

## 1376 ARREST AND CUSTODIAL AUTHORITY

Chapter: **Juvenile Justice Field Services**

Section: **Authority Limitations**



New Hampshire Division for Children, Youth and Families Policy Manual

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Approved:

A handwritten signature in cursive script that reads "Lorraine Bartlett".

Lorraine Bartlett, DCYF Director

Related Statute(s): [RSA 169-A](#), [RSA 169-B](#), [RSA 169-C](#), [RSA 169-D](#), [RSA 170-G:16](#), [RSA 463](#), [RSA 594](#), and [RSA 627](#)

Related Admin Rule(s) and Protocols:

[DHHS Policy "Facilities and Security: Firearms and Illegal Weapons Prohibition" \(November 3, 2008\)](#)

Related Federal Regulation(s): [P.L. 93-415; 42 U.S.C. 5061](#)

Related Form(s): [FORM 1379](#)

Bridges' Screen(s) and Attachment(s):

The Division for Children, Youth, and Families (DCYF) is committed to professionalism in its delivery of juvenile probation and parole services. JJS recognizes its responsibility to promote the safety of youth, the community, and JJS staff when exercising their statutorily authorized arrest and custodial powers pursuant to RSA 170-G:16. Policy, training, and practice shall be focused on meeting these standards. JJS is committed to ensuring that all lawful and constitutional safeguards are afforded youth to which they are entitled.

### Purpose

This policy outlines the authority and defines the practice of JJS staff to arrest and take a youth into custody. This policy is to be used in conjunction with policies [1379 Use of Force](#), [1378 Use of Oleoresin Capsicum Spray](#), [1377 Handcuffing and Other Mechanical Restraints](#), and [1346 Search and Seizure](#).

### Definitions

**"Arrest"** means "the taking of a person into custody in order that he may be forthcoming to answer for the commission of a crime" [see: RSA 594:1, I; and [State v. Sampson, 125 NH 544 \(1984\)](#)].

**"Child in Need of Services"** or **"CHINS"** means a child/youth under the age of 18:

1. Who is subject to compulsory school attendance and habitually, willfully and without good and sufficient cause truant from school;
2. Who habitually runs away from home, or who repeatedly disregards the reasonable and lawful commands of his or her parent(s)/guardian/custodian, and places himself/herself or others in unsafe circumstances;
3. Who has exhibited willful repeated or habitual conduct constituting offenses which would be violations under the criminal code of this state if committed by an adult or, if committed by a person 16 years of age or older, would be violations under the motor vehicle code of this state; or
4. With a diagnosis of severe emotional, cognitive, or other mental health issues who engages in aggressive, fire setting, or sexualized behaviors that pose a danger to the child/youth or

others and who is otherwise unable or ineligible to receive services under RSA 169-B or RSA 169-C; and

5. Is expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment, or rehabilitation.

**“Custodial Authority”** means the statutory power of JJS staff to take a child into “protective custody” pursuant to: RSA 169-C:6, I; RSA 170-G16, IV; “temporary custody” pursuant to RSA 169-D:8, II; and the arrest authority of a JPPO provided by RSA 169-B:9, I.

**“Fugitive”** or **“Fugitive From Justice”** means a person who has concealed himself/herself or fled a given jurisdiction to avoid prosecution or confinement (see: *Dictionary of Criminal Justice Terms*, © 1998 American Correctional Association, p. 46).

**“Imminent Danger”** means “circumstances or surroundings causing immediate peril or risk to a child’s health or life” [see: RSA 169-C:3, XV].

**“Interstate Compact for Juveniles”** or **“ICJ”** means the interstate agreement, codified in NH as RSA 169-A, authorizing the supervision of adjudicated delinquents and status offenders on probation or parole; the return of juvenile runaways, escapees and absconders; and the rendition of juveniles charged as delinquents--from one state to another.

**“JJS Staff”** for the purpose of this policy, means a staff employed as a Juvenile Probation and Parole Officer (JPPO), Juvenile Probation and Parole Supervisor (JPPS), or Juvenile Justice Field Administrator.

**“Offense”** means a felony, misdemeanor, violation, or “status offense.” Felonies and misdemeanors are crimes; violations and status offenses are not crimes. (See: RSA 625:9, “Classification of Crimes;” and RSA 169-D:2, II, definition of “child in need of services.”)

**“Protective Custody”** means “the status of a child who has been taken into physical custody by a police officer or juvenile probation and parole officer because the child was in such circumstances or surroundings which presented an imminent danger to the child’s health or life and where there was not sufficient time to obtain a court order [see: RSA 169-C:3, XXIV].”

**“Take into Custody”** means the act of asserting control over a person under circumstances that lead the person to reasonably believe they are no longer free to leave [see: [State v. Riley, 126 NH 257 \(1985\)](#)].

**“Temporary Custody”** means the act of asserting control over a child for that period of time necessary to notify and return the child to a parent, guardian, or custodian (see: RSA 169-D:8, II; and RSA 169-D:10, I).

**“Violation of Conditional Release”** means engaging in prohibited conduct, or failing to perform a required action, as specified by the rules and terms of “conditional release.” The term is analogous to a “violation of probation” as such term is used in adult criminal proceedings, or in juvenile proceedings in other states. A “violation of conditional release” is not classified as a crime [see: [State v. Brackett, 122 NH 716 \(1982\)](#); and [Robert C. v. Baird, 129 NH 495 \(1987\)](#)].

**“Violation of Parole”** means engaging in prohibited conduct, or failing to perform a required action, as specified by the rules and terms of “parole.” A “violation of parole” is not classified as a crime [see: [State v. Brackett, 122 NH 716 \(1982\)](#); and [Robert C. v. Baird, 129 NH 495 \(1987\)](#)].

## Policy

- I. Authority and Limitations for Arrest and Custodial Actions:
  - A. The authority of JJS staff to arrest and take custody is established by the following:
    1. RSA 170-G:16, IV "Juvenile Probation and Parole Officers; Powers and Duties:" JJS staff may arrest and take into custody any youth:
      - (a) Who is found violating any law;
      - (b) Who is reasonably believed to be a fugitive from justice; or
      - (c) Whose circumstances are such as to endanger his/her person or welfare, unless immediate action is taken.
    2. RSA 169-B:9, I "Arrest or Taking Minor into Custody:" JJS staff may immediately arrest or take into custody any youth:
      - (a) Who is found violating the law except youth that fall under the statutory limitations described in section I-B:2, of this policy;
      - (b) Who is reasonably believed to be a fugitive from justice; or
      - (c) Whose circumstances are such as to endanger such youth's person or welfare, unless immediate action is taken.
    3. RSA 169-C:6, I "Protective Custody:" JJS staff maintain the statutory authority to take a youth into protective custody without the consent of the parents or other person legally responsible for the youth's care if:
      - (a) In the JJS staff's professional judgment, the youth is in such circumstances or surroundings as would present an imminent danger to the youth's health or life unless immediate action is taken; and
      - (b) There is not enough time to notify law enforcement or petition for a court order.
    4. RSA 169-A, "Interstate Compact on Juveniles (ICJ):" After the appropriate Interstate Compact authorities of both New Hampshire (sending state) and the receiving state have consulted and approved, JJS staff may enter a receiving state to:
      - (a) Apprehend and retake youth on conditional release or parole;
      - (b) Transport youth through any and all states party to the ICJ without interference; and
      - (c) Return youth to NH.
    5. RSA 169-D:8, II "Temporary Custody:" JJS staff may take a youth into temporary custody when:

- (a) There are reasonable grounds to believe that a youth has run away from his or her parents, guardian, or other custodian; or
- (b) The circumstances are such as to endanger the youth's health or welfare unless immediate action is taken.

6. RSA 594:11 "Judge's Order to Arrest" and RSA 594:12 "Duty to Obey:"

- (a) Upon view of a breach of the peace or other transgression of the law proper for his/her cognizance, or if necessary for the preservation of the peace, any justice of any court may command (by verbal warrant) any officer or other person to arrest, bring before the court and detain an offender until complaint can be made against the offender.
- (b) Every officer or person, upon receipt of such command shall arrest and detain the offender.
- (c) It is the province and duty of the judge alone to decide as to what constitutes an offense, and it makes no difference whether the arresting officer observes the commission of the offense or not [see: *Forrist v. Leavitt*, 52 N.H. 481 (1872)].

B. Arrest and custody by JJS staff is prohibited as follows:

- 1. Except as specified in A above, offenders whose age, offense, or legal status excludes them from juvenile proceedings must be immediately reported by JJS staff to the appropriate law enforcement agency for action.
- 2. Excluded from arrest or custodial authority by JJS staff are:
  - (a) Persons over 18 years of age for any offense or situation, including persons for whom the court has obtained or retained its juvenile jurisdiction beyond the age of majority pursuant to RSA 169-B:4, RSA 169-C:4, or RSA 169-D:3;
  - (b) Youth known to have been emancipated by another state--for any offense or situation (see: RSA 21-B:2);
  - (c) Youth known to have been tried and convicted as adults resulting from criminal proceedings pursuant to RSA 169-B:24, RSA 169-B:25, or RSA 169-B:26 (see: also RSA 169-B:27);
  - (d) Youth for "violation of parole" without the prior authority of the Juvenile Parole Board or commissioner of DHHS established by RSA 170-H:8 and RSA 621:25;
  - (e) Youth for "violation of conditional release" without a bench warrant or detention order from the court;
  - (f) Persons whose offense or situation is not subject to the jurisdiction of a NH state court, *e.g.* offenses committed in other states or in violation of federal law [**exception:** when the person is identified as a fugitive from justice pursuant to policy sections I-A:1, (b); or I-A:2, (b) above];

- (g) Persons who are found outside the boundaries of the State of New Hampshire [**exception:** when authorized pursuant to policy section I-A:4 above]; and
- (h) Persons who commit any offense excluded from juvenile jurisdiction by RSA 169-B:32 or RSA 169-D:22, specifically the following:
  - (1) A motor vehicle law by persons over 16 years of age (Title XXI);
  - (2) An aeronautics law (Title XXXIX);
  - (3) A law pertaining to navigation of boats (Title XXII);
  - (4) A fish and game law (Title XVIII);
  - (5) A law relating to alcoholic beverages (Title XIII);
  - (6) A law relating to fireworks (RSA 160-B or RSA 160-C);
  - (7) Any town or municipal ordinance; or
  - (8) Any law relating to the possession, sale, or distribution of tobacco products (RSA 78, RSA 126-K).

II. JJS staff must exercise arrest and custodial authority over youth consistent with the following:

- A. Identification: JJS staff must always identify himself/herself and display proper DHHS employee identification credentials, including badge and photo identification card, to the youth and any other persons present.
- B. Use of Force: JJS staff must abide by the provisions of policy [1379 Use of Force](#) and applicable state and federal laws when using force to effect arrest or other custodial actions.

III. Arrest and custodial authority, including the use of force, may only be exercised by JJS staff who have completed required training, instruction, and refresher courses.

IV. JJS staff may exercise arrest and custodial authority within the scope of their statutorily authorized powers and duties as established by RSA 170-G:16 in accordance with this policy. When JJS staff believes imminent safety concerns are present, they may request law enforcement agency support.

V. Equipment Use: Equipment used by JJS staff in the exercise of their arrest or custodial responsibilities is subject to the following requirements and limitations (See policies [1346 Search and Seizure](#) and [1378 Use of Oleoresin Capsicum Spray](#)):

- A. Weapons: JJS staff are prohibited from the use of firearms or other weapons in the exercise of their duties, with the exception of O.C. Spray as sanctioned by the Division;
- B. Restraints: Only handcuffs or restraining devices issued by DCYF and in proper working condition are to be utilized by JJS staff (the use of handcuffs or other restraining devices are subject to the provisions of policy [1377 Handcuffing and Other Mechanical Restraints](#)); and
- C. Vehicles: For the safety of all concerned, JJS staff shall arrange transportation in a state-owned vehicle or request the appropriate law enforcement agency to perform this function.

1. Under no circumstances should JJS staff transport a detained youth in a private vehicle;
2. In the circumstance JJS staff must transport detained youth in a state vehicle, JJS staff shall:
  - (a) Work in conjunction with another JJS staff and handcuff/restrain the youth as specified in policy [1377 Handcuffing and Other Mechanical Restraints](#);
  - (b) Further restrain the youth in the back seat of the transport vehicle using the vehicle's seat belts (both lap and shoulder belts when the vehicle is so equipped); and
  - (c) Have the assisting JJS staff shall sit directly behind the driver with the youth placed in the back seat with the seatbelt appropriately secured.

VI. JJS staff must document any deviations from this policy.

### **Procedures**

- I. General Procedures: JJS staff shall proceed as follows in the exercise of arrest or custodial authority over youth:
  - A. Identify himself/herself and display proper DHHS employee identification credentials, including badge and photo identification card, to the youth and any other persons present.
  - B. Notify the appropriate law enforcement agency at the earliest possible moment of any situation that may require a youth to be arrested or taken into immediate custody.
    1. The arrest or other custodial action shall be accomplished by a law enforcement officer acting upon the request of JJS staff whenever practicable; or
    2. In situations where law enforcement is not immediately available:
      - (a) JJS staff shall initiate arrest and/or other custodial actions;
      - (b) Obtain law enforcement assistance and transfer custody upon their arrival; and
      - (c) JJS staff who arrest, take protective custody, or take temporary custody of a youth shall complete and submit Form 1379 "Use of Force Report" on the incident.
- II. Arrest Procedures: JJS staff shall exercise arrest of a youth only under the belief that the arrest can be accomplished in a manner that is consistent with the safety of the public, the youth, and the JJS staff.
  - A. JJS staff may exercise arrest authority when:
    1. A youth has committed a delinquent act in the presence of JJS staff;
    2. A youth is known to be a fugitive from justice;

3. A law enforcement officer is not available or cannot respond in a timely manner; or
  4. A judge, pursuant to RSA 594:11 ("Judge's Order to Arrest") and RSA 594:12 ("Duty to Obey"), has ordered JJS staff to arrest.
- B. When arresting a youth, JJS staff must use only the amount of physical force necessary to detain and restrain the youth pursuant to training, instruction and policy [1379 Use of Force](#).
  - C. Consistent with policy [1377 Handcuffing and Other Mechanical Restraints](#), physical restraint of an arrested youth shall be exercised by JJS staff when necessary to protect the youth, JJS staff, and others from harm, or to prevent flight from custody.
  - D. Once a youth has been arrested and the area has been determined safe, JJS staff shall conduct an immediate search of the youth according to policy [1346 Search and Seizure](#).
    1. JJS staff unable to determine an area safe shall transport the youth from the immediate area and call 911 to request assistance from law enforcement. Upon arrival, the JJS staff shall inform the responding law enforcement personnel that the youth has not been searched.
    2. The use of prone restraint beyond the establishment of control is not authorized due to the potential to cause positional asphyxia. Youth in handcuffs, exposed to OC Spray, in custody and/or under arrest shall be immediately removed from a prone position after the establishment of control according to policy and training.
      - (a) "Positional Asphyxia" means the positioning of a person's body that restricts or interferes with their breathing leading to hypoxia, an inadequate amount of oxygen to meet the body's demand. Causes include: intense physical activity, drug or alcohol use, physical build, and environmental factors. Symptoms include: vomiting, loss of consciousness, labored breathing, going limp, and the inability to answer simple questions.
- III. Protective Custody Procedures: JJS staff maintain statutory authority to take youth into protective custody only when JJS staff believes that this can be accomplished in a manner that is consistent with the safety of the public, youth and JJS staff.
- A. JJS staff may take protective custody when:
    1. The youth's health or life is in imminent danger unless immediate action is taken;
    2. Law enforcement is not available; and
    3. There is not enough time to petition for a court order.
  - B. Immediately after taking a youth into protective custody, JJS staff shall:
    1. Call 911 to request the assistance of law enforcement;
    2. Transfer custody to the responding law enforcement; and
    3. Consistent with the Reporting Law requirements of the Child Protection Act (see: RSA 169-C:29 *et seq.*), report suspected abuse or neglect of the youth, and the actions

taken, to the DCYF Central Intake Unit [telephone: (603) 271-6556 or toll-free at 1-800-894-5533].

- C. JJS staff maintain custodial authority over a youth in protective custody and must continue to assess safety during the time a youth is in protective custody.
  - 1. JJS staff shall not securely detain any youth taken into protective custody pursuant to RSA 169-C:6, VII; and
  - 2. Unobtrusive searches of the youth are authorized only when deemed necessary and as a safety precaution.
  
- IV. Temporary Custody Procedures: JJS staff may take youth into temporary custody only when JJS staff believes that this can be accomplished in a manner that is consistent with the safety of the public, the youth and the JJS staff.
  - A. JJS staff may take temporary custody of a youth when:
    - 1. There are reasonable grounds for JJS staff to believe the youth has run away from his/her parent(s), guardian or other custodian; or
    - 2. The circumstances are such as to endanger the youth's health or welfare unless immediate action is taken; and
    - 3. A law enforcement officer is not available or cannot respond in a timely manner.
  - B. When taking a youth into temporary custody, JJS staff shall use only that amount of physical force necessary to detain and restrain the youth pursuant to training, instruction and policy [1379 Use of Force](#).
  - C. Consistent with policy [1377 Handcuffing and Other Mechanical Restraints](#), restraint of a youth taken into temporary custody is exercised by JJS staff when necessary to protect JJS staff, the youth, and others from harm, or to prevent flight from custody by the youth.
  - D. Once a youth has been taken into temporary custody and the area has been determined safe, JJS staff shall conduct an immediate search of the youth according to policy [1346 Search and Seizure](#).
    - 1. JJS staff unable to determine an area safe shall transport the youth from the immediate area and call 911 to request assistance from law enforcement.
    - 2. Upon arrival, the JJS staff shall inform the responding law enforcement personnel that the youth has not been searched.
  - E. The use of prone restraint beyond the establishment of control is not authorized due to the potential to cause positional asphyxia. Youth in custody shall be immediately removed from a prone position after the establishment of control according to policy and training.
    - 1. "Positional Asphyxia" means the positioning of a person's body that restricts or interferes with their breathing leading to hypoxia, an inadequate amount of oxygen to meet the body's demand. Causes include: intense physical activity, drug or alcohol use, physical build, and environmental factors. Symptoms include: vomiting, loss of

consciousness, labored breathing, going limp, and the inability to answer simple questions.

### **Practice Guidance**

#### **What are the options after a youth has been arrested or taken into temporary custody?**

- For arrest situations, JJS staff in consultation with their supervisor and the involved law enforcement agency, may recommend the filing of a juvenile petition by the law enforcement agency or prosecutor in the appropriate district or family division court. JJS staff may subsequently appear in court when required to provide necessary testimony, reports and recommendations.
  
- Following temporary custody actions and notification to law enforcement, JJS staff must immediately:
  - Release the youth to the custody of the law enforcement agency; or
  - Release the youth to the custody and control of the youth's parent(s), guardian, or custodian; and
  - If JJS staff is unable to release the youth to an appropriate law enforcement agency, and the youth's parent(s), guardian or custodian is not readily available for release of the youth, JJS staff must notify the court who shall determine the release of the youth prior to an initial court appearance. (see: RSA 169-D:10, I).