

## Temporary Custody of Juveniles

### 312.1 PURPOSE AND SCOPE

This policy provides guidelines consistent with the Juvenile Justice and Delinquency Prevention Act for juveniles taken into temporary custody by members of the Fargo Police Department (34 USC § 11133).

This policy only applies to the temporary custody of juveniles before they are released or transferred to a juvenile detention facility, jail, or other place authorized for the detention of juveniles (N.D.C.C. § 27-20.4-08).

#### 312.1.1 DEFINITIONS

Definitions related to this policy include:

**Child in Need of Services (CHINS) Referral** - A referral of a juvenile who commits a specific act for which there is no criminal arrest, referral, or prosecution authority. Examples may include runaways, possession of tobacco under the age of 14, unruly juvenile or school truancy cases. CHINS referrals shall be handled as provided for in Standard Operating Procedure 312 (Temporary Custody of Juveniles).

**Juvenile non-offender** - An abused, neglected, dependent, or alien juvenile who may be legally held for his/her own safety or welfare. This also includes any juvenile who may have initially been contacted for an offense that would not subject an adult to arrest (e.g., fine-only offense) but was taken into custody for his/her protection or for purposes of reuniting the juvenile with a parent, guardian, or other responsible person. Also included is any juvenile nine years of age or younger (N.D.C.C. § 12.1-04-01).

**Juvenile offender** - A juvenile 17 years of age or younger who is alleged to have committed an offense that would subject an adult to arrest (a non-status offense). It also includes an offense under N.D.C.C. § 62.1-02-01 for underage possession of a handgun (28 CFR 31.303).

**Non-secure custody** - When a juvenile is held in the presence of an officer or other custody employee at all times and not placed in a locked room, cell, or behind any locked doors. Juveniles in non-secure custody may be handcuffed, but not to a stationary or secure object. Personal supervision, through direct visual monitoring and audio two-way communication, is maintained. Monitoring through electronic devices, such as video, does not replace direct visual observation.

**Secure custody** - When a juvenile offender is held in a locked room, a set of rooms, or a cell. Secure custody also includes being physically secured to a stationary object.

Examples of secure custody include:

- (a) A juvenile left alone in an unlocked room within the secure perimeter of the adult temporary holding area.
- (b) A juvenile handcuffed to a rail.

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- (c) A juvenile placed in a room that contains doors with delayed egress devices with a delay of more than 30 seconds.
- (d) A juvenile being processed in a secure booking area when a non-secure booking area is available.
- (e) A juvenile left alone in a secure booking area after being photographed and fingerprinted.
- (f) A juvenile placed in a cell within the adult temporary holding area, whether or not the cell door is locked.
- (g) A juvenile placed in a room that is capable of being locked or contains a fixed object designed for cuffing or restricting movement.

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

**Status offender** - A juvenile suspected of committing a criminal violation of the law that would not be a criminal violation but for the age of the offender. Examples may include possession of tobacco 14 years of age and older, curfew violation or minor in possession of or consuming alcohol. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender.

### **312.2 POLICY**

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

### **312.3 JUVENILES WHO SHOULD NOT BE HELD**

Juveniles who exhibit any of the following conditions should not be held at the Fargo Police Department. These include:

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

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- (f) Afflicted with, or displaying symptoms of, a communicable disease that poses an unreasonable exposure risk.

Officers taking custody of a juvenile who exhibits any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and notify a supervisor of the situation. These juveniles should not be held at the Fargo Police Department unless or until they have been evaluated by a qualified medical and/or mental health professional.

#### **312.4 CUSTODY OF JUVENILES**

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

No juvenile should be held in temporary custody at the Fargo Police Department without authorization of the arresting officer's supervisor or the Shift Commander. Juveniles taken into custody shall be held in non-secure custody unless otherwise authorized by this policy.

Any juvenile taken into custody shall be released to the care of the juvenile's parent, legal guardian, or other responsible adult, or transferred to a juvenile custody facility or to other authority as soon as practicable, and in no event shall a juvenile be held beyond six hours from the time of the juvenile's entry into the Fargo Police Department (N.D.C.C. § 27-20.4-07; 34 USC § 11133).

##### **312.4.1 CUSTODY OF NON-OFFENDERS**

Non-offenders taken into protective custody in compliance with the Child Abuse Policy should generally not be held at the Fargo Police Department. Custodial arrangements should be made for non-offenders as soon as reasonably possible. Juvenile non-offenders may not be held in secure custody (34 USC § 11133).

##### **312.4.2 CUSTODY OF JUVENILE STATUS OFFENDERS**

Status offenders should generally be released by juvenile referral or upon a warning rather than taken into temporary custody. However, officers may take custody of a status offender if requested to do so by a parent or legal guardian in order to facilitate reunification (e.g., transported home or to the station to await a parent). Juvenile status offenders may not be held in secure custody (34 USC § 11133).

##### **312.4.3 CUSTODY OF JUVENILE OFFENDERS**

Juvenile offenders should be held in non-secure custody while at the Fargo Police Department unless another form of custody is authorized by this policy or is necessary due to exigent circumstances.

The following applies to juveniles taken into custody:

- (a) Juvenile offenders may be taken into custody (N.D.C.C. § 27-20.4-05):
  - 1. Pursuant to an order of the court.

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2. Pursuant to the laws of arrest applicable to adults and as authorized after scoring of the detention screening tool.
- (b) A juvenile offender should not be released from custody without first contacting the court if there is reason to believe any of the following (N.D.C.C. § 27-20.4-06):
  1. Further care is required to protect the juvenile offender, or the property of others, or of the juvenile offender.
  2. The juvenile offender may abscond or be removed from the jurisdiction of the court.
  3. The juvenile offender has no parent, guardian, custodian, or other person able to provide supervision and care, and return the juvenile offender to the court when required.
  4. An order for the juvenile offender's detention or nonsecure care has been made by the court.
  5. The detention screening tool indicates that the juvenile offender should be detained.

### **312.5 ADVISEMENTS**

A member of this department who does not release a juvenile to a parent, guardian, or other custodian shall promptly notify the juvenile's parent, guardian, or other custodian and the court of the reason for the custody (N.D.C.C. § 27-20.4-07).

If there is reason to believe that a juvenile offender committed a sexual offense (see generally N.D.C.C. § 12.1-20-01 et seq. and N.D.C.C. § 12.1-27.2-01 et seq.), the Department of Health and Human Services should be notified as soon as practicable. A copy of the case report shall also be forwarded to the Department of Health and Human Services (N.D.C.C. § 50-25.1-05.3).

### **312.6 USE OF RESTRAINT DEVICES**

Juvenile offenders may be handcuffed in accordance with the Handcuffing and Restraints Policy.

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

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

Juveniles in restraints shall be kept away from other unrestrained individuals and monitored in such a way as to protect the juvenile from abuse.

#### **312.6.1 PREGNANT JUVENILES**

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

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### **312.7 INTERVIEWING OR INTERROGATING JUVENILE SUSPECTS**

No interview or interrogation of a juvenile should occur unless the juvenile has the apparent capacity to consent, and does consent to an interview or interrogation. In addition, parental permission shall be obtained from a parent or guardian by phone or in person.

### **312.8 RELIGIOUS ACCOMMODATION**

Juveniles have the right to the same religious accommodation as adults in temporary custody (see the Temporary Custody of Adults Policy).

### **312.9 TRAINING**

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

### **312.10 REVISION DATE 02/09/2023**