INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

Safeguarding Children of Arrested Parents

Bureau of Justice Assistance
U.S. Department of Justice

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE
POLICE
SINCE 1893

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About BJA

Vision and Mission

The Bureau of Justice Assistance (BJA) strengthens the nation's criminal justice system and helps America's state, local, and tribal jurisdictions reduce and prevent crime, reduce recidivism, and promote a fair and safe criminal justice system. BJA focuses its programmatic and policy efforts on providing a wide range of resources, including training and technical assistance (TTA) to law enforcement, courts, corrections, treatment, reentry, justice information sharing, and community-based partners to address chronic and emerging criminal justice challenges nationwide.

BJA's mission is to provide leadership and services in grant administration and criminal justice policy development to support state, local, and tribal justice strategies to achieve safer communities.

About the IACP

Founded in 1893, the Association's goals are to advance the science and art of police services; to develop and disseminate improved administrative, technical and operational practices and promote their use in police work; to foster police cooperation and the exchange of information and experience among police administrators throughout the world; to bring about recruitment and training in the police profession of qualified persons; and to encourage adherence of all police officers to high professional standards of performance and conduct.

Since 1893, the International Association of Chiefs of Police has been serving the needs of the law enforcement community. Throughout those past 100-plus years, we have been launching historically acclaimed programs, conducting ground-breaking research and providing exemplary programs and services to our membership across the globe.

Professionally recognized programs such as the FBI Identification Division and the Uniform Crime Records system can trace their origins back to the IACP. In fact, the IACP has been instrumental in forwarding breakthrough technologies and philosophies from the early years of our establishment to now, as we begin the 21st century. From spearheading national use of fingerprint identification to partnering in a consortium on community policing to gathering top experts in criminal justice, the government and education for summits on violence, homicide, and youth violence, IACP has realized our responsibility to positively affect the goals of law enforcement.

Vision and Mission

The IACP shall advance professional police services; promote enhanced administrative, technical, and operational police practices; foster cooperation and the exchange of information and experience among police leaders and police organizations of recognized professional and technical standing throughout the world.

We shall champion the recruitment and training of qualified persons in the police profession and encourage all police personnel worldwide to achieve and maintain the highest standards of ethics, integrity, community interaction and professional conduct.

U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Office of the Director

Washington, D.C. 20531

July 23, 2014

Dear Colleague:

The Bureau of Justice Assistance (BJA), a part of the Department of Justice's Office of Justice Programs, has historically been at the forefront of efforts to improve the effectiveness of our criminal justice system while safeguarding the wellbeing of our communities nationwide. BJA is pleased to partner with the International Association of Chiefs of Police (IACP) to develop a model policy, Safeguarding Children of Arrested Parents, as an important resource for law enforcement.

It is estimated that more than 1.7 million children currently have a parent in prison, and it is important to understand the potential trauma that these children may experience when law enforcement carries out its investigative and arrest responsibilities. BJA is uniquely positioned to take the lead on this issue and partner with IACP to develop this model policy, and we hope that law enforcement agencies will find the information contained in this document highly instructive as they seek to enhance their policies and procedures.

This document reflects the collective input of a wide range of subject-matter experts and stakeholders. We believe it provides important strategies that law enforcement organizations across the nation can utilize as they seek to improve their services and positively impact the communities they serve.

Respectfully,

Denise E. O'Donnell

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Dear Colleague,

The arrest of a parent can, and often does, have significant lasting effects on children, whether they personally witness the arrest or not. That is why the International Association of Chiefs of Police and the Bureau of Justice Assistance have created this document to provide protocols for law enforcement to help address the needs of children at the time of, and just following, their parent's arrest.

There are numerous benefits associated with safeguarding the children of arrested parents. First and foremost, it supports the immediate, as well as future, physical, emotional, and psychological well-being of the child. In addition, a coordinated response helps to maintain the all-important relationship between child and parent, which further enhances the child's development. Also, while often overlooked, the image of police, developed by children during these encounters, can have long-lasting effects on their overall views of law enforcement, and their future willingness to cooperate with police and to abide with the law.

The procedures outlined in this document can be utilized to both ensure the wellbeing of children, while also maintaining the integrity of the arrest and officer safety. Agencies should consider adopting these recommendations, incorporating the general principles into their overall policing philosophy in an ongoing effort to provide the highest level of service to their communities.

Sincerely,

Yousry "Yost" Zakhary

President

International Association of Chiefs of Police

Serving the Leaders of Today and Developing the Leaders of Tomorrow

Preface

On June 12, 2013, Deputy Attorney General of the United States James M. Cole delivered remarks at the White House where he announced that "the International Association of Chiefs of Police (IACP), with funding support from the Department of Justice (DOJ) is developing a model protocol and training on protecting the physical and emotional well-being of children when their parents are arrested."

The IACP project announced by the Deputy Attorney General is part of an overarching White House Domestic Policy Council justice initiative focused on reducing trauma experienced by children who have parents in prison or jail. This is a broad-based undertaking given the myriad of situations in which parental arrest, incarceration, or both can have a negative impact on a child's physical, mental, social, and emotional well-being. Parental incarceration is now recognized as among the "adverse childhood experiences" that increase a child's risk of negative outcomes in adulthood, including alcoholism; depression; illegal drug use; domestic violence and other criminal behavior; health-related problems; and suicide, among others.[1] Minimizing the trauma experienced by children at the time of their parent's arrest has the potential to lessen this risk, improving outcomes in the short and long-run.

On September 10, 2013, the Department of Justice, Office of Justice Programs' Bureau of Justice Assistance (BJA) awarded supplemental funding to IACP to engage its National Law Enforcement Policy Center in the development of a Model Policy and Concepts and Issues Paper that would assist law enforcement agencies in developing measures to safeguard children when a parent is arrested. Instrumental to this process was the use of a focus group composed of federal, state, local, and tribal practitioners with expertise in child welfare, law enforcement, children's mental health, and children with incarcerated parents. In addition, the IACP will develop training to assist agencies with implementing the policy

The resulting Model Policy is incorporated in and forms the basis for issues and topics examined in the Concepts and Issues Paper. The Model Policy should be used as a template for agencies to develop and/or customize an internal policy, which should also reflect the input and coordination of partner organizations in order to incorporate their resources and capabilities. The intent of the Concepts and Issues Paper is twofold. First, it is intended to provide greater insight for readers of the Model Policy concerning the rationale underlying the policy positions and directives. Second, it is intended to provide an understanding of the most promising practices that have been identified and that will form the basis for development of law enforcement training modules addressing issues involving children of arrested parents.

[1] See Ginny Puddefoot and Lisa Foster, *Keeping Children Safe When Their Parents are Arrested: Local Approaches That Work* (California Research Bureau, July 2007) and "Adverse Childhood Experiences (ACE) Study," Centers for Disease Control and Prevention, http://www.cdc.gov/ace/findings.htm (accessed March 7, 2014).

Concepts and Issues Paper

I. Introduction

The arrest of a parent can have a significant impact on a child whether or not the child is present at the time of the arrest. Depending on age and quality of the relationship with the parent, children may feel shock, immense fear, anxiety, or anger towards the arresting officers or law enforcement in general. Over the past two decades, increasing emphasis has been placed on examination of the effects of these events on children of various ages and the ways in which law enforcement can make sure that an involved child doesn't "fall through the cracks."[2] Research clearly indicates that such events can and often do have a negative impact on a child's immediate and long-term emotional, mental, social, and physical health.[3] Symptoms such as sleep disruptions, separation anxiety, irritability, and even more serious disorders or post-traumatic reactions have been documented.[4] In addition, later problems with authority figures in general and law enforcement in particular can arise if officers or other service providers do not take the time to address the needs of the child. Time taken with a child under these trauma producing circumstances is time well spent. The kindness and assistance of an officer with a child creates lasting impressions even among very young children. Treating a child with compassion and thoughtfulness is not only the proper thing to do, it is also a hallmark of good policing that can have long-term positive benefits for the child and the community.

Treating a child with compassion and thoughtfulness is not only the proper thing to do, it is also a hallmark of good policing that can have long-term positive benefits for the child and the community.

Unfortunately, many, if not most, law enforcement agencies do not have policy, procedures, or training that specifically address actions that should be taken to reduce and prevent trauma associated with the arrest of a parent. For example, a seven-year study of all local California law enforcement agencies found that two-thirds of responding agencies did not have written policies outlining officer responsibilities for a child at the time of a parent's arrest. Additionally, about half of responding child welfare agencies had no written protocols describing how to minimize trauma that may be experienced by a child of an arrestee.[5] These findings may not reflect the situation in many jurisdictions around the country, but they do strongly suggest that both law enforcement and community partner organizations who share responsibility for child welfare in arrest situations may lack the training or preparation necessary to respond appropriately.

[2] See Marcus Nieto, *In Danger of Falling Through the Cracks: Children of Arrested Parents* (California Research Bureau, Sacramento, California, State Library, April 2002), https://www.library.ca.gov/crb/02/09/02-009.pdf (accessed March 10, 2014).

[3] See the *Report of the Attorney General's National Task Force on Children Exposed to Violence* (December 12, 2012), 29–35, http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf (accessed March 7, 2014).

[4] Puddefoot, 15.

[5] Nieto, 1.

When children are involved during the arrest of a parent, police officers are often confronted with many overlapping challenges and responsibilities. They must perform their duties in sometimes difficult or even chaotic situations, while also fulfilling their legal responsibility to protect the interests of an innocent child at the scene. Readily available alternatives, such as placing a child with a neighbor, relative, or family friend, often must be made with some urgency, but with minimal information on the capacity or suitability of those persons to provide adequate and safe care. Efforts to reduce the trauma on children created by the arrest cannot always be addressed in a coordinated or timely manner given exigencies associated with some arrests, particularly those involving greater risks to officers. For example, officers may unexpectedly encounter armed or violent suspects who must first be subdued before any additional action can be taken.

Fortunately, law enforcement is developing a greater understanding of the overall impact of violence and parental incarceration on children. Efforts to keep families connected, even if a parent is incarcerated, are part of the overall movement championed by many correctional systems.

Similarly, child welfare services (CWS) often has limited resources to respond to these situations in a timely manner and all too often, its services may not be established with a complete understanding of law enforcement requirements, policies, and practices during arrest situations. In addition, involving CWS may not be necessary in all arrest situations or appropriate as defined by state law or agency policy. The same can be said of a lack of law enforcement understanding of CWS policies, procedures and responsibilities. Without cross-training and a procedure for the coordination of services between law enforcement and CWS, as well as other partner organizations, the needs of the child may be inadequately or only sporadically met.

Fortunately, law enforcement is developing a greater understanding of the overall impact of violence and parental incarceration on children. Efforts to keep families connected, even if a parent is incarcerated, are part of the overall movement championed by many correctional systems. Among law enforcement agencies, the philosophy of early intervention in the life of a child to support positive development is being recognized as part of the overall strategy to prevent crime and violence. Showing kindness and concern to a child whenever possible, but especially during a difficult time, will help influence his or her opinions towards law enforcement then and later in life. Helping to prevent or minimize a child's exposure to potentially traumatic events is an operationally sound law enforcement strategy to promote public safety and reduce the likelihood of future misconduct, criminal behavior, and victimization. It is also consistent with law enforcement's community service and assistance function and is a direct component of principles of community policing, problem solving, and conflict resolution.

Law enforcement officers and their agencies have long been attuned to the dangers of civil liability for failure to train. In the present context, failure to train officers to take reasonable measures to safeguard children at the time of their parent's arrest and to ensure that appropriate actions are taken before, during and after the arrest, can have legal implications for officers and their employing jurisdictions. In addition to the legal consequences, protection of a child in these and related situations should also be viewed as an ethical, moral, and pragmatic responsibility that serves the short-term and long-term interests of both law enforcement, its justice partners and the communities they serve.

II. Definitions

Child: Any unemancipated person under the age of 18, or as otherwise defined by state law, whether or not he or she is present at the arrest. (As used herein, "child" refers to both an individual child or multiple children.)

Parent: Any adult who is legally responsible for the well-being, supervision, and care of a child. In most cases, this individual is a biological or adoptive parent, or guardian.

Caregiver: A responsible adult selected to temporarily care for the child in situations where another individual with legal custody of the child is unavailable. In some cases, responsibility for the temporary care and supervision of a child may be delegated to a relative, neighbor, friend, or another adult, as they are willing and able.

Child Welfare Services (CWS): A public service agency, or its contractee, that has authority to assume responsibility for the care, welfare, and temporary supervision of a child pursuant to law.

Partner Organization: A group or agency with interests aligned with this department with regards to safeguarding a child from trauma when his or her parent is arrested. This may include, but is not necessarily limited to, CWS, probation/pretrial entities, victim advocates, corrections, medical/mental health services, schools, youth-serving organizations and faith-based programs.

Trauma: Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, mental, social, emotional, or spiritual well-being.[6]

Responsible Adult: An individual over 18 years of age who can pass a preliminary NCIC check and clear a child protection registry background check to ensure that he/she does not have any arrests for founded cases of child abuse, sexual crimes, domestic violence, recent arrests for drug use or possession, or other violent felony violations.

III. Scope of the Problem: How Many Children are Affected?

There are no accurate statistics on the number of children who are present when their parent is arrested since these numbers are not routinely captured in arrest reports or collected by any central authority. However, statistics on incarcerated parents collected by the U.S. Department of Justice, Bureau of Justice Statistics (BJS) cast some light on the issue, even though it is recognized that far more arrests are made than are represented by the data on incarcerated persons in state and federal prisons.

An estimated 809,800 prisoners of the 1,518,535 held in the nation's prisons at mid-year were parents of minor children—52 percent of state inmates and 63 percent of federal inmates.

According to the most recent data originally published in 2008 by BJS, and updated in 2010, among federal and state prisoners:

- An estimated 809,800 prisoners of the 1,518,535 held in the nation's prisons at mid-year were parents of minor children—52 percent of state inmates and 63 percent of federal inmates.
- An estimated 1,706,600 children have a parent in prison (i.e., 2.3 percent of the U.S. population under 18 years of age). Note that this does not include children who have parents in jail.
- Incarceration of mothers increased 122 percent and the incarceration of fathers rose 76 percent between 1991 and 2007.
- More than half of mothers held in state prison reported living with at least one of their children in the month before arrest, compared to 36 percent of fathers.
- Among federal inmates, mothers were two-and-one-half times more likely than fathers to report living in a single-parent household.
- Among parents living with their minor children prior to incarceration, more than three-quarters of mothers, compared to just over a

[6] "Trauma Definition: Part One – Defining Trauma," Substance Abuse and Mental Health Services Administration, http://www.samhsa.gov/traumajustice/traumadefinition/definition.aspx (accessed April 15, 2014).

quarter of fathers reported providing most of the daily care of their children.[7]

The increase in parental incarceration between the years 1991 and 2007 is of particular note within the present discussion. The arrest of any parent presents the clear possibility that a child may experience immediate trauma or have traumatic reactions at a later time. Possibly the most vulnerable among those cited above is the child of an incarcerated mother. Incarceration of a mother can have the most severe and long-lasting consequences for her child, as she is most often the primary, if not the only, caregiver. Separation from a primary caregiver represents a crisis for children and should be given special consideration.[8]

Incarceration of a mother can have the most severe and long-lasting consequences for her child, as she is most often the primary, if not the only, caregiver. Separation from a primary caregiver represents a crisis for children and should be given special consideration.

Recognition that the child of an incarcerated mother may be the most deeply affected by this separation is not to suggest that the arrest of a father or male guardian may not have the same impact or that officers should hesitate to make arrests of mothers when required. It is mentioned here to highlight the need to pay particular attention to arrests involving primary caregivers (arrested women or others who identify as primary caregivers) through coordination with partner organizations. Through this combined effort, all reasonable steps should be taken to minimize the child's exposure to the arrest, to allow the arrestee to reassure the child and stay with the child until the caregiver is present, to ensure placement with a responsible adult, and to guarantee that follow-up with the child is performed where necessary by the law enforcement agency, partner organizations, or both.

In spite of the need for law enforcement to closely monitor the arrest of primary caregivers, in most cases, mothers, the survey of California's law enforcement agencies cited previously does not suggest any particular emphasis by agencies on the needs of the child of an arrested mother. This is in spite of the fact that these agencies reported that the arrested sole caretaker of a child is a woman in over 80 percent of the cases. Additionally, almost half of all law enforcement agencies (42 percent) did not know the number of mothers with minor children arrested in their jurisdictions.[9] This latter fact underscores the failure of many law enforcement agencies to fully document when arrested parents are responsible for children and the importance of doing so routinely in arrest reports.

Another group of children of arrestees who are particularly vulnerable are teenagers. In some cases this is because they are viewed as being able to manage on their own, or, in other instances because they state that they can cope on their own or with the assistance of friends or other persons. A 2006 presentation by Nell Bernstein, author of *All Alone in the World: Children of the Incarcerated*, addressed this issue through review of actual case studies.

> *Teenagers, [she noted] are the most vulnerable to being left alone when a parent is arrested. Among police departments that said they had a written policy outlining officers' responsibility for minor children of an arrested caretaker, only 55 percent defined "minor" as all children under 18. The rest offered definitions that ranged from 16 and under to 10 and under. In other words, children who would not be permitted to sign a lease, get a job or enroll themselves in school because of their age were, as a matter of explicit policy, deemed old enough to be left behind in empty apartments.*

[7] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Special Report, *Parents in Prison and Their Minor Children*, revised March 30, 2010, http://www.bjs.gov/content/pub/pdf/pptmc.pdf (accessed April 15, 2014).

[8] American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care (2000), "Developmental Issues for Young Children in Foster Care." *Pediatrics*, 106 (5), pp. 1145-1150.

[9] Nieto, 1.

Terrence fell into this category. He was 15 the day police broke down his door and took away his mother, who had a problem with drugs. "Call somebody to come watch you," he remembers an officer advising him on the way out. But Terrence had no one to call. For a few weeks, he got by on what was left of the family's food stamps. When they ran out, he cracked open his piggy bank, netting 56 dollars. When that was gone, he washed cars in the neighborhood and sold newspapers door-to-door. At 15, he was old enough to be left alone, but too young to get a real job.

Terrence bought groceries with his odd job earnings, but he couldn't keep up with the bills. First the electricity got cut off, then the water and gas. Once his apartment went dark, then cold, Terrence began spending more and more time with friends from school who lived together in a foster home nearby. When he began spending the night there, the foster father took notice. Terrence explained his situation, and the man arranged for Terrence to be placed with him on an emergency basis. Five months had passed since his mother's arrest before Terrence's abandonment registered as an "emergency" with anyone.[10]

The foregoing is not to suggest that children in other age groups are less susceptible to trauma resulting from parental arrest. Children of all ages are vulnerable to potential trauma following the arrest of their parent and reactions vary somewhat by age.

Nell Bernstein's accounts also revealed the following common reactions:

...Some children's own experience during or after their parent's arrest may leave them feeling that they themselves have done something wrong, and are being punished—even incarcerated. One young woman described coming home from science camp one afternoon to find police in her home. One squad car had just left with her mother; now another took her to the children's shelter. She felt, she told me, "that my life was over. That I would never see my family again. I thought I had done something wrong because I had to go away too. But my family says I didn't." This young woman was 27 years old when she told me this story—and she still didn't sound convinced.

...For many children, a parent's arrest is the moment when their invisibility is made visible; when it is made clear to them just how easily they may be overlooked within the systems and institutions that come to claim their parents. With appalling regularity, young people have described to me being left to fend for themselves in empty apartments for weeks or even months in the wake of a parent's arrest. In most cases, these children were not present when their parent was arrested; they simply came home from school to find their parent gone and were left to draw their own conclusions. But some told me of watching police handcuff and remove a parent—the only adult in the house—and simply leave them behind.

...For many children, a parent's arrest is the moment when their invisibility is made visible; when it is made clear to them just how easily they may be overlooked within the systems and institutions that come to claim their parents.

The first time I heard such a story was from a young man named Ricky. Like a third of all incarcerated mothers, Ricky's mother was living alone with her children when she was arrested. Ricky was nine years old, and his brother under a year, when the police came to his house and took away his mother.

"I guess they thought someone else was in the house," Ricky said, when I asked him how the police had come to leave him by himself. "But no one else was in the house. I was trying to ask them what happened and they wouldn't say. Everything went so fast. They just rushed in the house and got her and left."

[10] Puddlefoot, 10.

After the police left with his mother, Ricky did what he could. He cooked for himself and his brother, and changed the baby's diapers. He burned himself trying to make toast, and got a blister on his hand, but he felt he was managing. He remembered that each day, his mother would take him and his brother out for a walk. So he kept to the family routine, pushing the baby down the sidewalk in a stroller every day for two weeks, until a neighbor took notice and called Child Protective Services.

I heard many more stories like these….but I heard another kind of story too, that left me more hopeful—stories where they were seen, and heard, at the time of an arrest; where someone took the time to look out for them, talk to them, perhaps find a relative to care for them. And when this is what happened, they told me, it colored all their future interactions with authority—colored them in a way that made it much more likely that they would respond positively to authority, to law, in the future.[11]

Though witnessing a parent's arrest may appear to be a short, relatively quick life event, the trauma that it can create may be a compounding risk factor that ultimately has a detrimental impact on the child's well-being and development.

Parental arrest and incarceration are associated with a number of other negative childhood experiences including household substance abuse, parental mental illness, physical or emotional neglect, and household violence.[12] One comprehensive, longitudinal examination - The Adverse Childhood Experiences (ACE) Study - examined a range of the health outcomes associated with traumatic events experienced early in life, and the range of behavioral, social, mental and physical effects, including physical and mental health disorders, aggressive behavior and adult victimization that can manifest throughout one's lifetime.[13]

Though witnessing a parent's arrest may appear to be a short, relatively quick life event, the trauma that it can create may be a compounding risk factor that ultimately has a detrimental impact on the child's well-being and development.

IV. Legal Responsibilities of Law Enforcement for Children of Arrested Parents

It may seem obvious that law enforcement has an inherent responsibility to ensure that children of arrested parents are properly cared for, but the typical lack of law enforcement policy and procedures in this regard reflects lack of awareness by many departments concerning the process surrounding, and sufficiency of, the care that should be provided. Unfortunately, federal courts are also "unsettled when it comes to when and under what circumstance a law enforcement officer has the responsibility for the safety of minors at the time of a guardian's arrest."[14] State statutory law addressing the legal responsibility of law enforcement officers to provide for the safety of children after a parent's arrest is generally nonexistent or lacking in specificity.

The Due Process Clause of the 14th Amendment forbids the government from depriving individuals of life, liberty, or property without "due process of law." However, in 1989, the U.S. Supreme Court found that the Due Process Clause does not

[11] Puddlefoot, 10.

[12] James A. Reavis, Jan Looman, and Briana Rojas, "Adverse Childhood Experiences and Adult Criminality: How Long Must We Live before We Possess Our Own Lives?" *The Permanente Journal* 17, no. 2 (Spring 2013): 44–48.

[13] Adverse Childhood Experiences (ACE) Study," Centers for Disease Control and Prevention, http://www.cdc.gov/ace/findings.htm (accessed March 7, 2014).

[14] Marilyn C. Moses and Cathy Girouard, "Written Policies for Responding to Children after a Parent or Caretaker Is Arrested," *The Police Chief* 72, no. 9 (September 2005): 135–145.

provide an affirmative right to government aid.[15] However, the Court has established two exceptions that may create a law enforcement officer's duty to protect and violations of which may subsequently be prosecuted under 42 U.S.C. §1983. Federal courts vary considerably in their interpretation of what constitutes either of the two exceptions, so law enforcement agencies should familiarize themselves with rulings in their federal district and circuit.

The first exception involves whether a "special relationship" exists, such as when an officer takes a suspect into custody and transports him or her to jail, thus making the officer responsible for the suspect's safety while in custody. Another example of a special relationship is when an officer makes a specific promise to protect an individual from another party.[16]

Possibly of more significance in context of the present discussion is the exception related to "state-created danger." Under this exception, a duty to protect may exist if an officer or other government operative leaves a person in a more dangerous situation than the one in which he or she was found, creating a previously nonexistent danger or increasing the danger. [17]

Specific circuits apply different tests to determine whether a state-created danger exception exists. For example, officers were found to have created a danger for three children who they left in a vehicle by themselves on the side of a limited access highway at night when their uncle was arrested for drag racing. The children decided that the only way to get help was to leave the vehicle and walk along the highway until they found a telephone. They then called their mother, but could not identify their location. The mother was unable to pick them up due to lack of transportation. They were finally located by a neighbor several hours after leaving the car. The officers' actions constituted "gross negligence" or "reckless endangerment" according to the 7th Circuit Court, which found the officers liable for both emotional and physical injuries sustained by the children.[18]

In another case, two children, 11 and 13 years of age, spent the night at a friend's house, who was also a minor. That night, law enforcement raided the apartment and arrested the mother on narcotics and related charges leaving the three children in the apartment alone. In spite of their ages and potential exposure to a drug environment, and the fact that they were left without adult supervision, the court held that the officers could not foresee potential dangers as compared to the circumstances in the foregoing case. The children were inside a building with a telephone that they could use to contact another responsible adult. The court therefore found that the officers were not negligent.[19]

In summary, an attorney analyzing these and similar cases concluded:

> *The courts have not been as consistent or as prescriptive as law enforcement administrators would like with regard to guidance in this area. It seems as though the courts are sending the signal that as long as the children are not so young as to shock the conscience and no harm results, the officer can leave children in risky situations and be found to have made an unfortunate judgment call but one that does not rise to the level of deprivation of qualified immunity. But if the abandoned child is harmed in some way, the officer should have anticipated it and will be found guilty of gross negligence and reckless disregard for safety. The problem with this*

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15 *DeShaney v. Winnebago County Dept. of Social Services*, 109 S. Ct. 998, 1003 (1989).

16 See for example, *Pinder v. Johnson*, 54 F. 3d 1169, 1175 (4th Cir. 1995) cert denied, 116 S. Ct. 530 (1995).

17 L. Cary Unkelbach, "No Duty to Protect: Two Exceptions," Chief's Counsel, *The Police Chief* 71, no. 7 (July 2004): 12–14.

18 *White v. Rochford*, 592 F.2d 381 (7th Cir. 1979) as cited by Moses. For a similar case with a different outcome, see the 6th Circuit Court of Appeals case *Walton v. City of Southfield*, 995 F.2d 1331 (6th Cir. 1993) as cited by Moses.

19 *Valita M. v. City of Chicago*, 1986 WL 15133 (N.D. Ill. 1986) as cited by Moses.

guidance is that it requires the officer to foresee the future.[20]

Yet, in spite of the rulings of these and other courts, there is another principle that provides guidance to officers beside that of the fear of legal liability—the need to provide the best level of service possible to ensure the well-being of a child of an arrested parent. The policy and procedures that follow are designed to assist officers in fulfilling their responsibility to serve the best interests of the child, rather than simply applying the bare bones compliance that may be gleaned from court rulings.

The child of an arrested parent needs to understand that he or she is not to blame and has done nothing wrong. Placing the child with a trusted and familiar adult or family member may add a level of stability to the situation and help the child cope with the other changes occurring during the period of stress.

V. Policy and Procedures

A. Overarching Policy

The overriding policy statement of the Model Policy that guides this discussion paper states that:

> *It is the policy of this department that officers will be trained to identify and respond effectively to a child, present or not present, whose parent is arrested in order to help minimize potential trauma and support a child's physical safety and well-being following an arrest.*

While the focus of this document and the recommended protocols that follow target the protection of a child's well-being during parental arrest, the needs and requirements of law enforcement during arrest situations cannot be overlooked. The integrity of the arrest; safety of officers, arrestees, and innocent bystanders, including children; and adherence to departmental procedures and training when performing an arrest must all be balanced in the context of a wide variety of situations and environments—the elements of which may be unknown or only partially known to arresting officers. All officers should be well versed in procedures for conducting arrests in a wide variety of circumstances.[21] Therefore, conducting arrests is addressed here only to the extent that additional measures may be needed prior to and during arrests to help safeguard the child of an arrested parent.

The Model Policy's statement of purpose expands on the direction, intent, and philosophy of the project. It states:

> *The purpose of this policy is to establish new and enhance existing collaboration between this department, child welfare services (CWS), and other key partner organizations in order to minimize the potential trauma to a child whose parent is arrested. Whenever possible, the child should be diverted from official custody and be placed with a responsible caregiver. The primary goal of this policy is to minimize trauma experienced by the child who witnesses a parent's arrest and the separation caused by the arrest while maintaining the integrity of the arrest and the safety of officers, suspects, and other involved individuals.*

Two important positions incorporated in this statement need to be singled out for attention. First, this statement recognizes that safeguarding a child's well-being is the shared responsibility of a number of partner organizations within the community, not only law enforcement. Partner organizations can be local, or they may be regional offices or groups representing state or national child welfare enterprises. Collaboration and coordination between law enforcement and partner organizations is essential for meeting the

[20] Marilyn Moses, "Written Policies for Responding to Children after a Parent or Caretaker Is Arrested."

[21] See, for example, policies, procedures, and discussion papers on the following topics "Off-Duty Arrests," "Executing Search Warrants," and "Arrests," published by the IACP National Law Enforcement Policy Center, International Association of Chiefs of Police, Alexandria, VA.

varied needs of a child whose parent has been arrested.

Second, whenever reasonably possible, a child who may be affected by parental arrest should not be placed in the custody of a law enforcement agency or CWS, but rather be placed temporarily with a caregiver, often the other parent, a close relative, or family friend. Custody provided by law enforcement or CWS may in some instances be the only, if not the best option, particularly when a responsible adult who is able to serve as a caregiver cannot readily be located. But, custody of this type should not be routinely regarded as the only or even the best option. Custody by a law enforcement agency or CWS can have a significant negative emotional impact on a child adding to the trauma of parent-child separation that the arrest may cause and possibly creating an enduring stigmatization. For example, a child may feel, in being taken away from familiar surroundings and friends that he or she has done something wrong and is being punished. The child of an arrested parent needs to understand that he or she is not to blame and has done nothing wrong. Placing the child with a trusted and familiar adult or family member may add a level of stability to the situation and help the child cope with the other changes occurring during the period of stress.

In addition, law enforcement officers should be aware that children love their parents and that most of these arrested individuals love their children, even though they may have made bad decisions without consideration for their children's well-being. Children of all arrested parents—no matter how the parent is judged—can be negatively affected by the arrest and the ensuing separation. Many of these arrests are not related to violent crimes, drugs, or abuse-related offenses. The objective of law enforcement-child interaction during arrests is not typically to "protect" the child from their parents, unless abuse or neglect are evident. Rather, the role of law enforcement is to protect the child from trauma that may be caused as a result of the arrest. It is often beneficial to allow the parent to explain the situation directly to the child to prevent future feelings of guilt or wrongdoing on the part of the child.

B. Interagency Coordination and Training

Law enforcement officers understand the needs and requirements of making arrests, such as the need to gain control of the situation; develop reasonable suspicion and probable cause to make an arrest absent an arrest warrant; and ensure the security of the arrest scene and arrestee. Far fewer officers are fully aware of the impact of the parent's arrest on his or her child, whether the child is present or not. By the same token, professionals from CWS are educated and generally have hands-on experience in dealing with trauma among children, but may not have a good understanding of law enforcement procedures and protocols during arrests.

Law enforcement officers can be trained to have a better understanding of the needs of children at the time of their parent's arrest and possible law enforcement responses. But realistically, few departments have the resources to address this issue effectively on their own. Coordination of law enforcement with CWS and other partner organizations combines the two disciplines into a promising model for meeting the needs of the child and the family, as well as the community's need for public safety. Demonstration programs using this approach have been used in a number of jurisdictions, to include New Haven, Connecticut; Charlotte-Mecklenburg, North Carolina; Boston, Massachusetts; and San Francisco, California. Many jurisdictions have developed written agreements that spell out the intentions of each agency, their roles and responsibilities, and the services that can or will be provided under various circumstances—such as planning jointly in advance of a tactical arrest, responding to arrests where child placement becomes problematic, providing on-site problem solving and emotional support for children and families following the arrest of parents, or arranging for follow-up visits by law enforcement officers

Coordination of law enforcement with CWS and other partner organizations combines the two disciplines into a promising model for meeting the needs of the child and the family, as well as the community's need for public safety.

to ensure that temporary caregivers can and are providing suitable care.

Written agreements may already exist in jurisdictions between law enforcement and CWS to ensure joint response under specific conditions, such as abuse/neglect, drug-related arrests, or domestic violence. These protocols can often provide the basis for development of more extensive interagency collaboration and expanded response to a wider variety of parental arrest situations. However, the development of successful collaborative agreements requires that parties to the agreement accept several underlying concepts. It must be recognized that issues surrounding children of arrested parents are not just a law enforcement, but a community responsibility that can have far-reaching, negative consequences for children as they mature. This directly affects demands on community mental health services and related partner organizations. In sum, it has broad consequences for the present and future well-being of neighborhoods across jurisdictional boundaries, from crime prevention and control, to schools effectively educating their students, and the ability of mental health agencies to deliver services, among many other implications. There must also be a clear commitment by leaders of the partnership to succeed by working together to provide positive interventions and services to children of arrested parents, ideally outside the child welfare system.

The Model Policy lists four basic steps for the establishment of interagency coordination.

- The law enforcement agency should have a cooperative agreement with CWS and partner organizations responsible for safeguarding a child from harm when his or her parent is arrested and addressing trauma that has occurred. This can be in the form of a letter of agreement or a binding or non-binding memorandum of understanding.[22] Each of these documents should, at a minimum, define individual agency responsibilities and commitments; specific operational protocols; cost sharing, if necessary; shared work spaces, if required; meeting schedules and information/data exchange protocols; training responsibilities; issues related to confidentiality of information and records; and terms of agreement severability.
- The law enforcement agency and partner organizations should ensure that they meet regularly to exchange information on individual cases, as well as to evaluate the effectiveness and efficiency of joint operations. Operational review and evaluation is particularly important during the initial phases of the partnership in order to identify problems that may arise and implement corrective actions.
- The law enforcement agency should designate a liaison who is responsible for ensuring that follow-up is conducted to support the well-being of the child of an arrested parent. This may be a full or part-time assignment depending on the volume of incidents of this type encountered by the department. When the budget does not permit assignment of an officer in a full- or part-time capacity, departments can explore the possibility of using an individual from another partner organization to fill this role. Officers should be able and required to record in arrest or incident reports each time a child's parent is arrested, whether the child is present or not, so that the liaison can monitor incidents on a case-by-case basis and respond with appropriate follow-up. The liaison should also be present at all interagency children of arrested parents meetings as the department representative and work closely with partner organizations to address operational problems and ensure efficiency of services provided. The liaison should also prepare periodic reports on the number and types of children of arrested parents responses made including any follow-ups with an evaluation of case outcomes.
- Officers should be provided with a list of participating partner organizations and contact information so that they may take advantage of services provided through the interagency agreement.

[22] Examples of MOUs, Letters of Understanding, and similar cooperative agreements can be found in Puddefoot, Appendices 5 and 6.

As previously mentioned, law enforcement and partner organizations must also be prepared to recognize and effectively respond to professional culture differences that can negatively impact working relationships. Mutual understanding of the legal and operational roles and responsibilities of partner organizations such as CWS, and those of law enforcement agencies are essential to building trust, understanding, and a collaborative working partnership. Training and education of law enforcement officers are most often geared toward conflict resolution and peacekeeping. Officers may not fully understand or appreciate the need for and role of social service organizations. By the same token, the education of social service professionals does not necessarily provide them with an understanding and appreciation for the many, varied, difficult, and sometimes dangerous encounters law enforcement officers face on a routine basis. This cultural divide can be and has been overcome in many jurisdictions, most often through co-training and joint operational efforts, although this goal may take years to fully realize. For success to be achieved, law enforcement agencies and partner organizations must be willing to understand and respect the importance of different ways of thinking, recognize different agency goals, mandates, and responsibilities, and share a commitment to persist in a collaborative effort for the benefit of the common good. The ultimate goal of this cooperation is to help avoid or mitigate the trauma experienced by a child of an arrested parent.

As such, officers need to be trained by CWS and other partner organization professionals to respond to and effectively communicate with children of all ages whose parents are being arrested. Professionals who work with children and families are in a position to train officers on the meaning of and practical application of "trauma-informed"[23] practices when responding to children during parental arrest, as well as during a myriad of other police-youth interactions. These personnel can also provide officers with a basic knowledge of how trauma presents itself in children at different ages and stages of development, including common signs and symptoms, and de-escalation techniques. This recognizes that the officer's role is not to serve as a mental health professional or trauma expert, but to ensure the overall well-being of the child, protect the child from further harm, protect the officer, and connect the child or family to community resources that may be better equipped to address these problems.

The success of this effort requires the "buy in" of departmental personnel—many of whom may be initially skeptical of the program's value and the need for them to become involved in matters that they believe are not their responsibility. Helping prevent a child's exposure to trauma is an operationally sound law enforcement strategy that can effectively reduce the likelihood of future misconduct or criminal behavior. Additionally, in these cases, the trauma experienced by the child may be blamed on or associated with the officer. Minimizing this trauma is directly linked to community perception of law enforcement, which translates into an officer safety issue. It is also consistent with the officer's community service and assistance function and is a clear component of principles of community policing, problem solving, and conflict resolution.

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One key component of buy-in centers around who delivers the information. Law enforcement officers are often most receptive to new ideas and programs when they are championed by fellow officers. Therefore, where possible, co-training with both a law enforcement trainer and a childhood trauma specialist has proven to be most effective. In this approach, officers gain knowledge and understanding from both law enforcement personnel and child development/trauma

[23] See for example, Eva J. Klain and Amanda R. White, I*mplementing Trauma-Informed Practices in Child Welfare* (ABA Center on Children and the Law, November, 2013).

professionals in a manner that is most suitable for their understanding and assimilation within the law enforcement culture.

The introduction to concepts and protocols regarding the appropriate response to children of arrested parents should begin in recruit training and be reinforced thereafter in regular in-service training. Officers who are introduced to these principles and protocols at the beginning of their careers are far more likely to accept and apply them as a natural part of their law enforcement responsibilities. Supervisory leadership also plays an important part in ensuring that officers understand, accept, and apply what they have learned.

It is therefore incumbent on law enforcement officers to educate their partner organizations in the policies, procedures, and departmental and legal requirements under which they must operate. This basic knowledge may lay the foundation for these partner organizations to better assist and become acculturated into law enforcement operations.

Reciprocal training by law enforcement officers for CWS and other partner organizations is equally critical. Just as law enforcement officers may have their own notions about social service organizations, those who work in these professions may also have preconceived notions and perceptions of law enforcement work and law enforcement officers, some of which may inhibit inter-organizational working relationships. In spite of its many rewards, law enforcement work can be challenging, placing officers in situations that must be resolved in a short period of time, often without sufficient information and in the midst of chaos. Arrest situations can be very unpredictable. While they may have some rudimentary understanding of these facts, social service personnel do not normally understand the reality and dynamics of these and related law enforcement-citizen encounters. It is therefore incumbent on law enforcement officers to educate their partner organizations in the policies, procedures, and departmental and legal requirements under which they must operate. This basic knowledge may lay the foundation for these partner organizations to better assist and become acculturated into law enforcement operations.

C. Pre-Arrest Planning

An important measure that law enforcement can take to protect a child when his or her parent will be arrested is to determine, when reasonably possible, whether a child is, or is reasonably likely to be, at the arrest location. Of course, this is not always possible. Arrests made of drivers for motor vehicle violations and similar unanticipated arrests do not allow for such planning. However, when an arrest or search warrant is being executed or officers expect that it is probable that questioning of a suspect at his or her home or other location may lead to an arrest, there may be time to determine whether it is likely that a child will be present or may be under parental care of the suspect. A check of departmental records may indicate that a child was present during prior encounters or arrests, a preliminary drive-by of the proposed arrest location may reveal a child's toys around the house, or a check with CWS, when time permits, may determine that a child is or is likely to be present.

In some cases, where timing is not a critical concern, an arrest may be postponed so that it will not be conducted in the presence of the child. Decision making in this regard is based on a number of factors that must be weighed collectively before determining the best approach for conducting the arrest, considering law enforcement requirements, the safety of the community and the interests of the child. These types of decisions are more common when using tactical teams to conduct arrests. Pre-deployment checklists are commonly used by such teams and should always factor in risks associated with a child. If delay is not possible, arrangements should be made in advance to have additional law enforcement officers and/or representatives from CWS and/or appropriate partner organizations at the scene or on call.

There may be other situations in which officers can weigh the importance of making an arrest against the trauma that it might inflict on a child who is present. For example, officers may understand to a degree of certainty when, in accordance with

historical precedent and local circumstances, an arrestee will be processed and released within a short period of time, generally a few hours. If departmental policy permits, the use of a citation in lieu of arrest may serve the same ends as an arrest. Use of a citation avoids the need to separate the child from his or her parent and expose the child to the arrest and eliminates the need to transfer the child to another caregiver or have him or her spend time at a law enforcement lockup until the parent is released. Officer judgment in making these types of decisions is essential. Before making a decision to cite rather than arrest, departmental policy must provide such discretion—and obtaining supervisory authorization is recommended.

Dispatched calls for service generally do not provide officers with time to determine whether a child will be present, and if they do, generally there is not enough time to fully prepare for the potential encounter with a child located at the dispatched location. One measure to assist in these situations is to require emergency communication operators to ask whether a child is present as a standard part of their protocol, much in the same way in which they may ask if weapons are present at the scene. If present, this information can be provided to responding officers.

Finally, with respect to pre-arrest planning, it is useful, if possible, to determine in advance if the arrestee is English-language proficient. If not, arrangements should be made for a translator. Ideally, the translator should be someone from a partner organization who can speak with the arrestee, other adults, and children who are present in age-appropriate language. If this is not possible, a fellow officer who has had training on issues related to the appropriate response to children of arrested parents is a good alternative. Proper communication is essential in these arrest situations. It is even more important when dealing with families from other cultures that hold parents and elders in particularly high esteem. Removing a parent under arrest in these situations can take on added emotional weight and requires officers to be particularly cognizant of explaining the reasons for this action to the child in terms that they will better understand. Thus, precise interpretation is particularly important.

When neither of these options is available, officers should not resort to using the child to interpret for adults, or parents to interpret for the child. Failure to understand what is being said can pose both safety concerns for officers and may present problems for a child who may be improperly or inaccurately informed of what is transpiring. Additionally, it may place a child in the situation where he or she may be called to testify in court about what was said during the incident. For example, a child may be purposely misinformed about the reason for the arrest or be told to hide or discard evidence of a crime. Such information may become germane to a subsequent court proceeding and the child may be called upon to testify about what was said.

D. Making an Arrest

In order to safeguard the welfare of a child during the arrest of a parent, it is essential to determine if a child is present at the proposed arrest location or at another location. While one would assume that this action takes place routinely, research indicates the exact opposite. As of 2002, it was the exception that parents were asked about the presence of or their responsibility for a child. The authors in one study state:

> *According to our survey, officers in only 13 percent of law enforcement agencies ask whether an arrestee has dependent children every time an arrest is made, whether or not children are present. Officers in a majority of law enforcement agencies do not ask about an arrestee's children at the scene of a crime or when making an arrest. If children are present at the time of arrest, officers in 42 percent of the responding departments will inquire about their care. If an arrestee offers information about children, officers in 39 percent of the departments will get involved,*

...it is an essential initial measure for arresting officers to ask individuals, when safe to do so, specifically whether they are a parent responsible for any minor children or living with any minor children.

and 12 percent will ask about children when there is physical evidence at the scene (toys, clothes, baby bottles, etc.).[24]

The presence of a child is inadequately addressed in a large number of arrest situations throughout the United States given that a majority of departments still do not have policies and procedures for responding to children of arrested parents. Therefore, it is an essential initial measure for arresting officers to ask individuals, when safe to do so, specifically whether they are a parent responsible for any minor children or living with any minor children. The inquiry must include any child who may not be present at the time but is expected to be picked up from school or return home from school, a babysitter, a friend's house, or other location or activity.

When a child is not at home at the time of the arrest, the arresting officer or a backup officer or supervisor should ensure that appropriate arrangements are made, either through the law enforcement agency or through a partner organization, to place the child with a responsible adult. If the child is at school or daycare, the arrested parent should be consulted on who should pick the child up and who will provide temporary care. Most schools have lists of approved adults who, in the absence of a child's parents, are authorized to pick up the child. These would usually be the logical choices. If they are not available, however, officers may need to contact the school principal or similar adult and discuss the most appropriate and least traumatic means of transporting the child to temporary care.

The officer charged with addressing the child's care must not leave the scene of an arrest until suitable arrangements have been made for care of the child.

Some parents may be reluctant to disclose the presence of a child or their responsibility for a child who is not present. The parent's fear is often that the child will be taken by CWS or similar agencies, and that the arrest may result in loss of custody. As such, officers should be aware of any indications of a child in the home, such as toys, clothing, diapers, or other items.

When arrests are performed outside the home, officers should also inquire whether the arrestee is responsible for a child and whether taking him or her into custody will require that arrangements be made for care of the child. As some of the legal case studies previously discussed reveal, the presence of a child during arrests made during traffic stops is a common scenario. In these and similar instances, officers must not only focus on the integrity of the arrest, but also ensure that arrangements are made for care of the child. Options include calling the other parent or other legal guardian(s), or another responsible adult, such as a relative, or a close family friend and arranging for transportation of the child to a safe location or calling upon an appropriate partner organization to take the child into temporary custody until other arrangements can be made. The option that is patently unacceptable in these or other arrest situations is to leave the child unattended. The officer charged with addressing the child's care must not leave the scene of an arrest until suitable arrangements have been made for care of the child. This applies equally to all children, defined previously as anyone under the age of 18. Officers should not assume that a teenager can be safely left without supervision.

The integrity and safety of the arrest, quelling of commotion, and de-escalation of conflict, whether in a residence or elsewhere is of primary importance. When accomplished, officers may then focus on obtaining proper care for a child. However, in situations where a child is present, officers are encouraged to make certain allowances in order to reduce the potential of trauma. For example, when reasonable and prudent, the arrest—including handcuffing and questioning—should be performed away from the sight and hearing of the child.

One author notes that….*in the absence of [police] protocols or planning, 70 percent of children who are present at a parent's arrest watch that parent being handcuffed. Nearly 30 percent are confronted with drawn weapons. Many go on*

[24] Nieto, 1.

to demonstrate the symptoms of post-traumatic stress syndrome. Smaller children may respond by becoming unable to eat or to sleep, losing the ability to speak, or even reverting from walking to crawling.[25]

When it is appropriate and safe to do so, the parent should be given the opportunity to speak to the child, explain what is happening and reassure him or her that arrangements will be made for his or her care and safety. Parents should also be given first consideration to identify someone who they feel would be most suitable and best situated to take care of their child. In some cases, efforts to comfort the child or make appropriate child care placement decisions may not be prudent or possible. The parent being arrested may be so distraught as to make the child even more upset. The parent may not be articulate enough to convey an appropriate message, may not understand how best to comfort the child, or may be incapable of doing so because of impairment by alcohol, drugs, or mental instability. If the parent is incapable or unwilling to comfort and inform the child, an officer or trained representative from a partner organization, such as a social worker, caseworker, or victim advocate, when available, should perform this task. The child should be spoken to in an age- and developmentally-appropriate manner and to the degree possible, be provided with an explanation of what is happening. Above all, the child should be made to understand that he or she has done nothing wrong and that arrangements will be made so that he or she will be safe and well cared for. Additionally, children generally worry about what will happen to their parent and whether he or she will be safe. Therefore, to the extent possible, officers should provide information to the caregiver about how they can locate the parent for visitation.

When a child is removed from the home, it is often comforting to them to keep items with them that are familiar or make them feel safe. Parents should be asked about these items, or if that is not appropriate, the child should be allowed to select some favorite toys, clothing, blankets, books, photographs, or foods. In addition, officers should inquire about any of the child's special needs such as medical or mental health conditions, physical impairments or limitations, allergies, or developmental disorders, as well as any medications or treatments necessary for these conditions.

[25] Puddlefoot, 9.

Normally, the best placement of a child is with another parent or legal guardian, particularly if the child can remain in his or her own home. Moreover, this is usually legally required barring any issues that would disqualify the other parent or guardian.

E. Appropriate Placement of a Child

Normally, the best placement of a child is with another parent or legal guardian, particularly if the child can remain in his or her own home. Moreover, this is usually legally required barring any issues that would disqualify the other parent or guardian. Exceptions to this arise when there are concerns about the capability or competency of the second parent or legal guardian to provide proper physical care, emotional support, and supervision of the child.

Parents have the right to express their preference in where they would like their child to be housed and the person(s) who should provide care and supervision. If the arrested parent has sole custody of the child, he or she should be given a reasonable opportunity to select a caregiver unless the arrest is for child abuse or neglect. However, some arrested parents do not make the best placement decisions for their child. Some children have been left in homes where drugs or alcohol abuse is present, supervision is poor or nonexistent, or caregivers are abusive or neglectful. Even when parents make appropriate decisions, some potential caregivers may simply not have the financial resources; physical capabilities; housing requirements; or, when working on a daily basis, the time necessary to provide proper supervision and care. Officers may ask the child, in age appropriate language, if he or she feels safe and comfortable with the proposed caregiver, or has any concerns that would make them uncomfortable or put them in danger. However, it is the responsibility of the

police and, in some cases, CWS to check with the temporary caregiver to ensure the child's wellbeing.

As such, as soon as reasonably possible, some basic checks of the proposed caregiver should be performed. Follow-up visits can provide additional information about the capabilities and ability of the caregiver to care for the child, and can lead to referrals for supportive services to address the child's and caregiver's needs. At arrest, a preliminary NCIC check of the selected caregiver(s) should be performed by the law enforcement agency and CWS case files should be checked if possible. Any arrests for child abuse or neglect, sexual crimes, domestic violence, or recent arrests for major drug offenses and/or violent felonies should automatically disqualify the individual from taking custody of the child.

...as soon as reasonably possible, some basic checks of the proposed caregiver should be performed. Follow-up visits can provide additional information about the capabilities and ability of the caregiver to care for the child, and can lead to referrals for supportive services to address the child's and caregiver's needs.

If the parent cannot or will not provide the name and contact information of a preferred caregiver, officers should make arrangements to have the child taken into the care of CWS or another authorized partner organization. Referral to CWS and similar child protection agencies should be avoided whenever reasonably possible. Similarly, referral to CWS is not always necessary or appropriate. In many cases state laws dictate the circumstances under which CWS can or must be involved. In many situations, the child of an arrested parent is not inherently in harm's way. Many children of arrested parents live in homes with caring and nurturing adults. Placement of these children in institutional care can have a significant, negative impact on them. Therefore, whenever reasonably possible, placement with a familiar, responsible adult is the preferred option. In the absence of parental decisions, an older child may express a preference for where and with whom they would like to stay. This preference should be given reasonable consideration pending a determination of whether the placement is safe and a responsible adult is present to ensure the child's well-being and proper supervision.

F. Booking

Intake and prisoner processing at a jail or other holding facility is another point in the arrest process in which law enforcement officers can inquire as to whether an arrestee has a dependent child who would be affected by the incarceration, even if incarceration is for a short period of time. It is also a point at which law enforcement agencies can check whether the question about a dependent child has been asked of the arrestee. Even parents who have refused to identify a dependent child previously when asked, may have second thoughts about that decision when they fully realize that they will be held in confinement for an indefinite period of time.

Therefore, a routine question during the booking process should be the name and age of the arrestee's child. If the arrest creates an interruption in a child's supervision and care, the arrestee must be given reasonable opportunities to make alternative arrangements for care if this has not already been addressed by the arresting officer(s) or other personnel. The arresting officer can be queried as to arrangements that may have already been made and those arrangements that still may need to be addressed. This information should be entered into the booking report along with the name, address, and phone number of the caregiver. If arrangements are still in process or there are questions that have not been completely answered concerning the child's care and supervision, the arresting and/or booking officer(s) should take all appropriate measures, with or without the assistance of the arrestee, to ensure that adequate arrangements for the child are completed.

One issue for agencies to consider is allowing the arrestee to use his or her cellular telephone to make arrangements for care of the child. This may prove especially important if the arrestee must contact the child directly. Many children are taught to never accept a call from an unknown

number. Therefore, using a telephone in the booking location would most likely result in the child not answering. By allowing the arrestee to use his or her cellular telephone, the likelihood of speaking directly with the child is greatly increased. In addition, many individuals no longer memorize their phone numbers and only have them saved in their cellular phones, which they may rely exclusively on to make calls; and which will not accept the collect charges that are commonly associated with telephones in jail or holding facility settings. However, this consideration should not be extended in cases where the cellular telephone may be used as evidence.

G. Follow-Up Visits

Although the realities of budget and manpower limitations may make this difficult, whenever reasonably possible, law enforcement agencies should strive to ensure that the arresting officer or departmental liaison officer visit the caregiver who has assumed responsibility for the child. Telephone contacts alone are generally insufficient to ensure that the child's welfare is being adequately addressed. On-site visits to the caregiver's residence are most important when NCIC checks and any potential CWS case file checks have not yet been completed. It is also more important to physically visit the caregiver when the arrestee cannot or is unlikely to make bond based on the offense or cannot appear before a magistrate in a timely manner to establish release criteria.

If a telephone call is all that can be performed, the inquiring officer can still gain some assurance as to whether the child is being cared for properly. The officer should speak to the child in an age-appropriate language and ask how he or she feels, when he or she last ate and what was eaten, whether he or she took a bath or cleaned up, and the child's feelings about the caregiver. Does the child feel safe and comfortable or uncomfortable and fearful? In many cases, the use of yes/no questions may be prudent to provide the child with an opportunity to respond truthfully without fear of negative interference from the caretaker who may be listening. These types of inquiries and related follow-up questions can provide valuable information that can help determine whether additional on-site follow-up may be necessary. They also provide the child with reassurance that his or her safety is important. This is particularly valuable and noteworthy for children when it comes from a law enforcement officer. When speaking with the caregiver, an officer can ask similar questions about the child's behavior and care and any signs or symptoms of serious problems. During these discussions, the caregiver can also be provided with information on community resources and services that may be needed to address perceived problems.

Follow-up with the caregiver and the child during the time frame immediately surrounding and following the arrest of the parent is essential.

Depending on the circumstances of the arrest, child placement, and other considerations, the arresting officer or the liaison officer may seek the assistance of CWS or another partner organization representative to participate in the home visit. However, CWS caseworkers and other similar agencies may have guidelines and restrictions on when and how they can become involved in such visits, and officers should be aware of these protocols. Without a warrant, probable cause, permission of the caregiver, or exigent circumstances, officers may not enter the residence to perform a visual inspection of the home environment or to communicate with the child. Normally an individual who has agreed to serve as a caregiver will permit an officer to enter the residence and, if necessary, allow a social worker or caseworker to also enter to converse with the child and the caregiver. When in the home, questions similar to those asked by phone can be posed to the caregiver and the child. Additionally, the officer will have a better opportunity to read the body language of involved parties, get a visual picture of the home environment, and even determine if the placement may be negatively affected by family crises. Social workers or caseworkers are in the best position to determine whether a family may be in crisis, based on such factors as the recent death of a close family member, financial

problems that would affect the ability to care for the child, indications of substance abuse, marital or domestic tensions/problems, frequent visits and "sleep overs" by different boyfriends or girlfriends, and major illnesses of the caregiver or immediate family members.

Follow-up with the caregiver and the child during the time frame immediately surrounding and following the arrest of the parent is essential. Longer-term follow-up may also be needed to ensure that the child and others involved in the situation, including the arrested parent, are receiving the support that is needed. A child may initially appear unaffected by the arrest, but later show increasing signs of trauma. Law enforcement agencies should work with partner organizations to provide ongoing information and assistance to these children and their families in an effort to minimize the lasting negative effects of the arrest.

Law enforcement agency policy must require that whenever an arrest is made, the existence of an arrestee's child, whether present or not, be noted in the arrest report along with related documentation that will allow the department and others to monitor the safety and well-being of the child.

H. Documentation

Law enforcement agency policy must require that whenever an arrest is made, the existence of an arrestee's child, whether present or not, be noted in the arrest report along with related documentation that will allow the department and others to monitor the safety and well-being of the child. A "check the box" report format will help ensure that officers have asked parents about their responsibility for any child. When a child of the arrestee is identified, the following types of information should be recorded:

- the identities and biographical information of any dependent child whether or not he or she was present at the arrest;
- any of the child's special needs such as medical or mental health conditions, physical impairments or limitations, allergies, or developmental disorders;
- the identities, addresses, and contact information for any actual or potential caregivers;
- the names and contact information of any involved representatives from partner organizations;
- the names and contact information of any adult contacted for notification purposes, such as school officials;
- the final placement determination for the child; and any information or observations that suggest the need for further investigation into the child's living conditions and general well-being, such as any indications of a household in crisis.

Simply collecting the data is not enough. Departments must aggregate and analyze the information and share the results both internally and with partner organizations as appropriate.

Model Policy

I. POLICY

It is the policy of this department that officers will be trained to identify and respond effectively to a child, present or not present, whose parent is arrested in order to help minimize potential trauma and support a child's physical safety and well-being following an arrest.

II. PURPOSE

The purpose of this policy is to establish new and enhance existing collaborations between this department, child welfare services (CWS), and other key partner organizations in order to minimize the potential trauma to a child whose parent is arrested. Whenever possible, the child should be diverted from official custody and be placed with a responsible caregiver. The primary goal of this policy is to minimize trauma experienced by the child who witnesses a parent's arrest and the separation caused by the arrest while maintaining the integrity of the arrest and the safety of officers, suspects, and other involved individuals.

III. DEFINITIONS

Child: Any unemancipated person under the age of 18, or as otherwise defined by state law, whether or not he or she is present at the arrest. (As used herein, "child" refers to both an individual child or multiple children.)

Parent: Any adult who is legally responsible for the well-being, supervision, and care of a child. In most cases, this individual is a biological or adoptive parent, or guardian.

Caregiver: A responsible adult selected to temporarily care for the child in situations where another individual with legal custody of the child is unavailable. In some cases, responsibility for the temporary care and supervision of a child may be delegated to a relative, neighbor, friend, or another adult, as they are willing and able.

Child Welfare Services (CWS): A public service agency, or its contractee, that has authority to assume responsibility for the care, welfare, and temporary supervision of a child pursuant to law.

Partner Organization: A group or agency with interests aligned with this department with regards to safeguarding a child from trauma when his or her parent is arrested. This may include, but is not necessarily limited to, CWS, probation/pretrial entities, victim advocates, corrections, medical/mental health services, schools, youth-serving organizations and faith-based programs.

Trauma: Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, mental, social, emotional, or spiritual well-being.[26]

Responsible Adult: An individual over 18 years of age who can pass a preliminary NCIC check and clear a child protection registry background check to ensure that he/she does not have any arrests

[26] Trauma Definition: Part One – Defining Trauma." Substance Abuse and Mental Health Services Administration. http://www.samhsa.gov/traumajustice/traumadefinition/definition.aspx

for founded cases of child abuse, sexual crimes, domestic violence, recent arrests for drug use or possession, or other violent felony violations.

IV. PROCEDURES

A. Chief Executive Responsibilities

1. Agency Coordination

a. This department shall have a cooperative agreement with CWS and partner organizations that can provide on-site and other assistance to law enforcement requests for assistance when a child's parent is arrested.

b. Regular meetings shall be held involving all partner organizations to review and evaluate the effectiveness of joint operational protocols and to make improvements where necessary.

c. The department's chief executive shall designate a liaison who is responsible for ensuring that follow-up is conducted to support the well-being of the child of an arrested parent.

d. Officers shall be provided with a list of agencies that have partnered under the cooperative agreement, along with contact information for each. These agencies may be contacted by the arresting officer, or another component of this department, when officers need assistance during the arrest of a parent.

2. Training

a. Officers of this department shall be trained to effectively communicate with the child using developmentally appropriate language during a parental arrest.

b. This department shall provide recruit training and routine in-service training on child development and the effects of trauma on the child so that officers can effectively support the well-being of a child of an arrested parent.

c. Training will be available to CWS staff and other partner organizations on the role, responsibilities, and protocols of law enforcement during arrest situations. Cross training will be provided to officers of this department by CWS staff and representatives of other partner organizations on their roles, responsibilities, and policies for a child when his or her parent is arrested.

B. Pre-Arrest Planning

1. Call takers at the emergency communications center (ECC) shall ask callers if a child is present at the scene.

2. If ECC determines that a child is present at the scene of a reported incident, responding officers shall be notified.

3. When service of an arrest or search warrant is planned

a. Where possible, officers shall determine whether any child is likely to be present at the location.

b. When reasonably possible, officers may delay an arrest until the child is not likely to be present (e.g., at school or daycare), or consider another time and place for making the arrest. If delay is not possible, arrangements should be made in advance to have representatives from CWS and/or appropriate partner organizations at the scene or on call.

4. When reasonably possible, officers shall determine if the arrestee and other family members are English-language proficient. If not, arrangements should be made to provide a translator. A parent should not be allowed to interpret for a child and a child should not be allowed to interpret for a parent.

C. Making an Arrest

1. General Procedures

   a. The officer shall inquire whether the arrestee is a parent of a child who would need arrangements for supervision because of the arrest. The inquiry shall include any child who may not be present at the time but who is expected to return home from school, a babysitter, a friend's home, or other location or activity.

   b. Adults may be reluctant to disclose the presence of or responsibility for a child for fear that they may lose custody. Therefore, when making an arrest, and when safe to do so, the officer shall be aware of any items in plain view that may indicate the presence of a child, such as toys, diapers, and similar items.

   c. If a parent is responsible for a child, whether or not the child is present, a determination regarding appropriate placement shall be made (see IV.D.).

2. When a Child is Present

   If a child is present, the officer shall

   a. Take custody of the child in accordance with state law when the officer reasonably believes there is a threat of imminent danger to the child.

   b. Make the arrest, whenever reasonable and prudent, including handcuffing and questioning, in a location away from the child's sight and hearing.

   c. Determine whether the arrestee will be permitted to speak with the child prior to being removed subsequent to the arrest.

   d. Not leave the scene of the arrest until the child is in the care of a caregiver

3. When a Child is Not Present

   a. When a child is not present, the officer shall ensure that appropriate arrangements are made, either through this department, CWS or a partner organization, to place the child with a caregiver.

   b. If the arrest occurs while the child is not present (e.g., at school or daycare), the officer should be prepared to discuss with the arrested parent how the child will be picked up and by whom.

D. Determining Appropriate Placement of a Child

1. The child should be placed with another parent if this individual is capable of assuming responsibility for and care of the child. If questions should arise concerning the capability or competency of the second parent, the officer should request assistance from a supervisor.

2. If another parent is not available, the arrested parent should be given a reasonable opportunity to select and contact a caregiver unless there is a compelling reason not to do so or the arrest is for child abuse or neglect.

3. A preliminary NCIC check and, when possible, check of CWS case files shall be conducted on the caregiver chosen by the parent as soon as reasonably possible. Any arrest for child abuse, sexual crimes, domestic violence, recent arrests for drug offenses, or other violent felonies shall disqualify the individual from taking custody of the child.

4. If possible, a secondary caregiver should also be identified.

5. If the parent is unable or unwilling to identify a caregiver, and other suitable arrangements cannot be secured within a reasonable period of time, the child shall be taken into the custody of CWS or another authorized partner organization.

E. Interacting with a Child

1. Where appropriate and safe, the parent should be given an opportunity to reassure the child and explain what is happening.
2. If the parent is unable to provide reassurance to the child, the officer shall provide an explanation to the child, in an age- and developmentally-appropriate manner. It should be emphasized that the child has done nothing wrong and will be safe.
3. When reasonably possible, the officer shall ask the parent about items or objects that provide particular comfort to the child, such as toys, clothing, blankets, photographs or food that can be taken with the child.
4. The officer shall ask the parent about any medical, behavioral, or psychological conditions and/or required treatments of the child that would become the responsibility of a caregiver.

F. Booking

1. The booking officer shall ask the arrestee if he or she is responsible for a child.
2. If the arrest creates an interruption in a child's supervision and care, the arrestee shall be given reasonable opportunities to make alternative arrangements for such care if appropriate arrangements have not already been ensured by the arresting officer, other components of this department or through partner organizations.
3. The name, address, and phone number of the caregiver shall be entered into the booking record.

G. Follow-Up

Follow-up should be performed wherever possible to ensure the continued safety and well-being of the child. The department liaison and/or the arresting officer shall work with partner organizations to determine the responsibility for and scope of follow-up.

H. Documentation

Whenever an arrest is made, the existence of a child, present or not, shall be noted in the arrest report and documentation shall include, at a minimum,

1. the identity and biographical information of the child involved, whether or not he or she was present at the arrest;
2. any of the child's special needs such as medical or mental health conditions, physical impairments or limitations, allergies, or developmental disorders;
3. the identities, addresses, and contact information for any actual or potential caregivers;
4. names and contact information of any representatives from partner organizations involved;
5. names and contact information of any adult contacted for notification purposes, such as school officials;
6. the final placement determination for the child; and
7. any information or observations that suggest the need for further investigation into the child's living conditions and general well-being, such as any indications of a household in crisis.

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