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MEMO TO: Kevin Ott; Andy Morgan
Grand Rapids Police Department

All Itasca County Law Enforcement

FROM: John Kempe, Assistant County Attorney
Jake Fauchald, Assistant County Attorney

RE: Recent issues raised by Grand Rapids Police Department regarding juveniles
DATE: August 16, 2022

Officers Ott and Morgan,

The County Attorney's Office was made aware that you seek input and resources related to the Police Department's role with investigations/searches at occurring at area schools as well as the circumstances under which law enforcement should exercise a detention hold on juveniles who reside in area foster homes/treatment facilities. John Kempe and I met with both of you at the Grand Rapids Police Department on August 9, 2022 to further discuss these issues. During the meeting we discussed factors that justify a juvenile detention hold, the duty that foster homes have to enforce their own household rules/discipline, and the differing standards employed by the courts when scrutinizing in-school investigations conducted by school staff vs. law enforcement. You additionally proposed that we attempt to begin a dialogue between school officials, school-resource officers, and the county attorney's office so that all parties have a better understanding of their respective roles in the context of school disciplinary issues and criminal investigations occurring at the schools.

WHEN TO EXERCISE HOLD VERSUS WHEN TO CITE AND RELEASE

Being that Grand Rapids is home to multiple juvenile treatment facilities and foster care residencies, GRPD receive many calls for service when a juvenile at one of these facilities acts

out. For this reason, it is important to determine the extent to which law enforcement can/should take action in these situations. The applicable rules dictate that a juvenile *should not* be detained unless there are compelling reasons to do so.

FIRST: Law enforcement have “broad discretion” to release the juvenile before a detention hearing if less restrictive measures will be “adequate” to ensure public safety and the welfare of the child.¹

- The rules grant law enforcement the ability to “cite and release” juvenile suspects who are suspected of breaking the law.
- Because Minnesota law requires that a juvenile suspect must remain in the “least restrictive setting”, cite and release should always be the first consideration.²
- Foster care and treatment facilities should be reminded that because there is a presumption that the juvenile should remain released, that the facility itself may need to take appropriate action to isolate/discipline the juvenile to prevent further misbehavior.

SECOND: The applicable rules recognize a handful of factors that law enforcement must identify before taking a juvenile into custody.³

- A juvenile can be detained if it is determined that:
 - They will endanger themselves or others;
 - They will not appear for a court hearing;
 - They will not remain in care or control of foster care/facility;
 - Their health or welfare is in immediate danger.
- Additional factors that weigh in favor of detention include:
 - Juvenile is being charged with arson, assault, criminal sexual assault, or prostitution;
 - Juvenile is accused of a “presumptive commit” felony or a felony involving use of a firearm;
 - Juvenile already has other pending felony charges;
 - Juvenile has prior delinquency adjudications and has received out-of-home placement as a result;
 - Juvenile has a history of failing to appear or is a fugitive from another jurisdiction.

¹ Minn. R. Juv. Del. P. 5.03 subd. 3

² Minn. Stat. §260B.181 subd. 2

³ Minn. R. Juv. Del. P. 5.03 subd. 1, subd. 2

- EVEN IF MULTIPLE FACTORS ARE PRESENT, LAW ENFORCEMENT STILL HAVE DISCRETION TO CITE AND RELEASE (if appropriate under the totality of circumstances)⁴
 - If an officer believes that the foster home or treatment facility has the ability to adequately address the underlying concerns regarding a particular juvenile, the juvenile should remain released even over the objection of the foster home/treatment facility.

THIRD: Focus on the immediate allegations when deciding whether to detain and charge.

- When considering whether to detain and/or request charges against a particular juvenile, focus on the alleged conduct at hand, not prior unreported incidents of “bad behavior”.
 - Foster care residencies and treatment facilities often cite to past unreported incidents regarding a juvenile when trying to justify a charging decision or the removal of the juvenile from the facility.
 - As with any criminal investigation, law enforcement should primarily focus and base their decisions on the immediate allegations rather than past, unproven incidents of misconduct.

FOURTH: Other considerations.

- If there is a disagreement between law enforcement and a foster care residence or a treatment facility regarding a particular juvenile individual, consider getting the social worker in charge of the juvenile’s placement involved.
 - If a social worker is involved, they are primarily responsible for the ongoing placement of the juvenile.
 - In other cases, a parent or guardian may have placed the child there, in which case the parent/guardian could be contacted
 - If the foster care residence or treatment facility says that they do not want a particular juvenile to reside there in the future, that issue should be dealt with between the facility and the social worker/parent/guardian.

⁴ Minn. R. Juv. Del. P. 5.03 subd. 3

- Law enforcement has the authority to detain a juvenile but must do so on an individualized basis, taking into consideration the factors above and choosing the least restrictive placement.

INVESTIGATIONS AND SEARCHES AT SCHOOL

GRPD explains that law enforcement, particularly school resource officers, have been asked by area schools to take an increasingly active role in student disciplinary matters. We were told that that school officials have gone so far as to request that law enforcement essentially fill-in during the temporary absence of an assistant principal to address disciplinary concerns that might arise within the school. It is important for law enforcement and school officials alike to know that Minnesota law draws a distinct line between the standards applicable when school officials conduct an investigation at school versus when law enforcement get involved.

Because the law favors and even empowers schools to conduct investigations and searches “in-house”, law enforcement should carefully consider whether their intervention is truly beneficial, or even necessary.⁵

FIRST: School officials, including teachers, need only “reasonable suspicion” to search and interview students at the school whereas law enforcement must demonstrate the higher standard of “probable cause” to take the same actions.⁶

- Minnesota law creates a relaxed standard for school officials related to the level of suspicion necessary before they can interview and search students at the school.
- To properly utilize this law, school officials should be encouraged to gather as much information as they can on the front-end before law enforcement get involved.
- The preliminary information communicated to law enforcement by school officials can be used to support a finding that probable cause to suspect that a crime has been committed exists.

⁵ See *New Jersey v. T.L.O.*, 105 S. Ct. 733 (1985); *Carson v. Cook*, 810 F.2d 188 (8th Cir. 1987)

⁶ See *Thomas v. Barze, Mills, and City of Minneapolis*, 57 F. Supp.3d 1040 (D. Minn. 2014)

- Searches by law enforcement requiring probable cause could include looking through a student's backpack, notebooks, binder or locker, or accessing the contents of a student's cell phone or school-issued laptop

SECOND: Minnesota courts have increasingly applied the more stringent probable cause standard when both law enforcement and school officials are present during searches and investigations at school.

- Minnesota appellate court decisions indicate that they are more likely to find that probable cause must first be established if law enforcement are going to get involved in a search or interview.⁷
 - In the context of an interview of a student, a law enforcement officer's mere presence can trigger the application of the probable cause standard, even if school officials do most of the questioning.
 - In the context of a search, the assistance of law enforcement in any way could also trigger the application of the probable cause standard.
- Any evidence gathered during the search or interview of a student which involves the active participation of law enforcement could be deemed INADMISSABLE if probable cause is not first established.

THIRD: When law enforcement do get involved in the interview of a student suspected of committing a crime, a rights advisory (*Miranda*) should be given and the interview should be recorded.

- Because the courts are increasingly likely to differentiate encounters between school officials and students from encounters between law enforcement and students at school, it is necessary for law enforcement to treat these encounters in ways that are similar to adult custodial interrogations.
 - Interviews conducted solely by a school resource officer in a closed office is highly likely to be construed as a "custodial interrogation", thus implicating additional protections for the student
 - Interviews conducted by school officials in open areas, with a school resource officer merely observing, are not as likely to implicate additional protections for the student

⁷ See *In re Welfare of T.J.C.*, 662 N.W.2d 175 (Minn. Ct. App. 2003); *In re Welfare of G.S.P.*, 610 N.W.2d 651 (Minn. Ct. App. 2000)

- Interviews of students which are either conducted entirely by law enforcement AND interviews in which law enforcement is present and interjects questions should be audio recorded and the student should be informed of his/her right to have their parent present during the interview
- Law enforcement must exercise discretion in determining when a particular encounter with a student may produce evidence related to a possible crime
 - If it is anticipated that such evidence may arise, be prepared to properly document the encounter and collect the relevant evidence for use in court proceedings.
 - In any circumstance, a student's statement is much more likely to be admissible for court-related purposes if an advisory is given and the statement is recorded

s/Jake Fauchald

s/John Kempe

cc: Matti Adam, County Attorney

Mike Haig, Chief Assistant County Attorney