

# MALDEN POLICE DEPARTMENT HANDLING JUVENILES

Massachusetts police accreditation standards referenced:  
[1.2.6](#); [44.1.1](#); [44.2.1 a, b, c](#); [44.2.2 a, b, c, d, e](#); [44.2.3 a, b](#); [44.2.4](#); [82.1.2 a, b](#)

**General Order**  
 -----  
**Policy Number**  
**008**

Effective Date:

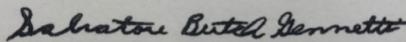
**01/31/2022**

Revised Date:

**Total Pages: 23**

## ISSUING AUTHORITY

Police Commissioner



**Salvatore "Butch" Gennetti**



## I. GENERAL CONSIDERATIONS AND GUIDELINES

It is generally recognized that juveniles ( $\geq 12$  and  $< 18$  years of age) who engage in anti-social conduct present different problems to society than do adults who engage in similar types of activities. There is, therefore, a modification of police procedures in handling juvenile offenders who come in contact with the police. This special procedure is based on the concept that the juvenile offender is often not yet hardened and may be more easily influenced to conduct himself/herself within the confines of the law. There is no question that the attitude and actions of the police can have considerable impact upon the first offender who is often times a frightened youngster at the time of their initial arrest which may be their first contact with law enforcement. How [s]he is treated at that specific time by the police can absolutely have a lasting impression as it pertains to the police and the criminal justice system in general. At the same time, it must always be remembered that the so-called "hardened" juvenile arrestee can be just as dangerous as any adult.

Although the police are not expected to be social workers, they must have an understanding of the social and psychological factors which contribute to juvenile misbehavior and crime. By the nature of their duties and responsibilities, the police should be familiar with any undesirable conditions in the community which tend to have the capacity to breed juvenile delinquency. The prevention of juvenile crime has a high priority and any success in this regard can pay large dividends to the community as a whole and to its young people. [44.1.1](#)

As a preventive measure, officers should frequently check those areas, places and buildings that have been particularly prone to juvenile delinquent behavior and conduct field encounters of all juveniles found in suspicious situations. Energetic and proactive patrol, impressing the fact of a consistent police presence, can be a most effective deterrent to juvenile delinquency. The members of the Malden Police Department, both sworn and non-sworn, should also cooperate and collaborate actively with all other agencies, public or private, that can be of assistance in deterring and controlling juvenile delinquency.

Police officers play a very important part in the Juvenile Justice System. Patience, understanding, compassion and when necessary firmness, together with close cooperation with court officials in the processing of juvenile cases, are necessary for the system to operate most effectively and efficiently.

Police officers should be aware that one's constitutional rights are never lost by virtue of one's age. Indeed, juveniles merit greater protection, especially in the areas of custodial questioning and the initiation of a waiver of their rights.

The State Legislature has rescinded the law formerly referred to as CHINS (Children in Need of Services) and replaced it with numerous provisions concerning Children Requiring Assistance. Rather than arresting certain young persons, the police may place them in "custodial protection" but not handcuff, shackle or even bring them to the police station. Until the legislature or a court clarifies certain provisions of the new law, the department will do its best to interpret and comply with the spirit of the legislation, which is clearly aimed at further separating certain so-called "status offenders" from the stigmatizing effects of certain aspects of the criminal justice system.

## II. POLICY

A. It shall be the policy of the Malden Police Department that:

1. Juveniles shall be afforded their constitutional and statutory rights when being questioned, searched, detained or arrested; [44.2.2 c](#)
2. Juvenile offenders shall not be detained at the Malden Police Department for longer than reasonably necessary;
3. Children Requiring Assistance shall be provided custodial protection and other required services where this can be done safely;
4. Officers 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;

5. The Department shall be committed to the development and perpetuation of programs to prevent and control juvenile delinquency; [44.1.1](#)
6. The Department shall implement all the suggested guidelines as promulgated by the Massachusetts Peace Officer Standards and Training Commission on June 30, 2021 titled “*Guidance on Developmentally Appropriate De-escalation and Disengagement Tactics, Techniques and Procedures and Other Alternatives to the Use of Force for Minor Children*” and incorporated in this policy in Section IV (C-F).

### III. DEFINITIONS

A. ***Child Requiring Assistance (CRA)*** Behavior: a child at least 6 years old, but not yet 18 who:

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. Is sexually exploited by anyone. [44.2.2](#)

***Child Requiring Assistance (CRA)*** School: a child at least age 6, but not yet 16 who:

4. Repeatedly fails to obey the lawful and reasonable regulations of the child’s school; or
5. Is habitually truant.

B. ***"Delinquent child"*** : a child at least 12 but less than 18 years of age who commits any offense against a law of the commonwealth; provided, however, that such offense shall not include:

- a civil infraction,
- a violation of any municipal ordinance or town by-law,
- or a first offense of a misdemeanor
  - for which the punishment is a fine, imprisonment in a jail or house of correction for not more than 6 months or both such fine and imprisonment.<sup>1</sup>

- **Important Note:**

- The previous definition of a *"Delinquent child"* was much broader. Previously it was defined as a child between the ages of seven (7) and

eighteen (18) who violates any city ordinance or town by-law or who commits any offense against a law of the commonwealth.

- The *New Age of Criminal Responsibility* has been increased from 7 to 12 years of age.
- In addition the new statute states in pertinent part that juveniles shall not be found delinquent in juvenile court for any misdemeanor for which the first offense is punishable by less than 6 months in the House of Correction.
- With that in mind, there is nothing in this newly modified definition of a “*Delinquent Child*” under Chapter 119 Section 52 that specifically precludes police officers from making an arrest under certain circumstances such as:
  1. when specifically authorized by statute based on “probable cause”;
  2. when specifically authorized by statute when the violation occurs in the presence of a police officer; or
  3. when the violation takes place in the presence of a police officer in which said violation amounts to an ongoing or prospective breach of the peace.
- Therefore, arrests of juveniles for certain types of misdemeanors which carry a penalty for less than six months include:
  - Indecent Exposure c. 272 § 53,
  - Disorderly Conduct c. 272 § 53,
  - Disturbing the Peace c. 272 § 53,
  - Minor Transporting Alcohol c. 138 § 34C,
  - Operating with a Suspended License c. 90 § 23,
  - Shoplifting c. 266 § 30A,
  - Threats c. 275 § 4,
  - Driving without a license c. 90 § 10,
  - Breaking and Entry to Commit a Misdemeanor c. 266 § 16A, or
  - Making Annoying/Harassing Phone Calls c. 269 § 14A.
- Until such time as the state legislature provides additional clarity and guidance on this complicated issue, beyond that outlined in the 2019 Wallace W Decision, the preferred response whenever possible for a violation of these listed enumerated offenses is to avoid making an arrest whenever possible. However, when circumstances warrant, such as to quell an ongoing breach of the peace and an arrest becomes the only viable option and there is no reasonable alternative available, officers of this department shall continue to be authorized to make such an arrest if any of the 3 conditions above exist.

- Recently, in the case of Commonwealth v Wallace (2019), the SJC concluded that the amendment to § 52 of Chapter 119 was plainly designed to give juveniles a so-called “*second chance*” with regard to a “first offense of a misdemeanor” that carries a maximum punishment of six months' imprisonment or a fine. In other words, the Legislature intended to excuse a juvenile's first isolated instance of such misconduct. This means that the Juvenile Court may not exercise jurisdiction where the juvenile's first-offense is one such misdemeanor. However, once a juvenile has committed his/her “first offense,” the Juvenile Court may exercise jurisdiction over all other offenses not otherwise excluded under § 52, including subsequent six months or less misdemeanors. The SJC further concluded that, consistent with the purpose of the statute and the rule of lenity, the term “first offense” under § 52 means a first adjudication of delinquency and not just one where a complaint was issued and the case was resolved short of adjudication (e.g., dismissed, diverted, continued without a finding, etc.).
- Further, by way of logistical implication in procedure outlined by the SJC for determining the “first-offense” misdemeanor in the Wallace W. decision, Police Officers shall retain the Right of Arrest for any “*first offense misdemeanor*” specifically allowable by existing statutes – whether in presence or on probable cause - in furtherance with this procedure as outlined by the SJC.
- If an arrest is made a Clerk Magistrate and/or District Court Judge shall continue to make such a determination in the juvenile session of the district court prior to arraignment as to whether or not a complaint shall issue.
- Note: Individual police departments are advised to consult with their local city/town counsel for additional guidance on this particular issue in consultation with the local District Attorney and the local Juvenile Court Justice.

C. ***Youthful Offender***: A person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen (14) and eighteen (18), an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed a felony which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine; provided that, nothing in this clause shall allow for less than the imposition of the mandatory commitment periods provided in section fifty-eight of chapter one hundred and nineteen.<sup>2</sup>

*D.* **Non-Offenses:** Children held in protective custody because they were found present where controlled substances are kept pursuant to G.L. c. 94C § 36, or are incapacitated due to intoxication pursuant to G.L. c. 111B § 8.

*E.* **Non-Secure Custody:** A condition under which a juvenile's freedom of movement is controlled by members of the Malden Police Department and, during such time, the juvenile: **44.2.2 a**

1. If a status offender is held in an unlocked, multi-purpose room that is in no way designed for residential use; e.g. Room 123 (Interview Room). The juvenile shall be monitored and under the supervision of the arresting officer or an assisting officer;
2. Is not handcuffed to any stationary object;
3. Is held only long enough to complete identification, investigation and processing and then released to a parent or guardian or transferred to a juvenile facility or the court; and
4. Is under continuous supervision until released.

*F.* **Secure Custody:** A condition under which a juvenile's freedom of movement is controlled by being placed in a cell or locked room (or set of rooms) or being handcuffed to a stationary object.<sup>3</sup>

*G.* **Custodial Protection:** A term used but not defined in several parts of MGL c. 119, referring to actions resembling Non-Secure Custody, above, but without handcuffing, restraining or even transporting the young person to a police facility.

*H.* **Age of Criminal Responsibility:** The age of Criminal Responsibility shall now be 12 years of age.<sup>4</sup>

*I* **Restraints:** a device that limits voluntary physical movement of an individual, including leg irons and shackles, which have been approved by the trial court department.<sup>5</sup>

## **IV. PROCEDURE / POST COMMISSION GUIDANCE**

### **A. Administration**

1. The responsibility for participating in and supporting the department's juvenile operations is shared by all department components and personnel.  
**44.1.1**

## B. Enforcement Alternatives 1.2.6, 44.2.1, 1.2.6

1. Officers dealing with juveniles in enforcement capacities may exercise reasonable discretion in deciding appropriate action. Officers shall use the least coercive and most reasonable alternative, consistent with preserving public safety, order and individual liberty. **44.2.1 a**
2. Whenever reasonable and possible, an officer will request a summons for a juvenile rather than taking him/her into custody. **44.2.1 b**
3. Alternatives available include the following:
  - a. Release with no further action or following informal counseling when no arrest has been made. Officers may also turn the juvenile over to his/her parent or guardian when appropriate; **44.2.1 a**
  - b. Informal referral to an appropriate community social service agency;
  - c. Limited custody and station house warning. The juvenile shall be held in non-secure custody until released to his/her parent(s) or guardian;
  - d. Issue a citation or applying for a summons or complaint; and
  - e. Arrest when appropriate and authorized.
4. Criteria When Choosing an Alternative
  - a. 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.
  - b. **Note:** No arrests are authorized in cases involving *Children Requiring Assistance*.

**Note:** Sections (C) through (F) that immediately follow come directly from the ***Official Guidance*** offered from the Massachusetts ***Peace Officer Standards and Training Commission*** "***Guidance on Developmentally Appropriate De-escalation and Disengagement Tactics, Techniques and Procedures and Other Alternatives to the Use of Force for Minor Children***".

## C. DE-ESCALATION & DISENGAGEMENT<sup>1</sup>

1. When appropriate, safe, and feasible in determining how to respond to minor children, Law Enforcement Officers should use de-escalation strategies in an attempt to problem solve and provide alternatives to arrest.
  
2. Law Enforcement Officers should consider all approved diversion options and select the alternative which least restricts the minor child's freedom and provides an alternative compatible with the best interests of the minor child and the community. When interacting with minor children, Law Enforcement Officers should make every reasonable effort to prevent an incident from escalating.

---

<sup>1</sup> The Municipal Police Training Committee (MPTC) in their current lesson plan, *Police Response to Mental Illness and Emotional Disturbances*, defines de-escalation as an “interactive process where the goal is to guide an individual to a calmer state of mind and to get to solution-based thinking. De-escalation refers to establishing and maintaining control of a situation in order to increase the safety of all and to build rapport with a person in order to increase cooperation.” This concept of de-escalation is embedded in the MPTC’s current Use of Force and Integrating Communications, Assessment and Tactics (ICAT)<sup>i</sup> curricula. It is generally understood that de-escalation techniques require Law Enforcement Officers to make a shift away from transactional, “quick resolution” tactics and slow down their interactions to build rapport and provide support to an emotionally dysregulated individual.

3. Any Law Enforcement Officer involved in a situation with a minor child should remain calm, engage the minor child in dialogue, and attempt to gain cooperation and trust from the minor child whenever safe and feasible.
4. When appropriate and feasible, Law Enforcement Officers should approach a minor child in a manner that is slower and more deliberate than a Law Enforcement Officer would approach an adult, in order to begin a process of de-escalation and to encourage and promote mutual cooperation and trust.
5. Law Enforcement Officers should attempt to engage the minor child in conversation, explain their role as peacekeeper, and encourage the minor child to partner with the officer in keeping the peace and managing the situation by using the timing, language, and physical bearing that is least likely to escalate the minor child's response.
6. Law Enforcement Officers' attempts to keep the peace should provide the minor child with the opportunity to understand and comply with their instructions, encourage questions and provide answers, and minimize the likelihood for confrontation by engaging in and facilitating non-threatening dialogue.
7. When it is safe and feasible, Law Enforcement Officers should adopt a calm, collaborative, respectful, and firm demeanor with minors to prevent a fight, flight or freeze response, slow down the interaction, and de-escalation the situation.
8. When interacting with a minor child, Law Enforcement Officers should explain the interaction in an age or developmentally appropriate manner, use developmentally appropriate language, maintain a non-threatening demeanor, and treat the minor child with courtesy, professionalism, dignity, respect, and equality.
9. When interacting with a minor child, officers should avoid tactics that are demeaning or likely to humiliate the minor child.

#### **D. EDUCATION & TRAINING**

1. Training of Law Enforcement Officers should address child and adolescent development, brain development, and trauma informed, age-appropriate, and culturally relevant tactics to prevent escalation of Law Enforcement Officer-minor child interactions. Training should include, but is not limited to:
  - a. Implicit and explicit bias training to address racial, age-based, gender, cultural, linguistic, and economic bias and the disproportionate impact of such biases on minor children of color;
  - b. Trauma training that includes strategies for effective, trauma-informed responses to minor child behavior. Training should provide a basic understanding of emotional and/or traumatic stress presentation in minor children;
  - c. Scenario based training involving interactions with minor children;

d. Training should include special considerations that officers should take when encountering special populations including minor children suffering from cognitive/and or mental health issues, minor children under the influence of substances, minor children with disabilities, and minor children for whom English is not a first language; and

e. Training in communication, stabilization, and crisis intervention strategies and techniques. Strategies/techniques should encompass:

- active, reflective, and empathic listening;
  
- rapport building;

- affect management; and
  
- crisis negotiation and response.

2. Law Enforcement Agencies should develop specific academy training on how to interact and engage with minor children. Academy training should include the following as it relates to minor children:

- Conflict resolution and problem solving;
- Alternatives to arrest; and
- Impact of child development and trauma on minor children's ability to process, take directives, and respond to Law Enforcement Officers.

## **E. TRAUMA**



1. Law Enforcement Agencies should encourage and provide resources for Law Enforcement Officers of all ranks to establish community relationships through non-enforcement interactions among Law Enforcement Officers, minor children, and other community members.
  
2. Law Enforcement Agencies should make identified community resources for minor children available and accessible to Law Enforcement Officers.
  
3. Law Enforcement Agencies should periodically review and update procedures for effective Law Enforcement Officer-minor child interactions that include effective communication strategies for children.
  
4. Law Enforcement Agencies should support initiatives that increase positive Law Enforcement Officer-minor child interactions and

engagement in communities that increase community trust in Law Enforcement Officers.

**G. Referral to Juvenile Court (or Juvenile Session of the District Court) 44.2.1 c**

1. While an officer should recognize the unique and often sensitive nature of juvenile contact, [s]he should not be deterred from properly enforcing the law when required to do so. A decision to arrest should be based on the same legal considerations as the arrest of an adult.
2. Officers may arrest juveniles for acts of delinquency but not for traditional “status offenses”. **44.2.2 a**
3. Arrested juveniles are subject to the same security and other transportation requirements as adults and may be handcuffed or otherwise restrained as necessary during transport and processing. See departmental policy on Transporting Prisoners. Children Requiring Assistance may not be handcuffed, shackled or even transported to the police station. **44.2.2 a**
4. When an arrest is made, the juvenile shall be brought to the booking room without significant delay. **44.2.2 d**
5. Pursuant to Chapter 119 Section 67(a), Whenever a child between 12 and 18 years of age is arrested with or without a warrant, as provided by law, and the court or courts having jurisdiction over the offense are not in session, the officer in charge shall immediately notify at least 1 of the child's parents, or, if there is no parent, the guardian or custodian with whom the child resides or if the child is in the custody and care of the department, the department of children and families. Pending such notice, such child shall be detained pursuant to subsection (c) of Chapter 119 Section 67 [section 7 below].<sup>6</sup> **44.2.2 e**
6. Pursuant to Chapter 119 Section 67(b), Upon the acceptance by the officer in charge of the police station or town lockup of the written promise of the parent, guardian, custodian or representative of the department of children and families to be responsible for the presence of the child in court at the time and place when the child is ordered to appear, the child shall be released to the person giving such promise; provided, however, that if the supervisor of the arresting officer requests in writing that a child between 14 and 18 years of age be detained, and if the court issuing a warrant for the arrest of a child between 14 and 18 years of age directs in the warrant that the child shall be held in safekeeping pending the child's appearance

in court, the child shall be detained in a police station, town lockup, a place of temporary custody commonly referred to as a detention home of the department of youth services or any other home approved by the department of youth services pending the child's appearance in court; provided further, that in the event any child is so detained, the officer in charge of the police station or town lockup shall notify the parents, guardian, custodian or representative of the department of children and families of the detention of the child. Nothing contained in this section shall prevent the admitting of such child to bail in accordance with law. <sup>7</sup>

**44.2.2 c**

7. Pursuant to Chapter 119 Section 67(c), no child between 14 and 18 years of age shall be detained in a police station or town lockup pursuant to subsections (a) or (b) [5 and 6 above] unless the detention facilities for children at the police station or town lockup have received the approval in writing of the commissioner of youth services. The department of youth services shall make inspection at least annually of police stations and town lockups where children are detained. If no approved detention facility exists in a city or town, the city or town may contract with an adjacent city or town for the use of approved detention facilities to prevent children who are detained from coming in contact with adult prisoners. A separate and distinct place shall be provided in police stations, town lockups or places of detention for such children. Nothing in this section shall permit a child between 14 and 18 years of age to be detained in a jail or house of correction.<sup>8</sup>
8. Pursuant to Chapter 119 Section 67(d), When a child is arrested who is in the care and custody of the department of children and families, the officer in charge of the police station or town lockup where the child has been taken shall immediately contact the department's emergency hotline and notify the on-call worker of the child's arrest. The on-call worker shall notify the social worker assigned to the child's case who shall make arrangement for the child's release as soon as practicable if it has been determined that the child will not be detained.<sup>9</sup>
9. Juveniles arrested for criminal type offenses are subject to the same booking procedures as adults. Juveniles taken into custody for status offenses or for non-criminal offenses as well as Children Requiring Assistance that are placed in custodial protection shall not be fingerprinted or photographed.<sup>10</sup> **44.2.2 c, 82.1.2 b**
10. The arresting officer and the prosecutor should cooperate in the preparation and presentation of the case if court action is necessary.

11. Any police proceeding involving juveniles or Children Requiring Assistance shall be treated in a confidential manner.

## **H. Holding Juveniles**

### **1. Delinquent Offenders**

- a. Juveniles between ages fourteen and eighteen accused of delinquent offenses may be held in secure custody for no longer than six (6) hours for the purpose of identifying and processing the juvenile and, if appropriate, transportation to a juvenile facility or court.<sup>11</sup>
  - i. Records shall be kept that specify:
    - [a] The time the juvenile entered secure detention and the duration of each period of secure detention;
    - [b] The name of the police officer or custodial officer responsible for visual supervision and the schedule of visual supervision; and
    - [c] A statement of the need for secure detention.

NOTE: Juveniles accused of first or second degree murder or who will be tried in adult court as a youthful offender are not subject to the six hour detention limit as they are automatically tried in adult court.<sup>12</sup>

- b. No child between the ages of fourteen and eighteen shall be detained in a police department unless the detention facilities for children have received the written approval of the Commissioner of Youth Services.<sup>13</sup>
- c. Lockup and other detention facilities shall be such as prevent juveniles who are detained from coming in sight and sound contact with adult prisoners.<sup>14</sup>
- d. No child under age fourteen shall be placed in a cell or otherwise securely detained for any reason. Such child may be held in a safe environment pending suitable disposition. **44.2.2 d**

### **2. Protective Custody { Where Drugs are found }**

- a. Status offenders and juveniles held for protective custody shall not be held in secure custody.
- b. A child under the age of eighteen may be taken into protective custody, for a period not exceeding four (4) hours, if an officer:
  - i. Finds the child at a place where the officer reasonably believes there is a controlled substance of Class A, B or C;
  - ii. Reasonably believes the child to be under age eighteen; and
  - iii. Reasonably believes the child knew of the presence of the controlled substance.<sup>15</sup>

Note: The Officer in Charge of the police station shall make every reasonable effort to notify the juvenile's parent or guardian or other person having lawful custody. Under these circumstances, the juvenile shall NOT be placed in a secure cell or restrained in any way.

### 3. **Children Requiring Assistance**

- a. Children Requiring Assistance shall not be held in secure custody.
- b. A child may be taken into custodial protection for engaging in behavior described in the definition of "Child Requiring Assistance" in Section 21, only if such child has failed to obey a summons issued pursuant to MGL c. 119 § 39E or if 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.
- c. A parent, legal guardian or custodian of a child having custody of such child, may initiate an application for assistance in one of said courts stating that said child repeatedly runs away from home of said parent or guardian or repeatedly refused to obey the lawful and reasonable commands of said parent or guardian resulting in said parent's or guardian's inability to adequately care for and protect said child.
- d. A school district may initiate an application for assistance in said court stating that said child is not excused from attendance in accordance with the lawful and reasonable regulations of such child's school, has willfully failed to attend school for more than 8

school days in a quarter or repeatedly fails to obey the lawful and reasonable regulations of the child's school. The application for assistance shall also state whether or not the child and the child's family have participated in the truancy prevention program, if one is available, and a statement of the specific steps taken under the truancy prevention program to prevent the child's truancy; and if the application of assistance states that a child has repeatedly failed to obey the lawful and reasonable regulations of the school, a statement of the specific steps taken by the school to improve the child's conduct.

- e. Upon the filing of an application for assistance, the court may issue a summons, to which a copy of the application for assistance shall be attached, requiring the child named in such application to appear before said court at the time set forth in the summons. If such child fails to obey the summons, said Court may issue a warrant reciting the substance of the petition and requiring the officer to whom it is directed forthwith to take and bring such child before said Court. Notice of the hearing shall be given to the Department of Children and Families and the Department of Youth Services.
- f. Where the Court summons such child, the court shall in addition issue a summons to both parents of the child, if both parents are known to reside in the Commonwealth, or to one parent if only one is known to reside within the Commonwealth, or, if there is no parent residing in the Commonwealth, then to the parent having custody or to the lawful guardian of such child. Said summons shall require the person served to appear at a time and place stated therein at a hearing to determine whether or not such child is in need of assistance.
- g. Unless service of the summons required by this section is waived in writing, such summons shall be served by the constable or police officer, either by delivering it personally to the person to whom addressed or by leaving it with a person of proper age to receive the same, at the place of residence or business of such person, and said constable or police officer shall immediately make return to the court of the time and manner of service.
- h. A child who is the subject of an application for assistance may not be confined in shackles or similar restraints or in a court lockup facility in connection with any proceeding under Sections 39E to 39I, inclusive. A child who is the subject of an application for assistance shall not be placed in a locked facility or any facility designated or operated for juveniles who are alleged to be

delinquent or who have adjudicated delinquent. Such child may, however, 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.

- i. A child may not be arrested for engaging in behavior which constitutes being a Child Requiring Assistance.
  
- j. After a law enforcement officer has taken a child into custodial protection, the officer shall immediately notify the parent, other person legally responsible for the child's care or the person with whom the child is domiciled, that such child is under the custodial protection of the officer and a representative of the Department of Children and Families, if the law enforcement officer has reason to believe that the child is or has been in the care of custody of such department and shall inquire into the case.
  
- k. The law enforcement officer, 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:
  - (i) 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 the Department of Children and Families or the child's foster home upon written promise, without surety, of the person to whose custody the child is released that such parent, guardian, person or custodian will bring the child to the Court on the next court date:
  - (ii) Forthwith and with all reasonable speed take the child directly and without first being taken to the police station house, 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
  - (iii) Take the child directly to the juvenile court in which the act providing 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 (i) and (ii), was unable to exercise these options and the reasons for such inability.

Notwithstanding the foregoing requirement for placement, any such child who is taken into custodial protection shall, if necessary, be taken to a medical facility for treatment or observation.

4. When juveniles are detained by the Malden Police Department the juvenile, parent or guardian shall be informed by the Officer-in-Charge about the department's juvenile procedures regarding custody and release to a parent or guardian. The officer will also inform the juvenile/parent/guardian about juvenile justice system procedures regarding transportation to another facility, or court procedures as applicable. [44.2.3 a](#)

## **I. Custodial Interrogation of Minors**

1. For a general review of the standards and procedures to be followed when conducting custodial interrogation see the departmental policy and procedure on Interrogating Suspects and Arrestees. It should be remembered that the Miranda Rules apply to juveniles.
2. In addition, the police must also follow the special rules that apply to the interrogation of juveniles. [44.2.2 c](#)
  - a. **"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. Before initiating an interrogation, the juvenile's parent, legal guardian, or other interested adult (including an attorney) should be present.<sup>16</sup> [44.2.3 b](#)
    - i. **UNDER AGE FOURTEEN**: No waiver of rights by a juvenile who is 12 years of age or older and 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>17</sup>
    - ii. **FOURTEEN YEARS OR 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, officers should ensure, before interrogating the juvenile, that [s]he understands the Miranda warnings and the consequences of

waiving them and that any waiver of his/her 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>18</sup>

- b. INTERESTED ADULT EXPLAINED: An interested adult is, most often, a parent of the juvenile. When the parent is unavailable, another interested adult may be called upon, such as, depending on the circumstances, a legal guardian, an adult brother or sister, grandparent, or other adult relative or an attorney.
  - i. A person would not qualify as an interested adult if the adult:
    - [a] Lacks the capacity to appreciate the juvenile's situation (e.g., is intoxicated);
    - [b] Appears to be actually antagonistic to the juvenile; or
    - [c] 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>19</sup>
- c. 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.

### 3. **Interrogation 44.2.3**

- 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.
- b. Preferably, a written card containing the Miranda warnings should be used. This card 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.

- c. When an adult acting on behalf of the juvenile is present, the officer shall read the Miranda warnings to the adult.
  - d. Some inquiries shall 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 [s]he has any reading disabilities or mental or emotional conditions and whether [s]he understands the words contained in each Miranda warning.
  - e. **UNDER FOURTEEN:** If the juvenile being interrogated is twelve years of age or older and under the age of fourteen, he/she must be given an opportunity to have an actual consultation with an interested adult to discuss the Miranda warnings.<sup>20</sup>
  - f. **AGE 14 TO 18:** If the juvenile is over the age of fourteen and an interested adult is present, the adult shall be given an opportunity to have a meaningful consultation with the juvenile.<sup>21</sup>
4. Officers shall ensure that the interrogation is not unduly coercive, particularly when an interested adult is not present. **44.2.3 b**
- a. The duration of each interrogation session should be limited and frequent breaks taken.
  - b. Absent extraordinary circumstances, only two officers shall 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>22</sup>

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

**J. Abused or Neglected Children 44.2.2 b**

1. 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 immediately report such condition to the Department of Children and Family Services (DCF) by oral communication, followed by

a written report within 48 hours of the oral communication.<sup>23</sup> Said report shall contain the following information:

- a. The names and addresses of the child and parents or other person responsible for the child's care, if known;
  - b. The child's age;
  - c. The child's sex;
  - d. The nature and extent of the child's injuries, abuse, maltreatment or neglect;
  - e. The circumstances under which the officer first became aware of the child's condition;
  - f. The action taken, if any, to treat, shelter or otherwise assist the child;
  - g. The name of the officer making the report;
  - h. Any other information which the officer believes may be helpful in establishing the cause of the injuries; and
  - i. The identity, if known, of the person or persons responsible for such injuries.
2. 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 Department of Children and Family Services (DCF) shall be immediately contacted and requested to respond to the scene to take custody of the juvenile.<sup>24</sup> If DCF does not respond to the scene in a reasonable amount of time, the juvenile may be transported to the station to await DCF.
  3. 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 child care agency or individual.<sup>25</sup>

## **K. School Liaison and Youth Programs**

1. The Chief of Police may establish and/or maintain a school liaison program and appoint one or more officers to do the following: [44.2.4](#)

- a. Act as a resource with respect to delinquency prevention; **41.1.1**
  - b. Provide guidance on ethical issues in a classroom setting, as requested;
  - c. Provide individual counseling and/or mentoring to students; and
  - d. Explain to students the role of law enforcement in society.
2. The Department encourages all departmental personnel, as good citizens, to participate on their off-duty time, in any community recreational programs for youth. Where a recreational program is needed but does not exist, officers should encourage citizens and community leaders to organize one. **42.2.5**

## **L. Record Keeping**

1. Officers who select noncustodial alternatives or engage in informal enforcement contacts with juveniles shall complete appropriate incident reports as required by this agency. These reports shall clearly identify the juveniles involved, the nature of the incident and the rationale for the officer's disposition.
3. Juveniles taken into custody for criminal-type offenses shall be subject to the same reporting requirements as adults. Such records, including photographs and fingerprints, shall be clearly marked "Juvenile". Dissemination of juvenile records shall be consistent with existing MGL and Public Records Dissemination Guide. **82.1.2 a, b**

## **M. New State Statutes of Interest pertaining to Juveniles:**

### **Chapter 138 Section 1:**

"*Alcohol-related incapacitation*", the condition of an intoxicated person who, by reason of the consumption of intoxicating liquor, is: (a) unconscious; (b) in need of medical attention; or (c) likely to suffer or cause physical harm or damage property.

### **Chapter 138 Section 34E.**

(a) A person under 21 years of age who, in good faith, seeks medical assistance for someone experiencing alcohol-related incapacitation shall not be charged or prosecuted under sections 34, 34A or 34C if the evidence for the charge of purchase or possession of alcohol was gained as a result of seeking medical assistance.

(b) A person under 21 years of age who experiences alcohol-related incapacitation and is in need of medical assistance and, in good faith, seeks such medical assistance or is the subject of such a good faith request for medical assistance shall not be charged or prosecuted under sections 34, 34A or 34C if the evidence for the charge of purchase or possession of alcohol was gained as a result of seeking medical assistance.

**Chapter 272 Section 40:**

Whoever willfully interrupts or disturbs an assembly of people meeting for a lawful purpose shall be punished by imprisonment for not more than 1 month or by a fine of not more than \$50; provided, however, that an elementary or secondary student shall not be adjudged a delinquent child for an alleged violation of this section for such conduct within school buildings or on school grounds or in the course of school-related events.

**Chapter 272 Section 53:**

(b) Disorderly persons and disturbers of the peace shall, for a first offense, be punished by a fine of not more than \$150. For a second or subsequent offense, disorderly persons and disturbers of the peace shall be punished by imprisonment in a jail or house of correction for not more than 6 months or by a fine of not more than \$200 or by both such fine and imprisonment; provided, however, that an elementary or secondary school student shall not be adjudged a delinquent child for a violation of this subsection for such conduct within school buildings or on school grounds or in the course of school-related events.

**Endnotes:**

---

<sup>1</sup> M.G.L. c. 119, s. 52

<sup>2</sup> M.G.L. c. 119, s. 52

<sup>3</sup> 28 CFR Part 31.303 (i)

<sup>4</sup> M.G.L. c. 119, s. 54

<sup>5</sup> M.G.L. c. 119, s. 86

<sup>6</sup> M.G.L. c. 119, s. 67(a)

<sup>7</sup> M.G.L. c. 119, s. 67(b)

<sup>8</sup> M.G.L. c. 119, s. 67(c)

<sup>9</sup> M.G.L. c. 119, s. 67(d)

<sup>10</sup> M.G.L. c. 263, s. 1A; Com. v. Shippis, 399 Mass. 820, 507 N.E.2d 671 (1987)

<sup>11</sup> Executive Order Number 339, Commonwealth of Massachusetts, Aug. 14, 1992; 28 CFR Part 31.303(f)(5)(iv)(H)

<sup>12</sup> M.G.L. c. 119, s. 68

<sup>13</sup> M.G.L. c. 119, s. 67

<sup>14</sup> M.G.L. c. 119, s. 67

<sup>15</sup> M.G.L. c. 94C, s. 36

---

<sup>16</sup> Com. v. A Juvenile, 389 Mass. 128, 449 N.E.2d 654 (1983)

<sup>17</sup> Com. v. Berry, 410 Mass. 31, 570 N.E.2d 1004 (1991)

<sup>18</sup> Com. v. King, 17 Mass. App. Ct. 602, 460 N.E.2d 1299, rev. den. 391 Mass. 1105, 464 N.E.2d 73 (1984)

<sup>19</sup> 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>20</sup> Com. v. Berry, 410 Mass. 31, 570 N.E.2d 1004 (1991)

<sup>21</sup> Id.

<sup>22</sup> See Com. v. Harris, 364 Mass. 236, 303 N.E.2d 115 (1973)

<sup>23</sup> M.G.L. c. 119, s. 51A

<sup>24</sup> M.G.L. c. 119, s. 51B

<sup>25</sup> M.G.L. c. 119, s. 24