

Temporary Custody of Juveniles

900.1 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 Town of Cheektowaga Police Department (34 USC § 11133).

900.1.1 DEFINITIONS

Definitions related to this policy include (Family Court Act § 301.2; CPL § 1.20):

Adolescent offender – A youth 16 years of age who is in custody for a felony.

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.

Juvenile delinquent - A juvenile 7 to 15 years of age who is alleged to have committed a penal law misdemeanor or felony (excluding Juvenile Offenders) and 16 years of age who is alleged to have committed a penal law misdemeanor (see: Penal Law 30.00 Infancy, Family Court Act 302 adn Penal Law 265.05 for unlawful possession of a handgun).

Juvenile offender - A juvenile delinquent 13 to 15 years of age who is in custody for a designated felony (serious violent or weapons-related charges listed in Family Court Act § 301.2 or Criminal Procedure Law 1.20 (42)).

Non-secure custody - When a juvenile is held in the presence of an officer or other department member at all times and is 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.

Safety checks - Direct visual observation by a member of this department performed at random intervals, within time frames prescribed in this policy, to provide for the health and welfare of juveniles in temporary custody.

Secure custody - When a juvenile or adolescent 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.
- (c) A juvenile placed in a room that contains doors with delayed egress devices that have a delay of more than 30 seconds.

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- (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 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 running away, underage possession of tobacco, curfew violation, and truancy. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender.

900.2 POLICY

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

900.3 JUVENILES WHO SHOULD NOT BE HELD

Juveniles who exhibit certain behaviors or conditions should not be held at the Town of Cheektowaga 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 Emergency Admissions Policy).
 - 1. If the officer taking custody of a juvenile believes that he/she 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.
- (f) Afflicted with, or displaying symptoms of, a communicable disease that poses an unreasonable exposure risk.

Officers taking custody of a juvenile exhibiting any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and should notify a supervisor of the

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situation. These juveniles should not be held at the Department unless they have been evaluated by a qualified medical or mental health professional, as appropriate for the circumstances.

900.4 CUSTODY OF JUVENILES

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

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 taken to Erie County Family Court, if in session, as soon as practicable. In no event shall a juvenile be held beyond six hours from the time of his/her entry into the Department (42 USC § 5633).

900.4.1 CUSTODY OF JUVENILE NON-OFFENDERS

Non-offenders taken into protective custody in compliance with the Child Abuse Policy should generally not be held at the Town of Cheektowaga 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).

A child taken into custody due to an emergency removal without a court order under Family Court Act § 1024 or Social Services Law § 417 shall be taken as soon as practicable to an approved facility. Every reasonable effort to inform the parent or other person legally responsible for the child's care shall be made.

900.4.2 CUSTODY OF JUVENILE DELINQUENTS

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

A member serving as a peace officer or a police officer may take a juvenile delinquent into custody without a warrant under the same circumstances for which an adult may be arrested for a crime. Every reasonable effort should then be made to give notice of the custody to a parent or other person legally responsible for the child as soon as practicable (Family Court Act § 305.2; CPL § 120.90; CPL § 140.20; CPL § 140.27).

Juvenile delinquents and juvenile offenders should generally be released to the custody of a parent or other legally responsible person upon the issuance of an appearance ticket to the child and the person to whose custody the child is released (Family Court Act § 305.2).

Upon being taken into custody, adolescent offenders, juvenile offenders, and other juvenile delinquents with special circumstances should be taken to the youth part of the superior court or family court, as appropriate. If the court is not in session, members should take the juvenile before an appropriate magistrate as designated by the court (Family Court Act § 305.2; CPL § 140.20; CPL § 140.27; CPL § 722.21).

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In cases where the member determines that it is necessary to question the juvenile delinquent, the child may be transported to a location specifically designated for the purpose of questioning juveniles, even in cases where the member intends to later transport the juvenile to court. If the member intends to release the juvenile after questioning, and upon the consent of a parent or other person legally responsible for the care of the child, the juvenile may be taken to his/her residence for questioning for a reasonable period of time (Family Court Act § 305.2; CPL § 140.20).

Special circumstances may make a release inappropriate due to a substantial probability that a juvenile will not appear in court or a significant risk the juvenile may commit further serious criminal acts. In these cases, taking a juvenile to family court is appropriate. When family court is not in session, the member should take the juvenile before an appropriate magistrate as designated by the court. The supervisor or designee may then contact a juvenile detention facility and seek authorization for further detention (Family Court Act § 305.2; Family Court Act § 320.5).

900.5 ADVISEMENTS

Any member taking a juvenile delinquent or juvenile or adolescent offender into custody shall immediately notify the parent or other person legally responsible for the juvenile's care, or if such legally responsible person is unavailable, the person with whom the child resides, that the juvenile has been taken into custody and provide the juvenile's location (Family Court Act § 305.2; CPL § 140.20; CPL § 140.27).

900.6 NO-CONTACT REQUIREMENTS

Sight and sound separation shall be maintained between all juveniles and adults while in custody at the Town of Cheektowaga Police Department (34 USC § 11133). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

In situations where brief or accidental contact may occur (e.g., during the brief time a juvenile is being fingerprinted and/or photographed in booking), a member of the Department shall maintain a constant, immediate, side-by-side presence with the juvenile or the adult to minimize any contact. If inadvertent or accidental contact does occur, reasonable efforts shall be taken to end the contact.

In the event that a juvenile has erroneously been placed in custody through deception, impersonation or other reason, the incident must be immediately reported to the Watch Commander and a record made for reporting to the New York State Commission of Correction (reportable incident and annual reporting as required by Commission guidelines).

900.7 TEMPORARY CUSTODY REQUIREMENTS

Members and supervisors assigned to monitor or process any juvenile at the Town of Cheektowaga Police Department shall ensure:

- (a) The Watch Commander is notified if it is anticipated that a juvenile may need to remain at the Department more than four hours. This will enable the Watch Commander to ensure no juvenile is held at the Department more than six hours.

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- (b) Juveniles in custody are informed that they will be monitored at all times, except when using the toilet.
 - 1. This does not apply to surreptitious and legally obtained recorded interrogations.
- (c) A member of the same sex will supervise personal hygiene activities and care, such as changing clothing or using the restroom. Privacy will be afforded unless direct observation is required.
- (d) There is reasonable access to toilets and wash basins.
- (e) There is reasonable access to a drinking fountain or water.
- (f) Food is provided if a juvenile has not eaten within the past four hours or is otherwise in need of nourishment, including any special diet required for the health of the juvenile.
- (g) Juveniles are generally permitted to remain in their personal clothing unless it is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody.
- (h) Adequate furnishings are available, including suitable chairs or benches.
- (i) Discipline is not administered to any juvenile, nor will juveniles be subjected to corporal or unusual punishment, humiliation or mental abuse.

900.7.1 COURT APPROVAL

The Youth & Family Services Lieutenant will ensure that only areas that have been approved by the local court are used for the custody or questioning of juveniles. Members should not allow a juvenile in custody to be in an unapproved area (Family Court Act § 305.2).

900.8 USE OF RESTRAINT DEVICES

Juvenile delinquents, juvenile offenders, and adolescent offenders may be handcuffed in accordance with the Handcuffing and Restraints Policy. A juvenile delinquent or juvenile or adolescent offender may be handcuffed at the Town of Cheektowaga 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 Watch 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 in custody and monitored to protect them from abuse.

900.9 SECURE CUSTODY

Only juvenile or adolescent offenders 14 years of age or older may be placed in secure custody. Watch Commander approval is required before placing a juvenile or adolescent offender in secure custody.

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Secure custody should only be used for juvenile or adolescent offenders when there is a reasonable belief that the juvenile is a serious risk of harm to him/herself or others.

Members of this department should not use secure custody for convenience when non-secure custody is, or later becomes, a reasonable option.

When practicable, handcuffing one hand of a juvenile or adolescent offender to a fixed object while otherwise maintaining the juvenile in non-secure custody should be considered as the method of secure custody. A member must be present at all times to ensure the juvenile's safety while secured to a stationary object.

Generally, juveniles should not be secured to a stationary object for more than 60 minutes. Supervisor approval is required to secure a juvenile to a stationary object for longer than 60 minutes and every 30 minutes thereafter. Supervisor approval should be documented.

900.10 SUICIDE ATTEMPT, DEATH OR SERIOUS INJURY

The Youth & Family Lieutenant will ensure procedures are in place to address any suicide attempt, death or serious injury of any juvenile held at the Town of Cheektowaga Police Department. The procedures should include the following.

- (a) Immediate request for emergency medical assistance if appropriate
- (b) Immediate notification of the Watch Commander, Youth & Family Lieutenant, Chief of Police and Investigation Captain
- (c) Notification of the parent, guardian or person standing in loco parentis of the juvenile
- (d) Notification of the appropriate prosecutor
- (e) Notification of the Town Attorney
- (f) Notification of the Medical Examiner
- (g) Evidence preservation
- (h) Reporting to the New York State Division of Criminal Justice Services for the Death in Custody Reporting Act.

900.11 INTERVIEWING OR INTERROGATING

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.

Juvenile delinquents and adolescent and juvenile offenders in custody shall not be questioned unless the juvenile and either the juvenile's parent or other person legally responsible for the child's care, or if such legally responsible person is unavailable, the person with whom the child resides, are advised of the juvenile's department-approved *Miranda* rights for juveniles (Family Court Act § 305.2).

Any custodial interrogation of a juvenile should be recorded consistent with the requirements of the Investigations and Prosecution Policy.

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900.12 RESTRICTION ON FINGERPRINTING AND PHOTOGRAPHING

Fingerprints and palm prints may not be taken of juvenile delinquents unless (Family Court Act § 306.1):

- (a) The juvenile is in custody for a class A or B felony and the child is 11 years of age or older.
- (b) The juvenile is in custody for a class C, D or E felony and is 13 years of age or older.
- (c) The juvenile is 16 years old and is in custody for a misdemeanor defined in the Vehicle and Traffic Law (Penal Law 30.00; CPL 160.10).

The taking of fingerprints, palm prints, photographs, and related information concerning a juvenile delinquent or juvenile or adolescent offender in custody shall conform with standards established by the Commissioner of the New York State Division of Criminal Justice Services, the Family Court Act, and the Criminal Procedure Law (Family Court Act § 306.1; CPL § 120.90; CPL § 140.20; CPL § 140.27).