional Areas of Law  
Enforcement Responsibility:***

- 1) Dispositions, other than law enforcement, following arrest.
- 2) Information-sharing across agencies.
- 3) FI cards and their uses in crime analysis.
- 4) Identification and disposition of serious habitual juvenile offenders.
- 5) Separate juvenile detention policies.
- 6) Knowledge of probation and parole conditions.
- 7) Mandated discretion levels in dispositions. (OJJDP)

## **Rationale for Juvenile Policy**

There are a number of rationales for enacting departmental policy regarding juveniles: 1) it needs to be done; 2) it makes the department more professional; 3) the chief or sheriff has made it an assignment; 4) there is political or community pressure; and 5) other departments have done it (OJJDP). Still the question becomes, what is the police role in formulating juvenile justice or delinquency prevention policy? Two assumptions underlie this question. First, it is suggested that police policy is an extension of community standards. Second, the determination of whether or not a child enters the system is based largely on the initial contact with the police.

The International Association of Chiefs of Police offers several reasons for the adoption of juvenile police policy. First, policy statements define the broad objectives of the police consistent with the philosophical tenets upon which a democratic society is based. These policies provide a sound and reasonable basis for the exercise of police discretion. They offer guidelines for conduct that define limits under which the officer can operate. They also provide standards under which each individual department may measure its response on specific issues. Finally, the policies give politicians, the public, and the media a guide which helps shape their expectations.

***OJJDP Lists Several Reasons to  
Enact Specific Juvenile Policies:***

- 1) It needs to be done.
- 2) It makes the department more professional.
- 3) The chief or sheriff has made it an assignment.
- 4) There is political or community pressure.
- 5) Other departments have done it.

The President's Commission on Law Enforcement and Administration of Justice offered the following standard: "To the greatest feasible extent, police departments should formulate policy guidelines for dealing with juveniles." The National Advisory Commission on Criminal Justice Standards and Goals, in the volume on police, stated: "The chief executive of every policy agency immediately should develop written policy governing the agency involvement in the detection, deterrence and prevention of delinquent behavior and juvenile crime."

## Developing Juvenile Policy

The formulation of a juvenile police policy should be developed in cooperation with the juvenile court and other juvenile justice agencies. This policy should clarify the use of discretion in police disposition of juvenile cases. The IACP states that the police should, as a matter of policy, be officially represented and participate in civic, religious and social community organizations and functions through which the public order can be promoted. Further, the police should take an active role in the establishment of interdisciplinary juvenile justice coordinating councils at the community level. Many state legislatures have mandated that the police develop more specific policies. It is clear that the reasons for the adoption of juvenile police policy are many.

***"The chief executive of every policy agency immediately should develop written policy governing the agency involvement in the detection, deterrence and prevention of delinquent behavior and juvenile crime"*** (National Advisory Commission on Criminal Justice Standards and Goals).

Policy development is a function of top level management. While not all situations in a police department can be covered by written policies, it is the best advice of most authorities on management that policies should be written. Writing and implementing effective policy is no easy task as any administrator well knows. The benefits are that the process requires the manager to carefully formulate a policy decision before putting it into a policy and procedures manual. In addition, written policy can frequently be referred to and is less likely to be misunderstood than verbal communication. Finally, well developed policies offer the police a philosophical overview of how management expects operations to be run. Many of the policies currently in place in law enforcement are the result of external pressures such as juvenile law and court procedure. These policies are a natural extension of what the law, judge or prosecutor expects from the agency on a consistent basis.

Written juvenile policy and procedures require constant planning, implementation, evaluation and refinement based on changing community needs and pressures (National Advisory Commission on Criminal Justice Standards and Goals). These procedures must incorporate legal methods of discovering situations and environments that are harmful to juveniles' development in order to detect and deter conditions that may lead to delinquent behavior. Legal procedures for apprehension and detention of juvenile offenders should also be included.

***The National Advisory Commission on Criminal Justice Standards and Goals recommends that juvenile policies should cover at least the following:***

- Exerting every possible effort toward discovery of potential delinquents and conditions conducive to delinquent behavior.
- Working closely with other agencies to remove or control environmental conditions conducive to creating juvenile problems.
- Advising and assisting all agencies and organizations concerned with juvenile problems when the police agency is not directly involved in the activity.
- Using preventive patrol techniques in areas where there is potential for juvenile problems.
- Conducting thorough investigations into delinquency problems that lead to the commission of juvenile offenses. This includes apprehension and prosecution of adults who contribute to, or are involved in delinquency problems.
- Detecting and apprehending juvenile offenders as prescribed by existing juvenile law and procedures. There should be guidelines for the release of juveniles into parental or guardian custody, or their detention.
- Follow-up as needed in the referral of the offender, obtaining the necessary legal process and obtaining the disposition of each action involving the juvenile offender.
- Retaining prescribed juvenile records as indicated by the courts and required by law.



## Examples of Texas Juvenile Policies

**Goal statements.** A review of selected departmental policies from around Texas reveals that several jurisdictions have implemented wide-ranging and comprehensive policies for dealing with juveniles. Better policies are those which cover a wide range of situations and procedures parsimoniously. Policies implemented should be consistent with the Texas Family Code and relevant court cases, particularly those which deal with custody, interrogation, and fingerprinting and photographing of juveniles.

Several Texas jurisdictions include a statement of purpose and the goals and objectives of handling juvenile cases. Austin PD notes that all personnel are responsible for participating in and supporting Title 3 of the Texas Family Code which outlines the goals of the juvenile justice system. "Through the coordinated efforts of all major APD divisions and personnel, and other outside resources, the APD strives to provide a continuum of interagency, community-focused prevention, intervention, apprehension, diversion and treatment programs and services." The purpose of this order, and any juvenile policy, is to provide guidance and direction for processing and handling juvenile offenders and victims within the jurisdiction of the department.

*The Department's goal when dealing with juveniles is one of education, intervention, and behavioral correction wherever feasible. All personnel are encouraged to use the least stringent and most productive means reasonably available to them when dealing with juvenile offenders. Moreover, violations of the law are not ignored and any interventions by the department shall be documented* (Midland Police Department, Juvenile Investigations Policy —Goals and Objectives [B]).

**Dispositions.** A great deal of discretion and ambiguity exists in the decisions to arrest and divert juvenile offenders. Many jurisdictions provide structured guidelines to aid officers in their contacts with juveniles. Arlington Police Department's policy contains reference to Section 52.01 of the Texas Family Code which provides guidelines under which an officer can issue a field release/warning to juvenile offenders. The release can be made if the officer is releasing the child to the parent or guardian, if the release is in the best interest of the child or the state, for certain minor offenses,

and if it is desired to record a non-custody contact with the child. Additionally, the officer can divert a child out of the criminal process under the Texas Family Code (Sections 52.01 and 52.03). Amarillo Police Department's policy notes that the decision to use an officer's warning or diversion should be made after the following considerations: the nature of the alleged offense, the age of the juvenile and the circumstances surrounding the incident, and the juvenile's prior history. Many departmental policies provide for diversion to various community-based programs within the jurisdiction.

*Austin Police Department's policy provides for the following (escalating) measures to be used when interviewing, detaining, and taking into custody youth involved in criminal and delinquent acts:*

1. Identify, interview and release at the scene;
2. Identify, interview and release at the scene to a parent or other responsible adult;
3. Identify, interview, transport to the juvenile's home and release to a parent or other responsible adult;
4. Identify, interview, detain and refer to juvenile court.

**Rights of the juvenile.** Juveniles are accorded the same basic rights as adults in the criminal justice system. However, under Texas law, juveniles are accorded additional rights when it comes to representation by counsel, confessions, and any waiver of rights. Waco Police Department's policy notes that a waiver of rights (Title 3 Section 51.09, Texas Family Code) may be obtained only after the child has received a warning from a magistrate. Recent research concluded that Texas is one of the most protective states in the nation with regard to juvenile rights (Caeti, Hemmens and Burton, 1994). Specific juvenile rights should be outlined in any departmental policy.

Certain restrictions also apply to where a juvenile can be detained and how long the juvenile may be detained. Officers must also be aware of the need to notify parents or guardians. Under current juvenile laws, a juvenile can in no way be exposed or mixed with adult offenders (Amarillo Police Department policy, juvenile cases [14]). Lubbock Police Department's policy provides that a juvenile may be held in custody a maximum of (5) hours. The juvenile must be released to a parent, guardian, or other responsible adult, or, if he or she qualifies for acceptance, be taken to the local

youth facility by the end of this time limit. Many departmental policies provide extensive procedures to be followed when parents or guardians cannot be located.

***El Paso Police Department's warnings to a juvenile include:***

If you are 15 years of age or older and have committed a felony, the juvenile court may give up its jurisdiction over you and you may be tried as an adult in a criminal court.

One of the highest levels of protection afforded juveniles is the closed nature of juvenile records. El Paso Police Department's policy outlines the persons responsible for juvenile records as well as who is to have access in accordance with state law. Juveniles can be fingerprinted and photographed under certain conditions. Austin specifies that children 15 years of age or older, arrested for any felony, or children of any age arrested for a felony listed in Section 53.045 (a) of the Texas Family Code will be fingerprinted and photographed (Austin Police Department policy, document 509.11). Photographs may be taken if the officer believes that the photo will aid in the identification of the offender, as permitted under state law, and are subject to the same handling procedures as fingerprints. Field interrogation (FI) cards are a vital tool for crime analysis in many jurisdictions. Officers should be aware that FI cards on juveniles are subject to the same protections afforded to any other juvenile record.

***Working effectively with children and especially teenagers who have a history of misbehavior, requires a more flexible counseling approach than is normally used in dealing with adults. It is especially difficult to work with juveniles who have several prior arrests and who belittle the justice system and all police officers whom they meet. The department encourages officers to adjust their interviewing style to be sensitive to each juvenile's age and experience. The more approaches an officer can use, the more cooperation can be achieved with each child. Interview styles that include the use of threats or belittling tactics are not tolerated under any circumstances (Midland Police Department policy, chapter 11, section 3, VI [B and C]).***

**Interrogations and confessions.** Juvenile interrogations and confessions are subject to a higher degree of protection than adult statements. Prior to taking a confession from a child, the child must be properly warned by a magistrate. Arlington Police Department's policy specifies the warnings, locations, and limits placed on juvenile statements in accordance with state law and local court orders. Austin specifies that in most cases, a juvenile should not be interrogated in excess of two hours by more than two officers (Austin Police Department policy, 509-10[C]). These restrictions vary by jurisdiction, but the courts will judge the admissibility of a juvenile's confession based on the juvenile's age, conditions under which statements were given, the voluntary nature of the statements, and other exigent circumstances in accordance with federal case law.

***Waco Police Department's outline for the interrogation of juveniles:***

- a. Do not make any promises or threats.
- b. Solicit information with tact and patience without using abusive language, epithets, sarcasm or harsh tones.
- c. Ask questions in simple language to ensure the child understands clearly what is being asked.
- d. Satisfy the child's need for food, drink or clothing prior to the interview is an important step in establishing a good relationship.
- e. Interrogators are sensitive; respect the legal rights of adults and juveniles alike.
- f. Principles used in an interview setting apply during an interrogation, if applicable.
- g. Custodial interrogation of juveniles adheres to procedural requirements established by legal authority congruent with protection afforded by the juvenile's constitutional rights. In addition, the interrogation officer:
  - (1) confers with parents or guardian,
  - (2) explains department and juvenile justice system procedures to the juvenile being questioned,
  - (3) limits the duration of the interrogation to a reasonable time whereby the interrogation is completed or the juvenile or his parents request the interrogation be terminated.

***Austin Police Department's guidelines for fingerprints and photographs of juveniles:***

- A. Children 15 years of age or older, arrested for any felony, or children of any age arrested for a felony listed in section 53.045 (a) of the Texas Family Code will be fingerprinted and photographed. The felonies listed in section 53.045 (a) of the Texas Family Code are:
1. Murder;
  2. Capital Murder;
  3. Aggravated Kidnapping;
  4. Aggravated Sexual Assault;
  5. Deadly assault on a law enforcement officer, corrections officer or court participant;
  6. Attempted Capital Murder.
- B. Children who are suspects in connection with a case where latent prints were obtained and who cannot be eliminated, may be fingerprinted for comparison purposes. If an identification is not made, the child's fingerprints must be destroyed immediately.
- C. An officer must have probable cause to believe, not just "suspect," that a child committed an offense before that officer may make/request a comparison of the child's previously recorded fingerprints with any latent prints taken at a crime scene.
- D. The single fingerprint of a child arrested will not be taken on any copies of the arrest card. Because this fingerprint will not be available for identification purposes, it is vitally important that officers include in their incident report a full and complete physical description of the child, along with all identification characteristics.
- E. If, during the investigation of an offense, an officer has reason to believe that a photograph of a child taken into custody will assist in the identification of the offender and the child is under 15 years of age, the officer may photograph the face of the child only. If the child is not identified as an offender, the photograph and its negative shall be destroyed immediately.
- F. When photographs are taken solely to assist in the identification of an offender, the child's name will not be placed on the photograph.

**Guidelines for offense dispositions.** The better departmental policies include specific guidelines for dealing with juveniles under varying circumstances. These statements might include procedures for dealing with juvenile DWI, dispositions on school grounds, juvenile status offenses, and other specific offenses or situations. The department policies reviewed here all contained some reference to treating juveniles differently from adults in certain situations. Juvenile policy should reflect all of the issues reviewed here. Many include dispositional procedures for certain offenses and outline the officer's use of discretion in diverting the juvenile from the system. El Paso Police Department's policy outlines the procedures to be used when a juvenile commits a felony, class A or B misdemeanor, class C misdemeanor, traffic offense, juvenile DWI and DUID, or other status offenses. Structured guidelines for offense dispositions provide the officer with consistent alternatives when dealing with juveniles. The purpose behind this or any other juvenile policy is to provide guidance and direction for processing and handling juvenile offenders and victims.

### Conclusion

Police responsibilities in dealing with juveniles have increased in recent years. Juvenile offenders and juvenile crime are the "hot-topics" among the media, the public, and lawmakers. Police agencies are being asked to respond and control the rising tide of juvenile crime. A comprehensive juvenile policy provides the department with direction, coordinated effort, consistency, and accountability. Current examples of Texas police department policies include sections covering the goals in dealing with juveniles, dispositions and discretion, rights of juveniles, interrogations and confessions, fingerprints and photographs, and specific procedures for handling juveniles in certain situations. Juvenile policy directives are effective tools in developing a coordinated effort to deal with juveniles. Clear and comprehensive policy guidelines allow officers to be more professional in handling juvenile offenders.

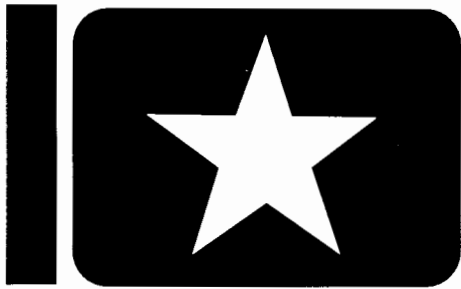
Caeti, T. J., Hemmens, C., & Burton, V. S., Jr. (forthcoming). Juvenile right to counsel: A state statute analysis. Office of Juvenile Justice and Delinquency Prevention (June 1993). Police operations leading to improved youth services. (Policy II) Training Seminar, Austin, TX. Office of Juvenile Justice and Delinquency Prevention (June 1993). Managing juvenile operations. (MJO) Training Seminar, Austin, TX.

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