

CHARLOTTESVILLE POLICE DEPARTMENT



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| JUVENILE MATTERS | Date: November 05, 2019 |
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I. POLICY

The Charlottesville Police Department recognizes that juveniles who are in need of protection, who are in violation of status offenses, and who are charged with criminal offenses present a significant challenge to this Department, the rest of the criminal justice system and the community as a whole.

This Department is committed to the development and perpetuation of programs, which are designed to prevent and control juvenile delinquency. It is the policy of this Department to task the entire organization with the responsibility to address this Department's efforts to reduce and control juvenile delinquency, rather than to establish a separate unit tasked with the investigation of crimes committed by juvenile offenders.

II. PURPOSE

The purpose of this directive is to set forth the guidelines and procedures for officers to follow in handling juveniles who are in need of protection, who are in violation of status offenses, or who have committed delinquent or criminal acts.

III. DEFINITION

- A. Child/juvenile: A person who is less than eighteen years of age.
- B. Child in Need of Services (CHINS/Services): children whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of the child.
- C. Child in need of Supervision (CHINS/Supervision):
 1. A child who, while subject to compulsory school attendance, is habitually absent from school without justification despite intervention by the school system; or
 2. a child who remains away from their family or lawful custodian or residential care placement without permission and reasonable cause,

where such conduct presents a clear and substantial danger to the child's life or health.

D. Delinquent Acts: An act designated a crime under the law of this commonwealth, or an ordinance of any city, county, town or service district, or under federal law.

E. Status Offender: A juvenile who commits an act that is unlawful only if committed by a juvenile, such as:

- Possession of tobacco/ alcohol
- Curfew violation
- Runaway

A. GENERAL PROVISIONS

1. The focus of the Juvenile Justice System in the Commonwealth of Virginia is upon public safety, protection of the rights of victims and the welfare of the child. The Juvenile Justice System seeks to protect the child and to correct delinquent behavior while trying to avoid stigmatizing the child. Toward achieving that goal, law enforcement officers are key participants. Officers should realize that juveniles are different from adults, and they experience major developmental changes in perception, processing and reasoning. Officers should take these differences in account when dealing with youth. The police officer is often the first person from the justice system that a juvenile encounters. First impressions are lasting impressions. Firmness, fairness and respect are key words in describing how officers should deal with juvenile offenders.
2. Officers shall not lie or otherwise deceive a juvenile. Absent of valid public or officer safety concern, officers shall use the following protocol when interacting with a juvenile:
 - a. Introduce yourself;
 - b. explain to the juvenile why they have been stopped;
 - c. ensure the juvenile understands whether or not they are free to leave;
 - d. if a frisk is deemed necessary based on reasonable grounds that the juvenile may be armed, the officer will explain to the juvenile what is taking place and why;
 - e. if an officer asks for consent to search the juvenile they must ensure the juvenile understands their right to refuse such a search;
 - f. the juvenile shall be informed of their right not to answer any questions or provide you with their identification; and
 - g. all street stops of juveniles shall be documented on a department incident based report and reviewed by a supervisor.

3. Members of the Department when dealing with juveniles shall determine the most appropriate means and intervention, which should be based on either the juvenile's non-criminal misbehavior (status offenses) or criminal acts (juvenile delinquency). Officers, after considering the facts available, shall take such action that is consistent with preserving public safety, order, the safety and welfare of the juvenile and individual liberty. Officers dealing with juvenile offenders should use the least coercive means among reasonable alternatives.
 - a. A continuum of actions available to the officer is as follows:
 - i. Release of the offender with no action other than a warning;
 - ii. recommendations of corrective actions to be taken by agreeing parents or guardians on a voluntary basis;
 - iii. voluntary treatment at social service agencies based on informal referral by the officer; or
 - iv. referral to the juvenile court system.
 - b. The following factors should be considered in determining what action to take:
 - i. The nature and seriousness of the offense;
 - ii. the injury to the victim or the victim's property;
 - iii. the age and circumstances of the juvenile;
 - iv. the juvenile's record, if known to the officer;
 - v. the sensitivity and attitude of the complainant or victim; and
 - vi. the availability of local social service programs.

Note: The nature and seriousness of the offense, particularly when the offense involves violence, may leave an officer with virtually no discretion regarding what action to take.

A. TAKING A JUVENILE INTO CUSTODY

1. Custody is the legal or physical control of a person. In juvenile matters, custody occurs whenever an officer takes an action other than immediately releasing a child with a warning, even if the action is no more than taking the child home to his parents. Generally, a child may be taken into custody when the child has committed a delinquent act, or when such custody is in the interest of the child's health, safety or welfare. Officers should assume that juveniles believe they are in custody, where a reasonable adult would believe they are free to leave.
2. When an officer takes a juvenile into custody, the officer needs to keep in mind the following provisions:

- a. Whether the juvenile is alleged to have engaged in non-criminal misbehavior (a status offence) or a criminal act(s);
 - b. whether the juvenile is alleged to have been harmed or to be in danger of harm; and
 - c. ensuring that the constitutional rights of the juvenile are protected.
3. Section 16.1-246 of the Code of Virginia, provides that a child may be taken into immediate custody:
- a. With a detention order issued by the judge, intake officer or the clerk, when authorized by the judge of the family court, or with a warrant issued by a magistrate;
 - b. When a child is alleged to be in need of services or supervision and there is a clear and substantial danger to the child's life or health, or the assumption of custody is necessary to ensure the child's appearance before the court;
 - c. When, in the presence of the officer who makes the arrest, a child has committed an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law and the officer believes that such is necessary for the protection of the public interest;
 - d. When a child has committed a misdemeanor offense involving shoplifting in violation of Section 18.2-103, Code of Virginia, assault and battery, or carrying a weapon on school property in violation of Section 18.2-308.1 and although the offense was not committed in the presence of the officer who makes the arrest, the arrest is based upon probable cause on reasonable complaint of a person who observed the alleged offense;
 - e. When there is probable cause to believe that a child has committed an offense, which if committed by an adult would be a felony;
 - f. When a law enforcement officer has probable cause to believe that a person committed to the Department of Juvenile Justice as a child has run away or the child has escaped from a jail or detention home;
 - g. When a law enforcement officer has probable cause to believe a child has run away from a residential, child-caring facility or home in which the child had been placed by the court, the local department of public welfare or social services or a licensed child welfare agency;

- h. When a law enforcement officer has probable cause to believe that a child has run away from home, or is without adult supervision at such hours of the night and under such circumstances that the law enforcement officer reasonably concludes that there is clear and substantial danger to the child's welfare;
 - i. When a child is believed to be in need of inpatient treatment for mental illness as provided in Section 16.1—340, Code of Virginia.
1. Generally, an officer shall, pursuant to Section 16.1—247:
 - a. Release a child to a parent, guardian, legal custodian, or other person standing in loco parentis after a warning is issued, or a promise to bring the child before the court is received by the officer upon request; or
 - b. The officer shall with all practicable speed take the child before a judge or intake officer, unless the juvenile is in need of emergency medical treatment; or
 - c. If an escapee, release the child to the facility from which the child escaped. The officer assuming custody of the child shall comply with the respective paragraph of Section 16.1—247, dependant upon the circumstances of such custody.
 2. Nothing in Section 16.1—247 shall prevent a child from being held or detained for the purpose of administering a blood or breath test to determine the alcoholic content of the child's blood where the child has been taken into custody pursuant to Section 18.2—266.

C. DETENTION OF INTOXICATED OR INJURED JUVENILES

1. If a child is under the influence of alcohol or drugs to the extent that they cannot control bodily or mental functions, the child shall be taken to a hospital for treatment, or other appropriate medical attention shall be obtained for the child prior to placing the child in a detention facility.
2. If the child is injured or in need of emergency medical care, the officer must first seek medical attention for the child before taking the child to an intake or detention facility.

D. SUMMONS

1. In most instances, a juvenile will enter the formal intake and/or court proceedings through the issuance of a petition as provided in Section 16.1—260 and Section 16.1—263, Code of Virginia. However, in the following instances, an officer may issue a Uniform Summons in lieu of obtaining a petition:

- a. Misdemeanor traffic offenses and traffic violations (including motor vehicle accidents, bicycle violations, pedestrian violations, and driving or operating a boat in a reckless manner);
- b. Simple Possession of marijuana in violation of Virginia Code Section 18.2-250. The Officer must release the juvenile to the custody of a parent or legal guardian pending the initial court date, issue a summons to the parent or legal guardian to require them to appear with the juvenile before the court, serve upon the juvenile (on the required form) written notice of the right to have the charge referred to intake, and file a return copy of the served notice with the juvenile court;
- c. Driving or operating a motor vehicle or boat under the influence and any other alcohol-related misdemeanors. An officer may charge a misdemeanor violation of Virginia Code Section 18.2-266 or 18.2-66.1, or 29.1-738(B) for driving a motor vehicle or boat while under the influence of alcohol or other intoxicant (DUI or DUID) by summons and may also charge any other alcohol-related misdemeanor offense by summons. In either situation, the Officer must release the juvenile to the custody of a parent or legal guardian pending the initial court date and issue a summons to the parent or legal guardian requiring them to appear with the juvenile at court;
- d. Refusal charges. If a juvenile charged with any violation of Virginia Code Section 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to Virginia Code Section 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the refusal shall be charged on a warrant as required by law. A magistrate is required by law to then authorize execution of the warrant as a summons on the juvenile and their parent or legal guardian. The Officer shall release the juvenile to the custody of a parent or legal guardian pending the initial court date and serve the summons on both the juvenile and on the juvenile' parent or legal guardian to require them to appear with the juvenile at court;
- e. Class 3 or Class 4 misdemeanors such as Curse and Abuse;
- f. tobacco-related violations;
- g. curfew ordinance violations;
- h. littering ordinances violations;
- i. animal control ordinance violations; and

j. game and fish law violations.

E. OBTAINING PETITIONS

1. For non summonsable offenses committed by juveniles that require the placement of formal charges by a delinquency petition, the Juvenile Court Intake process will be utilized. The Intake Officer is part of the Court Services Unit and serves as the magistrate for the juvenile justice system. The Police Officer handling the incident will first make a determination as to who should request the intake hearing. In the case of criminal offenses committed in the Officers presence and past felony offenses where the Officers investigation determines probable cause exists to obtain a petition the Officer will schedule an appointment for an intake hearing and present the probable cause to the Intake Officer. For misdemeanors not committed in the Officers presence the investigating Officer will first attempt to determine the identity of the suspect. If the suspect can be identified the Officer will complete a juvenile intake referral form. A copy of the form will be given to the victim of the crime, a copy will be attached to a copy of the case report and forwarded to the Juvenile Court Intake Office, and the officer will maintain a copy for their records. The victim will be instructed by the Officer to call the Court Service Unit to schedule an intake hearing and will present the referral form to the Intake Officer at the hearing.

F. RUNAWAYS

1. A child who is a runaway from this jurisdiction or a jurisdiction within this Commonwealth may be taken into immediate custody and returned to his or her parents or guardian. Such child may be detained under the supervision of a police officer at the police station while awaiting pickup by a parent or guardian if the officer is unable to deliver the child to the custody of the parent or guardian.
2. A child who is a runaway from out-of-state may be taken into immediate custody. Upon receipt of a teletype or similar documentation stating that the child is a runaway from another jurisdiction or state, the officer shall contact an Intake Officer and request to have that child placed in detention pending the arrival of the parent or guardian.
3. A CHINS/Supervision petition can be considered as an option to bring JDR Court supervision to runaway juveniles. In addition, immediate shelter care can be requested when a runaway juvenile's parent cannot be located.

G. CHILD IN NEED OF SERVICES OR SUPERVISION

1. When an officer finds that a child is in need of services or supervision and there is a clear and substantial danger to the child's life or health, the officer may take the child into immediate custody and then shall contact the Social Services Department and request that the child be placed in

shelter care.

H. NOTIFICATION OF PARENT OR GUARDIAN WHEN A CHILD IS TAKEN INTO CUSTODY

1. Whenever a child is taken into custody, the officer shall notify the parent or guardian of the child as soon as possible that the child is in custody, except that no such notification shall be necessary when a child is briefly taken into custody to return the child to a parent, guardian, or school and the purpose of such custody is simply to transport the child to the parent, guardian or school.

I. CUSTODIAL INTERROGATION

1. In some circumstances, a child's age can affect how a reasonable person would perceive his or her freedom to leave.
2. When questioning youth in any custodial situation, the Officer shall mirandize them as soon as reasonably possible.
3. When possible, the parent or guardian should be present during the interrogation of the child. The investigating officer shall permit the request from a parent or guardian, who is present at the child's interrogation, to confer in private with their child. In addition, the investigating officer will honor a child's request to confer privately with a parent or guardian who is present at the interrogation.
4. The duration of the interrogation shall be reasonable and police personnel present should be limited to those assigned to the case and/or whose technical expertise is required.
5. Before asking a juvenile to waive his rights, the Officer shall make an assessment whether the youth has diminished capacity.
6. A child shall be advised of his or her constitutional rights prior to a custodial interrogation. These rights shall be read slowly and clearly, and the Officer shall ask the youth to repeat back their understanding of their rights. The Waiver of Rights Form shall be executed prior to interrogation to document that the rights advisory was given.
7. If special circumstances exist where an Investigator identifies a compelling reason(s) for a custodial interrogation without contacting the child's parent the investigator shall seek the approval of the Commonwealth Attorney's Office prior to questioning.
8. The officer conducting the interrogation explains the agencies and juvenile justice system procedures

J. JUVENILE RECORDS

1. Juvenile records, including fingerprints and photographs, require special security and privacy precautions in accordance with Section 16.1—299 through Section 16.1—309.1 of the Code of Virginia. All members shall adhere to the provisions of the aforementioned statutes when obtaining, processing, recording, filing or otherwise storing any juvenile records, photographs or fingerprints of a juvenile charged with any delinquent or criminal acts.

K. JUVENILE CURFEW PROCEDURES

1. The curfew ordinance (City Code 17-7) applies to juveniles under the age of seventeen and between the hours of 12:01 a.m. through 5:00 a.m. Monday through Friday, and 1:00 a.m. through 5:00 a.m. Saturday and Sunday.
2. Exceptions to the curfew ordinance are:
 - a. The minor is accompanied by a parent; or
 - b. the minor is involved in an emergency; or
 - c. the minor is engaged in an employment activity, or is going to or returning home from such activity, without detour or stop; or
 - d. the minor is on the sidewalk directly abutting a place where he or she resides with a parent; or
 - e. the minor is attending an activity sponsored by a school, religious, or civic organization, by a public organization or agency, or by another similar organization or entity, which activity is supervised by adults, and/or the minor is going to or returning from such an activity without detour or stop; or
 - f. the minor is on an errand at the direction of a parent, and the minor has in his or her possession a writing signed by the parent containing the following information: the name, signature, address and telephone number of the parent authorizing the errand, the telephone number where the parent may be reached during the errand, the name of the minor, and a brief description of the errand, the minor's destination(s) and the hours the minor is authorized to be engaged in the errand; or
 - g. the minor is involved in interstate travel through, or beginning or terminating in, the City of Charlottesville; or
 - h. the minor is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of

speech and the right of assembly.

3. Curfew Warnings

- a. If the minor has not previously been issued a warning for any such violation, then the officer shall issue a verbal warning to the minor and as soon as practicable shall:
- b. Release the minor to his or her parent(s); or
- c. If a minor refuses to give an officer their name and address, refuses to give the name and address of his or her parent(s), or if no parent can be located prior to the end of the applicable curfew hours, or if located, no parent appears to accept custody of the minor, the minor may be taken to the police department until such time as they may be taken to a judge or intake officer of the juvenile court;
- d. The Officer shall complete a warning ticket, which should be reviewed and signed off on by a supervisor. The officer shall label the Field Contact Card with “Curfew Warning” in the block next to the date/time;
- e. The reviewing supervisor shall turn the Warning Ticket into IMS, where it will be entered into the Field Contact module with “Curfew Violation” as the “Reason.”;
- f. IMS shall enter the card into the Records Management System and create a “Previous Curfew Warning” alert for the juvenile’s name record in the RMS;
- g. IMS shall send a pre-approved form warning letter to both the child and parent as required by City Code 17-7. IMS shall scan the letters into a PDF document and electronically attach to the Child’s name record.

4. Curfew Arrests:

- a. If the minor has previously been issued a warning for any such violation, then the officer shall charge the minor with a violation of this ordinance and shall issue a summons requiring the minor to appear in court; and as soon as practicable the officer shall:
 - i. Release the minor to their parent(s); or
 - ii. If a minor refuses to give an officer his or her name and address, refuses to give the name and address of his or her parent(s), or if no parent can be located prior to the end of the applicable curfew hours, or if located, no parent appears to accept custody of the minor, the minor may be taken to a nonsecure crisis center or juvenile shelter and/or may be taken to a judge or intake officer of the juvenile court to be dealt with in the manner and pursuant to such procedures as required by law.

iii. Officer completes an Incident Report, utilizing Case Report code 902 (Curfew/Loitering/Vagrancy) for the offense.

5. The following is the Charlottesville City Code Sec. 17-7 Curfew for Minors for easy reference:

Current City Code

Sec. 17-7. Curfew for minors.

The purpose of this section is to: (i) promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the city; (ii) promote the safety and well-being of the city's youngest citizens, persons under the age of seventeen (17), whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful drug activities, and to being victimized by older perpetrators of crime; and (iii) foster and strengthen parental responsibility for children.

(a) *Definitions.* As used within this section 17-7, the following words and phrases shall have the meanings ascribed to them below:

Curfew hours refers to the hours of 12:01 a.m. through 5:00 a.m. on Monday through Friday, and 1:00 a.m. through 5:00 a.m. on Saturday and Sunday.

Emergency refers to unforeseen circumstances, or the status or condition resulting therefrom, requiring immediate action to safeguard life, limb or property. The term includes, but is not limited to, fires, natural disasters, automobile accidents, or other similar circumstances.

Establishment refers to any privately-owned place of business within the city operated for a profit, to which the public is invited, including, but not limited to any place of amusement or entertainment. With respect to such establishment, the term "operator" shall mean any person, and any firm, association, partnership (and the members or partners thereof) and/or any corporation (and the officers thereof) conducting or managing that establishment.

Minor refers to any person under seventeen (17) years of age who has not been emancipated by court order entered pursuant to Section 16.1-333 of the Code of Virginia, 1950, as amended.

Officer refers to a police or other law enforcement officer charged with the duty of enforcing the laws of the Commonwealth of Virginia and/or the ordinances of the City of Charlottesville.

Parent refers to:

(1) A person who is a minor's biological or adoptive parent and who has legal custody of a minor (including either parent, if custody is shared under a court order or agreement);

(2) A person who is the biological or adoptive parent with whom a minor regularly resides;

(3) A person judicially appointed as a legal guardian of the minor; and/or

(4) A person eighteen (18) years of age or older standing in loco parentis (as indicated by the authorization of an individual listed in part(s) (1), (2) or (3) of this definition,

above, for the person to assume the care or physical custody of the child, or as indicated by any other circumstances).

Person refers to an individual, not to any association, corporation, or any other legal entity.

Public place refers to any place to which the public or a substantial group of the public has access, including, but not limited to: streets, highways, roads, sidewalks, alleys, avenues, parks, and/or the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities and shops.

Remain refers to the following actions:

- (1) To linger or stay at or upon a place; and/or
- (2) To fail to leave a place when requested to do so by an officer or by the owner, operator or other person in control of that place.

Temporary care facility refers to a non-locked, non-restrictive shelter at which minors may wait, under visual supervision, to be retrieved by a parent. No minors waiting in such facility shall be handcuffed and/or secured (by handcuffs or otherwise) to any stationary object.

(b) It shall be unlawful for a minor, during curfew hours, to remain in or upon any public place within the city, to remain in any motor vehicle operating or parked therein or thereon, or to remain in or upon the premises of any establishment within the city, unless:

- (1) The minor is accompanied by a parent; or
- (2) The minor is involved in an emergency; or
- (3) The minor is engaged in an employment activity, or is going to or returning home from such activity, without detour or stop; or
- (4) The minor is on the sidewalk directly abutting a place where he or she resides with a parent; or
- (5) The minor is attending an activity sponsored by a school, religious, or civic organization, by a public organization or agency, or by another similar organization or entity, which activity is supervised by adults, and/or the minor is going to or returning from such an activity without detour or stop; or
- (6) The minor is on an errand at the direction of a parent, and the minor has in his or her possession a writing signed by the parent containing the following information: the name, signature, address and telephone number of the parent authorizing the errand, the telephone number where the parent may be reached during the errand, the name of the minor, and a brief description of the errand, the minor's destination(s) and the hours the minor is authorized to be engaged in the errand; or
- (7) The minor is involved in interstate travel through, or beginning or terminating in, the City of Charlottesville; or
- (8) The minor is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly.

(c) It shall be unlawful for a minor's parent to knowingly permit, allow or encourage such minor to violate 17-7(b).

(d) It shall be unlawful for a person who is the owner or operator of any motor vehicle to knowingly permit, allow or encourage a violation of 17-7(b).

(e) It shall be unlawful for the operator of any establishment, or for any person who is an employee thereof, to knowingly permit, allow or encourage a minor to remain upon

the premises of the establishment during curfew hours. It shall be a defense to prosecution under this subsection that the operator or employee of an establishment promptly notified the police department that a minor was present at the establishment after curfew hours and refused to leave.

(f) It shall be unlawful for any person (including any minor) to give a false name, address, or telephone number to any officer investigating a possible violation of this section 17-7.

(g) Enforcement.

(1) *Minors.* Before taking any enforcement action hereunder, an officer shall make an immediate investigation for the purpose of ascertaining whether or not the presence of an minor in a public place, motor vehicle and/or establishment within the city during curfew hours is in violation of 17-7(b).

a. If such investigation reveals that the presence of such minor is in violation of 17-7(b), then:

1. If the minor has not previously been issued a warning for any such violation, then the officer shall issue a verbal warning to the minor, which shall be followed by a written warning mailed by the police department to the minor and his or her parent(s), or

2. If the minor has previously been issued a warning for any such violation, then the officer shall charge the minor with a violation of this ordinance and shall issue a summons requiring the minor to appear in court (Ref. Va. Code § 16.1-260(H)(1)), and

b. As soon as practicable, the officer shall:

1. Release the minor to his or her parent(s); or

2. Place the minor in a temporary care facility for a period not to exceed the remainder of the curfew hours, so that his or her parent(s) may retrieve the minor; or

3. If a minor refuses to give an officer his or her name and address, refuses to give the name and address of his or her parent(s), or if no parent can be located prior to the end of the applicable curfew hours, or if located, no parent appears to accept custody of the minor, the minor may be taken to a nonsecure crisis center or juvenile shelter and/or may be taken to a judge or intake officer of the juvenile court to be dealt with in the manner and pursuant to such procedures as required by law. (Ref. Va. Code § 16.1-260(H)(1); § 16.1-278.6; §§ 16.1-241(A)(1)).

(2) *Others.* If an investigation by an officer reveals that a person has violated 17-7(c),(d) and/or (e), and if the person has not previously been issued a warning with respect to any such violation, an officer shall issue a verbal warning to the person, which shall be followed by a written warning mailed by the police department to the person; however, if any such warning has previously been issued to that person then the officer shall charge the person with a violation and shall issue a summons directing the person to appear in court.

(h) Each violation of this section 17-7 shall constitute a Class 4 misdemeanor.

(Code 1976, §§ 17-10--17-13; 12-16-96, § 1)

Cross references: Penalty for Class 1 misdemeanor, § 1-11.