

Department of Public Safety

Arrest Protocol

ENSURING
CHILD
SAFETY



New Mexico Criminal Procedures (31-1-8 NMSA [1978])

Ensuring Child Safety Upon Arrest

1. An arresting officer shall at the time of an arrest inquire whether the arrestee is a parent or guardian of minor or dependent children. The officer shall make reasonable efforts to ensure the safety of minor or dependent children at risk as a result of an arrest in accordance with guidelines established by the Department of Public Safety (DPS) in consultation with the Children, Youth, and Families Department (CYFD).
 - a. The officer shall ensure whether arrestees have minor or dependent children who may be present or at another location at the time of the arrest. The officer shall indicate that in the arrest/booking report.
 - b. Proper arrangements shall be made for the temporary care of children to ensure their safety and well-being.
2. Whenever it is safe, an officer shall make an arrest away from children or at a time when children are not present.
3. Whenever it is safe, an officer shall allow an arrestee to assure his or her children that they will be provided care in their absence. If the situation is not safe or if a conversation between the arrestee and children would prove to be non-productive, the officer shall explain the reason for the arrest to the children in age appropriate language and reassure the children that both the arrestee and the children will be taken care of.
4. When an arrest or search warrant is planned, the ages and likely location of the children shall be taken into consideration when determining the time, place, and logistics of the arrest or search.
5. If children are present during an arrest or if the arrestee indicates that children will be home without an adult caretaker, the officer shall determine whether another parent or guardian will be available to care for the children. If not, the officer shall attempt to locate an adult relative or another adult with whom the child or children have a significant emotional relationship with who is willing to take responsibility for the children. A preliminary criminal background check shall be completed on the alternative caregiver to ensure the safety and well-being of the child or children.
6. Prior to placing children with an adult other than a parent, the officer shall call CYFD State Central Intake (SCI) at 1-800-797-3260 to obtain information from the CYFD FACTS database regarding the potential caregiver. If there are abuse or neglect concerns, or if there is no identified caregiver for a child/children, the officer shall contact CYFD Statewide Central Intake for further support in ensuring the safety of the child/children and in providing support to families and children during the arrest of the parent.
7. If the child or children are in school, the officer shall contact the school and advise an authorized school employee of the parent's arrest and of the arrestee's preference for an alternative caregiver to pick up the child or children for temporary placement.
8. In the event that a child or children are present during an arrest, the officer must make alternative arrangements for transportation of the children. Due to safety issues regarding child restraints, an officer shall avoid transporting children inside a caged unit unless absolutely necessary.
9. The arresting officer shall include the following in the Offense/Incident Report:
 - a. The names and contact information for the adults with whom the child or children are left with.
 - b. The name of any CYFD workers or school personnel contacted.
 - c. The names and contact information for any family members identified whether or not the child or children were placed with them.

New Mexico Department of Safety, Policy Manual. OPR: 33 (R-4), pages 6-7.

Necessary Information to Provide Alternative Caregiver



Once the officer identifies an alternate caregiver who can provide a safe environment for the child, the officer must provide that individual with as much information as possible regarding the arrest of the parent or guardian and the care of the child. This information should include, but is not limited to:

- Location of the jail.
- Offense leading to arrest.
- Estimated amount of time the parent or guardian could be in jail. The alternative caregiver should be advised that the amount of time is dependent upon the charges and whether or not the parent can make bail.

Additionally, make sure the alternate caregiver:

- Understands that he or she is accepting responsibility for the child.
- Realizes that the child may be returned to the parent/guardian.
- Receives all available information pertaining to the child's physical health, medications, etc.

Tips for Talking to Children and Other Suggestions



- Introduce yourself with your first name
- Use the child's name
- Use simple, age-appropriate language
- Sit at the child's physical eye level
- Explain your role as a police officer is to keep the child safe
- Acknowledge the child's right to remain silent
- Recognize the child's loyalty to the parent
- Don't criticize the parent(s)
- Answer any questions that the child may have
- Ask one question at a time
- Avoid "why" questions
- Ensure that the child understands the question
- Ask open-ended questions and use simple reflection to make sure there is clarity
- Make no assumptions about the child's abilities based on age
- Allow the child to hold onto a stuffed animal or other object for comfort
- Avoid rushing the child; let them have time to process thoughts and feelings
- Observe non-verbal communication
- Do not make promises that you will not be able to fulfill
- Do not arrest the parent in front of the child when possible
- Avoid the use of sirens and lights when possible
- Avoid transporting children in caged units

A Child's Bill of Rights¹

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The following “Bill of Rights” was created by the San Francisco Children of Incarcerated Parents Partnership based on the experiences and research of families and children impacted by incarceration. The bill of rights can be used as a guideline to consider the child’s perspective when law enforcement encounters children in arrest situations.

1. I have the right to be kept safe and informed at the time of my parent’s arrest.
2. I have the right to be heard when decisions are made about me.
3. I have the right to be considered when decisions are made about my parent.
4. I have the right to be well cared for in my parent’s absence.
5. I have the right to speak with, see and touch my parent.
6. I have the right to support as I face my parent’s incarceration.
7. I have the right not to be judged, blamed or labeled because my parent is incarcerated.
8. I have the right to a lifelong relationship with my parent.

¹ “A Child’s Bill of Rights.” *San Francisco Children of Incarcerated Parents*, n.d. Web. 2 Oct. 2012. <<http://www.sfcipp.com>>.