15-01 - Warrantless Detention of Children

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services, (323) 890-5411

WARRANTLESS DETENTION OF CHILDREN

Field personnel must recognize that removing children from their home, parents' custody, or guardians' custody is a serious matter and must be done with the individual child's safety as the main priority. Personnel must be familiar with the laws related to removing children from their home, parents' custody, or guardians' custody without a warrant when they are in **imminent danger**.

Welfare and Institutions Code (WIC) section 305 states in part:

"Any peace officer may, without a warrant, take into temporary custody a minor:

(a) When the officer has reasonable cause for believing that the minor is a person described in section 300, and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety."

Children may be removed from their home, parents' custody, or guardians' custody under three circumstances:

- Consent from parents to detain child;
- Exigency to detain; or
- Warrant.

Field personnel must ask and consider the following questions when determining if exigent circumstances exist:

- Is there an immediate threat of serious physical harm?
- Is there an immediate threat of sexual abuse?
- Is there an immediate threat of physical abuse?
- Is there an immediate need for medical care for a serious medical condition? or
- Does the physical environment pose an immediate risk to the child's health or safety?

A child being homeless does not necessarily create exigency to remove the child. Deputies must be able to articulate why the homelessness is causing an immediate threat.

What does "immediate" mean?

Will the child likely be seriously harmed in one of the ways previously stated during the time it will take to get a warrant? In other words, field personnel must act immediately, if not, the child will be seriously harmed if field personnel leave to obtain a warrant. Field personnel may take into account the time it would take to prepare, obtain, and execute the warrant.

Field personnel must also consider the suspect's criminal history, especially any prior sexual or physical abuse, when determining to remove any child.

What if there are multiple children?

If field personnel determine there is reasonable cause to remove a child from their home, parents' custody, or guardians' custody for the child's safety and there are other children in the home, parents' custody, or guardians' custody, a thorough investigation must be conducted regarding each child. Field personnel must determine the reasonable cause specific to each individual child for the child to be removed. Simply having reasonable cause to remove one child for his or her safety does not give field personnel the authority to remove other children, such as siblings, from their home, parents' custody, or guardians' custody. These facts and all aspects of the investigation, including an explanation of the immediate threat or danger to each particular child's health or safety, must be thoroughly detailed in the incident or supplemental reports.

Special Victims Bureau detectives can help direct and provide assistance to field personnel regarding their investigation; however, field personnel must ultimately determine if they have exigency as defined in WIC

section 305 to remove each child for their safety, absent consent, or a warrant. Field personnel shall document all facts in their initial incident report related to their decision to remove any child.

If field personnel have questions regarding the removal of children from their home, parents' custody, or guardians' custody without a warrant, they should call Special Victims Bureau and speak with a detective for advice. A detectives from Special Victims Bureau may be reached, during normal business hours, at (562)946-7960. After hours, a detective from Special Victims Bureau may be reached through the Department's Operation Center (DOC), at (323)980-2101.

Information regarding the content of this newsletter may be directed to Special Victims Bureau, at (562) 946-7960, or Field Operations Support Services, at (323) 890-5411.

References

Welfare and Institutions Code section 305

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