

	<b>Winchester City Sheriff's Office</b> <b>Manual of General Orders</b>  <b>Operations</b> <b>313</b>	<b>Effective Date:</b> May 1, 2014 Accreditation Standards: <b>OPR .04.01</b> <b>OPR .04.02</b> <b>OPR .04.03</b>
		<b>Original Policy:</b> May 1, 2014 <b>Last Review Date:</b> May 1, 2020 <b>Next Review Date:</b> May 1, 2023
<b>Subject: Juvenile Operations</b>		<b>By Authority of:</b> <hr/> <b>Les R Taylor, Sheriff</b>

Effective /Review Date	Sections Changed	Changes	Reviewed by	Approved by
06-11-18	IV B 6	Changed "Lieutenant" to "Major"	EAS	LRT

### I. PURPOSE

The purpose of this policy is to establish guidelines and procedures for handling juveniles who are in need of protection, who violate status offenses, or who are charged with criminal offenses.

### II. POLICY

The Winchester City Sheriff's Office interests concerning juvenile offenders reflect those of the community: to prevent and control juvenile delinquency. All members of the Winchester City Sheriff's Office are committed to the development and perpetuation of this policy that is designed to prevent and control juvenile delinquency. The Sheriff's Office's policy includes the identification, apprehension, and conviction of juveniles charged with crimes. The best interests of juveniles and the community, however, may dictate a limited application of arrest against juveniles who are charged with status offenses. Accordingly, deputies may handle errant juveniles informally, particularly status offenders, those in need of protection, and those suspected of committing minor criminal offenses. The authority to carry out the provisions of this order derives from Virginia Code § 16.1-246, § 16.1-247, § 16.1-260, and § 16.1-299. In case of minor or status offenses, deputies may divert juveniles from the formal criminal justice process, and instead choose community referral.

### III. DEFINITIONS

- A. Child, Juvenile, Minor: A person who is less than 18 years of age.
- B. Status Offender: A juvenile who commits an act which is unlawful only if committed by a juvenile, i.e., (1) a juvenile who is subject to compulsory school attendance but is habitually absent without justification (truant); (2) a juvenile who is habitually disobedient to the lawful commands of parents or other responsible persons (incorrigible); (3) a juvenile who remains away from or who habitually deserts or abandons the family (runaway).
- C. Delinquent Acts: Acts designated as a violation of a law of the Commonwealth of Virginia or an ordinance of any city, county, town or federal law, but not to include status offenses.
- D. Delinquent Child: A child who has committed a delinquent act or an adult who had committed a delinquent act prior to his/her 18th birthday.
- E. Intake Officer: A juvenile probation officer who is designated by law as having the quasi-judicial authority to decide probable cause, divert or petition the court, and issue a detention or shelter care order.
- F. Juvenile Court: The name by which the Juvenile and Domestic Relations District Court is often called. This court is responsible for the judicial processing of juvenile offenders, and the determination of abuse and neglect cases. As a result, the judge of this court decides the propriety and legality of law enforcement's interaction with juveniles.

G. Person Acting for a Parent: An adult willing to accept the responsibility for the juvenile.

#### IV. PROCEDURES

A. Members of the Sheriff's Office will cooperate with juvenile justice authorities and support their decisions regarding the handling of juveniles. Furthermore, the Sheriff's Office is committed to the development and perpetuation of programs designed to prevent and control juvenile delinquency.

B. Handling of Juvenile Offenders – General

1. A juvenile offender should be handled with firmness and respect; this sets the tone for the entire processing of the juvenile's case. The contact a juvenile has with law enforcement maybe his/her first impression of the criminal justice system. The deputy's proper handling may prevent the recurrence of antisocial behavior. A deputy's warning is often all that is required to keep the juvenile from having to appear in juvenile court. Improper handling often creates the mistaken, but lasting impression that all deputies and other government officials are unfair, untrustworthy, and inflexible, and may result in the juvenile's complete rejection of lawful authority.
2. The juvenile justice system and laws are designed to give juveniles a chance to mature without bearing the stigma of a criminal record. The juvenile justice system emphasizes confidentiality of records and the privacy of an adjudicatory hearing. Terms such as "take into custody" and "not innocent" substitute for "arrest" and "guilty" to avoid giving the juvenile's behavior a criminal label. Where appropriate, deputies shall reasonably try to keep juveniles out of the criminal justice system.

C. Guidelines for Informal or Formal Handling

1. The deputy may handle a juvenile either informally or formally. Informal handling is managing a situation by releasing the juvenile under warning to a parent or guardian with no further enforcement action. This requires either the parent picking up the child or the deputy taking the child home and informing the parents of the alleged offense. Formal handling occurs when the juvenile is taken before the juvenile court, an intake officer, or issued a summons.
2. In making the decision to handle either informally or formally, the deputy should consider the following criteria:
  - a. Seriousness of offense;
  - b. Prior record of the juvenile;
  - c. Juvenile's age;
  - d. Cooperation and attitude of all parties (juvenile, parent, victim) and the possibility of the offense being repeated;
  - e. Degree of wrongful intent, violence, premeditation, knowledge of violation;
  - f. Likelihood that the juvenile and/or parent can be successfully referred to a community agency for further assistance.



## D. Informal Handling

### 1. Informal handling includes the deputy's use of:

- a. Warning and releasing the juvenile to a parent or guardian at the incident;
- b. Taking the juvenile home and informing the parent(s) of the reason(s) that the juvenile detained;
- c. Referring the family to a community service agency;
- d. When handling the juvenile informally, the deputy must ensure that the parents are notified.

### 2. Notes on informal handling

- a. Virginia code regulates the release of juvenile information. Refer to Sheriff's Office policy on criminal histories and records management regarding the dissemination of juvenile information.
- b. Anytime a deputy and a victim/complainant disagree on whether a juvenile should be handled informally or formally, the deputy shall contact the intake officer for assistance.
- c. Although a juvenile is being handled informally, the juvenile has all the constitutional rights that an adult would have in the same situation.
- d. If a deputy handles a case informally, he/she may still follow-up the case at a later time, or at any time, refer the juvenile and his/her parents to an appropriate social/community service agency.

### 3. Sample offenses for informal handling

Generally, first offenses involving minor offenses may be handled informally. A deputy's fair and impartial judgment is important whenever juvenile offenses are handled informally. The following list is an example of minor/status offenses that may be handled informally. (The following is not an all-inclusive list.)

- a. Status Offenses.
- b. Annoying telephone calls.
- c. Curse and abuse.
- d. Malicious Mischief.
- e. Noise complaints.
- f. Traffic violations.

### 4. Philosophy of informal handling

The objective of the juvenile justice system is to rehabilitate rather than punish. Keeping the juvenile in the patrol car discussing the case for an inordinate length of time may appear to the juvenile to be punishment. Deputies shall decide without delay whether formal or informal handling is in order, and then begin the appropriate procedure.

## E. Formal Handling

Formal handling occurs when the juvenile is formally charged through a summons or petition, taken before the juvenile intake officer, or taken before the juvenile court system (See VII. CRIMINAL CHARGES).

#### F. Taking Juveniles into Custody

Virginia Code § 16.1-246 states when a juvenile may be taken into custody by law enforcement. A juvenile may be taken into immediate custody for the following:

- (A) With a detention order issued by the judge, the intake officer or the clerk, when authorized by the judge, of the juvenile and domestic relations district court in accordance with the provisions of this law or with a warrant issued by a magistrate; or
- (B) When a child is alleged to be in need of services or supervision and (i) there is a clear and substantial danger to the child's life or health or (ii) the assumption of custody is necessary to ensure the child's appearance before the court; or
- (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; or
  - (C1) When a child has committed a misdemeanor offense involving (i) shoplifting in violation of § 18.2-103, (ii) assault and battery or (iii) carrying a weapon on school property in violation of § 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 on probable cause on reasonable complaint of a person who observed the alleged offense; or
- (D) When there is probable cause to believe that a child has committed an offense which if committed by an adult would be a felony; or
- (E) 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 that a child has escaped from a jail or detention home; or
- (F) 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 he had been placed by the court, the local department of social services or a licensed child welfare agency; or
- (G) When a law-enforcement officer has probable cause to believe that a child (i) has run away from home or (ii) is without adult supervision at such hours of the night and under such circumstances that the law-enforcement officer reasonably concludes that there is a clear and substantial danger to the child's welfare; or
- (H) When a child is believed to be in need of inpatient treatment for mental illness as provided in § 16.1-340.

#### G. Handling Juveniles in Custody

Virginia Code § 16.1-247 specifies the deputy's duties after taking a juvenile into custody.

- (A) A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto, bring the child to the judge or



intake officer of the court and the judge, intake officer or arresting officer shall, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

(B) A person taking a child into custody pursuant to the provisions of subsection B, C or D of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to such child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for such child and issue oral counsel and warning as may be appropriate; or
2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis upon their promise to bring the child before the court when requested; or
3. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis. Nothing herein shall prevent the child from being held for the purpose of administering a blood or breath test to determine the alcoholic content of his blood where the child has been taken into custody pursuant to § 18.2-266.

(C) A person taking a child into custody pursuant to the provisions of subsections E and F of § 16.1-246, during such hours as the court is open, shall, with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to the institution, facility or home from which he ran away or escaped; or
2. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the institution, facility or home in which the child had been placed and orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

(D) A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is not open, shall with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child taken into custody pursuant to a warrant on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2; or
2. Place the child in a detention home or in shelter care; or
3. Place the child in a jail subject to the provisions of § 16.1-249.

(E) A person taking a child into custody pursuant to the provisions of subsection B, C or D of § 16.1-246 during such hours as the court is not open, shall:

1. Release the child pursuant to the provisions of subdivision B 1 or B 2 of this section; or
2. Release the child on bail or recognizance pursuant to Chapter 9 of Title 19.2; or
3. Place the child taken into custody pursuant to subsection B of § 16.1-246 in shelter care after the issuance of a detention order pursuant to § 16.1-255; or
4. Place the child taken into custody pursuant to subsection C or D of § 16.1-246 in shelter care or in a detention home after the issuance of a warrant by a magistrate; or
5. Place the child in a jail subject to the provisions of § 16.1-249 after the issuance of a warrant by a magistrate or after the issuance of a detention order pursuant to § 16.1-255; or
6. In addition to any other provisions of this subsection, detain the child for a reasonably necessary period of time in order to administer a breath or blood test to determine the alcohol content of his blood, if such child was taken into custody pursuant to § 18.2-266.

(F) A person taking a child into custody pursuant to the provisions of subsection E of § 16.1-246, during such hours as the court is not open, shall:

1. Release the child to the institution or facility from which he ran away or escaped; or
2. Detain the child in a detention home or in a jail subject to the provisions of § 16.1-249 after the issuance of a warrant by a magistrate or after the issuance of a detention order pursuant to § 16.1-255.

(G) A person taking a child into custody pursuant to the provisions of subsection F of § 16.1-246, during such hours as the court is not open, shall:

1. Release the child to the facility or home from which he ran away; or
2. Detain the child in shelter care after the issuance of a detention order pursuant to § 16.1-255 or after the issuance of a warrant by a magistrate.

(H) If a parent, guardian or other custodian fails, when requested, to bring the child before the court as provided in subdivisions B 2 and E 1 hereof, the court may issue a detention order directing that the child be taken into custody and be brought before the court.

(I) A law-enforcement officer taking a child into custody pursuant to the provisions of subsection G of § 16.1-246 shall notify the intake officer of the juvenile court of the action taken. The intake officer shall determine if the child's conduct or situation is within the jurisdiction of the court and if a petition should be filed on behalf of the child. If the intake officer determines that a petition should not be filed, the law-enforcement officer shall as soon as practicable:

1. Return the child to his home;
2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis;
3. Place the child in shelter care for a period not longer than 24 hours after the issuance of a detention order pursuant to § 16.1-255; or
4. Release the child.

During the period of detention authorized by this subsection no child shall be confined in any detention home, jail or other facility for the detention of adults.



(J) If a child is taken into custody pursuant to the provisions of subsection B, F or G of § 16.1-246 by a law-enforcement officer during such hours as the court is not in session and the child is not released or transferred to a facility or institution in accordance with subsection E, G, or I of this section, the child shall be held in custody only so long as is reasonably necessary to complete identification, investigation and processing. The child shall be held under visual supervision in a non-locked, multipurpose area, which is not designated for residential use. The child shall not be handcuffed or otherwise secured to a stationary object.

#### H. Transportation of Juveniles

Virginia Code § 16.1-254 states that no juvenile shall be transported in the same vehicle with adults suspected of or charged with criminal acts.

#### I. Questioning Juveniles

Cary v. Commonwealth, 40 Va. App. 480, 579 S.E. 2d 691 (2003) states “The totality of the circumstances approach permits-indeed, it mandates-inquiry into all circumstances surrounding the interrogation. This includes a evaluation of the juvenile’s age, experience, education, background and intelligence, and into whether he has the capacity to understand the warning given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.” (Juveniles have to be given their Miranda Warning the same as an adult if they are in custody.) Furthermore, “The absence of a parent does not necessarily invalidate a wavier, but instead constitutes a circumstance and factor to be considered in the totality of the circumstances.”

1. Deputy’s will provide the same constitutional guarantees to juveniles that are provided to adults during non-custodial and custodial questioning.
2. Under no circumstances shall the juvenile be compelled to answer questions either by physical force or intimidation.
3. Taking Cary v. Commonwealth into consideration, the questioning deputy(s) will have to articulate that the juvenile was capable of understanding and waiving his/her constitutional rights, whenever a statement is taken without the juvenile’s parents or attorney present.
4. Deputies should keep in mind that when questioning a juvenile; they should not prolong the interview beyond what is needed in order to complete their investigation. Also, no more than two deputies should handle the interrogation if at all possible, in order to lessen the chance of the juvenile feeling intimidated or pressured.
5. Deputies are reminded that all of the constitutional safeguards that apply to adults also apply to juveniles (Search and Seizure, Probable Cause, etc.).
6. If possible, the parent or legal guardian will be notified an interrogation has occurred and what, if any, charges will be placed. The parent will be informed as to the procedures the judicial process will take.

#### J. Written citations/summons:

A deputy may use the Virginia Uniform Summons form, just as for an adult, in the following situations:

1. Violation of the traffic laws.
2. Violation of town ordinances establishing curfew violations or animal control violations.
3. Violation of game and fish laws.
4. Violation of Alcohol Beverage Control laws.
5. Violation of Tobacco Laws.

## **V. CHILD PROTECTION**

- A. Virginia Code § 63.2-1503 states that upon the receipt of a complaint or report of child abuse or neglect, the Department of Social Services will immediately notify the local law enforcement agency of the report.
  1. Deputies/Investigators will investigate these reports as criminal offenses and will make the appropriate charge, if warranted.
- B. Virginia Code § 16.1-228 defines child abuse/neglect and Virginia Code § 63.2-1508/1509 requires law enforcement personnel to notify the Department of Social Services of any child abuse or neglect reports where the caregiver is the suspect. Deputies will make this notification as soon as possible.
  1. Deputies/Investigators will investigate child abuse and neglect cases as criminal offenses and will make the appropriate charge, if warranted. Deputies are reminded that Social Services does not handle criminal cases, their cases are civil cases.
- C. Virginia Code § 63.2-1517 provides the authority to take a child into custody.
  - (A) A physician or child-protective services worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to 72 hours without prior approval of parents or guardians provided:
    1. The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result or if evidence of abuse is perishable or subject to deterioration before a hearing can be held;
    2. A court order is not immediately obtainable;
    3. The court has set up procedures for placing such children;
    4. Following taking the child into custody, the parents or guardians are notified as soon as practicable.
    5. Every effort shall be made to provide such notice in person;
    6. A report is made to the local department; and
    7. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than 72 hours, an emergency removal order pursuant to § 16.1-251; however, if a preliminary removal order is issued after a hearing held in accordance with § 16.1-



252 within 72 hours of the removal of the child, an emergency removal order shall not be necessary. Any person or agency petitioning for an emergency removal order after four hours have elapsed following taking custody of the child shall state the reasons therefore pursuant to § 16.1-251.

(B) If the 72-hour period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed, the 72 hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed.

D. Virginia Code § 63.2-1517 provides the authority to talk to any child suspected of being abused or neglected, or any of the siblings without the parent, guardian, legal custodian, person standing in loco parentis, or school personnel present.

## **VI. STATUS OFFENSES**

A. Virginia Code § 16.1-228 defines "Status offense" as an act prohibited by law, which would not be an offense if committed by an adult.

B. Deputies taking a report of a runaway child shall:

1. Ensure the accuracy of the received information on the child, particularly the name, the birth date and the physical description of the child.
2. Complete an incident report.
3. Complete a Virginia Missing Children Information Clearinghouse Report.
4. Broadcast a lookout for the runaway juvenile.
5. The supervisor shall review the completed report and ensure entry of the appropriate information in VCIN and NCIC.
6. Do appropriate case follow-up trying to locate the juvenile, and if the juvenile is not located within 7 days of the initial report, notify the Major for assistance.

C. Virginia Code § 22.1-266 provides the authority for law enforcement officers to take into custody suspected truant children and deliver them to the appropriate school.

## **VII. CRIMINAL CHARGES**

A. Virginia Code § 16.1-260 states how a juvenile may be charged with a criminal offense, and begins with all matters alleged to be within the jurisdiction of this court shall be commenced by the filing of a petition, except as provided in Subsection H of this section. Section H states the following.

(I) The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations, animal control violations or littering violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H of § 16.1-241.
3. In the case of a violation of § 18.2-266 or 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of § 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 §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried.
4. In the case of offenses, which if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

B. Virginia Code § 16.1-260 E states:

If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.