



**MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE**

CHARGING AND PROCESSING JUVENILES

DIRECTIVE NO:

FC 0509

EFFECTIVE DATE:

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CANCELS:

FC 0509, dated October 1, 2022
FC 0509, Appendix A and Appendix B

ACCREDITATION:

CALEA Standards: 1.2.8, 41.3.8, 44.2.1, 44.2.2,
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PROPONENT UNITS:

Investigative Services Bureau, Patrol Services
Bureau, Information Management Technology
Division/Juvenile Screening Unit

AUTHORITY:

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If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61).

I. POLICY

It is the policy of the Montgomery County Department of Police (MCPD) to arrest, transport, and process juveniles in a manner that protects the rights of juveniles and ensures the personal safety of both the officer and the prisoner.

II. DEFINITIONS

For purposes of this directive, the following terms have the meanings indicated.

- A. Adjudication: A hearing to determine if the juvenile committed a delinquent act or violation of the law.
- B. Delinquent Offender: A juvenile offender who has been charged with an offense for which an adult can also be charged but who is subject to the jurisdiction of the juvenile court.
- C. Juvenile: Also, may be referred to as "child." Any person under the age of 18 (whether under juvenile or criminal court jurisdiction) or a person between the ages of 18 to 21 who is still under juvenile court jurisdiction.

- D. Non-Offenders: A Child in Need of Assistance (CINA); a juvenile who is not charged with any offense but who needs help for some reason (abused, neglected, or developmental disability).
- E. Status Offender: A Child in Need of Supervision (CINS); a juvenile who has been accused or adjudicated for an offense for which an adult cannot be charged (e.g., runaway, truancy, underage drinking).
- F. Student: An individual enrolled in the public school system within the State who is five years of age or older and under 22 years of age.

III. DISCRETION

- A. Officers are vested with a broad range of discretion when deciding whether or not to charge a juvenile with a crime. This directive is not intended to deprive any officer of that discretion when deciding whether or not to charge a juvenile, provided it is exercised in accordance with departmental rules and regulations and furtherance of the police mission. While the discretion to charge a juvenile is determined by the officer, the manner in which these charges are placed is determined by departmental policy.
- B. The proper exercise of discretion does not relieve the investigating officer of the responsibility to conduct a thorough preliminary investigation of the event.

IV. AUTHORITY TO TAKE JUVENILES INTO CUSTODY

- A. Juveniles may be taken into custody in accordance with Courts and Judicial Proceedings: § 3-814 and §3-8A-14 Taking Child into Custody.
- B. Juvenile Justice and Delinquency Prevention (JJDP) Act
The JJDP Act sets forth criteria that outline two specific statuses of custody.
 - 1. The JJDP Act requires an adequate system of monitoring for compliance with the core protections. Data must be collected on juvenile holding and annually reported to the State. The Professional Accountability Division (PAD) will also conduct regular on-site visits to verify compliance and reported data.

V. GENERAL INFORMATION

- A. Laws of Arrest
The laws of arrest apply the same for adults and juveniles. If the laws of arrest prevent an officer from arresting an adult, then the laws of arrest also prevent an officer from arresting a juvenile for the same offense.
- B. Juvenile Court Jurisdiction
Regardless of the date of the offense, the age at which a juvenile can be charged as a delinquent offender (for an act that would be a crime if committed by an adult) is 13 years

old, and 10 years old for specific crimes. A child who is at least 10 years old can be charged as a delinquent offender for *the following*:

1. Committing an act that, if committed by an adult, would constitute a crime of violence, as defined in §14-101 of the Criminal Law Article or
2. Committing an act arising out of the same incident as a crime of violence, as defined in §14-101 of the Criminal Law Article.

C. Parent/Guardian Notification Pursuant to MD Courts and Judicial Proceedings §3-BA-14.1

1. When an officer takes a child into custody, the officer shall immediately notify, or cause to be notified, the child's parents, guardian, or custodian in a manner reasonably calculated to give actual notice. The notice shall:

- a. Include the child's location;
- b. Provide the reason for the child being taken into custody; and
- c. Instruct the parent, guardian, or custodian on how to make immediate in-person contact with the child.

2. Charging a Juvenile

When an officer charges a juvenile with a crime, whether by arrest or by exception, the officer shall immediately notify the juvenile's parent, guardian, or custodian of the charges.

D. Civil and Traffic Citations

Juveniles can only be issued citations for civil violations of the alcohol, tobacco, and marijuana/*cannabis* laws. A Juvenile 16 or 17 years of age can be issued a Maryland Uniform Complaint, Citation, *or* Summons for violations of the motor vehicle law.

E. Physical Arrests

When a physical arrest is made, refer to section X "Processing Arrested Juveniles," for procedures.

F. IMTD Records- Juvenile Arrest Disposition Responsibility

The Information Management and Technology Records Division (IMTD)/Juvenile Screening Unit does not conduct follow-up investigations of juvenile arrests or cases closed by exception. Their responsibility is solely to screen juvenile cases and refer them to the appropriate course of adjudication or diversion program.

- G. Officers handling calls for service involving known juveniles *should consider* the juvenile's age when determining if the juvenile should be taken into custody for charges. Officers handling calls for service of a criminal nature where the juvenile's age cannot readily be determined *should* proceed with enforcement duties (e.g., investigation, taking the juvenile into custody, searching of the juvenile, etc.) until the juvenile's age is determined. If a

juvenile is of qualifying age, the officer shall follow current departmental procedures. If an officer determines a juvenile is not of qualifying age, the officer shall discontinue enforcement action and release the juvenile without charge. Refer to Section X.E.3

H. Arrests on School Property

Whenever a juvenile is arrested on school property, refer to FC 0512, "Arrest, Questioning, and Search of Students on School Premises," for additional direction.

VI. TAKING A CHILD INTO CUSTODY FOR A STATUS OFFENSE (RUNAWAY)

- A. Pursuant to §3-8A-14 of Courts of Judicial Proceedings, an officer may take a juvenile status offender into custody if the officer has reasonable grounds to believe that the child has run away from their parent or guardian.

VII. JUVENILE WARRANTS (WRITS)

- A. There is currently no warrant application process for juveniles that can be utilized by an officer.
- B. Juvenile warrants can only be issued by juvenile court judges.
- C. Juvenile warrants can be served at any time, day or night. If the charge is of a minor nature, service *should* be made at a reasonable time of day, normally between 7 am and 10 pm.
- D. Any officer holding a juvenile warrant or having knowledge of one has lawful authority to take the juvenile named into custody.

VIII. CLOSING CASES BY EXCEPTION AND REFERRING TO IMTD RECORDS/JUVENILE SCREENING UNIT FOR DISPOSITION

- A. Closing cases by exception and referring them to IMTD Records/Juvenile Screening Unit was instituted as a way of presenting juveniles before the juvenile justice system when the laws of arrest prevent the officer from making a physical arrest.
- B. Only those misdemeanors that do not fall under the guidelines of Criminal Procedure Articles 2-202 or 2-203 can be closed and referred to IMTD Records/Juvenile Screening Unit.
- C. A physical arrest must be made on all felonies and misdemeanors that fall under the guidelines of Criminal Procedure Articles 2-202 or 2-203 if the officer determines that charges *will* be placed.
- D. Exceptions
A felony or misdemeanor can be closed by exception when:
1. The juvenile cannot be located, or

2. The juvenile lives outside of Maryland, and the parent/guardian refuses to bring the juvenile to Montgomery County.

Note: Officers should include in the incident report all efforts on locating the juvenile and/or the parent's/guardian's refusal to bring the juvenile to Montgomery County.

IX. ISSUING CITATIONS TO JUVENILES

A. Juvenile Civil Citations

When charging a juvenile on a civil citation (alcohol, tobacco, and marijuana/*cannabis* violations only), refer to the MCP Citation Manual to determine eligibility and processing procedures.

B. Juvenile Traffic Enforcement

1. Juveniles Less Than 16 Years of Age-Traffic Offenses Only

All traffic offenses committed by juveniles less than 16 years of age will be charged via an incident report. DO NOT issue citations/summons.

2. Juveniles 16 and 17 Years of Age-Must Appear Traffic Offenses

If a juvenile 16 or 17 years of age commits a must-appear traffic violation, ALL traffic charges arising from that event are charged and handwritten on the citation/summons.

3. Juveniles 16 and 17 Years of Age-Non-Incarcerable Traffic Offenses

Traffic offenses committed by juveniles 16 or 17 years of age which carry no penalty of incarceration, will be charged on the Maryland Uniform Complaint Citation and Summons in the same manner as for an adult.

4. Juveniles Less Than 16 Years of Age-Charged Criminally and with Traffic Offenses

If a juvenile under the age of 16 years is charged with a criminal offense and accompanying traffic charges (i.e., stolen vehicle and related traffic offenses), DO NOT issue a traffic citation/summons.

5. Juveniles 16 and 17 Years of Age-Charged Criminally and with Traffic Offenses

If a juvenile 16 or 17 years of age is charged with a criminal offense and accompanying non-incarcerable traffic charges, issue the related traffic citations and note the criminal charges and traffic citations issued in the narrative of the report.

6. Juveniles-Charged with Civil Citations and with Traffic Offenses

- a. If a juvenile 16 or 17 years of age is charged with a civil offense (alcohol, tobacco, or marijuana/*cannabis*) and accompanying non-incarcerable traffic charge(s):
 - i. Issue the civil citation (DC-31)
 - ii. Issue the non-incarcerable traffic citation(s) to the juvenile on the Maryland Uniform Complaint Citation and Summons.

- b. If a juvenile 16 or 17 years of age is charged with a civil offense and accompanying "must appear" traffic charges:
 - i. Issue the civil citation (DC-31)
- c. If a juvenile less than 16 years of age is charged with a civil offense and accompanying "must appear" traffic charges:
 - i. All traffic offenses committed by juveniles less than 16 years of age will be charged via an incident report.

X. PROCESSING ARRESTED JUVENILES

A. Miranda Rights and Interrogations

1. Interrogations are custodial encounters when a juvenile is to be questioned or interrogated concerning their involvement in a delinquent act; they shall be advised of their Constitutional Rights. Interviews and interrogations will be conducted in accordance with FC 0811, "***Prisoner Processing***."
2. Access to Counsel Pursuant to MD Courts and Judicial Proceedings §3-8A-14.2
Once in custody, officers will advise the juvenile of their rights via an MCP ***Form 50-J (Advice of Rights Form-Juvenile)***. Officers may not conduct a custodial interrogation of a juvenile until:
 - a. The juvenile has consulted with an attorney who is:
 - i. retained by the parent, guardian, or custodian of the juvenile; or
 - ii. provided by the Office of the Public Defender; and
 - b. The officer has made an effort reasonably calculated to give actual notice to the parent, guardian, or custodian of the juvenile that the juvenile will be interrogated. Officers shall maintain a record of the notification or attempted notification of a parent, guardian, or custodian, including:
 - i. A signed statement by the officer (MCP ***Form 185, Parent/Guardian Notification Log***) that an attempt to notify a parent, guardian, or custodian was made;
 - ii. The name of the person sought to be notified; and
 - iii. The method of attempted notification.

Note: The signed MCP ***Form 185*** will be uploaded into the incident report, and a copy will be kept in the officer's case file.
 - c. The requirement of consultation with an attorney may not be waived and applies regardless of whether the child is charged as an adult.
 - d. A consultation with an attorney shall be:

- i. Conducted in a manner consistent with the Maryland rules for professional conduct; and
 - ii. Confidential
 - e. The consultation may be in-person, by telephone, or *via* video conference.
 - f. Officers conducting an interrogation shall record in the incident report:
 - i. the name of the attorney contacted, and
 - ii. the county or counties in which the attorney provided consultation.
 - g. Exceptions
An officer may conduct an otherwise lawful interrogation of a child without access to counsel if:
 - i. The officer reasonably believes that the information sought is necessary to protect against a threat to public safety; and
 - ii. The questions posed to the child by the officer are limited to those questions reasonably necessary to obtain the information necessary to protect against the threat to public safety.
3. There is no absolute legal requirement that a parent or guardian be present when officers question a juvenile. However, it is a good practice to attempt to have a parent present so that the parent can offer their child guidance during the interview process.
 4. Officers assigned body-worn cameras must activate their BWCS during interviews and interrogations in a manner consistent with FC 0430, "***Body-worn Camera System,***" unless using interview rooms with audio/visual recording devices. The child being interrogated shall be informed ***that*** the interrogation is being recorded.
 5. Any juvenile who speaks with an attorney and subsequently communicates the intent to waive their rights and answer questions will be re-advised on the advice of rights form (MCP ***Form*** 50-J) before any further questioning. The circumstances surrounding the juvenile's waiver will be fully documented in the incident report (name of attorney, date/time, ***the*** reason for waiving right, etc.).
 6. The length and conditions of interrogations will be in accordance with current case law. Juvenile interrogations will be reasonable in length. During lengthy interrogations, provide for rest periods, bathroom breaks, and food and drink, if appropriate. Generally, no more than two officers will interrogate a juvenile.
 7. The law is clear. There are factors that must be considered in determining whether juveniles understood their rights well enough to intelligently waive them. The effectiveness of the waiver is determined only by examining the "totality of the circumstances" surrounding the giving of the statement.
 8. The following circumstances should be considered in weighing whether a waiver is valid:

- a. Age of the accused
 - b. Education
 - c. Knowledge as to the substance of the charge (if any) and the nature of their rights to consult with an attorney and remain silent.
 - d. Whether the juvenile is permitted to consult with friends, relatives, attorneys, etc.
 - e. If charges are filed, whether the juvenile is to be interrogated before or after formal charges have been filed (in those cases where the juvenile is charged as an adult).
 - f. Methods of interrogation used.
 - g. Length of interrogation.
 - h. Whether the accused refused to voluntarily give statements on prior occasions.
 - i. Whether the juvenile had ever disavowed an out-of-court statement at a later date.
 - j. Mental impairment, drug or alcohol use.
9. Regardless of the circumstances, interrogations may be conducted without the parent if the parent refuses to be present, is disruptive, or is not available within a reasonable period of time, and interrogation cannot be delayed. In these cases, if the juvenile does not seem to understand the juvenile's rights, advise the rights in the presence of a court commissioner and record that fact on an MCP *Form 50-J* and the incident report.

B. Arrest, Processing, and Charging

The handling, searching, and transporting of juveniles will be conducted in accordance with FC 0811. NOTE: FC 0811 applies to both adults and juveniles.

C. Crimes for which juvenile court has no jurisdiction.

1. Juvenile court has no jurisdiction in the following circumstances:

- a. A child at least 14 years old alleged to have done an act which, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article;
 - i. First-degree murder
 - ii. First-degree rape
 - iii. First-degree sexual offense
 - iv. Attempt/conspiracy to commit above
- b. A child at least 16 years old alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;
- c. A child at least 16 years old alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration;

- d. A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under §4-202 of the Criminal Procedure Article:
- i. Abduction
 - ii. Kidnapping
 - iii. Second-degree murder (Criminal Law 2-204)
 - iv. Manslaughter, except involuntary manslaughter
 - v. Second-degree rape (Criminal Law 3-304)
 - vi. Robbery or attempted robbery with a dangerous or deadly weapon (Criminal Law 3-403)
 - vii. Second-degree sexual offense (Criminal Law 3-306 (a)(1))
 - viii. Third-degree sexual offense (Criminal Law 3-307 (a)(1))
 - ix. Using, wearing, carrying, or transporting a firearm during and in relation to drug trafficking crimes (Criminal Law 5-621)
 - x. Unlawful use of a firearm (Criminal Law 5-622)
 - xi. Carjacking or armed carjacking (Criminal Law 3-405)
 - xii. First-Degree Assault (Criminal Law 3-202)
 - xiii. Attempted murder in the second degree (Criminal Law 2-206)
 - xiv. Attempted rape in the second degree (Criminal Law 3-310) or attempted sexual offense in the second degree (Criminal Law 3-312)
 - xv. Possession use of a machine gun in commission of crime (Criminal Law 4- 404)
 - xvi. Use of machine gun for aggressive purposes (Criminal Law 4-405).
 - xvii. Sale/transfer of pistol or revolver under prescribed circumstances (Public Safety Article 5-134).
 - xviii. Sale/transfer of stolen pistol (Public Safety Article 5-138).
 - xix. Possession of short-barreled rifles and short-barreled shotguns (Public Safety Article 5-133).
 - xx. Wearing, carrying, transporting, or using a firearm during and in relation to a drug trafficking crime (Criminal Law 4-203)
 - xxi. Use of a handgun or antique firearm in the commission of a crime (Criminal Law 4-204)
- e. A child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult.

2. Charge the juvenile as an adult for all additional charges resulting from an incident listed above.

D. Waiver by Juvenile Court

For certain crimes committed by juveniles, the *State's Attorney's Office* (SAO) may petition to waive Juvenile Court jurisdiction and charge the juvenile as an adult.

E. Arrest/Processing Without Charging

1. Fingerprinting and photographing as an investigative aid does not constitute an arrest record for the juvenile. When this occurs, explain to the juvenile's parents that the fingerprints and photographs will be strictly confidential, kept segregated from those of adults, and destroyed upon completion of the investigation. Supervisors will ensure that these files are purged once the investigation is completed.
2. The investigator should retain investigative photographs and fingerprints in the case file; do not send *them* to Records Section. Furthermore, inform the parents that if the juvenile is arrested as a result of these fingerprints and photographs, they will be retained in the file until the juvenile reaches the age of 21.
3. When a juvenile is detained but released without being charged, notify the parents. If requested, meet and discuss the matter with the parents. If no report is on file, initiate a 2938 (*Police Information*) incident report detailing the arrest and release in the narrative.

XI. WARRANTLESS ARREST ON ACCUSATIONS / CITIZENS ARREST

A. Legal Authority

1. FELONY - In Maryland, a private citizen has the authority to arrest without a warrant when a felony is being committed in the citizen's presence or when a felony has, in fact, been committed, whether or not in the citizen's presence, and the citizen has probable cause to believe that the person arrested has committed it.
2. MISDEMEANOR - In Maryland, a private citizen has the authority to arrest without a warrant when a misdemeanor that amounts to a breach of the peace is being committed in the presence or view of the citizen. There is a narrow exception to this in the common law. A citizen has the right to detain a person believed to have taken the citizen's property. This must be done to prevent theft or recapture property, and not as a punishment. It is false imprisonment if the person does not have the property.

XII. WARRANTLESS ARREST BY POLICE OFFICERS OR COMMISSIONED SPECIAL POLICE OFFICERS (SPO)

- A. In accordance with Maryland case law, an officer or SPO may arrest a juvenile without a warrant under the authority of the Maryland Criminal Procedure 2-102.

XIII. OUT-OF-STATE JUVENILE EXTRADITION

A. Fast Tracking

The process in which the Department of Juvenile Services (DJS) and the State's Attorney Office/Juvenile Division facilitate the extradition of juveniles. This process is strictly limited to those juveniles:

1. Identified by the NCIC (*National Crime Information Center*) database as having an outstanding warrant or as a non-delinquent missing person from an out-of-state jurisdiction; or
2. Arrested in out-of-state jurisdictions; and
3. After a fresh pursuit across state lines; and
4. For a violent felony originally committed in Montgomery County.

B. Writ Request

The case will be presented during emergency hearings. DJS will inform the judge that they have adopted the case, and the SAO will request a writ. The writ will serve as a warrant, allowing the foreign jurisdiction to begin extradition. The SAO will obtain the writ from the court and forward it as soon as possible to the foreign police agency.

XIV. DISPOSITION OF ARRESTED JUVENILES

A. Release to Parents/Guardians

1. A juvenile offender cannot be held in a secure setting for more than six (6) hours; the clock starts at the point when the juvenile is placed in the secure area or is secured to a stationary object by handcuffs and is cumulative. Juveniles will not be released on their own recognizance. Release juveniles to their parents/guardians on a timely basis.

B. Detention of Juveniles

1. Initiate detention proceedings *via DJS* when juveniles cannot be released to their parent(s) or they are arrested for any of the below-listed offenses. The only exception to this detention procedure would be when the juvenile is charged as an adult.
 - a. Abduction [Criminal Law 3-503(a)]
 - b. Arson in the first degree [Criminal Law 6-102 (a)]
 - c. Assault in the first degree (Criminal Law 3-202)
 - d. Bomb threat (Criminal Law 6-107)
 - e. Burglary in the first, second, or third degree (Criminal Law 6-202, 203, 204)
 - f. Carjacking or armed carjacking (Criminal Law 3-405)
 - g. Escape (Criminal Law 9-404, 9-405)
 - h. Kidnapping [Criminal Law 3-503 (a, b, c)]
 - i. Manslaughter (voluntary, common law)
 - j. Murder in the first or second degree [Criminal Law 2-201(a)]
 - k. Possession of explosives/destructive device (Criminal Law 4-503)
 - l. Rape in the first or second degree (Criminal Law 3-303, 3-304)
 - m. Robbery (common law)
 - n. Robbery with a dangerous or deadly weapon (Criminal Law 3-403, 3-404)
 - o. Sexual offense in the first, second, or third degree (Criminal Law 3-305, 3-306, 3-307)

- p. Sodomy (common law)
- q. Attempts to commit any of the above crimes.
- r. Any offense which, in the officer's opinion, is serious in nature.

- 2. Alleged out-of-control or runaway juveniles who are in the home shall not be removed at the request of the parents. If the juvenile has not been charged with a violation of the law, DJS cannot detain *them* for out-of-control or runaway. Being out of control is not a chargeable offense.

XV. REQUIRED NOTIFICATION – STUDENT ARREST OF PUBLIC AND NON-PUBLIC SCHOOL STUDENTS

A. Maryland Safe School Act 2010

Effective July 1, 2010, the Maryland Safe School Act 2010 amended Maryland Annotated Code Education Article § 7-303 and mandates the local public school superintendent and the school principal, both public and non-public, be notified of the arrest and charges placed against a student for certain offenses.