



# OFFICE OF POLICE OVERSIGHT

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August 19, 2021

Joseph Chacon, Interim Chief of Police  
Austin Police Department  
715 E. 8th Street  
Austin, TX 78701

RE: Response to Proposed Changes to the General Orders Received June 2021 and Approved Changes to the General Orders Received July 2021

Dear Chief Chacon:

On June 10, 2021, OPO received notification of proposed changes to the APD General Orders related to the following:

1. 317 Handling Juveniles

On July 6, 2021, OPO received notification of approved changes to the APD General Orders related to the following:

1. 415 Utilization of Narcan

OPO has reviewed the proposed and approved changes. Attached to this memorandum you will find OPO's initial feedback on these changes, specifically the areas in which there remains room for improvement.

We look forward to our collaboration with APD to address the issues identified by OPO to improve these policies to benefit the community and APD's sworn personnel.

Sincerely,

Farah C. Muscadin, JD  
Director



OPO Response to Proposed GO Changes

**317 Handling Juveniles**

Definition for juvenile/child should be clarified.

Section 51.02(2) of the Texas Family Code defines the term “child.” APD is using this state law definition of “child” to define the term “juvenile.” The proposed changes to General Order 317 substitute the word “child” for “juvenile.”

To improve clarity, the definition should be for “juvenile” only and note in its meaning that the definition being used comes from the state law definition for “child” as provided in Section 51.02(2) of the Texas Family Code.

The General Orders should specify age limitations that vary by situation and classifications of offenses that vary by age.

The proposed changes add to the provision that defines “child/juvenile” a statement acknowledging that classifications of offenses vary by age, and age limitations vary by situation. However, more information is needed to clarify the situations or offenses that vary by age. The General Orders should, when applicable, break down classifications of offenses and situational age limitations by age group.

The General Orders should include guidance for children under 10 years of age.

The definition of “juvenile” is limited to individuals between the ages of 10 and 17. There is no guidance included in the General Orders for handling children under 10 years of age. The General Orders would benefit from including such guidance.

The General Orders should include guidance for verifying age.

The General Orders and state law require different treatment of juveniles and children depending on age. Children develop at different rates, which means a child may seem much older or much younger than their actual age. This makes age verification important to handling children. As a result, it should be addressed by the General Orders.

There should be more specific guidance about taking juveniles into custody.



The General Orders include language from the Texas Family Code about taking a juvenile into custody, but nothing more. The General Orders could benefit from more specific guidance and examples regarding situations that warrant taking a juvenile into custody.

Officers should be required to contact their Sector Detective Unit regarding probable cause, type of charges, and disposition of the juvenile when taking a juvenile into custody.

General Order 317.2.1(e) encourages officers to contact their Sector Detective Unit for advice regarding questions of probable cause, charges, disposition of the juvenile, and any other assistance needed when taking a juvenile into custody.

The Houston Police Department requires rather than encourages officers to contact and follow the guidance of a Juvenile Division supervisor when there is any question concerning the appropriate disposition of a juvenile.<sup>1</sup> The Houston Police Department also requires officers to document this action in an incident report.<sup>2</sup>

The APD General Orders should similarly require rather than encourage officers to seek guidance from their Sector Detective Unit. The General Orders directs officers to align their actions with the ideals of Title 3 of the Texas Family Code, including the ideal of removing, when possible, the taint of criminality from juveniles. Adding this layer of review will aid in achieving this ideal. Additionally, officers who contact their Sector Detective Unit should be given specific directives about how to document this contact. In particular, the General Orders should outline requirements for officers to document the contact in an incident report with the detective's identifying information, information the detective provided, and other relevant details.

The General Orders should expand the situations in which juveniles receive emergency medical treatment.

Currently, APD General Order 317.2.2 Emergency Medical Treatment provides that juveniles taken into custody should be seen by EMS or transported to a medical facility if the juvenile is "believed to suffer from a serious physical condition or illness and requires prompt treatment." The General Orders should be revised to expand the situations in which juveniles receive emergency medical treatment. In particular, officers should ensure that juveniles also receive emergency medical treatment when they request it or complain of pain or injury during any contact with law enforcement. In other words, the General Orders should cover situations in which a juvenile cannot or does not communicate a need for

<sup>1</sup> Houston Police Department, "500-06(9) Questions," *Houston Police Department General Orders: 4*, updated 3 Apr. 2017, [https://www.houstontx.gov/police/general\\_orders/500/500-06%20Disposition%20of%20Arrested%20Juveniles.pdf](https://www.houstontx.gov/police/general_orders/500/500-06%20Disposition%20of%20Arrested%20Juveniles.pdf).

<sup>2</sup> Houston Police Department, "500-06(9) Questions."



EMS but officers believe that they need care, as well as those situations in which a juvenile communicates a need for care, regardless of the officer's beliefs.

The General Orders should also be revised to ensure that this policy aligns with recently enacted state legislation, specifically SB 2212 related to a peace officer's duty to request and render aid.

The General Orders should provide guidance for handling invasive searches of juveniles.

The General Orders discuss strip searches and body cavity searches generally, but they provide no particular guidance for how officers should handle these invasive searches of juveniles. The proposed changes do not address this issue.

Strip searches and body cavity searches have been shown to cause trauma that can have lifelong impact on an adolescent's developing mind.<sup>3</sup> The American Bar Association recently adopted a resolution regarding invasive searches of juveniles.<sup>4</sup> This resolution recommends an outright ban of body cavity searches.<sup>5</sup>

APD General Order 306.11.2 covers body cavity searches and allows officers to check an individual's mouth area; officers are not otherwise permitted to conduct body cavity searches. Instead, if officers believe a cavity search is necessary, "the prisoner will be transported to the jail where proper hygienic/medical resources are available. Only jail personnel will conduct the cavity search." OPO recommends a categorical ban on body cavity searches of juveniles.

The American Bar Association's resolution also calls for policies at all levels of government that prohibit strip searches of juveniles except in exceptional circumstances.<sup>6</sup> The resolution advises that strip searches be banned except when all the following conditions are met:

- (1) when the child or youth is in custody;
- (2) when there is reasonable suspicion that the child or youth possesses or has had immediate access to an implement that poses a threat of imminent bodily harm to themselves or others;

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<sup>3</sup> 9 Emily J. Nelson, *Custodial Strip Searches of Juveniles: How Safford Informs a New Two-Tiered Standard of Review*, 52 B.C.L. REV. 339, 361 (2011) (citing Erica J. Adams, *Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense*, JUST. POL'Y INST. 1, 2 (2010), [www.justicepolicy.org/images/upload/10-07\\_REP\\_HealingInvisibleWounds\\_JJ-PS.pdf](http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf)).

<sup>4</sup> "Resolution 111B," *American Bar Association*, August 2020, <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/111b-annual-2020.pdf>.

<sup>5</sup> Resolution 111B.

<sup>6</sup> Resolution 111B.



- (3) after all other less intrusive methods of discovering and removing the implement have been exhausted, including the use of alternative search techniques that can be performed while the child or youth is fully clothed; and
- (4) after the child or youth has been given notice, in a manner that is consistent with the child's or youth's primary language and developmental stage, and that takes into account accommodations for disability, that they will be searched and that they have the opportunity to reveal any implement they are carrying instead of being searched.<sup>7</sup>

OPO recommends that APD adopt a policy that specifically speaks to protocols for invasive searches of juveniles, and that the policy be consistent with the above recommendation from the American Bar Association.

Additionally, APD does not have a unit that specializes in handling juveniles. Both the Houston Police Department and the Dallas Police Department have specialized units that can be called for incidents involving juveniles.<sup>8</sup> The Dallas Police Department prohibits regular patrol officers from performing any strip or body cavity searches of a juvenile.<sup>9</sup> Instead, Dallas's policy requires officers to contact a specialized unit to handle any situation in which an officer feels a strip or body cavity search is needed.<sup>10</sup> APD would benefit from creating a specialized unit to handle sensitive issues involving juveniles, including when an officer believes a strip search of a juvenile is needed.

The General Orders should provide more guidance for when parents should receive advance notice that their child will be interviewed or interrogated.

General Order 317.5.2(c) states only that parents should, "when reasonable," be given advance notice that their juvenile will be interviewed or interrogated. More guidance is needed to clarify situations that qualify as "reasonable" such that parents must be given advance notice.

The General Orders should provide further guidance for assessing whether a juvenile is "too young or mentally incompetent to render a decision" such that the caregivers should be present during an interview.

General Order 317.5.3(c) states parents or guardians should be present during interviews when a juvenile is "too young or mentally incompetent to render a decision." This policy provides officers with no guidance or examples for making this determination. The General Orders would benefit from adding

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<sup>7</sup> Resolution 111B.

<sup>8</sup> Dallas Police Department, "314.08(B) Searching of Juvenile Prisoners," *Dallas Police Department General Orders*, updated 4 Oct. 2019, <https://dallaspolice.net/resources/Shared%20Documents/General-Orders.pdf>; Houston Police Department, "500-06 Disposition of Arrested Juveniles."

<sup>9</sup> Dallas Police Department, "314.08(B) Searching of Juvenile Prisoners."

<sup>10</sup> Dallas Police Department, "314.08(B) Searching of Juvenile Prisoners."



specific guidance to assist officers in determining when an interview requires the presence of a parent or guardian.

OPO Response to Approved GO Changes

**415 Utilization of Narcan**

General Order 415 is a new section that has been added to establish guidelines for APD's use of Nasal Naloxone, more commonly known as Narcan. This drug is used to reverse the side effects of opioid overdose, including breathing issues.<sup>11</sup>

Clearer definitions of opioids and Naloxone are needed.

The definitions provisions contained in General Order 415.3 would benefit from clearer definitions of opioids and Naloxone. For example, the definitions should state that opioids include both legally available prescriptions and illegal drugs. Also, the most relevant information for the definition of Naloxone/Narcan is that it rapidly reverses an opioid overdose.<sup>12</sup> As a result, the definition could be improved by starting with this information.

The information in General Order 415.4 Considerations should be reorganized and some of the information should be relocated.

The current structure and organization of General Order 415.4 Considerations is confusing. This General Order contains a wide range of information and would benefit from reorganization and more descriptive headings. For example, General Order 415.4(a) is currently titled "General Considerations," but seems to cover considerations regarding officer safety. Similarly, General Order 415.4(c) is titled "Considerations for the use of Narcan," but primarily provides guidance for evaluating a person for a potential overdose. A policy that outlines the evaluation process for a potential overdose should be conspicuously titled due its level of importance.

General Order 415.4(c) is made more unclear because it begins with a subsection discussing a procedural step that does not occur until an officer has already decided to administer Narcan. This procedural step, which gives officers instructions for how to relay information to responding medical personnel would be better placed before General Order 415.5.2, which provides step-by-step instructions for Narcan deployment. Further, this procedural information also warrants its own uniquely titled section.

<sup>11</sup> "Naloxone," Substance Abuse and Mental Health Services Administration, accessed August 16, 2021, <https://www.samhsa.gov/medication-assisted-treatment/medications-counseling-related-conditions/naloxone>.

<sup>12</sup> "Naloxone," Substance Abuse and Mental Health Services Administration.



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Additionally, the list of factors to consider before using Narcan should be close in proximity to the procedures for deployment of Narcan. Currently, these sections are separated by inventory and storage procedures.

