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## **Wilkesboro Police Department**

### **Electronic Written Directives Document**

#### I. PURPOSE

The purpose of this directive is to provide the procedures and guidelines for dealing with juveniles during investigations, arrests and traffic violations.

#### II. POLICY

The Wilkesboro Police Department will manage each juvenile case in a manner that ensures appropriate enforcement action to best meet the needs of the juvenile and protect the public. Patrol and investigative personnel have primary responsibility for actions relating to juvenile cases. All employees will support department efforts to prevent juvenile delinquency. Efforts will be coordinated, as appropriate, with other agencies including Wilkes County Social Services (Child Protective Services) and the North Carolina Office of Juvenile Justice.

The Department will share policies and procedures with other elements of the juvenile justice system. Review and comment from other agencies and organizations involved in juvenile justice will be solicited by direct request.

#### III. DEFINITIONS

- A. **Delinquent Juvenile:** Any juvenile between six and 16 years of age who has committed a crime or infraction under state law or under any ordinance of local government, including violation of the motor vehicle laws.
- B. **Diversion:** Any procedure that substitutes:
  - 1. Non-entry for official entry into the justice process;
  - 2. The suspension of criminal or juvenile proceedings for continuation of proceedings;
  - 3. Lesser suspension or referral to a non-justice agency or no supervision for conventional supervision;
  - 4. Any non-confinement status for confinement.
- C. **Juvenile:** Any person who has not reached his/her eighteenth birthday and is not married, emancipated, or a member of the United States Armed Services;

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For criminal purposes in North Carolina, any person who has not reached the age of 16.

- D. Juvenile Court Counselor: A person responsible for intake services (screen complaints alleging delinquency or undisciplined behavior to determine if a juvenile petition should be filed) and court supervision services to juveniles under the supervision of the chief court counselor.
- E. Juvenile Liaison Officer: An officer will be assigned to act as liaison for the department in juvenile investigations, delinquency prevention and control.
- F. Non-Secure Custody: The physical placement of a juvenile into a licensed foster home, a home authorized to provide such care, a facility operated by the Department of Social Services, or any home or facility approved by the court and designated in the order.
- G. Non-testimonial Identification: Court-ordered procedure that requires the presence of a juvenile for the purpose of establishing questioned identity and/or participation in a criminal act by means of the examination of finger prints, palm-prints, footprints, measurements, or other reasonable physical examination, handwriting samples, voice samples, photographs, lineups, or similar identification procedures. Non testimonial identification must go through the District Attorney and be signed by the District Court Judge.
- H. Secure Custody: The physical placement and holding of a juvenile in an approved county detention home or a regional detention facility.
- I. Temporary Custody: The taking of a person into physical custody and provision o personal care and supervision until a court order for secure or non-secure custody may be obtained.
- J. Undisciplined Juvenile: A juvenile is less than 16 years of age but at least 6 years of age who:
  - 1. Is unlawfully absent from school; or
  - 2. Is regularly disobedient and beyond the disciplinary control of his/her parent or guardian, or custodian, or;
  - 3. Is regularly found in places where it is unlawful for a juvenile to be, or;
  - 4. Has run away from home for a period of more than 24 hours
- K. Is a juvenile who is 16 or 17 years of age who:

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1. Is regularly disobedient and beyond the disciplinary control of his/her parent or guardian, or custodian, or;
  2. Is regularly found in places where it is unlawful for a juvenile to be, or;
  3. Has run away from home for a period of more than 24 hours
- All Department Personnel share the responsibility for participating in and supporting the agency's juvenile operations and delinquency prevention efforts. The Juvenile Liaison Officers will coordinate all such activities.

#### IV. PROCEDURES

- A. Officers dealing with juvenile defendants will use the least coercive, most appropriate enforcement alternatives, consistent with preserving public safety, order, and individual liberty.
- B. When taking a juvenile into temporary custody, officers should select from the following alternatives the most appropriate course of action dependant upon the situation and needs of the juvenile:
  1. Divert the juvenile from the court by release, with or without counseling;
  2. Release to parent, guardian, or custodian;
  3. Or refer to community resources;
  4. Seek a juvenile petition;
  5. Seek a juvenile petition and request a secure custody order.
- C. A juvenile 16 years of age or older who has been charged with a traffic misdemeanor or infraction may be issued a Uniform Traffic Citation and processed as an adult.
- D. Juveniles less than 16 years of age to be charged with a traffic misdemeanor or infraction are not to be issued a Uniform Traffic Citation. The reporting officer will submit a written Incident Report detailing the facts of the incident to the Juvenile Intake Counselor for review and processing through the Juvenile Justice System.
- E. When determining the course of action to be taken, officer should consider that secure custody orders are issued only for felonies and serious

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misdemeanors, such as assaults with injury. Officers should also consider the following factors:

1. Nature of the alleged offense;
2. Age and circumstances of the defendant;
3. Defendant's juvenile record, if any;
4. Availability of community-based programs;
5. Need and limitations of the juvenile;
6. Strengths and weaknesses of the family;
7. Concerns of any victims or complainants.

F. Referral to Juvenile Court Intake Counselor

At minimum juveniles committing offenses in the following categories will be referred to an Intake Counselor:

1. Delinquent acts that would be felonious if committed by an adult;
2. Delinquent acts involving weapons;
3. Serious gang –related delinquent acts;
4. Delinquent acts involving aggravated assaults;
5. Delinquent acts committed by juveniles under probation or by those with a case pending;
6. Repeated delinquent acts within a 12 month period.

G. Other situations that may require Referral to an Intake Counselor are:

1. Juveniles who have been selected for a diversion program but have refused to participate;
2. Cases in which it has been determined that parental supervision is not effective;

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3. Cases in which juveniles are alleged to be undisciplined, such as runaways and truants; the officer will instruct the parent, guardian, or social worker to file the undisciplined petition.

## V. CUSTODY

- A. In accordance with North Carolina General Statute 7B-1900, a juvenile may be taken into temporary custody without a court order in the following circumstances:
  1. If grounds exist for the arrest of an adult in identical circumstances under North Carolina General Statute 15A-401(b)
  2. If there are reasonable grounds to believe that the juvenile is undisciplined
  3. If there are reasonable grounds to believe that the juvenile is abused, neglected, or dependant and that he/she would be injured or could not be taken into custody if it were first necessary to obtain a court order.
  4. If there are reasonable grounds to believe that the juvenile is an absconder from any state training school or approved detention facility.
- B. A juvenile taken into temporary custody will not be held for more than 12 hours (or 24 hours if any of the hours fall on Saturday, Sunday, or a legal holiday) unless:
  1. A petition or motion for review has been filed by an Intake Counselor or by the Wilkes County Department of Social Services, and
  2. An order for secure or non-secure custody has been entered by a judge.
- C. An officer who takes juveniles into custody as absconders will, after contacting the judge and receiving an order for secure custody, transport the juvenile to the nearest approved facility providing secure custody. The officer will then contact the administrators of the training school or detention facility from which the juvenile absconded.
- D. A juvenile will not be placed or transported in any police or other vehicle which, at the same time, contains an adult under arrest, unless the adult is involved in the same offense or transaction with the juvenile and then only when absolutely necessary.
- F. Any officer taking a juvenile into custody will proceed as follows:

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1. Determine through questioning complaints, witnesses, victims, and physical evidence if the juvenile is alleged to have been harmed or in danger of being harmed and,
2. Id the alleged behavior of the juvenile a criminal offense or a non-criminal status offense.
3. If any interrogation is anticipated, advise the juvenile of his/her constitutional rights using the Juvenile Rights Form. Juveniles under 14 must have a parent, guardian, or custodian present and they must be advised of the juvenile's rights if an attorney is not present.
4. If necessary transport the juvenile to the Police Department.
5. Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into custody and advise them of their right to be present with the juvenile until a determination is made as to the need for secure custody or parental release.
6. If unnecessary to continue custody, release the juvenile to the parent, guardian, or custodian, or their designee and record the parent information as well as information regarding the person who assumes custody on an Incident Report Form.
7. Complete a Parent/Custodian Notification form and either give a copy to the parent, custodian, or guardian, or next of kin, or attach the form to the Incident Report and mail or deliver a copy to the parent. If the officer completing the form is not the charging officer, the form should be checked "Charges may be pending." The officer completing the form should indicate his/her name as the investigative officer.
8. If immediate action is need (such as for a serious felony or violent misdemeanor) that would require the issuance of an order for secure custody:
  - a. Contact a juvenile Intake Counselor with Wilkes County Juvenile Services. If after business hours,, contact the on-call Intake Counselor through the Wilkes Communication Center and explain the situation. The Intake Counselor will determine if the need is sufficient enough to justify a secure custody order, and will arrange for the issuance of the order and for an approved detention facility to accept the juvenile.

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- b. Normally the Juvenile Intake Counselor will provide transportation to the juvenile detention facility. If necessary, particularly after business hours, transport the juvenile to the approved detention facility.
  - c. Complete an Incident Report and Juvenile Custody Report including juvenile arrest numbers and listing himself/herself as the charging officer.
9. If the Juvenile is alleged to be abused, neglected, or dependant:
- a. Contact the Child Protective Services of the Wilkes County Department of Social Services, explain the conditions and allegations, and receive advice as to whether to remove the juvenile from his/her present surroundings.
  - b. If the situation dictates and all parties agree, temporarily move the juvenile to another location to alleviate the situation while the Wilkes County Department of Social Services investigates.
  - c. If a clear violation has occurred proceed as for any other violation. Remember that it is not illegal for a parent to use corporal punishment as a means of discipline. Baring any immediate threat of injury to the juvenile, allow Wilkes County Department of Social Services to complete their investigation before deciding whether to arrest a parent.
  - d. Ensure that a supervisor reviews all cases alleging abuse, neglect, or dependency.

## VI. DUTIES OF CHARGING OFFICER

- A. The majority of juvenile offenses remain with the initial patrol officer for further investigation and/or filing of juvenile complaints. The more serious cases, such as felonies, may be assigned to an investigator for follow up investigation as needed.
- B. For cases in which a petition will be sought that alleges delinquent behaviors pursuant to North Carolina General Statutes 7B-404, 7B-1804, the charging officer will:
  - 1. Complete and Incident Report and list at the start of the narrative that this is a "Delinquent Juvenile" Intake Referral/Complaint.
  - 2. Meet with a Wilkes County Juvenile Services Intake Counselor to submit the report and discuss the offense.

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3. Swear to sign the complaint(s) before a Clerk of Court assigned to the Wilkes County Juvenile Court or other authorized personnel.
4. Follow departmental directives if there is a need to place the juvenile in secure custody.
5. General statute 15A-505 states: "A law enforcement officer who charges a minor (under the age of 18 years) with a criminal offense shall notify the minor's parent or guardian of the charges, as soon as practicable, in person or by telephone. If the minor is taken into custody, the law enforcement officer or the officer's immediate superior shall notify a parent or guardian in writing that the minor is in custody within 24 hours on the minor's arrest." If the parent or guardian can not be found then the minor's next of kin shall be notified as soon as practicable.

C. When written notification is required, a copy of the Juvenile Petition and Secure Custody Order delivered to the parent or guardian shall be sufficient to comply with the requirements for a minor under the age of 16 years.

D. Minors 16 or 17 years old charged with a criminal offense are processed as adults and when written notification is required a copy of the arrest report listing all charges shall be provided to the parent or guardian. If the parent, guardian, or next of kin cannot be located, the charging officer or the officer's immediate superior shall send, or cause to be sent, a copy of the arrest report and a notification letter addressed to the parent and mailed to the last known address of the parent to inform the parent of the charges.

E. Exceptions: The minor is emancipated; the minor is not taken into custody and has been charged with a motor vehicle moving violation for which three or fewer points are assessed under General Statute 20-16(c), except an offense involving impaired driving; or the minor is charged with a motor vehicle offense that is not a moving violation.

## VII. NON-TESTOMONIAL IDENTIFICATION

A. Juveniles will not be processed and non-testimonial identification procedures will not be conducted without a court order unless the juvenile has been transferred to Superior Court for trial as an adult.

B. A District Attorney must seek non-testimonial identification orders. Non-testimonial identification includes identification by fingerprints, palm-prints, footprints, measurements, urine specimens, saliva samples, photographs, lineups, or similar identification procedures requiring the presence of the juvenile.

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- C. Chemical analysis procedures do not require a non-testimonial identification order. The following are grounds for a non-testimonial identification order:
1. The offense must be a felony, or the officer must have probable cause to believe that an offense has been committed that would be a felony if committed by an adult
  2. The officer must have reasonable grounds to believe that the juvenile committed the offense
  3. The results of the procedure will be made of material aid in determining whether the juvenile named committed the offense.
  4. The juvenile requests that non-testimonial procedures be conducted upon himself/herself (a court order is still needed)
- D. The results of any non-testimonial identification procedures will be retained or disposed of as follows:
1. If a petition is not filed against a juvenile who has been the subject of non-testimonial identification procedures, all records of such evidence will be destroyed.
  2. If a case is in the District Court or Superior Court pursuant to a transfer and the juvenile is found not guilty, all records resulting from a non-testimonial order will be destroyed. In the case of a juvenile who is under 13 years of age and who is adjudicated to have committed a delinquent act, which would be less than a felony had the juvenile been an adult, all records will be destroyed.
  3. If a juvenile 13 years of age or older is found to have committed a delinquent act which would be a felony if committed by an adult, all records resulting from a non-testimonial order may be retained in the court file. Special precautions will be taken to ensure that these records are maintained under safeguards to limit their use to inspection for comparison purposes by law-enforcement officers only in the investigation of a crime.
  4. If a juvenile is transferred to Superior Court, all records resulting from non-testimonial identification procedures will be processed as in the case of an adult.

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5. The officer will retain any evidence seized pursuant to a non-testimonial order until the Court enters further orders.
6. The destruction of non-testimonial identification records will be performed in accordance with departmental directives. After destruction, the Department will make written certification to the Court of the destruction.

## VIII. FINGERPRINTING AND PHOTOGRAPHING

A. According to North Carolina General Statute 7B-2102 a law enforcement officer or agency shall:

1. Fingerprint and photograph a juvenile who was 10 years of age or older at the time the juvenile allegedly committed a non-divertible offense as set forth in G.S. 7B-1701, when a complaint has been prepared for filing as a petition and the juvenile is in physical custody of law enforcement or the Department.
2. If a law enforcement officer or agency does not take the fingerprints or a photograph of the juvenile pursuant to subsection (a) of this section or the fingerprints or photograph have been destroyed pursuant to subsection (e) of this section, a law enforcement officer or agency shall fingerprint and photograph a juvenile who has been adjudicated delinquent if the juvenile was 10 years of age or older at the time the juvenile committed an offense that would be a felony if committed by an adult.
3. A law enforcement officer or agency who fingerprints or photographs a juvenile pursuant to this section shall do so in a proper format for transfer to the State Bureau of Investigation and the Federal Bureau of Investigation. After the juvenile, who was 10 years of age or older at the time of the offense, is adjudicated delinquent of an offense that would be a felony if committed by an adult, fingerprints obtained pursuant to this section shall be transferred to the State Bureau of Investigation and placed in the Automated Fingerprint Identification System (AFIS) to be used for all investigative and comparison purposes. Photographs obtained pursuant to this section shall be placed in a format approved by the State Bureau of Investigation and may be used for all investigative or comparison purposes.
4. Fingerprints and photographs taken pursuant to this section are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, shall be withheld from public inspection or examination, and shall not be eligible for expunction

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pursuant to G.S. 7B-3200. Fingerprints and photographs taken pursuant to this section shall be maintained separately from any juvenile record, other than the electronic file maintained by the State Bureau of Investigation.

5. If a juvenile is fingerprinted and photographed pursuant to subsection (a) of this section, the custodian of records shall destroy all fingerprints and photographs at the earlier of the following:
    - a. The intake counselor or prosecutor does not file a petition against the juvenile within one year of fingerprinting and photographing the juvenile pursuant to subsection (a) of this section;
    - b. The court does not find probable cause pursuant to G.S. 7B-2202; or
    - c. The juvenile is not adjudicated delinquent of any offense that would be a felony or a misdemeanor if committed by an adult. The chief court counselor shall notify the local custodian of records, and the local custodian of records shall notify any other record-holding agencies, when a decision is made not to file a petition, the court does not find probable cause, or the court does not adjudicate the juvenile delinquent
- B. N.C.G.S. 7B-1701 lists the following as non-divertible offenses:
1. Murder;
  2. First-degree rape or second degree rape;
  3. First-degree sexual offense or second degree sexual offense;
  4. Arson;
  5. Any violation of Article 5, Chapter 90 of the General Statutes that would constitute a felony if committed by an adult;
  6. First degree burglary;
  7. Crime against nature; or
  8. Any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a Lethal weapon
- C. When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation

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IX. AGENCY RECORDS

- A. The Department's Administrative Assistant is responsible for the, maintenance, dissemination, and retention of juvenile records.
- B. All arrest and identification records pertaining to juveniles will be kept separate from adult records.
- C. The expunction of juvenile arrest records can be accomplished only by a valid court order as allowed by NCGS 7B-3200. The Administrative Assistant will carry out all expunctions.
- D. N.C.G.S. 7B-3002 (b) states that unless jurisdiction of the juvenile has been transferred to superior court, all law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults and shall be withheld from public inspection. The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without an order of the court:
  - 1. The juvenile
  - 2. The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
  - 3. The district attorney or prosecutor;
  - 4. Juvenile court counselors; and
  - 5. Law enforcement officers sworn in this State.
- E. Otherwise, the records and files may be examined or copied only by order of the court.
- F. Based on North Carolina General Statute 7B-3002 Law enforcement officers of the Wilkesboro Police Department have access to view the computerized juvenile records maintained in the Juvenile Module.
- G. The Administrative Assistant will have full access to all juvenile records for entry, expunction, and other lawful purposes.

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X. INTERVIEW AND INTEROGATIONS

- A. Any juvenile taken into custody must be advised of the following before questioning:
1. That he/she has the right to remain silent
  2. That any statement he/she does make can be and may be used against him/her
  3. That he/she has the right to have a parent, guardian, or custodian present during questioning
  4. That he/she has the right to consult with an attorney, and that one will be appointed for him/her if he/she is not represented and wants representation.
- B. When a juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney.
- C. If an attorney is not present, **the parent, guardian, or custodian** and the juvenile must be advised of the juvenile's rights. A parent, guardian, or custodian may not waive rights on behalf of the juvenile, but the juvenile may confer with the parent or guardian.
- D. No more than two officers should normally engage in the interrogation of a juvenile. The duration of interrogation involving juveniles should normally be limited to no more than two hours at any one session.
- E. The officer(s) conducting the interrogation will explain departmental and juvenile justice system procedures to juveniles being interrogated.
- F. If a juvenile indicates in any manner or at any point of questioning that he/she does not wish to be questioned further, the interrogating officer will cease questioning.

XI. COMMUNITY YOUTH BASED PROGRAMS

The Department supports a philosophy of youth interaction and is committed to the development and proliferation of programs or activities designed to prevent and control juvenile delinquency. All employees are encouraged to volunteer their time and talents and become active in such community recreational and

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educational youth programs offered by governmental agencies, civic, educational, or faith based organization.

XII. REFERENCES

N.C.G.S. 7B

N.C.G.S. 15A-401(b)

N.C.G.S. 15A-505

N.C.G.S. 20-16(c)

CALEA 44.1.1, 44.1.2, 44.2.1, 44.2.2, 44.2.3 and 44.2.5