

# POLICY 3

## Arrest, Transport, Booking and Temporary Custody

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### PURPOSE

Ensure that officers use the most effective practices for taking youth into custody in a manner that avoids physical harm or additional trauma to youth, while maintaining public safety.

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### POLICY

This policy provides guidance for arrests of youth, and for transporting, booking, and holding youth in custody while clarifying officers' constitutional obligations. It is designed to ensure that officers will:

- Undertake these activities consistent with youths' rights;
- Employ alternatives to arrest when appropriate and consistent with public safety;
- Limit the use of physical restraints; and
- Safely transport and take temporary custody of youth.

Officers should also read and implement this policy consistent with [Policy 8: Policing of Youth with Disabilities, Experiencing Mental Health Crises, or Impaired By Drugs or Alcohol](#).

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# REASONS FOR YOUTH-SPECIFIC POLICIES

## Why Arrests, Transport, Booking, and Temporary Custody Should Be Different for Youth

- An arrest of a youth is often a life-changing event; the aftermath of youth arrests can include trauma, depression, and high rates of recidivism.
  - Black, Indigenous, People of Color (BIPOC) youth and youth living in poverty are arrested at disproportionately high rates that are not explained by higher levels of offending, even when other variables are held constant. They are thus disproportionately subjected to the harms that arise from contact with the juvenile or adult justice systems.
  - Procedural justice is key to effective youth interactions. A youth's earliest interactions with law enforcement—particularly, whether youth perceives that they have been treated fairly in the interactions—can have a lasting impact on their responses at the time and their future perceptions of the legitimacy of the justice system, as well as their likelihood of reoffending. Law enforcement agencies can modify their practices to decrease potential harm and make the encounter more developmentally appropriate, without impairing officer or public safety.
  - In almost all circumstances, youth who are taken into custody have a parent or other responsible adult in their lives. Law enforcement agencies should keep these adults informed when the youth is arrested.
  - In many cases, citations, diversion, and similar approaches may be more effective in holding youth accountable for their actions than arrest and formal justice system involvement.<sup>1</sup>
- Additional source and background information for this policy can be found in the [Appendix to Policy 3](#).

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1. See, e.g. Baltimore Police Department Policy 1202, Interactions with Youth, at 2 (2022) (“Research has shown that many Youth, particularly those accused of low-level offenses, achieve better life outcomes and are less likely to commit future offenses when given an appropriate level of intervention that promotes pro-social behavior while protecting public safety. Youth who are diverted from formal involvement in the juvenile justice system can still be held accountable for their actions while receiving more Developmentally Appropriate services and support from community-based providers.”)

# DEFINITIONS

## **AGENCY**

This law enforcement agency.

## **JUVENILE JUSTICE DELINQUENCY PREVENTION ACT (JJDP)**

Juvenile Justice Delinquency Prevention Act, 34 U.S.C. Section 1110 *et seq.*

This federal law requires states to participate in juvenile justice planning and advisory systems as a condition of receiving federal funding for delinquency prevention and improvements in state and local juvenile justice programs and practices. To receive federal funding, states must agree to comply with the JJDP's four Core Requirements: 1) deinstitutionalization of status offenders (see definition below), 2) keeping youth "sight and sound" separated from adults in secure facilities, 3) removing youth from adult jails and detention facilities, and 4) implement strategies to address and eliminate racial and ethnic disparities from youths' first point of contact with the juvenile legal system, namely arrests by law enforcement officers.

## **PARENT**

The youth's biological or adoptive parent, guardian, or legal custodian.

## **PROCEDURAL JUSTICE FOR YOUTH**

Procedural justice is predicated on four core principles. Officers: 1) treat people with dignity and respect regardless of social status, 2) give people voice during interactions, 3) use neutral and transparent decision-making as well as explanations for the officer's actions, and 4) treat people in a lawful and trustworthy manner.<sup>2</sup> SFY believes that an additional two core principles are merited for interactions with youth: 1) express concern and care for the youth's well-being and safety, and 2) do not take advantage of the youth's lack of status and power to their disadvantage.

## **RESPONSIBLE ADULT**

Any adult related to the youth by blood, adoption, or marriage, or who has an established familial or mentoring relationship with the youth, who does not exhibit adverse interests to the youth. A responsible adult can include, but is not limited to, godparents, clergy, teachers, neighbors, and family friends.

2.. Tom Tyler is the author of the term procedural justice. His definition was first published in *Why People Obey the Law*. (New Haven, CT: Yale University Press, 1990). He further explained this theory in "Procedural Justice, Legitimacy and the Effective Rule of Law," *Crime & Justice*, vol. 30, 2003, pp.283-357. JSTOR, <http://www.jstor.org/stable/1147701>. The operation and impacts of law enforcement's use of Procedural Justice are available on the U.S. Department of Justice website at: <https://cops.usdoj.gov/proceduraljustice>.

### **STATUS OFFENDER**

The JJDPDA defines status offender as “a juvenile who is charged with or who has committed an offense that would not be criminal if committed by an adult.” 34 U.S.C. §11103(42). With limited exceptions, status offenders shall not be placed in a secure detention facility or secure correctional facility. Status offenses vary by state but typically include: runaways, curfew violations, truancy, incorrigibility, possession of tobacco, or being a minor in possession of alcohol.

### **TRAUMA**

As defined by the U.S. Department of Health and Human Services, individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being.

### **TRAUMA-INFORMED**

A trauma-informed **officer**: 1) anticipates that exposure to and experience of trauma is widespread, 2) realizes that the impacts of trauma often lead to reactive, survival behaviors; 3) recognizes hallmarks of traumatic responses, which are often shaped by a perspective of powerlessness, and 4) responds by considering the role trauma may play in a person’s response while taking steps to avoid re-traumatization. A trauma-informed law enforcement **agency** supports its officers’ trauma-informed responses by promoting awareness of and training about trauma, policies that require training for trauma-informed skills with the public and among officers.

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# PROCEDURE

## I. PROCEDURES

### A. Necessary Considerations Before Arresting Youth

To redirect youth from unwanted or unlawful behavior, officers should use the least intrusive action as their primary response before considering arrest, such as issuing a warning or making a referral. Officers should also consider issuing a summons or citation to court, rather than taking a youth into custody. Criteria for determining the means to achieve a resolution other than arrest include, but are not limited to:

- The nature of the offense,
- The youth's age,
- Likelihood of recurrence,
- Diversion opportunities for the youth,
- The views of complainants and/or victims about diversion or alternatives to arrest,
- Availability of family support and supervision.

### B. Arresting Youth

1. Officers should avoid taking youth into custody for petty or minor offenses such as fleeing, disturbing the peace, disorderly conduct, obstruction of justice, failure to obey, absent a valid legal reason.<sup>3</sup> Officers should avoid taking youth into custody for noncriminal offenses such as status offenses.
2. When officers take youth into custody for petty, minor offenses, or non-criminal behavior, such as those set out in B.1, above, officers must notify a supervisor as soon as possible.
3. Whenever an arrested youth has an injury or illness as a result of the use of force or chemical agents, the officer must immediately provide or seek medical care.
  - If a youth receives treatment from a medical facility, the officer shall obtain discharge information from the facility before transporting the youth to be booked or to go through intake.

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3. "The colloquial term for abusive arrests under disorderly conduct and similar statutes is 'contempt of cop.' The term is a play on the phrase 'contempt of court,' in which a person is punished for interfering with a courts ability to administer justice...In contempt of cop arrests, the individual is arrested for showing "contempt" towards a law enforcement officer, either by the way they speak to the officer or by refusing to do what the officer tells them to, or simply because the person is behaving legally but in a way the officer does not like...[C]ontempt of cop arrests are by definition abusive: they are arrests made with no valid legal reason. These abusive arrests cause direct and significant harm to those arrested and, more generally, undermine the appropriate balance between police authority and individual prerogative to question the exercise of that authority." Christy Lopez, *[Dis]orderly Conduct: The Problem with Contempt of Cop Arrests*, (2010) [https://www.acslaw.org/issue\\_brief/briefs-2007-2011/disorderly-misconduct-the-problem-with-contempt-of-cop-arrests/](https://www.acslaw.org/issue_brief/briefs-2007-2011/disorderly-misconduct-the-problem-with-contempt-of-cop-arrests/)

4. Any arrest report for a youth must include:
  - Description of the youth's conduct that led to the arrest,
  - Description of any efforts the officer made to avoid arrest,
  - Reasons alternatives to arrest were not chosen,
  - Description of any use of force to effect the arrest,
  - Whether chemical agents were used to effect the arrest,
  - Any apparent emotional duress experienced by the youth and the officer's response,
  - Any physical injuries to the youth and provision of medical assistance to the youth,
  - Whether parents, responsible adults, friends, or others observed the arrest,
  - If the youth is questioned, documentation that the youth was read and understood their *Miranda* rights, and a description of how the *Miranda* rights were administered to the youth.<sup>4</sup>

### C. Use of Restraints

1. Officers will only use handcuffs/flexicuffs or other restraints as part of the arrest process when necessary to ensure the safety of the youth or others.
2. Officers shall consider the totality of circumstances when determining whether to use handcuffs/flexicuffs or other restraints, including the possibility that cuffing may trigger a traumatic response in a young person. There is a presumption against using restraints for arrested youth who are:
  - Under 13 years old, unless the youth presents a danger to themselves or others, or
  - Charged with non-violent offenses, or
  - Complying with officers' instructions.

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4. Relevant policies concerning the process of providing youth with *Miranda* warnings, are set out in [Policy 4: Miranda, Waiver of Rights, and Youth Interrogations](#).

## Policy 3 – Procedure (cont'd)

3. Provided they otherwise comply with I.C(1) and (2) above, officers are permitted to use flexicuffs to restrain youth whose wrists are too small for handcuffs so long as flexicuffs do not impinge on circulation and nerves, and do not rip or otherwise harm the youth's skin. Since these youth are likely to be young and pose a reduced level of threat, the reasons for the use of flexicuffs should be clearly articulable.
4. Officers are prohibited from using handcuffs/flexicuffs or other restraints:
  - To attach youth to a fixed object,
  - When the youth is unsupervised by an officer, or
  - When the youth has a medical condition where restraints could interfere with the condition or the youth's breathing.
5. Officers will explain the use of restraints to youth and to the youth's family in a developmentally appropriate and respectful manner and explain when the restraints will be removed.

## II. Transporting Youth

Officers should avoid transporting youth in the same vehicles as adults.<sup>5</sup> Separating youth from adults during transport will facilitate compliance with the Juvenile Justice and Delinquency Prevention Act (JJDP), which requires that youth be separated by sight and sound from contact with adults when in secure facilities.

Officers should also avoid transporting male and female youth in the same vehicle.<sup>6</sup> In doing so, officers should respect a youth's stated gender identify, even if different from the youth's sex assigned at birth, and transport the youth in accordance with this gender identity.

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5. Some law enforcement agencies, including in Cincinnati, Columbus, and Cleveland, Ohio, prohibit or restrict transporting youth with adults. See Cincinnati Police Department Policy 12.900(D)(4)(c) (2022) ("Whenever juveniles are transported or processed, separate them from adult offenders. Juveniles should be out of sight and sound of adult detainees."); Columbus Police Division Directive 3.03(II)(1) (2021) ("Do not transport a juvenile with an adult violator in the same vehicle."); Columbus Police Division Directive 3.04(III)(F)(1) (2021) ("Juveniles shall not be transported with an adult."); Cleveland Division of Police Policy 3.01.01(II)(G) (2020) ("Officers shall transport male, female, and juvenile arrestees separately unless all arrested persons are handcuffed in a two-member vehicle with the non-driving officer continually monitoring the arrestees and 1 or 2 below apply. 1. Officers are transporting the arrestees from the scene of a crime in instances arising from the same criminal conduct (e.g., mass arrests, a male and female arrested for the same theft, etc.). 2. Officers are transporting an arrestee for emergency medical treatment and transporting males, females, and juveniles together is due to medical necessity. All arrestees shall be handcuffed as described in section I.A. unless the medical condition would make handcuffing impractical.")

6. See Cleveland Division of Police Policy 3.01.01(II)(G) (2020) (requiring that male and female arrestees, as well as juvenile arrestees, be transported separately "unless all arrested persons are handcuffed in a two-member vehicle with the non-driving officer continually monitoring the arrestees and 1 or 2 below apply. 1. Officers are transporting the arrestees from the scene of a crime in instances arising from the same criminal conduct (e.g., mass arrests, a male and female arrested for the same theft, etc.). 2. Officers are transporting an arrestee for emergency medical treatment and transporting males, females, and juveniles together is due to medical necessity. All arrestees shall be handcuffed as described in section I.A. unless the medical condition would make handcuffing impractical.")

**A. Requirements for Transporting Youth After Arrest**

- Officers will explain to youth where they will be taken and assure the youth that they will not be in custody with adults.
- If officers cannot avoid transporting youth with adults, they should keep youth separated by sight and sound from adults during transport.
- Officers shall ensure that youth are, when possible, transported by two officers, preferably including one female officer.
- Officers must transport youth, without unnecessary delay, to the location designated by state or county directive.

**B. Procedures for Placing Youth in Transport Vehicles**

- Officers will conduct a pat down and search to remove all possessions from youth before placing them in a vehicle for transport.
  - Officers will explain to the youth where valuables removed from their pockets/person will be kept and when youth can expect the valuables will be returned.
- Officers will ensure the youth is belted into the seat.
- If an officer uses force to arrest and place youth in transport, the officer will immediately provide first aid or medical attention if required and document the use of force in a use of force report and in the youth's case file.

**C. Use of Restraints in Transport**

- Officers may handcuff/flexicuff youth under the age of 13 during transport for safety purposes, to prevent them from hurting themselves or others.

**D. Documentation of Transport**

- Upon arrival to destination, officers shall inform the booking supervisor, dispatcher or other employee identified by the Agency of their starting and ending mileage. Dispatch or the officer shall then broadcast and record in the computer-aided dispatch system (CAD) a starting time and ending time for the transport.
- The arresting officer(s) must complete forms relating to transport.
- The arresting officer(s) must complete a custody report.



### III. Booking

#### A. Procedures for Processing Youth

1. When an arresting officer transports the youth to the Agency booking room or processing facility, the officer shall process the youth immediately once:
  - The arresting officer has completed the necessary forms or other documentation, and
  - Where permitted by staffing, the officer's supervisor has reviewed and found the arrest is based on probable cause, or
  - The youth is arrested pursuant to a warrant.
2. If a person who is perceived to be an adult prior to the booking process is found to be a youth during the booking process, a supervisor will be notified and officers will comply with the provisions of this policy.
3. If the booking officer believes that the youth being booked needs medical treatment, or the youth requests such treatment, the booking officer will take all reasonable steps to ensure that the youth is evaluated by medical personnel who can determine the appropriate treatment for the youth.
4. If a memorandum of understanding (MOU) exists between the Agency and the facility that will take youth in custody into detention, the booking officer must follow the MOU procedures and directives.

### IV. Notification to Parent

The arresting officer shall immediately take steps to inform the youth's parent that the youth has been arrested.

#### A. Procedures for Notification

- Officers must notify the youth's parent at the earliest possible juncture following youth's arrest. Whenever possible, officers must contact the youth's parent before transporting the youth. If contacting the parent before transporting the youth is not feasible, officers must contact the parent as soon as it is feasible to do so.
- Officers must notify the parent of the following:
  - That the youth is in custody,

## Policy 3 – Procedure (cont'd)

- The youth's location (including any future destination if the youth is to be transported),
- The reason the youth is in custody, unless it would endanger a witness or compromise the investigation.
- If the officer intends to advise the youth of their *Miranda* rights, the officer will tell the parent that:
  - The advisement of *Miranda* rights will take place in the presence of the parent or a responsible adult and an attorney,
  - The youth will have the opportunity to consult with the parent and an attorney prior to and during any questioning by the officers, and
  - The youth will not be permitted to waive their *Miranda* rights until the youth has consulted with an attorney.<sup>7</sup>
- Officers must respond to questions from the parent about the youth's physical condition.
- Officers must explain how decisions regarding detention or release will be made and by whom.
- Should an officer not be successful in contacting a youth's parent, the officer shall make renewed attempts throughout the booking and investigation process.

## V. Temporary Custody on Law Enforcement Agency Premises

The Juvenile Justice and Delinquency Prevention Act (JJJPA) limits to no more than six hours the time a youth from can be held in any adult jail or lock-up for the purposes of processing or releasing the youth, transferring the youth to a juvenile facility, or while awaiting transportation to a youth facility or court. The JJJPA also requires that youth be separated by sight and sound from adults while in an adult jail or lock-up, and mandates that states have a policy that requires individuals who work with juveniles in adult jails or lock-ups to be trained and certified to work with juveniles. The following policies incorporate JJJPA requirements and/or are designed to complement and facilitate compliance with the JJJPA.

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7. See [Policy 4: Miranda Warnings, Waiver of Rights, and Youth Interrogations](#) for additional details about providing *Miranda* warnings to youth, including the role of parents and attorneys in the *Miranda* process.

**A. Policies and Procedures for Interactions with Youth Held on Law Enforcement Agency Premises**

1. Supervision and Surveillance

Youth on law enforcement agency premises:

- Must be kept sight and sound separated from adults at all times,
- Must be kept under constant direct supervision and surveillance,
- May not be chained or in any way affixed to a stationary object, or otherwise securely detained.

2. Officers' Duty to Provide Basic Amenities to Youth

Officers must provide youth with:

- A snack if the youth has been in custody for more than three hours,
- Reasonable access to a restroom and drinking water,
- Private visits with a parent, and/or attorney,
- Reasonable access to a phone to call a parent, another responsible adult designated by the parent, or an attorney.

3. Officers supervising youth who complain of medical issues or appear injured or ill must:

- Provide and/or find medical assistance as soon as possible,
- If the need for medical care is urgent, immediately transport the youth to a medical facility or call for an ambulance,
- Notify a supervisor,
- Notify the youth's parent of any decision to transport youth for medical treatment, as well as the location and telephone number where medical treatment will be provided and, if known to the officer, information about how to contact the medical provider(s).

4. If officers are supervising youth who appear at **high risk**, including youth who appear to be actively suicidal, experiencing a mental health crisis, or experiencing withdrawal or other adverse effects from drugs or alcohol, the officer's first response must be to attempt to transport the youth to an appropriate hospital or other facility where the youth can receive necessary psychiatric, medical, or sub-

## Policy 3 – Procedure (cont'd)

stance abuse services. For whatever time the officer continues to supervise the youth, the officer must:

- Keep the high-risk youth under constant personal observation while in their temporary custody,
  - Immediately notify a supervisor of the youth's condition,
  - In the event of a suicide attempt or overdose, notify the youth's parent of the location and phone number where medical treatment will be provided and, if known to the officer, information about how to contact the mental health provider(s).
5. Officers must document, their monitoring of youth who appear to be suicidal, experiencing a mental health crisis, or experiencing adverse effects from drugs or alcohol. Supervisors must provide officers with any necessary assistance in monitoring the youth, or in ensuring that the youth is connected with appropriate service providers.

### **B. Release and Detention:**

1. Youth who have been arrested but who will not be taken into secure custody for alleged violations of law shall be released to:
  - A parent or another responsible adult that has been designated by the parent, who agrees to take custody of the youth and who commits, either verbally or in writing, to the officer in charge that the responsible adult will produce the youth in court at the required time and place.
2. When a youth has been taken into custody or arrested and will be detained pursuant to statute or court order, officers shall:
  - Explain to the youth that they will be placed in secure custody and describe next steps.
  - Ask the youth if they are a caregiver for younger siblings or other individuals, and if so, help the youth identify an alternate caregiver. Where necessary and permitted, the officer may also consult with a child welfare or other relevant agency.
  - Inform the parent or designated responsible adult that the youth will be placed in secure custody, provide contact information, and describe next steps.