

## 1.15 HANDLING JUVENILES



# HANDLING JUVENILES

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Chief Nathan C. Hagglund			

## I. GENERAL CONSIDERATIONS AND GUIDELINES

It is generally recognized that juveniles who engage in anti-social conduct present different problems to society than adults who engage in similar activity. The juvenile offender is often not yet hardened and may be more easily influenced to conduct themselves within the law if handled in a different manner than an adult. There is no question that the attitude and actions of the police can have a considerable impact upon the first offender that may be a frightened youngster at the time of their arrest. How an individual is treated during an incident involving the police at a young age can make a lasting impression. At the same time, personnel must remember that a juvenile criminal can be just as dangerous as any adult.

By the nature of their duties, the police should be familiar with conditions in the community which breed juvenile delinquency. As a preventive measure, personnel should frequently check places and buildings that have been particularly prone to juvenile delinquent behavior and question juveniles found in suspicious situations. Energetic patrol, impressing the fact of a consistent police presence, can be a most effective deterrent. Cooperation with other public and private agencies can be of assistance in deterring and controlling juvenile delinquency.

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Police personnel play a very important part in the juvenile justice system, particularly working together with court officials when processing juvenile cases. Patience, understanding, and firmness are necessary for the system to operate effectively. Personnel should be aware that constitutional rights are not lost by virtue of one's age. Indeed, juveniles' merit greater protection, especially in the areas of questioning and waiver of rights.

### **II. POLICY**

Juveniles shall be afforded their constitutional and statutory rights when being questioned, searched, detained, or arrested and shall not be detained at the police station for any longer than necessary. **[44.2.2(2-C)]**

Personnel shall, whenever reasonable and justified under this policy, take those measures necessary to effect positive change in juvenile offenders that are consistent with Massachusetts law and the safety and security interests of the community. The department is committed to the development and perpetuation of programs to prevent and control juvenile delinquency. **[44.1.1]**

### **III. DEFINITIONS**

### **IV. PROCEDURES**

#### **ADMINISTRATION**

The Chief of Police shall designate a School Resource Officer to have the primary responsibility for juvenile operations, however, it is the responsibility of all department personnel to support and assist in juvenile operations as needed.

#### **SCHOOL LIAISON AND YOUTH PROGRAMS [44.1.1] [42.2.4]**

The Chief of Police may establish and/or maintain a school liaison program and appoint one or more personnel to do the following:

1. Act as a resource with respect to delinquency prevention;
2. Provide guidance on ethical issues in a classroom setting, as requested;

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3. Provide individual counseling and/or mentoring to students; and
4. Explain to students the participation of law enforcement in society.

The department encourages all departmental personnel to participate in community recreational programs for youths when practical. Where a recreational program is needed but does not exist, personnel should work with or encourage citizens and community leaders to organize one. **[42.2.5]**

### **ENFORCEMENT ALTERNATIVES [41.4.4] [44.2.1]**

Personnel dealing with juveniles in enforcement capacities may exercise reasonable discretion in deciding appropriate action. Personnel shall use the least coercive and most reasonable alternative, consistent with preserving public safety, order and individual liberty. Massachusetts General Law provides the following guidance:

1. Under Age 12: Presumed incapable of committing a crime (M.G.L. Chapter 119, § 62).
2. Age 12 to Age 14: A summons is the preferred method on bringing a juvenile to court (M.G.L. Chapter 119, § 54).
3. Warrant: A warrant will issue if the court has reason to believe the child will not appear upon a summons or if the child has been summoned and did not appear (M.G.L. Chapter 119, § 54).

Alternatives available include the following:

1. Release with no further action or following informal counseling when no arrest has been made. Personnel may turn the juvenile over to his/her parent or guardian when appropriate;
2. Informal referral to an appropriate community social service agency;
3. Formal referral to the Youth Diversion program; **[41.4.6]**
4. Issue a citation or applying for a hearing, summons or complaint;
5. Arrest.

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In considering a course of action, the officer shall consider the nature of the offense, the age of the juvenile, the juvenile's prior contacts with the police, the availability of community-based rehabilitation programs, and, in some cases, the recommendation of the complainant or victim.

**[41.4.5] [44.2.1]**

### **STATUS OFFENDERS [44.2.2(2-A)(3-A,B,C)]**

A status offense is an offense committed by a juvenile that would not be a crime if committed by an adult. This includes a "Child Requiring Assistance", runaways, truants, youth curfew violations, and protective custody situations. Status offense violators that are taken into custody shall be handled according to the guidelines below and shall not go through the booking process. If a status offender is at the police station, they shall be placed in the public interview room, accompanied by an officer with the door open. This area will be clear of any confidential information including CJIS and IMC Reports.

### **CHILD REQUIRING ASSISTANCE (CRA)**

A child between the ages of 6 and 18 whom:

1. Repeatedly runs away from the home of the child's parent, legal guardian or custodian;
2. Repeatedly fails to obey the lawful and reasonable commands of the child's parent, legal guardian or custodian, thereby interfering with their ability to adequately care for and protect the child;
3. Repeatedly fails to obey the lawful and reasonable regulations of the child's school; or
4. Is habitually truant.

### **PROTECTIVE CUSTODY WARRANT**

A judge may order a Warrant of Protective Custody after the child fails to respond to a summons issued for the preliminary hearing. The warrant is similar to a Warrant of Apprehension and is to be served in the same manner. Therefore, the child must be delivered when the court is open and before 4:30 pm.

When an officer takes a child into custody upon the execution of a Warrant of Protective Custody, the officer shall immediately bring the child to the Clerk's Office and shall file the return of service.

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### **CHILD TAKEN INTO "CUSTODIAL PROTECTION" BY POLICE [44.2.2(D)]**

In accordance with M.G.L., Chapter 119, § 39h, a child may be taken into custodial protection for engaging in the behavior described in the definition of "Child Requiring Assistance" only if,

1. The child has failed to obey a summons; or
2. The law enforcement officer initiating such custodial protection has probable cause to believe that such child has run away from the home of his parents or guardian and will not respond to a summons.

When a child is taken into custodial protection, the officer shall ensure that the child's parent, guardian, or other person legally responsible for the child's care is immediately notified. Notification must be made to DCF if the child is in their custody.

The officer on shift, **in consultation with the probation officer**, shall then immediately make all reasonable diversion efforts so that such child is delivered to the following types of placements, **and in the following order of preference**:

1. To one of the child's parents, or to the child's guardian or other responsible person known to the child, or to the child's legal custodian including DCF or the child's foster home; or
2. Forthwith and with all reasonable speed take the child directly to a temporary shelter facility licensed or approved by the department of early education and care, a shelter home approved by a temporary shelter facility licensed or approved by said department of early education and care or a family foster care home approved by a placement agency licensed or approved by said department of early education and care; or
3. Officer should contact Juvenile Probation Officer prior to taking the child directly to the juvenile court. Officer should provide the reason to take the child into custodial protection occurred **if the officer affirms on the record** that the officer attempted to exercise the options identified in clauses 1 and 2, was unable to exercise these options and the reasons for such inability.

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### **A CHILD IN POLICE CUSTODY**

When a child is taken into custody by police, whether by a **Warrant of Protective Custody or Custodial Protection**, the child:

1. May not be confined in shackles or similar restraints or in a court lockup facility in connection with any proceedings under sections 39E to 39I, inclusive;
2. Shall not be placed in a locked facility or a facility designated or operated for juveniles who are alleged to be delinquent or who have been adjudicated delinquent;
3. May be placed in a facility, which operates as a group home to provide therapeutic care for juveniles, regardless of whether juveniles adjudicated delinquent are also provided care in such facility; and
4. If necessary, be taken to a medical facility for treatment or observation.
5. May not be strip searched or body cavity **[41.4.2(E)]**

### **DELINQUENT OFFENDERS**

A delinquent offender is a juvenile between the ages of **twelve (12) and eighteen (18)** violates any Town By-Law or who commits any offence against a law of the Commonwealth (M.G.L., Chapter 119, § 52).

A juvenile charged with delinquency offenses shall not be held in a police lockup or otherwise securely detained for **any longer than six (6) hours**.

### **JUVENILE ARREST [44.2.2(2-C,D,E)]**

When a juvenile is placed under arrest the on duty officer must ensure that immediately notification is made to the juvenile's parent/guardian and Juvenile Probation. Juvenile Probation will decide whether to "**release**" or "**hold**" the juvenile based on the juvenile's criminal history, the current charge(s), and the circumstances of the arrest.

**Release:** The juvenile will be released to a parent, guardian, relative, or other reasonable adult who will ensure the juvenile's appearance at court on the designated date and time. The adult taking custody of a juvenile must be approved by Juvenile Probation.

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**Hold:** Juveniles are constitutionally afforded the right to bail even when juvenile probation directs the department to hold the juvenile. Therefore, in this event, the Bail Commissioner must be contacted to decide on bail.

### **SECURE DETENTION**

Detention refers to being physically detained or confined in a locked room, set of rooms, or a cell that is designated for the purpose of securely detaining persons who are in law enforcement custody. Secure detention can result from either being placed in such a room and/or from being physically secured to a stationary object such as a cuffing rail.

Juveniles under the age of fourteen (14) cannot be securely detained.

Juvenile's who are age fourteen (14) and up to age eighteen (18) that are securely detained in police custody must be separated by sight and sound from adults in custody. If placed in a cell, the cell must be an approved juvenile cell.

A juvenile should only be held long enough to complete the identification and booking process, release the juvenile to his/her parent/guardian, and/or transport the juvenile to court or to an appropriate alternative lockup program (ALP).

### **JUVENILE UNABLE TO MAKE BAIL**

In determining how to handle a juvenile who is unable to make bail depends on the juvenile's most significant charge. This will determine whether the juvenile will be transferred to a Secure or Non-Secure Alternative Lockup Program. This applies to juveniles who are age fourteen (14) and up to age eighteen (18).

#### **Non-Violent Offenders**

1. Status Offenders cannot be securely detained for any amount of time.
2. Upon completion of the booking process, the department's non-secure ALP facility must be contacted to make the necessary arrangements to transfer custody.

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### **Serious Violent Offenders**

1. May be securely detained or held in an approved juvenile cell for no longer than six (6) hours.
2. Must be held sight and sound separate from adult detainees.
3. Contact your department's regional Secure-ALP facility if the "hold" is expected to last longer than six (6) hours, in order to make arrangements to transfer custody.

### **Default Warrant**

1. When a juvenile is arrested on a Default Warrant, the original charge is used to determine if the juvenile is to be treated as a Status Offender/Non-Violent Offender or Serious Violent Offender.

**NOTE:** A juvenile charged with a minor delinquency offense who has a known history of prior arrests, violence or running from placements may be placed in a Secure ALP if deemed necessary by the non-Secure ALP for the protection of the client or other non-Secure ALP residents.

### **CUSTODIAL INTERROGATION OF MINORS [44.2.3(1-A)]**

For a general review of the standards and procedures to be followed when conducting a custodial interrogation see the departmental policy and procedure on **Interrogating Suspects**. It should be remembered that the Miranda rules apply to juveniles. In addition, the police must also follow the special rules that apply to the interrogation of juveniles and ensure that their constitutional rights are protected. **[44.2.2(2-C)]**

**Under Age Fourteen (14):** No waiver of rights by a juvenile under age fourteen will be valid if an interested adult is not present, understands the warnings and has a meaningful opportunity to consult with the juvenile.<sup>1</sup>

**Fourteen (14) Years of Older:** For juveniles who are at least fourteen but under age eighteen, there should ordinarily be a meaningful opportunity to consult with a parent or interested adult. If there are valid, substantial reasons why an interested adult is not present, personnel should ensure, before interrogating the juvenile, that he/she understands the Miranda warnings and the consequences of waiving

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them and that any waiver of their rights is made intelligently, knowingly, and voluntarily. A valid waiver will not occur unless the circumstance "demonstrates a high degree of intelligence, experience, knowledge or sophistication on the part of the juvenile".<sup>2</sup>

**Eighteen Years of Age:** If the suspect is eighteen years of age at the time of the offense, he/she is considered an adult in the criminal justice system. Thus for Miranda purposes, the special protections afforded to juveniles do not apply.<sup>3</sup>

**Interested Adult Rule:** In order to obtain a knowing and intelligent waiver by a juvenile, in most cases a parent or interested adult must be present, understand the warnings and have a meaningful opportunity to consult with the juvenile. When the parent is unavailable, another interested adult may be called upon, such as a legal guardian, an adult brother or sister over the age of eighteen (18), grandparent, or other adult relative or an attorney. **[42.2.3(a)]**

A person would not qualify as an interested adult if the adult:

1. Lacks the capacity to appreciate the juvenile's situation (e.g., is intoxicated);
2. Appears to be antagonistic to the juvenile; or
3. Is required to report the juvenile's offenses to authorities (e.g., an employee of the Department of Youth Services, or a school official in the case of a weapons violation on school grounds).<sup>4</sup>
4. A person under the age of eighteen will not satisfy the interested adult rule.<sup>5</sup>

**Opportunity to Consult:** The interrogating officer should explain to the adult that the two of them will be left alone to provide them an opportunity to discuss the juvenile's rights. Then the adult and juvenile must be provided an actual opportunity to discuss the juvenile's rights and the consequences of the waiver.

### **INTERROGATION [44.2.3(1-A)]**

Prior to conducting a custodial interrogation of a juvenile, the interrogating officer shall be particularly careful to read each Miranda right distinctly, clearly and in a manner designed to ensure that the juvenile (and any adult present on his/her behalf) follows the words being spoken and comprehends their meaning.

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Preferably, a written version of the Miranda warnings should be used. The written version should be handed to the juvenile (and any adult present on his/her behalf) so that the juvenile can read it slowly and re-read it if necessary.

When an adult acting on behalf of the juvenile is present, the officer shall read the Miranda warnings to the adult.

Some inquiries should be made of the juvenile (and any adult present on his/her behalf) as to the juvenile's age, most recent level of schooling and education, whether he/she has any reading disabilities or mental or emotional conditions and whether he/she understands the words contained in each Miranda warning.

Personnel shall ensure that the interrogation is not unduly coercive, particularly when an interested adult is not present.

1. The duration of each interrogation session should be limited, and frequent breaks taken.
2. Only two personnel should be present at the interrogation.

**NOTE:** Massachusetts courts have not ruled on how long the interrogation session of a juvenile may continue before it becomes unduly coercive. Whether an interrogation is unduly coercive such that a valid waiver of rights cannot be made, is a facts and circumstances inquiry and will be dependent on the age, intelligence, and sophistication of the juvenile, as well as the circumstances of the interrogation.<sup>6</sup>

**Reports:** Included in the arrest record will be the time in which each period of interrogation was commenced and completed, the personnel present and the names of parents or responsible adults on hand.

### **ABUSED OR NEGLECTED CHILDREN [42.2.2(2-B)]**

A police officer who, in his/her professional capacity, has reasonable cause to believe a child under age 18 is suffering serious physical or emotional injury or death from abuse or neglect, including sexual abuse or malnutrition, shall report such condition to the Department of Children and Families (DCF) in accordance with the mandated reporting laws.

Juveniles may be taken into custody in situations where the officer believes that the life or health of the child is in immediate danger. In such cases, the DCF shall be immediately contacted and requested to respond to the scene to take custody of the juvenile. If DCF does not

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respond to the scene in a reasonable amount of time, the juvenile may be transported to the station to await DCF.

In serious cases of child neglect or abuse, the officer may apply to an appropriate juvenile court to have custody of a child under eighteen taken away from the parents or other neglectful or abusing custodian and have custody transferred, on an emergency basis, to DCF or a licensed childcare agency or individual.<sup>7</sup>

### **RECORD KEEPING**

Personnel who select non-custodial alternatives or engage in informal enforcement contacts with juveniles shall complete appropriate field interview and/or incident reports as required by this department. These reports shall clearly identify the juveniles involved, the nature of the incident and the rationale for the officer's disposition. Copies of all such reports shall be forwarded to the School Liaison Officer for follow-up.

#### **[82.2.4]**

Juveniles taken into custody for criminal offenses shall be subject to the same reporting requirements as adults. Such records, including photographs and fingerprints, shall be clearly marked "Juvenile" and will be separated from adult arrest records. Copies of all such reports shall be forwarded to the School Resource Officer who will keep a log of all juvenile arrests. **[82.1.2(1-A,2,3)][82.2.4][82.3.4]**

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<sup>1</sup> *Com. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

<sup>2</sup> *Com. v. King*, seventeen Mass. App. Ct. 602, 460 N.E.2d 1299, *rev. den.* 391 Mass. 1105, 464 N.E.2d 73 (1984)

<sup>3</sup> *Com. v. Carey*, 407 Mass. 528, 554 N.E.2d 1199 (1990)

*Com. v. A Juvenile*, 389 Mass. 128, 449 N.E.2d 654 (1983); *Com. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

<sup>4</sup> *Com. v. Guyton*, 405 Mass. 497, 541 N.E.2d 1006 (1989)

<sup>5</sup> *See Com. v. Harris*, 364 Mass. 236, 303 N.E.2d 115 (1973)

<sup>6</sup> M.G.L. c. 119, s. 51B

<sup>7</sup> M.G.L. c. 119, s. 24