



# BETHLEHEM POLICE DEPARTMENT

<b>Arrest of Juveniles</b>	<b>Related Policies:</b> <b>All Departmental Juvenile Policies, All Departmental Secure and Non-secure custody policies.</b>
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable New Hampshire Statutes: RSA 169-B:11, RSA 169-B:15-a, RSA 169-D:9	
<b>CALEA Standard: 44.2.2</b>	
<b>Date Implemented:</b> 09/2007	<b>Review Date:</b> 01/2015

**I. Purpose:** The purpose of this policy is to direct departmental procedures for all juveniles taken into custody by this department. All juveniles taken into custody by this department shall be treated in a manner which provides for the safety of all concerned, respect for human dignity, the preservation of legal rights and property of the individual, accurate documentation and administrative efficiency.

**II. Policy:** This policy addresses the secure and non-secure custody of juveniles detained by this Department.

**III. Definitions:** Found in 28 CFR 31.304 and NH RSA 169-B

- A. **Child:** A person who is under the age of 18 on the date the petition is filed pursuant to RSA 169-D:5.
- B. **Minor:** A person under the age of 18 years old. (RSA 169-B:2)
- C. **Juvenile:** A person under the age of 18 years old (juvenile offender) and 18 (CHINS and status offender) requires special consideration due to State and Federal regulations.
- D. **Delinquent:** A person who has committed an offense before reaching the age of 17 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof. (RSA 169-B:2)
- E. **Juvenile Offender:** An individual subject to the exercise of the juvenile court jurisdiction for purpose of adjudication and treatment based on age and offense limitation as defined by state law, i.e., a criminal-type offender or status offender.
- F. **Status Offender:** A juvenile who has been charged with or adjudicated for conduct which would not under the law of jurisdiction on which the offense was committed, be a crime if committed by an adult. **Examples include: running away, truancy, violation of curfew, underage possession and/or consumption of tobacco products, underage alcohol offenses**



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and motor/traffic violation level offenses. In New Hampshire this applies to persons under the age of 18.

- G. **Non-Offender:** A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency or neglect statutes, for reasons other than legally prohibited conduct of the juvenile, they have not committed a delinquent act.
- H. **Secure Custody:** Secure is defined as hardware or construction fixtures designed to physically restrain the movements and activities of persons in custody, e.g., secure perimeter, cells (whether or not the door is closed), lockable room, or handcuffing to a stationary object.
- I. **Time Phasing:** Use of the same non-residential area for adults and juveniles, but not at the same time.
- J. **Non-Secure Custody:** Non-secure custody is defined as placing a juvenile in an unlocked multi-purpose area such as a lobby, office, interview room and is not designed, set aside or used as a secure area. The juvenile is not physically secured to a stationary object (the juvenile may be handcuffed to him or herself but not to a stationary object) and continued visual supervision is provided by an officer or staff person. Use of this area is limited to providing non-secure custody only long enough and for the purpose of identification, processing, release and transfer of the juvenile. The area is not designed or intended to be used for residential purposes.
- K. **Sight Contact:** Sight Contact is defined as clear visual contact between adult inmates and juveniles within close proximity to each other.
- L. **Sound Contact:** Sound Contact is defined as direct oral communication between adult inmates and juvenile offenders.
- M. **Child in Need of Services (CHINS):** Means a child who is under the age of 18 and who is expressly found to be: (a) Subject to compulsory school attendance, and who is habitually and willfully, and without good and sufficient cause, truant from school; or (b) A child who habitually runs away from home, or who repeatedly disregards the reasonable and lawful commands of his or her parents, guardian, or custodian and places himself or herself or others in unsafe circumstances; or (c) A child who exhibited willful repeated or habitual conduct constituting offenses which would be violations under the criminal code of this state if committed by an adult, or if committed by a person 16 years of age or older, would be violations under the motor vehicle code of this state; and (d) Is expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment, or rehabilitation.

## IV. Procedure: It is the intent of this policy to standardize procedures for handling arrests or protective detention of juveniles by this department.

- A. **Arrest or Taking Minor Into Custody (RSA 169-B:9):** A police officer may immediately arrest or take into custody any minor who is found violating any law, or who is reasonably



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believed to be a fugitive from justice or a runaway, or whose circumstances are such as to endanger his/her person or welfare unless immediate action is taken, and may arrest any minor whose arrest would be permissible under RSA 594:10 (Laws of Arrest) for a crime or offense. A minor taken into custody pursuant to RSA 169-B:9 shall be released to a parent, guardian, or custodian pending arraignment; however, if the minor is not released within (4) four hours of being taken into custody, the court shall be notified, and thereupon, placement, until arraignment, shall be determined by the court.

1. **Juvenile Diversion (RSA 169-B:10):** An officer authorized under RSA 169-B:9 to take a minor into custody may dispose of the case without court referral by releasing the minor to a parent, guardian, or custodian. The officer shall make a written report identifying the minor, specifying the grounds for taking the minor into custody and indicating the basis for the disposition.
2. **Status offenders and non-offenders** will not be placed in a secure setting, for any period of time. They may be handcuffed to themselves. They may only be placed in a non-secure setting until such time as they are removed from the facility. It is permissible to transport status offenders and non-offenders in a secure patrol unit. Since there is only one booking area in the PD, status offenders may be processed in this area provided that, there is an officer with the juvenile at all times, there are no charged adults in the booking area, and once the booking is completed the juvenile is removed immediately and does not languish in the booking area for any period of time. A minor taken into custody pursuant to RSA 169-B:9 shall be released to a parent, guardian, or custodian pending arraignment; however, if the minor is not released within (4) four hours of being taken into custody, the court shall be notified, and thereupon, placement, until arraignment, shall be determined by the court.
3. **Delinquent offenders** who have committed a crime that would be criminal if committed by an adult may be temporarily detained in a secure setting provided they are sight and sound separated from charged adults. Accused delinquents may be temporary detained in a secure setting for up to six hours for processing only. Once the six-hour clock starts; it cannot be turned off until the juvenile is permanently removed from the secured setting. When a delinquent is placed in a secure setting they must be recorded on the Juvenile Lockup Log. An officer may release a minor to an alternative to secure detention (RSA 169-B:9-a), **with court approval**. The alternative program may release the minor to the parent, guardian, or custodian upon their arrival. Any court or police officer, acting in good faith pursuant to this section, shall have immunity from liability, civil or criminal, which might otherwise be incurred or imposed as a result of release to an alternative to secure detention. If the court determines that continued detention is required, based upon the criteria specified under RSA 169-B:14, I(e)(2), it may order continued detention at an alternative to secure detention, or any facility certified for detention of minors by the Commissioner of the Department of Health and Human Services.
- B. **Exceptions:** Minors under the age of 18 can be charged as adults for motor vehicle (except for the felony of reckless driving death resulting or negligent homicide), aeronautics, fish and game,



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liquor, fireworks and tobacco law violations, as well as town ordinance violations involving a fine of not over \$100.00; however, they cannot be held in secure custody.

1. **Tobacco Products:** Children age 12 or over who sell, possess, or use tobacco can be treated as adults, issued citations and fined up to \$100.00 by the court and sentenced to community service, or both.
2. **Certification for Felonies:** Children over the age of 13 who commit certain felonious crimes against the person, and children over the age of 15 who commit certain other felonies can be certified for trial as adults upon petition of the County Attorney, but must be treated as juveniles until such certification has taken place.