

ARRESTING ADULTS WITH MINOR OR DEPENDENT CHILDREN A PROTOCOL FOR LAW ENFORCEMENT PERSONNEL

The potential of harm to a child when his or her parent is arrested has been well documented. Children who witness their parents' arrests may suffer long-lasting emotional harm. According to C. M. Nolan in 2003, nearly a third of mothers and over a fourth of fathers reported their children had witnessed their arrest. In addition, there have been a number of situations nationally and locally in which young children were left without adult care in the aftermath of parental arrests. In an effort to ensure child safety upon the arrest, the New Mexico Legislature enacted House Bill 271 in 2007.

This protocol provides a series of steps and recommendations for law enforcement personnel to comply with the requirements of HB 271 and to ensure the safety of children whose parents or guardians are arrested. The goal of responding officers shall be to minimize the disruption to children by providing the most supportive environment possible after an arrest, to minimize unnecessary trauma to the children of arrestees and to determine the best alternative care for the children.

Nothing in this protocol negates parental rights to choose appropriate placement for their children. Unless there is compelling evidence to the contrary (obvious drug use, weapons or other indicators of an unsafe environment) parental discretion shall be respected.

Recommended Protocol

1. Whenever it is safe to do so, the officer shall make the arrest away from the children or at a time when the children are not present.
2. When officers make an arrest, they shall inquire about the presence of children or other vulnerable individuals for whom the arrested adult has responsibility. The inquiry could be phrased, "Is there anyone in your home who depends on you for their care?" If the arrest is made in a home environment, the officer should be aware of items which suggest the presence of children such as toys, clothing, formula, bunk bed, diapers, etc.
3. Whenever it is safe to do so, the officer shall allow the parent to assure his or her children that they will be provided care. If this is not safe or if the demeanor of the in-custody parent suggests this conversation would be non-productive, the officer at the scene should explain the reason for the arrest to the children in age-appropriate language and offer reassurances to the children that both the parent 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 considered when determining the time, place and logistics of the arrest.
5. If children are present at the arrest, or if the arrested parent indicates the children are or will be at home without an adult caretaker, the officer shall determine whether or not the other parent is available to care for the children. If not, the officer shall attempt to locate an adult relative or adult fictive kin (a person not related by birth or marriage who has an emotionally significant relationship with a child) who is willing to take responsibility for the children. Preliminary criminal background checks of the alternate caregiver shall be

completed. Any history of sexual crimes or violence against children shall make the adult ineligible to assume custodial care.

6. Prior to placing any child with an adult other than the non-arrested parent, the officer shall check with CYFD State Centralized Intake (SCI) for information on any child abuse or neglect history of the potential caregiver. The number is 1-800-797-3260 (Statewide) or 841-6100 (Albuquerque). SCI staff has a duty to verify the identity of the law enforcement officer.
7. If the non-arrested parent is not available, and the officer is unable to identify another adult to care for the children, SCI can provide the officer with contact numbers for shelters in the area closest to the place necessary.
8. If the officer believes protective custody is necessary, SCI will notify the CYFD worker on-call. The CYFD worker will ask any officer placing a child in protective custody to sign a "Statement of Reasonable Grounds for Emergency Custody."
9. If the children are currently in school, the responding officer shall contact the school and shall advise the School Resource Officer, the school principal, or the principal's designee of the parent's arrest and his/her stated preference for placement.
10. The reporting officer shall include in his/her report:
 - the names and contact information for the adults with whom a child is left;
 - the name of any CYFD workers or school personnel contacted;
 - the names and contact information for any family members identified whether or not the children are placed with them; this information is crucial for CYFD workers if future placement becomes necessary.