

Geneva Police Department GENERAL ORDERS		JUVENILE PROCEDURES	
<input type="checkbox"/> new: <input checked="" type="checkbox"/> rescinds: Policy & Procedure 50.4 <input type="checkbox"/> amends:		cross-reference: G.O. 350; G.O. 710; G.O. 760; G.O. 775 Accreditation/Recognition standards: C.A.L.E.A.: NYS L.E.A.P.: 50.4	
effective date: 8.24.05	issue/amend date: 8.24.05 / 10.15.20		

I. PURPOSE	The purpose of this General Order is to establish and describe policies and procedures for the conduct of investigations of cases involving juveniles.
II. POLICY	<p>A. It is the policy of the Geneva Police Department (GPD) to prevent and control juvenile delinquency through the combined efforts of all personnel supported by an organizational component dedicated to this purpose.</p> <p>B. The responsibility to support the Department’s juvenile operations is shared by all personnel of the Department as it relates to their specific duties.</p> <p>C. There is no area of the Geneva Police Department that may be used for the secure detention of juveniles. Juveniles may be detained in approved areas of the Department for interview and/or investigative purposes. In such cases, an Officer will remain with the juvenile at all times.</p>
III. DEFINITIONS	<p>A. <u>Designated Felony:</u> An act which, if done by an adult, would be a crime as defined in the Family Court Act, Section 301.2(8) and variously affecting persons 13, 14, 15, 16 or 17 years of age. Since these persons are also juvenile delinquents, actions involving a designated felony are handled by the County Attorney.</p> <p>B. <u>Diversion:</u> “Diversion,” as it applies to handling a juvenile, means any lesser alternative that is substituted for one which might be imposed within the juvenile justice system. The rationale for its use is to impose a more moderate punishment (or treatment) in an effort to encourage the juvenile to accept rehabilitation and to alter his behavior to that which is acceptable in the community.</p> <p>C. <u>Infancy:</u> A defense described in the Penal Law which states that a person less than eighteen (18) years of age is not criminally responsible for his conduct.</p> <p>D. <u>Intake:</u> The process comparable to the commencement of a criminal action as described in the Criminal Procedure Law, but applicable to juvenile delinquents. In Ontario County this function is performed by the Ontario County Probation Department, acting on a petition (accusatory instrument) prepared by the County Attorney’s Office at the request of GPD personnel, or, in some cases, at the request of a parent or guardian as the complainant.</p> <p>E. <u>Juvenile Delinquent:</u> A person over 13 and less than 15 years of age, who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to Article 725 of the CPL. Actions against juvenile delinquents are handled by the County Attorney.</p> <p>F. <u>Adolescent Offender:</u> A person who is 16 or 17 years of age that commits a felony level crime. These individuals have their cases heard in the Youth Part of Criminal Court.</p>

**III. DEFINITIONS
(CONT.)**

G. Juvenile Offender: A person who is 13, 14, or 15 years of age and who is criminally responsible for his conduct as it applies to certain serious felonies as enumerated under Subdivision 18 of Section 10.00 of the NYS Penal Law. Juvenile Offenders are under the initial jurisdiction of the local criminal court. The case may be ultimately prosecuted by the District Attorney’s Office in criminal court, or removed to Family Court.

H. PINS (person in need of supervision): A person less than eighteen years of age who does not attend school in accordance with the provisions of part one of Article 65 of the NYS Education Law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child’s care, or other lawful authority, or who violates the provisions of Section 221.05 of the NYS Penal Law.

**IV. FAMILY SERVICES
UNIT**

A. The Geneva Police Department has established and maintains a component referred to as the Family Service Unit, whose activities include but are not limited to: *See §775 Family Services Unit.*

1. Follow-up processing of youth arrests as assigned;
2. Assume responsibility as assigned for investigation, which involve one or more juvenile suspects;
3. Assist other Department personnel in juvenile cases;
4. Coordinate and prepare court cases in which a juvenile offender is involved;
5. Divert juvenile offenders out of the juvenile justice system;
6. Maintain liaison with other agencies and organizations involved with juvenile matters; and
7. Provide in-service training in juvenile procedures to Department personnel, as needed.

**V. REFERRAL TO
INTAKE OR
DIVERSION**

A. The decision to refer a juvenile to intake or diversion rests largely with the Family Services Unit or other assigned personnel who, by virtue of a thorough investigation, is in a position to determine what course of action will best serve justice. In determining whether to refer a juvenile to intake or diversion the following factors will be considered:

1. The nature and seriousness of the offense as judged by its nature, the use of a weapon, whether gang-related, or whether the juvenile was under the influence of alcohol or drugs;
2. The juvenile’s history of criminal activities and whether past criminal history is recent or remote in time;
3. The age and family circumstances of the juvenile;
4. The juvenile’s status with respect to official supervision;
5. The level of cooperation from the juvenile and/or parent or legal guardian; and
6. The effectiveness of the juvenile’s participation in any previous rehabilitation or diversion programs, including his/her attitude toward parental supervision, as well as the willingness and capability of the parent/guardian to control the youth.

V. REFERRAL TO INTAKE OR DIVERSION (cont.)

- B.** Personnel who are dealing with juveniles shall take the least coercive action among reasonable alternatives, consistent with preserving public safety, order, and individual liberty. Depending on the circumstances the following diversion options may be available:
1. Release to parent/guardian with no further action. When a juvenile is deemed not to be a threat to himself or others, he may be released to a parent, legal custodian, or a responsible adult relative **provided** the person receiving the juvenile has indicated a willingness and capacity to exercise reasonable care and control over the juvenile to prevent his resumption of the conduct which brought him to the attention of the Department.
 2. Conference involving the juvenile, parents/guardian, and the assigned Officer or Detective.
 3. Voluntary and prolonged program of treatment involving the participation of one or more agencies providing social or supervisory services.
 4. The Family Service Unit may make an informal referral to the probation department, or other youth service agency suggesting some follow-up corrective action.
 5. Referral through petition into Family Court.
- C.** If, in the opinion of the investigating Officer, there is little assurance that the juvenile will receive the necessary care and control, or that there is a substantial risk that the juvenile will continue in criminal activity, the Officer should consider placement in any appropriate placement facility after consulting with the District Attorney's Office, County Attorney's Office, Probation Department and the Family Service Unit.
- Note:** Secure detention is used only for a juvenile accused of a misdemeanor or felony. All members of the Geneva Police Department have authority for placement.
- D.** If, considering the juvenile's age and conduct, he or she qualifies as a juvenile offender within the meaning of the term as described above, there shall be no discretion concerning a disposition of the case and the juvenile shall be charged as a Juvenile Offender.
- E.** Under no circumstances will a juvenile be released or referred to a diversion program if there is probable cause to believe that he has committed those crimes specified in NYPL, §30.00-2 & 3. In such cases the appropriate charge(s) will be filed.

VI. DETECTIVE BUREAU NOTIFICATION

- A.** Whenever the Family Service Unit is on-duty, the investigating Officer will notify him/her of any criminal apprehension of a juvenile(s).
- B.** The on-duty Supervisor will notify the Lieutenant/Detective Bureau (LT/DB) or other Detective Bureau supervisor in the following cases:
1. All juvenile cases involving a felony;
 2. All juvenile cases in which the juvenile may be placed in detention; or
 3. Any other juvenile case which, in the judgment of the on duty Supervisor, the Detective Bureau should be notified immediately.
- C.** The Detective Bureau Supervisor will decide whether to call in Family Service Unit or other Detective Bureau personnel to assist with the case.

VII. GENERAL PROCEDURES

- A. In juvenile cases, Officers will follow the same basic reporting and investigative procedures including the securing of physical evidence as are followed in adult cases.
- B. The involved Officer will complete all appropriate Incident, Supplemental and other required Departmental Reports.
- C. Juvenile suspects that are transported to the Public Safety Building (PSB) will be brought into the building via the south side entrance door located on the administrative section of the PSB and placed in an approved area. *See §IX (B)(C)(I)* below.

VIII. ARREST AND CUSTODY OF JUVENILES

- A. Section 305.2 of the Family Court Act sets out the authority for a Police Officer’s arrest of a juvenile without a warrant, which authority is derived from Article 140 of the Criminal Procedure Law as it applies to the arrest of any person for a crime. The same rules affecting the seizing of evidence and the securing of admissions following the arrest of an adult are applicable to the arrest of a juvenile under this Section, including the requirement that the juvenile be notified of his constitutional rights.
- B. The Officer effecting such an arrest is required to make immediate notification to the juvenile’s parent or guardian, or, if unavailable, to the person with whom the juvenile resides, that the juvenile has been taken into custody. The identity of the parent, guardian, or adult family member who is notified will be documented in the Officer’s report as well as the time of the notice. Unsuccessful attempts to make such notice will also be documented.
- C. The arresting Officer will consult with and seek the assistance of the Family Service Unit or other Detective Bureau personnel as necessary or appropriate. The Officer or Detective assigned responsibility for the case shall take one or more of the following actions:
 - 1. **Designated Felonies**
 - a. If the juvenile has allegedly committed a designated felony as defined in FCA §301.2(8), **and** the Family Court is in session, the Officer may forthwith take the child directly to such Family Court after all necessary documentation is forwarded to the County Attorney for review and court appearance scheduled, unless the officer takes the juvenile to an approved facility for interview or if the case does not involve a designated felony, the Officer may, upon the consent of a parent or other person legally responsible for the care of the juvenile, go to the juvenile’s residence and there conduct an interview for a reasonable period of time. The decision to proceed directly to Family Court or to a place for questioning should be made after consultation with the Family Services Unit.
 - 2. **Crimes not constituting Designated Felonies**
 - a. If the juvenile is accused of committing a crime that is not a designated felony, **and** the Family Court is in session, the child must be released with an Appearance Ticket or taken forthwith to the court. In these circumstances, detention **is not** permitted.

Note: The juvenile may be interviewed prior to issuance of the Appearance Ticket and/or being taken to Family Court.
 - b. When the Family Court is not in session, the child must be released and an Appearance Ticket issued unless special circumstances exist that would justify detention.

VIII. ARREST AND CUSTODY OF JUVENILES (cont.)

3. Adolescent Offenders

- a. When a 16-17 year old person commits any felony, the District Attorney's Office **MUST** be contacted for further instructions.

4. Family Court / Youth Part Warrants

- a. A juvenile may also be taken into custody upon the authority of a Family Court / Youth Part warrant signed by a Family Court / Youth Part Judge commanding his/her appearance in court. Such a warrant may be issued for a juvenile offender, adolescent offender, juvenile delinquent, or for a PINS. It may be based on the juvenile's failure to appear for a court date or a probation meeting.
- b. An appearance ticket may not be issued to a juvenile arrested on a Family Court warrant.
- c. Family Court / Youth Part Judge will give instructions on when the warrant is executable.

IX. CUSTODIAL AND NON-CUSTODIAL INTERVIEWS AND PROCESSING OF JUVENILES

- A. A non-custodial interview** of a person under the age of eighteen (18), may occur and statements may be taken under "reasonable circumstances." Reasonable circumstances depend upon age, emotional state, mental acuity, time of day, and the anticipated duration of the interview. Whenever practicable, the interview should be conducted with the consent of a parent or guardian.

1. Exceptions:

- a. All 16 & 17 year old NYS Penal Law Violations level charges.
- b. NYS VTL Violations and Misdemeanors. ***See GO §710 Suspect Interview & Statement Procedures.***

- B. The following procedures will be followed when juveniles are in approved areas for interview or other investigative purposes:**

- 1. An Officer will remain with the juvenile at all times.
- 2. When juveniles are being held in approved areas of the PSB, the responsible Officer(s) must ensure that sight and sound separation is maintained between the juvenile and adult detainees or suspects.
- 3. Officers will escort juveniles to other areas of the PSB (e.g., restroom) as needed. Such areas will be checked first to be ensure that the juvenile will not come into contact with an adult detainee(s) or suspect(s).
- 4. A juvenile may be handcuffed without attachment to a stationary object in a Family Court-approved area if such action is necessary to control the juvenile, prevent his/her escape, or prevent injury to the juvenile or another person.

- C. Custodial interviews** of a juvenile are covered under Section 305.2 (7) and (8) of the Family Court Act which notes that the presence or absence of the child's parents, his age, and the period of time for questioning will all be considered relevant in determining whether such interrogation was suitable. The following procedures will govern such activity by Department personnel.

- 1. All custodial interviews of juveniles will be conducted in an area of the PSB that has been approved for use with juveniles pursuant to the procedures set forth in 22 NYCRR 205.20. Approved areas within the PSB are the Family Services Unit's Office (#204) and the interview room (#203) adjacent to the Family Services Unit's Office. In the alternative, a juvenile may be interviewed in his or her own home with the consent of a parent or legal guardian.

IX. CUSTODIAL AND NON-CUSTODIAL INTERVIEWS AND PROCESSING OF JUVENILES (CONT.)

2. Reasonable efforts must be made to notify a parent or any adult who is looking out for the best interest of the juvenile and have them present prior to any interview. All attempts will be fully documented in the Officer's report.
3. Interview and questioning must await the arrival of the juvenile's parent or guardian, unless such person has elected not to be present and/or has given express permission to proceed in his or her absence. These circumstances will be fully documented in the officer's report.
4. Prior to commencing the custodial interview, the juvenile and parent or guardian must be advised of and waive *Miranda Warnings* in accordance with current Department procedures. **See G.O. 710, *Suspect Interview and Statement Procedures***. In addition to standard *Miranda Warnings* the personnel conducting the interview will also explain the Department's procedures and the juvenile justice process as it relates to the particular case.
5. Custodial interviews of juveniles should be limited to a reasonable period of time bearing in mind the age and the circumstances of the juvenile, and whether there is a parent or legal guardian present. There generally should be no more than two (2) Officers actually interrogating a juvenile at the same time.
6. All statements will be recorded and documented in the investigating Officer's report.

X. FINGERPRINTS AND PHOTOGRAPHS

- A. Juveniles will be fingerprinted as set forth below at either the time of a custodial arrest or the issuance of an Appearance Ticket, whichever occurs first.
- B. Juveniles will be fingerprinted in Livescan and photographed **only** in the following cases:
 1. Juveniles **16 or 17 years of age** charged with **any felony offense** or any printable NYS VTL misdemeanor offense.
 2. Juveniles **13 to 15 years of age** charged with **any felony offense** (Class A, B, C, D, or E);
 3. Juveniles **11 to 12 years of age** charged with a **Class A or B felony offense**; or
 4. The Officer is unable to ascertain the juvenile's identity, or the Officer reasonably suspects that the identification given by the juvenile is not accurate.

XI. JUVENILE PROTECTIVE CUSTODY

- A. The taking of a juvenile into protective custody is also authorized when there is justification for such action. Juveniles taken into protective custody shall be placed in the least restrictive environment, which ensures safety and supervision. The parental home, a non-secure detention facility, or release into the care of the Department of Social Services are alternatives in this regard. Juveniles subject to being taken into protective custody include:
 1. An abandoned, abused or neglected child;
 2. One who is suffering from illness or injury, or who is under the influence of alcohol or drugs;
 3. One who is in immediate danger from his/her surroundings;
 4. A runaway (less than 18 Years of age) reported by a person of legal responsibility; or who in the reasonable conclusion of an officer, appears to have run away from home without just cause. **See G.O. 760 *Missing Person Investigations* §X**; or
 5. At the direction of Family Court or Department of Social Services.

XII. JUVENILE RECORDS

- A.** Confidentiality is of utmost importance when dealing with juveniles. The GPD is required by law to keep records and results of juvenile cases in strict confidence. Section 381.3 of the Family Court Act states:
1. All police records relating to the arrest and disposition of any person under this Article shall be kept in files separate and apart from the arrests of adults and shall be withheld from public inspection.
 2. Notwithstanding the provisions of subdivision one, the Family Court in the county in which the petition was adjudicated may, upon motion and for good cause shown, order such records open:
 - a. To the respondent or his parent or person responsible for his care; or
 - b. If the respondent is subsequently convicted of a crime, to a judge of the court in which he was convicted, unless such record has been sealed pursuant to Section 375.1.
 3. An order issued under Subdivision two must be in writing.
- B.** Records Office personnel are to be alert to any request made for information pertaining to a juvenile or his/her case, and must be certain that the person requesting the information has a legal right to receive it. Any doubt shall be resolved by referring the matter through the chain-of-command.
- C.** Information may be released when requested by a law enforcement agency conducting a background investigation for possible employment by that agency of the subject.
- D.** The identity of juvenile's arrest information may not be released or otherwise made available to the media or the public. *See G.O. 350, News Media and Police Relations §IV(E)(4)*. The Supervisor who reviews reports for release to the media will ensure that such information is redacted from any report made available to the media.
- E.** Destruction of juvenile records shall be in accordance with New York State and Ontario County retention schedules.
- Note:** All arson investigations with a juvenile suspect whether or not an arrest was made **MUST** be kept indefinitely.
- F.** Upon receipt of a court order to expunge records pertaining to a juvenile, all such records shall be destroyed without delay.
- G.** Access to juvenile records shall be obtained only through those personnel who are assigned to the Family Services Unit and who are responsible for the generation, collection and retention of such records, except that in certain circumstances access may be obtained through the Chief of Police or the Chief of Police's designee.

Approved By

MICHAEL J. PASSALACQUA
CHIEF OF POLICE