

Minors in the Care of Arrested Persons



Report and Recommendations of the

Police Complaints Board

to

**Mayor Anthony A. Williams,
The Council of the District of Columbia, and
Chief of Police Charles H. Ramsey**

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Police Complaints Board

**Maria-Cristina Fernández, Chair
Dr. Patricia Fisher
Michael Sainte-Andress
Marc Schindler**

730 11th Street, N.W., Suite 500
Washington D.C. 20001
(202) 727-3838

Website: policecomplaints.dc.gov

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I. INTRODUCTION AND OVERVIEW

During the course of carrying out their primary mission of investigating and resolving police misconduct complaints filed by the public against Metropolitan Police Department (MPD) officers, the Police Complaints Board (PCB) and the Office of Police Complaints (OPC)¹ regularly monitor the complaints received and the decisions issued by the agency. PCB and OPC examine the nature, severity, and frequency of allegations in the complaints as a whole, as well as individual decisions that draw attention to gaps in MPD's policies that, if filled, have the potential to reduce future instances of police misconduct. This information is used by the Board to make recommendations where appropriate to the Mayor, the Council of the District of Columbia, and the Chief of Police "concerning those elements of management of the [Metropolitan Police Department] affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers."²

A recent OPC decision highlighted such a gap in MPD's policies and presented the Board with an opportunity to make the recommendations contained in this report.³ In this decision, the complaint examiner concluded that two MPD officers harassed a minor when the officers left him and another minor on the street without adult supervision after 12:00 midnight in violation of the District's curfew law. The minors had been in the care of an adult until the adult's arrest left the two without a means to get home or to the police station. Although the subject officers were ostensibly aware of the existing procedures for handling curfew violators and failed to follow them, a broader concern exposed by the decision is the absence of procedures for handling a minor in the care of an arrested person regardless of the time and location of the adult's arrest.

MPD does recognize the special status of minors in various policies, and treats minors as a population for whom additional protection should be extended given the inherent vulnerability of young people.⁴ However, there is a void in MPD's policies regarding the handling of minors who are not involved in any criminality. Discussions with various members of the Department indicate that, in the absence of written procedures, most officers take a common sense approach to reuniting a minor to the care of another authorized adult. Nevertheless, this approach is neither universal nor adequate in guaranteeing the health and safety of minors left unattended by an arrested person.

¹ PCB and OPC were formerly known as the Citizen Complaint Review Board (CCRB) and the Office of Citizen Complaint Review (OCCR), respectively. The agency names changed on January 1, 2005.

² D.C. Official Code § 5-1104(d).

³ PCB would like to acknowledge the assistance of OPC's staff in preparing this report and accompanying recommendations. OPC's executive director, Philip K. Eure, and deputy director, Thomas E. Sharp, managed the project. OPC's former management analyst, Bradley R. Hicks, performed research and prepared the first draft of the report, and OPC summer law clerk, Heather Goss, who recently graduated from American University's Washington College of Law, performed research and provided other valuable assistance. We also are grateful to MPD for its cooperation in providing information for and comments regarding the report, and appreciate the efforts of everyone else who contributed to the report.

⁴ In the District, a "minor" is defined as any person under the age of 17. D.C. Official Code § 2-1542(5).

There are consequences that stem from this policy void beyond the obvious risk posed to the health and safety of minors. As an agent of the state, a police officer exposes the city to potential liability when the officer's actions place a minor in greater danger than the situation in which the minor was found. Although courts have set a high threshold for determining whether a state agent has an affirmative duty to keep an individual out of danger, police officers are responsible for minimizing the potential risks faced by a minor who is affected by the arrest of the person responsible for his or her care.

The Board's analysis of the procedures practiced by police departments in other major cities suggests that simple written guidelines can be quickly established by MPD to assist officers with handling minors under these circumstances. With this information in mind, the Board recommends that MPD create a written policy for handling minors in the care of arrested persons in coordination with the Child and Family Services Agency. MPD should train its officers on all laws and procedures that govern minors in the care of arrested persons and timely implement this new policy to ensure the health and safety of minors in the District of Columbia. After its implementation, MPD should monitor the policy to guarantee its application and evaluate its impact. Filling this gap in MPD's policies and procedures will not only assist officers in carrying out their duties, but also will advance two important goals set by the District in its Strategic Plan for the city, namely strengthening children, youth, families, and elders and building sustainable neighborhoods.

II. RELATED DECISION

The policy gap regarding minors in the care of arrested persons came to the attention of PCB as a result of a recent decision.⁵ In this case, two minors attended a show at a nightclub accompanied by the mother of one of the minors. Following the show, the mother discovered a parking ticket on her windshield and became upset. The record shows that the mother approached the subject officers in a hostile manner to protest the ticket because she had followed the instructions of the nightclub's parking attendant. She was arrested shortly before 1:00 a.m. for disorderly conduct and for assaulting a police officer.

Upon her arrest, the mother informed the officers that the minors in her care could not drive themselves home because their permits required a parent to be present in the car. Both minors possessed a learner's permit but not an actual driver's license. The minors were unfamiliar with the area and asked how they could get to the police station. In response, the officers gave the minors the choice of either walking to the station or being picked up by Child Protective Services of the Child and Family Services Agency.

Subsequently, the officers gave the minors walking directions to the nearest police station and left the two alone on the street outside the nightclub. Despite the hour, the minors followed the instructions and walked through an unknown neighborhood to reach the police station. When they had still not found their destination after 15 to 30 minutes, they hailed a cab to the Third District station where they waited for several hours until a friend's parent picked them up.

⁵ OPC Complaint No. 02-0509. The entire text of the complaint examiner's decision can be found on OPC's website, policecomplaints.dc.gov.

The complaint examiner concluded that the MPD officers were fully aware that two minors accompanied the arrestee and yet failed to enforce the city's curfew law.⁶ By doing so, the officers placed the minors in danger instead of taking them to the nearest available police station.⁷ More broadly, the officers' mistreatment of the minors failed a common sense test to protect the minors from becoming victims of crime themselves. In this expanded context, the decision exposed a gap in the policies of MPD establishing procedures for handling minors uninvolved in any criminality who are left without supervision when an adult is arrested.

III. THE POLICY GAP AND ITS CONSEQUENCES

MPD does not currently have a general or special order that comprehensively lays out procedures for police officers to follow when a minor is left unsupervised due to the arrest of a parent or guardian. As previously referenced, MPD General Order 305.01 and MPD Special Order 99-14 both provide procedures for handling minors under certain circumstances. General Order 305.01 distinctly applies to juveniles who are involved or suspected of involvement in some form of criminality whereas Special Order 99-14 distinctly applies to minors who have committed the offense of violating the city's curfew law. However, neither directive establishes in writing a process that broadly applies to minors uninvolved in any crime that are in need of care or shelter following the arrest of a parent or guardian.

The consequences of a police officer whose actions put an individual at increased risk are sufficiently severe to require the attention of MPD. Indeed, the courts have frequently weighed in on the question of a police officer's obligation to act in a way that does not further endanger an individual. While the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, as interpreted by the Supreme Court, does not create an affirmative duty for state actors, such as police officers, to protect individuals,⁸ a majority of the U.S. Courts of Appeals, including the court in the District of Columbia, have held that an exception to this rule exists when a state actor creates or increases the risk of injury to an individual.⁹

Under this reasoning, it is possible that a minor who is injured while unsupervised because a police officer knowingly arrested the parent and failed to provide temporary care can have an actionable cause against that officer under the Constitution. Clearly, this scenario extends beyond the specifics of the aforementioned OPC case to include instances where children have been left alone at home to care for young siblings¹⁰ and abandoned in a car on the side of a busy highway by an officer that arrested the minors' parent or legal guardian.¹¹

⁶ Curfew hours are defined in Special Order 99-14 as between 11:00 p.m. on Sunday through Thursday and 6:00 a.m. the following day and from 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

⁷ D.C. Official Code § 2-1543(c)(2)

⁸ *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989).

⁹ The Second, Third, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have used this theory to hold certain state actors and municipalities liable for plaintiff injuries. See Jeremy Daniel Kernodle, *Policing the Police: Clarifying the Test for Holding the Government Liable under 42 U.S.C. § 1983 and the State-Created Danger Theory*, 54 Vand. L. Rev. 165, 175-76 (2001).

¹⁰ See Clare M. Nolan, *Children of Arrested Parents: Strategies to Improve Their Safety and Well-Being* (July 2003), available at <http://www.library.ca.gov/crb/03/11/03-011.pdf>, at 11 (after a mother was arrested in her

Although most of the precedent involving state-created danger does not involve abandoned children of arrestees, these cases do set out certain tests that determine if the state-actor had an affirmative duty to keep an individual out of danger. In the District of Columbia, a case decided in 2001 by the U.S. Court of Appeals ruled that District officials have an affirmative duty when the official acts “to increase or create the danger that ultimately results in the individual’s harm,” and the official’s conduct is “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.”¹² This may seem like a high requirement in the average case, but when officers are dealing with minors, the duty is heightened. Not every case may be egregious, but abandoning a minor can certainly be raised to such a level much faster.¹³

The other courts that follow the affirmative duty theory have a variety of tests, most of which state that the injured party does not necessarily have to be in the custody of the state actor, that contact between the state actor and the plaintiff is not required, and that the officer need not eliminate all avenues of self-help before he or she becomes liable. Each one requires that the created or increased danger is causally related to the officer’s actions. The U.S. Court of Appeals for the Seventh Circuit has some of the most instructive cases. In *White v. Rochford*, a case involving children abandoned in a car after their uncle was arrested, the court stated that the police officers “had a duty to the children to conduct the arrest in such a manner that the children’s interest in personal security was not infringed.”¹⁴ In *Archie v. City of Racine*, the court held that when a state actor affirmatively places a person in danger, he or she must protect that individual “to the extent of ameliorating the incremental risk.”¹⁵

Simply stated, these findings suggest that a police officer whose actions may not rise to the level of criminal liability should, nonetheless, use his or her best judgment to mitigate risks to a minor caused by the arrest of the minor’s parent or legal guardian. At a minimum, the holdings in these cases argue for a police officer’s responsibility to be aware of minors that may be affected by an arrest. As even the case before OPC shows, leaving children on the street or at

home, the police officers left two boys, ages nine and one, who were present during the arrest; the nine-year-old took care of his younger brother alone for two to three weeks before a neighbor noticed the mother was missing and called Child Protective Services).

¹¹ See *White v. Rochford*, 592 F.2d 381 (7th Cir. 1979). In this case, three children were left unattended in a car on the side of a busy Chicago freeway after their uncle was arrested. The officers refused to help them, so the children crossed eight lanes of traffic to call their mother, who did not have a car. She called the police who again refused to help the children. Finally a neighbor was able to pick them up, but not before the five-year-old, an asthmatic, spent so long in the frigid night air that he had to be hospitalized for a week. The Seventh Circuit stated that, “The issue before this court is whether the unjustified and arbitrary refusal of police officers to lend aid to children endangered by the performance of official duty violates the constitution where that refusal ultimately results in physical and emotional injury to the children. We hold that such conduct indisputably breaches the Due Process Clause.” *Id.* at 383.

¹² *Butera v. District of Columbia*, 235 F.3d 637, 651 (D.C. Cir. 2001)

¹³ Especially in light of a case where police officers were held liable when they abandoned an adult woman on the side of a road in a notoriously criminal neighborhood after arresting her companion and confiscating the car. The woman was raped on her way home. See *Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989).

¹⁴ *White*, 592 F.2d at 388.

¹⁵ *Archie*, 847 F.2d. 1221, 1223 (7th Cir. 1988).

home alone may incrementally increase the potential risks to a minor's safety, especially when the minor is very young or the location is notoriously perilous.

IV. POLICIES IN OTHER JURISDICTIONS

To assist MPD with the development of a policy regarding the issues presented in this report, PCB examined the approaches of police departments in other major cities to identify the key elements of policies on the handling of minors in the care of arrested persons. While MPD is not the only major city police department without a directive on this issue, there are a number of jurisdictions that do provide specific instructions to police officers regarding the handling of minors in the care of arrested persons. Three of the police departments with the clearest and most thorough directives are located in New York, Detroit, and San Francisco.

Procedure Number 215-01 in the New York Police Department (NYPD) Patrol Guide gives members of the force step-by-step instructions on how to obtain temporary care for a minor who is left unsupervised due to the arrest, hospitalization, or death of a parent or guardian. The procedure is initiated by a simple, but necessary, inquiry by the officer to determine if a relative or friend is available to care for the minor. Even if the minor is left in the care of a relative or friend, the officer is instructed to notify the appropriate borough field office of the Administration for Children's Services (ACS). If the minor is left with a relative or friend not residing in the household, the officer must transmit a computerized Aided Report to the youth officer in the precinct where the child is located.

The NYPD procedure also provides instructions to officers in the event that a relative or friend is not available to care for the minor. Under this scenario the officer is required to process the minor as a "Child Requiring Shelter" by completing an Aided Report Worksheet (PD304-152b). The worksheet extensively documents the circumstances leading to the minor's need for care, including the following vital information:

1. Date, time, and location where the child was found or removed.
2. Physical description of the child including clothing, name, address, emotional, and physical condition.
3. Name, address, and phone number of person who found child, if applicable.
4. Name and address of parents or persons legally responsible for child, if known.
5. The particular circumstances causing the need to provide care or shelter.

Once the officer on the scene has notified the desk officer, the desk officer is responsible for notifying the ACS borough field office or the ACS Emergency Children's Services after business hours. ACS will send a representative to the stationhouse to provide transportation for the minor to a temporary shelter. If ACS is unable to provide transportation, the desk officer will assign a female officer, if available, to accompany the minor to the shelter.

The Detroit Police Department (DPD) Manual also instructs its officers on how to care for minors in the care of arrested persons. Implicit in other police departments' procedures,

Section 202.1-11.3 explicitly stipulates that the minor must not be involved in any criminality, curfew violation, or wanted on any other charge in order for the minor to be covered under this section entitled “Juveniles in the Company of Arrested Persons.” The arresting officer is instructed to release the minor only to a parent or guardian present at the scene. If none is present, the officer will arrange for the minor to be transported to the nearest police station or to the minor’s home. When possible, the manual instructs the officer to transport the minor in a separate vehicle from the one transporting the arrested person(s).

The procedures followed in Detroit strongly prohibit the release of any minor to any person without sufficient identification. The officer is responsible for documenting all information regarding the person to whom the minor was released in the officer’s Activity Log. When the minor is released from the station, the Desk Blotter shall also reflect the confirmed identity of the person to whom the minor was released.

In San Francisco, the police department’s General Order 7.01 instructs officers to seek care for a minor whose “physical environment or the fact that the [minor] is left unattended poses an immediate threat to the [minor’s] health and safety.” In particular, the order instructs officers on how to notify a minor’s parent or legal guardian once the minor arrives at the district police station or the Children’s Protective Service (CPS) for medical screening and placement. For example, the arresting officer is responsible for determining whether the minor is local or from out of town and for acting accordingly to reach a parent or guardian, if available, or a relative or friend. Officers are required to document in their incident reports what actions were taken to notify the minor’s parents and if parental notification was achieved.¹⁶

General Order 7.01 is also explicit in its instructions to officers for transporting minors. Officers are prohibited from knowingly transporting minors with adult arrestees. Female officers are expected, when possible, to transport female minors. If a female officer is unavailable, the order requires two male officers to transport the female minor. Under this scenario, the male officers must first notify the Communications Division of their destination and the vehicle’s starting mileage. Upon arrival, the officers must report the vehicle’s ending mileage. These precautions are taken to avoid unnecessary risks to the minor’s health and safety.

Collectively, the Board’s analysis of the policies implemented in New York, Detroit, and San Francisco highlight the following six key areas of concern for MPD to consider: the (1) identification, (2) transportation, and (3) location of origin of minors, the (4) reluctance on the

¹⁶ As comprehensive as the directive is in San Francisco, the San Francisco Office of Civilian Complaints (OCC) was compelled to issue a policy recommendation on June 23, 2003, to the police department to review and amend Departmental General Order 7.01. The OCC recommendation was a reaction to weaknesses in the order on the subject of parental notification procedures. OCC also recognized that the order does not include substantial documentation requirements for when a minor is released. To fill these gaps, OCC recommended that the police department articulate procedures for handling minors who are transported home or to an authorized adult’s home rather than to the police station or protective services. OCC recommended that procedures be added to cover parental notification under these circumstances that are as thorough as those that cover minors brought to the district station or protective services. Further, OCC recommended that documentation requirements be incorporated detailing the circumstances around the minor’s need for temporary care and the identity of the person to whom the minor is released. Numerous incidents led to the OCC’s recommendations including two cases in which minors were released to a friend’s parent or relative without sufficient information in the incident reports to identify or contact the adult.

part of the arrestee to identify minors in the arrestee's care, the (5) need to verify and document the identity of the adult to which the minor is released, and (6) the role and circumstances under which child protective services should become involved.

A. Identification of Minors

With regard to the identification of minors, NYPD's policy stipulates that the procedures therein only apply to those who are not involved in any criminality and require temporary care or shelter due to the arrest, hospitalization, or death of a parent or legal guardian. All three of the departments consider that minors affected by the parent or guardian's arrest may or may not be present at the scene. Even if a minor is present, the minor may not be readily identified as such due to mature physical characteristics or clothing that make the minor appear older. Similarly, a minor on the scene may not be easily identified by the arresting officer as a person under the arrestee's supervision.

If a minor under the care of the arrestee is not present at the scene, the minor may still require supervision while the arrestee is detained. For example, it is not unlikely that a minor could arrive home from school to an empty house because the arrestee is in custody and was unable to make appropriate arrangements for the minor's care. Therefore, procedures should always be established to encourage officers to ask the right questions to determine the identity of minors in the care of arrested persons present at the scene and not.

B. Transportation of Minors

To varying degrees of specificity, each department's policy includes procedures for the safe transport of minors in the care of arrested persons. An arrest may take place inside or outside the arrestee's home. If an arrest takes place at the person's home, it may not be difficult for the arrestee to authorize another adult present in the home to provide temporary care for minors affected by the arrest. However, if an arrest occurs outside the home, the officer should ensure the safe transportation of minors under the arrestee's care to a suitable location.

The exact transportation procedures may include picking up or dropping off the minor with an authorized adult, prohibiting the transport of the adult arrestee with the minor when possible, encouraging the use of female officers when transporting a female minor, using the patrol car radio to notify the district station in advance, recording the beginning and ending mileage, or driving the minor directly to the nearest district police station. Since MPD has spoken on the subject of the transportation of minors in the context of curfew violators in Special Order 99-14, the policy may wish to borrow from established practices where applicable.

C. Origin of Minors

The policy followed by the San Francisco Police Department takes into consideration that minors under the care of an arrestee may or may not live in the metropolitan area. The origin of minors in this situation would likely determine whether a temporary custodian is readily available. Since Washington receives millions of visitors every year from around the country and around the world, arresting officers should be prepared to handle minors in the care of arrested persons who do not live locally.

Special Order 99-14 deals with the subject of origin in the context of a curfew violation by directing officers to notify the appropriate authorities in the minor's home jurisdiction if the minor will require extended care in the District during the detainment of the arrestee. In addition, officers are instructed not to transport the minor outside the District limits, although transportation between police districts within the city is fine. These procedures may serve as a guide for MPD in developing a policy for handling all minors in the care of arrested persons.

D. Reluctance to Identify Minors

The policy should take into consideration that an arrestee may not identify a minor in his or her care for fear of losing permanent custody of the minor or due to the perception of increased danger to the minor. A standard policy should involve the simple questioning of the person being arrested, including an assurance that the arrest alone will not remove the parent's permanent custody, lest he or she be wary of revealing the child's presence. As a parent may feel less concerned about an older minor's ability to care for him or herself during the parent's detainment, the officer should make it readily known to the arrestee that minors are defined in the District as any person under the age of 17.

E. Notification, Identity Verification, and Documentation of Temporary Custodian

As the policy recommendation issued by the San Francisco Office of Civilian Complaints attests, the policy should articulate specific guidelines regarding when, how often, and where the officers should allow the minor to contact potential temporary custodians if one is not present at the scene of the arrest. The officers should also be required to document the number of attempts made, when, to whom, and whether or not the attempt was successful. Further, officers should document the circumstances surrounding the minor's need for temporary care, including a description of the minor's physical and emotional state as is required by NYPD's Aided Report Worksheet mandated by Procedure Number 215-01.

After a temporary custodian has been identified, no minor should be released by the police without the appropriate verification of the adult's identity. The officers should be required to document the date and time at which the minor was released, to whom, and how to contact the authorized adult.

F. Role of the Child Protective Services Agency

Each department's policy reflects a concern on the part of officers for the stress and fear that may accompany a minor who has just witnessed the arrest of a parent or guardian. This trauma could understandably be compounded by the subsequent placement of the minor in unfamiliar environs, such as a district police station or child protective services facility. When possible, the officers are to encourage the arrestee to identify a local temporary adult custodian with whom the minor is familiar.

When a suitable temporary custodian is not available, the policy should clearly outline the points of interface between the MPD and the appropriate child protection services agency. In the District of Columbia, that agency is the Child and Family Services Agency (CFSA). Generally, the MPD policy should reflect the approach in Special Order 99-14 that CFSA should only become involved as a last resort. As trained professionals in child welfare, it is important

that MPD coordinate with CFSA in the adoption of its policy on the handling of minors as is exemplified by the partnership of NYPD and ACS in New York and SFPD and CPS in San Francisco.

V. RECOMENDATIONS

Based upon the information included in this report, PCB recommends that MPD address the handling of minors in the care of arrested persons through the creation of a written policy that takes into consideration each of these common areas of concern: the (1) identification, (2) transportation, and (3) location of origin of minors, the (4) reluctance on the part of the arrestee to identify minors in the arrestee's care, the (5) need to verify and document the identity of the adult to which the minor is released, and (6) the role and circumstances under which child protective services should become involved. MPD should then train its officers on the laws and procedures governing minors who are not involved in any criminality. After its implementation, MPD should regularly monitor the policy to ensure its consistent application and to evaluate its effectiveness.