

	Houston Independent School District Police Department Directives	DIRECTIVE: 440-001
		EFFECTIVE DATE: May 28, 2013
	SUBJECT: Arrest and Interrogations of Suspects	REVISED DATE: January 28, 2022

PURPOSE

The purpose of this directive is to describe HISD Police department policies regarding arrests, interrogations, and interviews. The directive's primary purpose is to provide officers with procedures for interviewing and interrogating juveniles that are legal and consistent with the limitations in juveniles' maturity and emotional development characteristics.

The U.S. Supreme Court has recognized the emotional and developmental differences between adults and juveniles and its implications on the conduct of juvenile interviews in general and interrogations. These differences must be considered when an officer conducts an interview or interrogation of a juvenile. Officers shall follow this directive to observe juveniles' legal rights and protect against police coercion or intimidation charges during interviews and minors' interrogations.

This directive applies to all Houston Independent School District police personnel.

DEFINITIONS

Administrative Investigation: An investigation that is not criminal and may involve a violation of policy and or rules/regulations.

Administrative Search: Search performed by a member of school administration (non-law enforcement).

Arrest: Seize someone by legal authority and take them into custody.

Child Protective Services (CPS): A specific social service provided by the Department of Family and Protective Services to assist children believed to be neglected or abused by parents or other adults having permanent or temporary custody.

Criminal Investigation: An investigation that involves criminal allegations and does not involve violation of policy and or rules/regulations.

Custodial Detention: Situations where the individual is under arrest or when a "reasonable person" in the suspect's position would feel that their freedom of action has been restricted to the degree consistent with a formal arrest. When determining whether an individual, especially a juvenile, is in custody, the totality of the circumstances must be considered in determining whether a reasonable person would believe that they are free to leave.

Custodial Contact: Contact wherein an officer determines that a juvenile will be taken into police custody.

Detain: An investigation involving a criminal matter that breaches the peace or crime described by the Texas Penal Code.

Diversion Program: A program specifically designed to divert juveniles who have committed criminal offenses from the criminal justice system. The purpose of diversion programs is to provide corrective sanctions for their crime while avoiding the stigma of obtaining a criminal record.

Interrogation: The formal, systematic, and intensive questioning of a person arrested for or suspected of committing a crime. This also includes any words or actions by officers that they should know are reasonably likely to elicit an incriminating response.

Interview: A structured conversation where one participant asks questions and requests a general response/reply.

Investigative Stop: An interaction with a juvenile to determine whether a status offense or delinquent act has been committed.

Juvenile: A person under the age of 17.

Non-custodial: Situations where the individual is not in custody and is free to leave at any time, nor has their freedom been restrained to a degree associated with a formal arrest.

Office of Juvenile Justice and Delinquency Prevention (OJJDP): A component of the Office of Justice Programs, the U.S. Department of Justice accomplishes its missions by supporting states, local communities, and tribal jurisdictions to develop and implement effective programs for juveniles.

Parent: Any natural parent or adoptive parent, legal guardian, and any person or agency who has legal responsibility for the care and custody of the juvenile.

Pat Down: To pass the hands over someone's clothing in a search for a concealed weapon. They are often done for officers' safety.

Probable Cause: Probable cause to arrest exists where facts and circumstances within officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been or is being committed.

Reasonable Articulate Suspicion (RAS): Reason to believe, based on the officer's training and experience, that an individual has committed or is about to commit a crime. RAS requires articulable facts (more than a hunch) but less than probable cause.

Runaway: An individual under 17 years of age removes themselves from home or a place of legal residence without a parent or legal guardian's permission.

Secure Custody: The secure detention area where a juvenile is physically detained or confined, including a locked room, a cell, or area designated for the specific purpose

of physically restricting the movements and activities of a juvenile who is in police custody.

Status Offenses: Laws/offenses applicable only to juveniles, such as underage alcohol and tobacco violations, daytime and nighttime curfew violations, truancy, and running away from home.

CUSTODIAL AND NON-CUSTODIAL INTERROGATION PROCEDURES

Preparation

Before beginning an interview or interrogation, the investigator shall consider:

- a) If the interview subject is a juvenile, the following information should be collected as available:
 1. Family situation - parents, legal guardian, or person responsible
 2. Age
 3. Mental ability, including learning and emotional disability
 4. Education level
 5. Language spoken
 6. Prior law enforcement contacts and records
- b) Create an interview plan. Develop strategies for establishing rapport. Consider age-appropriate questions, juvenile's prior experience with police; maturity and sophistication; and seriousness of the offense in question.
- c) Determine the appropriate location and setting for the interview or interrogation based on the case's foregoing factors and other circumstances.
- d) Where possible, audiotape and videotape the interview.
- e) Limit the number of persons present at the interview to as few as possible.
- f) Designate one person to serve as the primary interviewer/interrogator.

INTERROGATION QUESTIONS

Officers should tailor their questions to the juvenile's age, maturity, education level, mental ability, and other information obtained. The following guidelines should be followed as appropriate, considering those factors.

- a) Avoid police or legal jargon
- b) Use names and places instead of pronouns
- c) Use short, simple words and sentences
- d) Avoid questions with multiple parts
- e) Connect time events to concrete events in the juvenile's life
- f) Avoid "yes/no" questions; instead, use questions that elicit a narrative response
- g) Avoid leading questions and subtle coercion
- h) Do not make promises or threats
- i) Avoid creating a story to prompt the juvenile to tell their story
- j) Avoid completing the juvenile's sentences
- k) Avoid jumping ahead in the conversation

- l) Double-check responses by asking questions that elicit the information differently.

NON-CUSTODIAL INTERVIEWS OF JUVENILES

The juvenile's parent or legal guardian should be contacted when reasonably possible. Officers should wait a reasonable amount of time before continuing with the interview if required by law or policy.

If the interview is conducted at school, a school administrator may observe the interview if it does not invade the victim's privacy. In cases where the administrator is allowed to witness the interview, the administrator's name will be listed in the offense report as a witness.

The interview should be limited in time and reasonable breaks before subsequent questioning. Where possible, dress in plainclothes and do not conspicuously reveal firearms.

Be on the juvenile's level; sit with the juvenile rather than across a table or standing over them. Begin by introducing all involved parties by first and last name and explaining the purpose of the interview. Refer to the juvenile by name.

Do not make promises or other coercive statements, whether direct or implied. Speak in non-threatening tones and attempt to create a sense of honesty and openness. Keep an open posture.

Build rapport before questioning. Find common ground and start with a topic that addresses the juvenile's interests, such as their favorite television show or activity.

Allow the juvenile to talk freely – do not interrupt. Emphasize the importance of telling the truth and reinforce the idea of honesty if appropriate in the interview. Remain neutral to the juvenile's responses.

Use follow-up questions to clarify any ambiguities only after the information available from open-ended questions has been exhausted. Close the interview by asking the juvenile if they have any questions.

CUSTODIAL INTERROGATIONS OF JUVENILES

Texas Family Code, Title 3 "Juvenile Justice Code, Chapter 51.095, outlines the procedures in taking a written or recorded statement from a juvenile under arrest or where probable cause exists to make an arrest.

Before obtaining a written confession or statement from an in-custody juvenile, the juvenile must receive a warning from a magistrate that informs the juvenile that:

- a) The juvenile may remain silent and not make any statement at all, and that any statement the juvenile makes may be used in evidence against the juvenile;

- b) The juvenile has the right to have an attorney present to advise the juvenile either before or during any questioning;
- c) If the juvenile is unable to employ an attorney, the juvenile has the right to have an attorney appointed to counsel with the juvenile before or during any interviews with peace officers or attorneys representing the state; and
- d) The juvenile has the right to terminate the interview at any time.

The magistrate must also ensure that the juvenile voluntarily waives or gives up these rights before and during the making of the statement.

After the magistrate determines that a juvenile wishes to waive their rights and gives a statement, the juvenile can be returned to the juvenile processing office by law enforcement to obtain a written confession. The statement, however, cannot be signed until the juvenile is again brought before the magistrate.

The Family Code requires that the juvenile sign the confession in the presence of a magistrate with no law enforcement officer or prosecuting attorney present. The magistrate must also be fully convinced that the juvenile understands the nature and content of the statement and that the juvenile is signing it voluntarily.

Finally, the magistrate must certify that the juvenile knowingly, intelligently, and voluntarily waives their rights before and during the making of the statement, and the juvenile understands the nature and contents of the statement.

RECORDED STATEMENT OR CONFESSION

If the custodial confession is recorded, the magistrate's warnings and the child's waiver of those warnings must be contained within the recording if the magistrate chooses to review the recorded confession to ensure voluntariness. In that case, the magistrate must advise law enforcement that the magistrate is exercising the right to review the recording at the beginning of the warning process. The magistrate must make written findings dated and signed by the magistrate regarding the statement's voluntariness.

After this process is completed, law enforcement must release the child or deliver the child to court by doing one of the following:

- a) Release the child to the parent or guardian;
- b) Bring the child before the office or official designated by the juvenile board, if there is probable cause to believe that an offense has been committed or for conduct that violates a condition of probation imposed by the juvenile court;
- c) Bring the child to a detention facility designated by the juvenile board;
- d) Bring the child to a secure detention facility (if a juvenile detention facility is not available in the county where the child is taken into custody);
- e) Bring the child to a medical facility if it is believed prompt treatment is required; or

- f) Dispose of the case without a referral to juvenile court if the law enforcement agency has established guidelines for such a disposition under §52.03, F.C. or §52.031, F.C. (§52.02(a), F.C.)

FINGERPRINTING AND PHOTOGRAPHING

Generally, a child may not be fingerprinted or photographed without the consent of the juvenile court unless the child is taken into custody or referred to the juvenile court for conduct that constitutes a felony or a misdemeanor punishable by confinement in jail (Class B or above).

Other exceptions to the general rule include fingerprinting and photographing a child with a parent or guardian's voluntary written consent or obtaining a driver's license or personal I.D. card, or inclusion in the missing children information clearinghouse.

Another exception allows a peace officer to place a child in temporary custody to take the child's fingerprints if:

- a) The officer has probable cause to believe the child engaged in delinquent conduct;
- b) The officer investigated that conduct and found other fingerprints during the investigation; and
- c) The officer has probable cause to believe the child's fingerprints match the other fingerprints.

A peace officer may also take temporary custody of a child to take the child's photograph or obtain a photograph from a juvenile probation department, if:

- a) The officer has probable cause to believe the child engaged in delinquent conduct;
- b) The officer has probable cause to believe the child's photograph will be of material assistance investigating that conduct.

Under these provisions, if a child is not taken into custody, the child must be released from temporary custody as soon as the fingerprints or photographs are obtained if the fingerprints or photographs do not lead to a positive comparison or identification. In that case, law enforcement must immediately destroy them and make a reasonable effort to notify the child's parent, guardian, or custodian of the action taken.

A peace officer may obtain fingerprints or photographs from a child at a juvenile processing office or a location that affords reasonable privacy to the child. These laws permit law enforcement to thoroughly investigate cases without unnecessarily creating a juvenile record of the event.

A peace officer may also fingerprint and photograph a runaway child when necessary to identify the person. Once the child is identified (or cannot be identified), law enforcement must immediately destroy all copies of the child's fingerprint records or photographs.

ARRESTS WITH/WITHOUT A WARRANT (WANT)

At all times, officers should consider the gravity of an arrest. Officers should exercise discretion when placing a juvenile in custody for a criminal offense. An arrest will be made only when an officer has probable cause to believe that a crime has been or is being committed.

The arrest of any juvenile is a traumatic experience for everyone involved. Before making an arrest, the officer will consider the following:

- a) Arrest/Detention Location: If possible, any arrest or detention should be made privately and out of other students' view. When possible, the arrest or detention should be made in an administrator's office.
- b) When possible, the juvenile will inconspicuously be escorted off campus to avoid detection by other students.

Arrests will be conducted in accordance with all constitutional and legal provisions and will require the minimum use of force possible under the circumstances.

At the time of arrest, suspects will be told that they are under arrest and the charge or cause for the arrest.

Suspects in custody shall be handcuffed from the back unless circumstances require handcuffing from the front. Once handcuffed, suspects shall not be secured by handcuffs or any other means to the interior or exterior or any other object or person. Arrest without a warrant must comply with Texas Criminal Procedure Code Art 14.01 (212) (259) (247).

LEGAL STATUS

The district is committed to providing a supportive educational environment for all students, regardless of their background; therefore, officers are not authorized to ask about any student's legal status unless necessary to provide social services or information about U-Visas.

Approved By


Pedro Lopez Jr., Chief of Police