Identification of Minor or Dependent Children
Upon Arrest
2016-2017 Biennium Refresher

Instructor Guide

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COURSE TITLE: Identification of Minor or Dependent Children Upon Arrest

INSTRUCTIONAL GOALS: Provide information to both officers and dispatchers regarding the responsibilities of Law Enforcement in regards to Identification of minor or dependent children upon arrest; NMSA 31-1-8

INSTRUCTIONAL OBJECTIVES: At the conclusion of the class students will be able to:

1. List the elements of the statute
2. Discuss the procedures required to meet the elements of the statute, to include making proper arrangements for the temporary care of a child
3. Discuss how the arrest and specific actions made by officers can be traumatic to children and how they (the officer) can assist in mitigating the long-term effects of trauma

INSTRUCTIONAL METHODS: Lecture

HANDOUTS: Students may be provided with a copy of the statute

COURSE DURATION: 1 hr

SAFETY CONSIDERATION: N/A

EQUIPMENT, PERSONNEL, AND SUPPLIES NEEDED: N/A

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TARGET AUDIENCE: NM Law Enforcement Officers and Telecommunicators

COURSE PREREQUISITES: N/A

INSTRUCTOR CERT.:   General Police

INSTRUCTOR RATIO: N/A

EVALUATION STRATEGY: N/A

CURRICULUM REFERENCES:

     31-1-8 NMSA

     Ensuring Child Safety Lesson Plan Accreditation # NM08-44

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I. Introduction

NMSA 31-1-8, Identification of minor or dependent children upon arrest, applies only to those incidences where an officer does not feel the child is a victim of Child Abuse or Neglect.

The intent of the statue is to ensure the safety of those children who could potentially be placed at risk due to the arrest of their care giver, as well as minimize trauma to the child by placing them (when possible) with an alternative care giver versus placing them in the care of Children Youth and Families Division (CYFD).

II. State Statute

NMSA 31-1-8, Identification of minor or dependent children upon arrest states:

A. *A state or local law enforcement officer who arrests a person shall, at the time of the arrest, inquire whether the person is a parent or guardian of minor or dependent children who may be at risk of a result of the arrest. 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.*

B. *The department of public safety, in consultation with the children, youth and families department, shall establish guidelines and a training program for law enforcement officers for ensuring child safety upon the arrest of a parent or guardian. The guidelines and training program shall include:*

   1) *Procedures to ensure that law enforcement officers inquire whether arrestees have minor or dependent children who may be present or at another location at the time of the arrest;*

   2) *Procedures for the proper arrangement of temporary care for children to ensure their safety and well-being; and*

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3) *Education on how the effects of witnessing a violent crime or other event causes emotional harm to children and how law enforcement can assist in mitigating the long-term effects of the trauma.*

III.   Identification of minor or dependent children

State statue states *"…law enforcement officer who arrests a person shall, at the time of the arrest, inquire whether the person is a parent or guardian of minor or dependent children who may be at risk as a result of the arrest…."*

Based on statute the officer *"shall"* ask the arrestee if they are a parent or guardian of minor or dependent children who may be at risk as a result of the arrest; the officers should document the fact they asked and document the response; if the state no then this should be documented; if they indicate there is children at risk then this should be documented as well as what was done to ensure the safety of the children. It is dependent upon the individual agencies to determine where or how this information will be documented. If an agency does not have a specific policy regarding this issue it is incumbent upon the officer to document what actions were taken. These notations can be made on the booking sheet, daily activity reports, etc.

If an officer observes car seats, children's toys, etc. in the vehicle or immediate area of the arrest, the officer may ask where the children are and who is taking care of them.

The purpose of this portion of the statute is to ensure children are not at home alone and because of the arrest will be left alone without appropriate supervision or care for an extended period of time.

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IV.   Reasonable efforts to ensure the safety of minor children or dependents

If a child is present at the scene of the arrest or a child has been identified, but are at a different location; the officer should attempt to find a caregiver for the child prior to contacting social services.

The individual being arrested should be asked if there is a co-parent or legal guardian who can be contacted to care of the child. If a co-parent or legal guardian are not available it should be determined whether or not there is a relative who could be contacted; if neither can be identified then an attempt should be made to identify a "fictive kin" who could be contacted to care for the child. A "fictive kin" is anyone with whom the child has established a relationship, but is not a blood relative.

Prior to placing a child with an alternative caregiver, law enforcement **must** contact CYFD Statewide Central Intake (SCI) for an abuse/neglect background check and conduct a local check.

The local check should be conducted by agency policy; it can include an NCIC check, an arrest check through local the local agency. A III can be run **if agency policy allows** and the officer can articulate why it is needed; this is allowed as the safety of the child overrides NCIC concerns.   (This was verified through DPS legal staff who contacted the NMDPS Programs Manager with the Records Bureau.)

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

When calling SCI the individual making the call will get a recording, wait for the Law Enforcement option.   The SCI Intake Worker should be advised background information is needed so an alternative caregiver for a child/children can be provided. The following will occur:

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- SCI Intake Worker will ask for the badge # of the officer and the officer's phone number; in addition the work may ask for the supervisors name and phone number
- The officer should provide as much information about the alternative caregiver as possible, name, date of birth, address
- The intake worker should be advised what type of information is being sought about the individual in question (outstanding referrals, substantiated cases, etc.)
- SCI can also provide a list of shelters, if applicable to the situation, for older children

The SCI telephone number is:

- (505)841-6100—Albuquerque
- 1-855-333-SAFE—Statewide
- Cell Phone - #SAFE (#7233) Statewide

If an alternative care giver can not be identified then CYFD should be contacted. CYFD should be the last resource utilized.

Once the officer feels the individual can provide a safe environment for the child, the officer must provide the individual with as much information as possible regarding the arrest of the parent/guardian of the child. This information should include but is not limited to:

- Location of the jail
- Charges
- Estimated amount of time the parent/guardian could be in jail
  - The alternative care giver should be advised the amount of time the parent or guardian could possibly spend in jail, the it is dependent upon the charges and whether or not they can make bond
- They are accepting responsibility for the child while the parent/guardian is in jail

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- Once the parent or guardian is released from jail the child may be turned over to them
- Any information pertaining to the child's physical health, medications, etc.

NOTE:

CYFD should be called if an alternative care giver can not be located; however CYFD is a last resort.

The key is to eliminate any further trauma to the child due to the arrest.

V.   Liability

Based upon the state statute "*…the officer shall made reasonable efforts to ensure the safety of minor or dependent children…"*.

Reasonable is defined in Blacks Law Dictionary 4th edition as:

Just, proper, fit and appropriate to the end

Reasonable according to the New Dictionary of Legal Terms by Irving Shapiro is:

Appropriate in the circumstances, moderate, fair, equitable.

The officer establishes this "reasonable effort" by:

- first asking if there are any minor or dependent children
- if an alternative care giver is located, ensure a "background check" through SCI is completed and at a minimum a local arrest history check is made
- any and all actions taken by the arresting officer should be located, beginning with the fact the arrestee was asked if there where any minor children at risk because of the arrest.

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VI.   Mitigating Trauma

Officers cannot control the environment in which a child lives or the circumstances which occurred before their interaction with the arrestee or the child. However, they can control the environment to a certain extent once they arrive on scene.

Actions an officer can take to mitigate the long term effects of the trauma include but are not limited to:

- Not arresting the parent in front of the child—*when appropriate*
- Keeping the child informed of what is going on
- Reaffirm they (the child) will be okay
- Allow the arrestee to speak with the child—*when appropriate*

VII.   Conclusion

The purpose of the statute is not meant to place an undue burden on the officers in the performance of their duties; but to ensure the well-being of any children whom could be affected by the arrest of their parent/guardian.

The key is ask and document any actions taken by officers.

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