



Guideline development sponsored by
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POLICE INTERVENTION **WITH JUVENILES¹**

Issued December 10, 2013
1st Revision September 11, 2014
2nd Revision October 25, 2017
3rd Revision December 12, 2019
4th Revision May 20, 2021
5th Revision October 18, 2022
6th Revision December 11, 2023

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Section I. ESSENTIAL PERSPECTIVES & PERSONNEL

Juveniles are anyone under the age of 18.

Exception: When receiving a missing person report, officers must consider anyone under age 21 as a child. See Section II.

All officers must understand how to deal effectively with juveniles and the legal principles that apply to key interventions.

- Juveniles present a challenge to police officers. They are physically and emotionally vulnerable, often requiring care and protection. At the same time, juveniles may be highly confrontational. They may be involved in significant crimes and acts of public disorder.
- For this reason, officers must understand how to communicate in an age-appropriate manner. This is referred to as developmental competence. It is this understanding that gives officers the best chance of intervening calmly, safely, and professionally.²

All department personnel are encouraged to participate — both on and off duty — in community youth programs, and to advocate for the development of programs that help children and their families.

At the same time, our department designates juvenile specialists.

- The term “juvenile specialist” includes School Resource Officers, Community Police Officers, or any other personnel who receive enhanced training and are given specific responsibility for juvenile matters.
- All reports concerning juveniles must be forwarded to a designated juvenile specialist, who will:
 - Coordinate or provide follow-up services to juveniles and their families.
 - Assess community issues involving juveniles and advise the command staff.
 - Provide technical assistance and support to officers involved in investigations and problem solving relating to juveniles.

- More specifically, a School Resource Officer (SRO):
 - May only be assigned at the *request* of the school superintendent and subject to funding.³
 - Is appointed by the Police Chief to provide law enforcement; to promote school safety and security in elementary and secondary public schools; and to maintain a positive school climate for all students, families, and staff.⁴
 - Must receive Special Certification as an SRO from the Peace Officer Standards & Training Commission (POST).⁵

All officers are authorized to provide law enforcement services on school property. However, if possible, they will coordinate with an SRO before doing so. It is a misconception that only SROs are permitted on school property. In fact, *all* officers have the legal authority to patrol school property; perform traffic enforcement there; respond to calls for service; and provide law enforcement services on the property and inside the facilities.⁶ Because SROs have enhanced training and “local knowledge,” it is best if officers coordinate in advance with an SRO before conducting operations at a school.

Finally, all personnel must understand that the law and written guidelines can never provide all the answers — especially when it comes to juveniles. Officers are expected to make the best decision possible given the information they have. The department will support officers when their decisions attempt to balance the need for public safety and the best interests of juveniles and their families.

Beyond following these written guidelines, officers will be assessed on their intent as much as on the results of their intervention.

¹ SROs may serve in any public elementary and secondary schools — including regional, charter, or agricultural schools located in the appointing municipality. See G.L. c. 71, § 37P(d).

Section II. PROTECTIVE SERVICES

Missing Children

- On the basis of federal law, a missing child is defined as anyone under the age of 21 whose whereabouts cannot be determined by the person or agency responsible for the child's care.⁷
- When officers receive a report of a missing child, they must *immediately*:
 - Notify the Officer in Charge (OIC).
 - Obtain critical information, including:
 - The name and address of the reporting person;
 - The relationship between the reporter and missing child;
 - A description of the missing child, including name, age, sex, physical description, and description of clothing;
 - Whether the person is mentally or physically impaired;
 - The time and place where the missing child was last seen, anyone who may be accompanying the child, and likely destination;
 - Whether the child's absence is a significant deviation from established patterns of behavior;
 - Whether the child may have been abducted or may be otherwise in danger.
- Attempt to locate the child or investigate as directed by the OIC.

- The OIC must:
 - Coordinate the necessary response.
 - Mobilize resources (e.g., other agencies, air support, detectives, etc.).
 - Initiate an AMBER Alert when appropriate:
 - Only for a child under 18 who is in serious danger, and there is enough descriptive information so that an alert might help locate the child.
 - Call State Police Operations at **508-820-2121** to request an AMBER Alert.
 - Ensure, as necessary, that:
 - The media is notified even if the State Police decline to issue an AMBER Alert;
 - An incident report is completed;
 - All information is entered into CJIS/NCIC;
 - A mandatory report of child abuse or neglect is filed;
 - The child's public or private school is notified;⁸
 - A follow-up investigation is undertaken;
 - Referrals to social services are provided.

Abused or Neglected Children

- When officers have reasonable suspicion that a child under 18 has suffered abuse and/or neglect from a caretaker, they must make an oral report to the Department of Children and Families (DCF).⁹
 - Reasonable suspicion may be based on officers' own observations or on information from another person or source.¹⁰
 - Abuse involves any act, or the failure to act, that causes non-trivial physical injury (including skin bruising); threats of injury; sexual contact; inappropriate verbal comments about sex; or significant emotional injury.¹¹
 - Neglect is the failure or refusal of a caretaker to provide the child with one or more basic necessities, including food, clothing, shelter, appropriate emotional guidance, or medical treatment.
 - A caretaker is anyone with parental responsibility for a child on either a permanent or temporary basis (e.g., parent, guardian, babysitter, teacher, camp counselor, bus driver).
- Before the end of their tour of duty, officers should call their local DCF office or the 24-hour hotline at **800-792-5200**.
 - Officers who are directly aware of the facts must contact DCF. They must speak to an intake worker and not just leave a message.
 - The fact that another mandated reporter was involved (e.g., a nurse or firefighter) does *not* relieve officers of their individual responsibility to report.
 - When in doubt about whether a report is necessary, officers must consult with the OIC, who may then decide to consult with DCF.
- If officers are present at the scene and believe that a child's health or safety is in immediate danger, they may:
 - Remove the child and notify DCF to respond to the station, hospital, or another location; or
 - Call DCF and allow a social worker to decide whether to remove the child.^{12,13}

- In emergencies, DCF may receive court permission to hold a child for up to 72 hours.¹⁴
- If DCF representatives state that they have legal authority to remove a child and request police assistance, officers should enter private property, identify those present, keep the peace, and assist DCF in taking custody of the child.¹⁵

Once the child is removed, police should typically leave. Child removal provides no independent grounds to search for evidence. Such a search must be supported by a warrant, consent, or exigent circumstances.¹⁶

- Officers must submit a written report as soon as practical to the department. They shall send a copy to DCF no later than 48 hours after the incident.¹⁷ This report must contain all relevant information, including:
 - How the officer first became aware of the child's condition;
 - The time of the original oral report to DCF, and the name and title of the DCF official who received it.
 - The names and addresses of the child, parents, or any other persons responsible for the child's care, if known;
 - The child's sex and age;
 - The nature and extent of the child's injuries, abuse, mistreatment, or neglect;
 - Any emergency response by DCF;
 - The action taken, if any, to treat, shelter, or otherwise assist the child;
 - Any other information that the officer believes may be helpful in establishing the cause of any injury, abuse, or neglect; and
 - The identity, if known, of the person(s) responsible.

- Officers are immune from criminal or civil liability if they file a report in good faith, regardless of the outcome of the investigation. Officers commit a crime if they fail to report a case where they knew, or should have known, that abuse or neglect might be occurring.¹⁸
- Officers are exempt from the coverage of confidentiality rules and should furnish any information to DCF pertaining to investigations of child abuse or neglect.¹⁹
- DCF is obligated to send its investigative report to the police department and district attorney.
- Officers are encouraged to work cooperatively with all DCF personnel.

Children Requiring Assistance (CRA)

Definitions

- **Behavior.** A child — at least 6 years old, but not yet 18 — who:
 - Repeatedly runs away from the home of a legal custodian; or
 - Repeatedly fails to obey the lawful and reasonable commands of a legal custodian, which results in an inability to adequately care for the child; or
 - Is sexually exploited by anyone (meaning the child has engaged in prostitution, pornography, or other sexual performance).²⁰

A “legal custodian” is a parent, guardian, or agency (such as DCF) who is responsible for the welfare of the child.

- **School.** A child — at least age 6, but not yet 16 — who:
 - Repeatedly fails to obey lawful and reasonable school regulations; or
 - Is habitually truant.²¹

Informal Assistance

- When legal custodians or school officials inform officers about the problem behavior of a juvenile, officers should provide an immediate referral to the appropriate juvenile specialist within the department.
- The juvenile specialist, along with the involved officer, may provide advice and counsel; and/or refer the matter to the juvenile court clerk’s office.
- The juvenile court clerk is in the best position to advise legal custodians and school officials about filing an application to initiate a CRA proceeding.²²
- Community-based services are the preferred intervention for juveniles and their families.

CRA Protective Custody (PC)

- **Impermissible reasons.** Officers may *never* arrest or place a child in Protective Custody (PC) for:
 - Failing to obey a legal custodian.
 - Failing to obey school regulations.
 - Failing to attend school.²³
 - Violating a local curfew.²⁴
- **CRA Warrant of Protective Custody.**
 - Officers *must* PC a child named in a CRA Warrant of Protective Custody (WPC) if they:²⁵
 - Confirm with the juvenile court that the WPC is still *active*; and
 - Are able to present the child to a juvenile court judge no later than 4:30 p.m.ⁱⁱ
 - *If unable to transport the child to a judge by 4:30 p.m. because the WPC originated in a court outside the officers' jurisdiction, officers must release the child to a parent or guardian, who is willing to sign a release form accepting responsibility to bring the child to court on the next business day. If a parent or guardian is unavailable or unwilling, officers should bring the child to the local juvenile court.*
 - *If unable to present the child to a judge by 4:30 p.m. that day, officers may only PC the child if they have probable cause that he or she is a runaway. If that is not the case, officers must notify a parent or guardian about the WPC and advise them to sign a release form and bring the child to court on the next available date. Officers may also attempt to serve the WPC the next day during court hours.*

ⁱⁱ This restriction appears in large letters on the WPC.

- Officers should:
 - Arrange for immediate medical care if necessary;
 - Explain that this is not a criminal arrest; the court issued the warrant because it is concerned about the child's welfare. Be empathetic, but avoid debating the merits of the case;
 - *Not* use handcuffs;²⁶
 - *Not* transport the child in a police wagon. Instead, transport the child in the secure area of a marked or unmarked cruiser;²⁷
 - Search the child and any items he or she is carrying for dangerous objects or contraband²⁸;
 - Radio dispatch with exact departure and arrival times, and mileage traveled;
 - Bring the child through the front door of the court to the clerk's office;
 - File the warrant return of service form in the clerk's office.
 - File a 51A report of child neglect with DCF in appropriate cases of parent/guardian unavailability or unwillingness to help.
- **CRA Runaway.** Officers *may* PC a child under 18 if they have probable cause that a child has run away from his or her legal custodian.²⁹
 - Under these guidelinesⁱⁱⁱ, running away applies to any child who is absent from his or her home or other designated location without the knowledge *and* permission of the child's legal custodian. A prior episode of running away is *not* required.³⁰

ⁱⁱⁱ The term "running away" is not defined by statute [see G.L. c. 119, § 21] or case law [see *In the Matter of Odetta*, 68 Mass. App. Ct. 862 (2007)]. Therefore, officers should apply the commonsense definition provided in these guidelines, which affords maximum protection to the child.

- Whenever officers decide to PC a runaway, they should:
 - Arrange for immediate medical care if necessary;
 - Explain that this is not a criminal arrest; they are concerned about the child's welfare. Children find it easier to accept a decision that is motivated by police concern and legally justified. Be empathetic, but avoid debating the merits of the case;
 - *Not* use handcuffs;
 - *Consider arrest as a last resort* for a runaway who is significantly non-compliant during the PC process after being repeatedly warned. Officers may arrest for the common law crime of "interfering with a police officer."³¹ Once under arrest for this or any other crime,^{iv} a child may be handcuffed and held as a delinquent child; the rules for CRA placement would not be applicable.
 - *Not* transport the child in a police wagon. Instead, transport the child in the secure area of a marked or unmarked cruiser;
 - Search the child and any items he or she is carrying for dangerous objects or contraband;
 - Notify or have dispatch notify:
 - The child's parent, guardian, or other responsible adult known to the child³²; or
 - DCF or any other agency responsible for the child's care; or
 - If these contacts are unsuccessful, juvenile court probation.³³
 - Properly place the child in the following *order of preference*:

^{iv} Sometimes runaways may also be engaged in criminal activity — e.g., trespass, shoplifting, attempted B&E — when encountered by the police. Sometimes they may assault an officer or another person on scene. Criminal episodes may be handled in the normal way and are outside the scope of the CRA law.

- Priority 1: Release to DCF, another agency, a parent, guardian, or other responsible adult^v – provided that they sign the Juvenile Release Form^{vi} in which they promise to bring the child to court on the next available date. To accomplish the release, police may:
 - *Preferred option*. Transport the child to his or her residence or another location to be reunited with an adult or agency; or
 - *Permissible option*. Arrange for the child to be picked up at the police station.^{vii}
- Priority 2: After consultation with probation, call 211 – the Runaway Assistance Program (RAP). RAP will refer officers to the local Emergency Service Program (ESP), which arranges temporary placement for the child. The residential program is responsible for transporting the child to court the next day.
- Priority 3: After consultation with probation and 211, transport to juvenile court. Officers must complete a form at the clerk's office which explains that they attempted a priority 1 and 2 placement before resorting to 3.
- In all cases, police should:
 - Radio dispatch with exact departure and arrival times, and mileage traveled;
 - If inside the station, ensure the child remains uncuffed, in an unlocked room or area, under continuous visual supervision, until the release form is signed and pickup occurs.

^v Officers, in consultation with their OIC, have discretion to decide whether an available adult is sufficiently “responsible” to take custody of a runaway.

^{vi} See Attachment A to these guidelines.

^{vii} The child may be brought to the police station in order to facilitate placement with a parent, guardian, caretaker agency, or other responsible adult. Bringing a CRA child to the police station is *only* prohibited *after* an officer in the field decides to place the child with a temporary shelter which, by protocol, will not happen until an officer notifies probation and 211. See G.L. c. 119, § 39H(ii).

- Note in the incident report why the child was brought to the station — e.g., “mother said she could pick up child at station in 20 minutes”; “inclement weather; mother not home; drove child to station, aunt to pick up in one hour”; or “call for service workload high; child brought to station where chief’s secretary monitored while calling parents.”
- *Not* photograph or fingerprint the child, unless necessary to determine the child’s identity.
- *Not* submit information concerning a CRA child to any Criminal Justice Information Systems (CJIS) database.
- File a 51A report of child neglect with DCF in appropriate cases of parent/guardian unavailability or unwillingness to help.

Children Incapacitated by Alcohol

- Juveniles under the age 18 may be taken into Protective Custody (PC) if officers have probable cause of incapacitation.³⁴
- Incapacitation occurs when alcohol consumption makes the juvenile:
 - Disorderly;
 - Unconscious;
 - In need of medical attention; or
 - Likely to suffer or cause physical harm or property damage.³⁵
- Officers may:
 - Conduct field sobriety tests to determine if the juvenile is incapacitated;³⁶
 - Remove an incapacitated juvenile from his home if necessary;³⁷
 - Search the juvenile and any items he is carrying for dangerous objects or contraband;
 - Handcuff the juvenile;
 - Transport the juvenile in a cruiser (not a police wagon³⁸) to one of the following locations:
 - Home — provided that a legal custodian or other responsible person is there to take custody of the juvenile. A “legal custodian” is a parent, guardian, or agency (such as DCF) responsible for the child’s welfare. Officers must document the custodian or responsible person’s name in their incident report.
 - Hospital or other “detox” facility³⁹ — provided treatment is available.
 - Police station.

- Officers must:
 - Immediately transport a child to the hospital by ambulance as soon as his or her condition presents a risk of serious injury;
 - File an incident report whenever they encounter an incapacitated child regardless of how the situation is resolved. At a minimum, the report must convey the signs and symptoms that supported the officer's opinion that the child was incapacitated, and the name and, if applicable, title of the person who took over custody of the child from the officer.
- When a juvenile is taken to the station, officers must:
 - Notify the legal custodian as soon as they reasonably can.⁴⁰
 - Perform a normal booking process, including an inventory of the juvenile's possessions. Departments are not prohibited from collecting fingerprints and a photograph of the juvenile.
 - Allow the juvenile to make a phone call.
 - Provide breathalyzer (BT) rights in writing. If the juvenile elects a BT:
 - .10 establishes incapacitation.
 - .06 to .09 authorizes the police to decide to continue to hold the juvenile.
 - .05 or less entitles the juvenile to release, although it should be to a legal custodian or other responsible person.
 - Care for the juvenile in the following order of priority:
 - Release to a legal custodian or responsible person when they arrive at the station – provided the adult is not incapacitated. If a legal custodian fails or refuses to take custody of the juvenile, consider filing a 51A report for neglect.⁴¹
 - Arrange transport to a treatment facility or document that it is unavailable.⁴²

- Hold at the station.
 - Juveniles may not be placed in a cell and must be kept under continuous visual supervision in an unlocked room or area. They may be handcuffed, but not to a stationary object.
 - Juveniles may not be held for more than 12 hours at the station.
- Officers are not criminally or civilly liable for acting in good faith. However, failing to help an incapacitated juvenile may result in liability.⁴³

Children Incapacitated by Drugs, Inhalants, or Other Substances

- Juveniles under the age 18 may be taken into Protective Custody (PC) if officers have probable cause of incapacitation.⁴⁴
- Incapacitation occurs when the consumption of a drug, inhalant, or some other substance makes the juvenile:
 - Disorderly;
 - Unconscious;
 - In need of medical attention; or
 - Likely to suffer or cause physical harm or property damage.

Incapacitation also exists whenever a person is administered naloxone (aka Narcan) to counter a possible opioid overdose, regardless of the person's reaction.⁴⁵

- Officers may:
 - Conduct field sobriety tests to determine if the juvenile is incapacitated;
 - Remove an incapacitated juvenile from his home;
 - Handcuff the juvenile.
- Officers must:
 - Search the juvenile and any items he or she is carrying for dangerous objects or contraband;
 - Transport the juvenile to the hospital by ambulance^{viii} for evaluation (although a police cruiser, not a wagon, may be used for this purpose);
 - Notify the legal custodian as soon as possible.⁴⁶ However, there is no requirement of immediate release. The custodian should be directed to reunite with their child at the hospital. If the custodian fails or refuses to take custody of the juvenile, consider filing a 51A report for neglect.

^{viii} Unlike protective custody for alcohol incapacitation, officers may only transport the child to the hospital. They may not bring the child home or to the station.

- File an incident report.
 - The report must convey the signs and symptoms that supported the officer's opinion that the child was incapacitated, and the name and, if applicable, title of the person who took over custody of the child from the officer.
 - The report must also list any items taken from the child. Any lawfully possessed items must be returned to the child or legal custodian following the incident. There is no booking process allowed since the child is taken directly to the hospital.
- Officers are not criminally or civilly liable for acting in good faith. However, failing to help an incapacitated juvenile may result in liability.⁴⁷

Children Present with Certain Drugs

- Officers may take a juvenile into Protective Custody (PC) when they reasonably believe that:
 - The juvenile is under 18 years old; and
 - The juvenile knows about and is present with a controlled substance in Class A, B or C (*not* Classes D or E).⁴⁸
- Officers may handcuff the juvenile.
- Officers must:
 - Search the juvenile and any items he or she is carrying for dangerous objects or contraband;
 - Transport the juvenile in a police cruiser (not wagon);
 - Notify the legal custodian as soon as possible.
 - Care for the juvenile in the following order of priority:
 - Release to a legal custodian or responsible person — provided the adult is not incapacitated. If a legal custodian fails or refuses to take custody of the juvenile, consider filing a 51A report for neglect.⁴⁹
 - Hold at the station.
 - Juveniles may not be placed in a cell and must be kept under continuous visual supervision in an unlocked room or area. They may be handcuffed, but not to a stationary object.
 - Juveniles may not be held for more than 4 hours at the station.
- File an incident report.

Section III. CRIMINAL ENFORCEMENT

Patrol & Enforcement Considerations

- Juvenile delinquents are:
 - At least 12 years old but less than 18; and
 - Involved in criminal conduct in Massachusetts.
- Officers should be familiar with conditions that contribute to delinquency. Preventing juvenile crime is a high priority. Officers should frequently check places that have attracted delinquent behavior. Question all juveniles discovered in suspicious situations. Energetic patrol and consistent police presence are the most effective deterrents.
- Officers should also cooperate with all other agencies, public or private, that deal with juveniles. They are partners who often possess intelligence about juvenile crime and disorder. They provide services that help reduce delinquency.
- At the same time, police activity involving juveniles is confidential. Legal constraints on disclosing information vary depending on the situation. When in doubt, officers should consult with the juvenile specialist before providing information about a juvenile.

Least Coercive Alternative

- Officers may exercise reasonable discretion. Reasonable discretion means the least coercive alternative, consistent with public safety, public order, and the best interests of the juvenile. Officers should consider:
 - The nature of the offense;
 - The age of the juvenile;
 - The juvenile's prior contact with police;
 - The availability of community-based rehabilitation programs; and
 - The victim's perspective.

- Reasonable enforcement alternatives include:
 - Informal counseling. The officer may engage in a dialogue with the juvenile and direct him to perform a simple task (e.g., pick up trash he threw on the ground). The juvenile is allowed to leave after the intervention.
 - Informal counseling and release to legal custodian or other adult. After a dialogue with the juvenile, this intervention involves a brief detention while the officer waits for the arrival of a legal custodian or other adult to take custody of the juvenile. It provides an extra level of accountability.
 - Referral to community services, including a recognized diversion or restorative justice program.^{ix}
 - Application for a criminal complaint.⁵⁰
 - Arrest.
- Officers should collaborate with the prosecutor in preparing and presenting cases in court or seeking referrals for services post-arraignment.

Informal Counseling or Referral

Officers who decide to informally counsel or refer a juvenile for services shall complete an incident report. The report must clearly identify:

- The identity of any juvenile involved;
- The nature of the incident; and
- The reasons for the officers' disposition.

Complaint

- For children 12 and 13 years old, officers should apply for a complaint — *unless* they feel compelled to arrest the child (e.g., a crime of violence and no adult control). Officers should document their reasons for making an arrest.⁵¹

^{ix} The referral may be accomplished directly or through the juvenile court, whichever works best.

- For children age 14, 15, 16, and 17, officers will generally seek a complaint *unless*:
 - There is reason to believe the youth will not come to court; or
 - The youth has already defaulted on a summons; or
 - Arrest is legally permissible and justified by the nature of the offense(s).

Arrest

- **Decision.** Officers should recognize the different dynamics of juvenile crime and misbehavior in their efforts to enforce the law. At the same time, legal components of an arrest are the same for juveniles and adults:
 - Probable cause of a crime^x;
 - Legal authority for the arrest (often referred to as the “right of arrest”);
 - De-escalation efforts are feasible and have not failed⁵²; or
 - Proportionate force⁵³ is necessary to take the offender into custody; and
 - Handcuffs are applied during transport and processing.
 - Duty to intervene. Officers must protect any juvenile who is the object of excessive force by another officer and document their intervention.⁵⁴
- **Two exceptions.** While juveniles are subject to arrest (or an application for a criminal complaint) in the exact same manner as adult offenders, there are *only* two exceptions. Juveniles must not be the subject of a complaint or arrest^{55,56}:

^x The absence of probable cause for an arrest may subject the officer and department to criminal and civil liability. *Scott v. City of San Bernadino*, 903 F.3d 943 (2018) (SRO arrested three girls because of their perceived disrespect toward him during a meeting about bullying; even though he knew he lacked probable cause that they had engaged in criminal conduct, the SRO justified his arrests as a way to “teach these girls a lesson”; his motivation and behavior were unconstitutional).

- For disorderly conduct (272, § 53), disturbing the peace (272, § 53), or interrupting an assembly (272, § 40) that occurs at the elementary or secondary school they attend, or at an event related to their school; or
- For the violation of any city ordinance or bylaw.
- **Transport.** Following lawful arrest, juveniles shall:
 - Be transported in a police cruiser (not wagon);
 - To the station without delay; and
 - Never accompanied by an adult prisoner.

Civil Tickets

- **Municipal and marijuana tickets.** Officers may issue municipal tickets to juveniles for ordinance violations, including parking violations [40, § 21D], and marijuana civil infractions [94G, § 13(g)].
- **Vehicle and bicycle citations.** Officers may also issue traffic citations to juvenile motorists and bicyclists for civil infractions [90C, § 3; 85, § 11B].⁵⁷

Post-Arrest Procedures

Booking Process

The juvenile booking process is the same as that for adults, including the inventory procedure.⁵⁸ Arrested juveniles shall be photographed and fingerprinted.⁵⁹ Custodial records for juveniles shall be maintained separately from adult records.

Notifications & Placement

- **If juvenile court in session:** Transport arrestee to courthouse. Juvenile Probation and the clerk will handle his or her conditions of release.
- **If arrest is after hours:**
 - Do *not* notify Juvenile Probation. Instead, officers should:
 - ***Release to Legal Custodian.*** The OIC typically releases the juvenile to a Legal Custodian (LC) upon completion of the Juvenile Release Form.^{xi} The term LC refers to a parent, guardian, or custodian with whom the child resides, or agency responsible for the child (e.g., DCF). The LC's written promise to bring the juvenile to court is legally sufficient.⁶⁰
 - If the LC refuses to take custody of a child, the OIC should point out that this is not a good approach. The OIC may then advise the LC that failure to take custody of their child may result in a 51A report to DCF from the police department.
 - A delinquent child may no longer be released by police to a "reputable" adult who signs the release form.^{xii}
 - For an arrestee in DCF custody, immediately call the DCF hotline at **800-792-5200**. A social worker shall arrange for the child's release as soon as practicable if the child is not going to be held overnight.
 - ***Hold juvenile pending a bail hearing.*** This may only be done in these three situations:

^{xi} See Attachment A.

^{xii} Children Requiring Assistance (CRA) may still be released to an adult who they know. See 119, § 39H.

- Juveniles — age 14, 15, 16, or 17 — accused of murder are automatically prosecuted as adults in superior court.⁶¹
- The arresting officer requests in writing that a child 14, 15, 16, or 17 be held. This request must be documented in the police report, and approved by the OIC; or
- The court issuing an arrest warrant directs that the child be held in safekeeping pending his court appearance.

Important note: In all cases, the juvenile must be given a bail hearing. It is the bail commissioner who makes the final decision on whether to release or hold the juvenile pending his or her court appearance.^{xiii}

- ***Transport to the Overnight Arrest Program (OAP)*** in cases where the juvenile did not go to court or gain release on bail. Again, the minimum age for OAP placement is 14. In the event the OAP is necessary, police must:
 - Arrange placement by calling **617-474-8150** or **617-474-8179**;
 - Ensure that any juvenile suffering from a medical condition is medically cleared prior to placement;
 - Find out if the juvenile is on any medication and transport it with the child;
 - Find out if the youth is suicidal or talking about hurting himself. If so, the child must be screened by a mental health clinician;
 - Transport the juvenile to the designated OAP facility;
 - Provide the intake staff with a completed copy of the OAP Referral Form^{xiv} and juvenile's booking sheet;
 - Arrange for a *Jenkins* probable cause hearing⁶² if the juvenile was arrested without a warrant and will be held at the OAP for longer than 24 hours; and
 - Transport the juvenile from the OAP to court for arraignment.

^{xiii} The key difference between adults and juveniles seeking bail: An adult must take responsibility for the child upon release. This "recognizance release" requires that an adult sign as a surety. Another difference is that juveniles accused of domestic violence do not have to be held for 6 hours before being eligible for release on bail (unlike certain adult offenders). Other specific questions may be directed to the State Bail Administrator at **617-788-7312**.

^{xiv} See Attachment B.

Station Custody Restrictions⁶³

- **No adult lockup.** Never place a juvenile in an adult lockup.
- **Non-secure detention** is mandated for:
 - All juvenile delinquents 12 and 13 years old⁶⁴; and
 - Any “status offender” who is not classified as a Child Requiring Assistance (CRA).

The five requirements for non-secure detention are:

1. Unlocked, multi-purpose area. The juvenile must be held in an unlocked, multi-purpose area such as a report writing room or office.
2. No residential area. The space must not be designed in any way for residential use (e.g., no bunks or toilets).
3. No handcuffing to a stationary object. Young juveniles charged with a crime may be handcuffed (unlike CRA children), but they may not be handcuffed to a stationary object like a “cuffing rail” at the station.
4. Continuous visual supervision. The OIC must designate an individual to maintain continuous visual supervision. This may be an officer, cadet, dispatcher, or other suitable person.
5. Process and transfer. The juvenile should be held only long enough to complete post-arrest processing, then transferred to an appropriate adult, program, or court. *See discussion below.*

Placement in secure area. Executive Office of Public Safety and Security (EOPSS) guidelines permit placing a juvenile under 14 in a locked area if officers gave clear instructions and the juvenile left the non-secure area. Moreover, if a delinquent is dangerous, officers may have no choice but to place him in a juvenile cell or locked room within the station. The OIC must document why a young delinquent was placed in secure custody.

- **Secure detention** is authorized for delinquents age 14, 15, 16, or 17.⁶⁵ *The four requirements for secure detention are:*
 1. Maximum of 6 hours. The 6-hour time limit for secure detention starts when the arrestee is confined in a locked room or cell, or is cuffed to a stationary object (such as a “cuffing rail”).
 2. Department of Youth Services (DYS) approved cell. Juvenile cells must be approved in writing by DYS.
 3. Sight *and* sound separation from adult prisoners. Sound separation means that no conversation is possible. Under *no* circumstances may a juvenile be placed in a cell with an adult.
 4. Monitoring. The OIC must monitor or designate someone to monitor juveniles in custody. The OIC is responsible for ensuring that the monitor:
 - Explains any interval, in writing, beyond 30 minutes between visual checks on the wellbeing of any juvenile in custody⁶⁶; and
 - Completes the “juvenile lockup docket sheet.” This record is periodically audited by a state compliance monitor.⁶⁷

Interview & Interrogation

- An arrested juvenile should not be held at the station for questioning when the juvenile court is open for arraignment. Following booking, the arrestee should be transported immediately to court.⁶⁸
- Courts have long recognized that children are more susceptible to police coercion than adults. Consequently, officers should:
 - Not interrogate children for more than 6 hours without supervisory approval.
 - Not engage in overbearing tactics including, but not limited to, direct or indirect threats.
 - Provide appropriate breaks, water, and food during an interview.
 - For the most part, avoid claiming to have evidence they do not actually have.
 - Not expressly or implicitly promise to release a juvenile if he confesses.
 - *Never* combine a false claim of evidence with an offer of leniency to induce a confession.
 - Be careful when a juvenile's statements do not match other evidence possessed by police.
- While juveniles, like adults, are only entitled to the protection of *Miranda* when custodial interrogation takes place, courts will consider a child's age in determining whether an interaction involved custody and/or interrogation.⁶⁹ Courts typically require police to advise juveniles of their rights at an earlier point than they would for similarly situated adults.
- Failure to have a parent or interested adult present to assist a child who is 12 or 13 years old will invalidate *any* waiver of *Miranda* rights.⁷⁰
- The same is true for a child that is 14, 15, 16, or 17 years old. The only exception is for "highly sophisticated" youths, but this standard is difficult to satisfy. Officers should not rely on it except in extreme cases.⁷¹
- Officers should try to locate a parent to advise the juvenile, then seek out an interested adult. Deliberate avoidance of a parent's participation is improper; however, there is no minimum search requirement before police may contact another adult.⁷²

- The parent or interested adult must be:
 - At least 18 years old.⁷³
 - Not physically or mentally incompetent, or under the influence of alcohol or drugs.⁷⁴
 - Likely to act in the juvenile's best interest (e.g., a relative or adult friend). However, the adult is qualified to serve in this role even though he or she may have some hard feelings toward the juvenile, and may encourage the youth to speak with police.⁷⁵
 - Present at the location of the interview. Typically, the adult should be physically present, but technological presence (e.g., via speaker phone or Zoom) is acceptable if there is no alternative.⁷⁶
- The officers should:
 - Wait for the parent/interested adult to arrive before initiating the waiver process.
 - Notify the juvenile and parent/interested adult that they are being recorded.⁷⁷
 - Read the *Miranda* warnings from a form or, in the field, from a card.^{xv}
 - Explicitly tell the parent/interested adult that this is an opportunity to talk with the juvenile about his or her rights.⁷⁸
 - Offer the juvenile and parent/interested adult a chance to confer in private.⁷⁹
 - The audio portion of the recording should be shut off in the interview room⁸⁰ until the adult exits the room and indicates to officers that she and the juvenile have completed their discussion.^{xvi}
 - Officers may engage in video monitoring (without audio) during any consultation.⁸¹

^{xv} See Attachment C to these guidelines. *Note:* If the form is unavailable, officers may read a *Miranda* card.

^{xvi} Another option is to move the juvenile and adult to another area that is not being audio recorded.

- Resume audio recording when police enter to hear whether the juvenile is prepared to waive his rights.
- A valid waiver requires that the juvenile *and* parent/interested adult understand the warnings. Police should answer any questions simply and truthfully about the *Miranda* rights.⁸²
 - Juveniles age 14, 15, 16, or 17 do not have to actually ask the adult for advice. Police simply must afford them the *opportunity* to consult.⁸³
 - On the other hand, juveniles age 12 and 13 must *actually* consult with the adult in order to furnish a valid waiver. In other words, officers should encourage interaction between the child and adult.⁸⁴
 - The private consultation should satisfy both standards.
- Have the child and parent/interested adult sign the waiver or, in the field, verbally acknowledge their waiver.
 - An adult may not waive a juvenile's rights without the juvenile's consent.⁸⁵
 - On the other hand, it is unclear whether a juvenile may agree to speak with the police over the objections of a parent/interested adult. Officers are advised to assess the juvenile's level of maturity and decide whether to accept his or her waiver and proceed with the interview.
- Record⁸⁶ the *entire* interview.⁸⁷ The failure to record is *only* permissible in the following situations:
 - The interview takes place outside the station and officers lack the equipment to record it.⁸⁸
 - The interview segment deals with intelligence gathering or investigative planning that is not intended for disclosure in court.⁸⁹
 - The juvenile or parent/interested adult requests to confer in private during the interview. Investigators should vacate the room and stop the audio recording, but they may continue video monitoring.⁹⁰

- The juvenile or parent/interested adult objects to any recording. In this situation, officers should explain, with the recording device running, why it protects the juvenile. The parties will often agree to continue. If they still refuse, officers should ask if they will waive their *Miranda* rights on tape and speak in an unrecorded session.

If they agree, officers may obtain a waiver, turn off the recording device, and continue the interview — taking notes and documenting the juvenile's statement in a written report. Having recorded this preliminary interaction, officers will have no problem proving in court that the juvenile and adult (not police) chose to discontinue the recording.⁹¹

¹ Massachusetts Accreditation Standards 44.1.1; 44.2.1; 44.2.2; 44.2.3; 82.1.1(a); 82.1.1(b). Note: 44.2.4 deals with having a school liaison program. This is highly recommended, but not required. 44.2.5 deals with agencies who organize or have officers participate in community recreation programs.

² Under Chapter 253 of the Acts of 2020, Section 119 mandated that the Peace Officer Standards & Training Commission (POST) issue “guidance on developmentally appropriate de-escalation and disengagement tactics . . . for minor children.” POST enlisted Lisa Thureau of Strategies for Youth (SFY) in Cambridge – an organization that has provided training on “developmental competence” for police officers nationally. SFY’s training and POST recommendations help officers understand that “how children and youth perceive, process and respond to situations is a function of their developmental stage, and secondarily their culture and life experience.” When officers realize that youth conflict is a “natural” function of development, and that there are strategies to diffuse this behavior, they are much more effective at intervening and less likely to arrest. For more on developmental competence, go to www.strategiesforyouth.org. To view the guidance document published by POST, go to <https://www.mass.gov/lists/post-commission-regulations-advisories>.

³ G.L. c. 71, § 37P(d).

⁴ These are the basic duties recognized in 71, § 37P and 555 CMR 10.03.

⁵ An SRO is the only law enforcement assignment that requires Special Certification by POST, a process mandated and outlined in 555 CMR 10.00. The regulations set forth an assignment process, an application, background check, and separate training requirements through MPTC. The Special Certification must be renewed every three years. See 555 CMR 10.07(6).

⁶ 555 CMR 10.04(2) (existence of SRO certification does not diminish authority of non-specialist officers in schools).

⁷ 42 U.S.C. § 5779(a). This definition also incorporates G.L. c. 22A, § 1.

⁸ G.L. c. 22A, § 9.

⁹ *C&P of Robert*, 408 Mass. 52 (1990) (“reasonable cause” serves a “threshold function” and means “known or suspected instances of child abuse”). *Cooney v. Department of Mental Retardation*, 52 Mass. App. Ct. 378 (2001).

¹⁰ G.L. c. 119, § 51A authorizes prosecution against people who file a “frivolous report” of child abuse. Some cases are also subject to prosecution as a false report of crime under G.L. c. 268, § 13A.

¹¹ 110 CMR 2.00 defines physical injury as “soft tissue swelling or skin bruising.” *John D. v. DCF*, 51 Mass. App. Ct. 125 (2001) (“verbal sexual contact” constitutes abuse, even though the victim is not touched).

¹² G.L. c. 119, § 51B(c). In an emergency, DCF must begin a preliminary investigation within 2 hours of the oral report and complete it within 24 hours. If DCF has reasonable cause to believe that the child is in immediate danger, DCF must take the child “into immediate temporary custody.” Emergency situation if DCF prevented by family or individual from viewing child. 110 CMR 4.26 say DCF should “seek the aid of local police in entering the home or otherwise viewing the child.”

¹³ 110 CMR 4.21 (DCF “primary duty to protect children from abuse or neglect inflicted by parents or parent substitutes”). 110 CMR 4.33 (DCF must “unsupport” if no caretaker involved — e.g., school nurse reports that 16 year old high school student molested by her 16 year old boyfriend; DCF will unsupport, but may refer to DA and police and offer voluntary services).

¹⁴ *Care and Protection of Lillian*, 445 Mass. 333 (2005).

¹⁵ *Comm. v. Mulvey*, 57 Mass. App. Ct. 579 (2003) (police may enter private property to serve a court order).

¹⁶ *Comm. v. Cunningham*, 2009 WL 614460 (Superior Court) (police properly entered apartment without a warrant, identified the occupants, and determined the child was safe; once the child was removed, police should have left; any search for drug evidence had to be supported by consent or a warrant, which could have been obtained after the apartment was secured).

¹⁷ G.L. c. 119, § 51A allows mandated reporters, including police officers, to take up to 48 hours to deliver a follow-up written report.

¹⁸ *Hope v. Landau*, 21 Mass. App. Ct. 240 (1985).

¹⁹ G.L. c. 119, § 51B(k) and (m). *Comm. v. Souther*, 31 Mass. App. Ct. 219 (1991).

²⁰ A “sexually exploited child” is under the age of 18 and has been the victim of Sexual Trafficking under G.L. c. 265, § 50 or 22 U.S.C. 7105 (the related federal law); or engaged in, or agreed to engage in, prostitution in violation of G.L. c. 272, §§ 53 or 53A; or engaged in, or agreed to engage in, sexual conduct in exchange for food, shelter, clothing, education or care; or has been induced to become a prostitute in violation of G.L. c. 272, § 4A. Under G.L. c. 119, § 39K, DCF must provide services for sexually exploited children and, if a child declines or fails to participate, DCF may file a care and protection petition.

²¹ G.L. c. 119, § 21 defines habitual truancy as failing to attend school for more than 8 school days in a quarter (unless excused from attendance in accordance with school regulations).

²² G.L. c. 119, § 39I.

²³ A department may choose to designate officers as supervisors of attendance, which gives them the authority to detain and transport truant children to school. G.L. c. 76, § 20. *Worcester v. Labor Relations Board*, 438 Mass. 177 (2002).

²⁴ *Comm. v. Weston W., a juvenile*, 455 Mass. 24 (2009) (SJC found City of Lowell curfew was reasonable; it requires people under age 17 to stay home between 11 p.m. and 5 a.m., unless they are employed, involved in an emergency, accompanied by a parent, or engaged in other listed activities; however, arresting violators was unreasonable; now, violators may be stopped by police, issued a civil fine of \$50 and, for chronic offenders, referred for CRA proceedings).

²⁵ Similar to a “Warrant of Apprehension” under G.L. c. 123, § 12, the WPC is sent by the court to the police department in the community where the child lives. The police should serve it. The WPC, unlike the old CHINS warrant, does not appear in the Warrant Management System (WMS).

²⁶ G.L. c. 119, § 39H states that “a child may not be confined in shackles or similar restraints.”

²⁷ G.L. c. 119, § 34 prohibits the police from transporting a child in a police wagon to any court or institution. There is even a criminal penalty for this transgression. CRA children should only be transported in a marked or unmarked cruiser.

²⁸ *Comm. v. Chism*, 2015 WL 924236 (Superior Court) (court approved of search of juvenile and his backpack when he was placed into protective custody as a runaway; this was an appropriate precaution for non-secure custody without handcuffs; since search and PC procedure were proper, discovery of evidence related to the murder of his high school teacher was also proper).

²⁹ G.L. c. 119, § 39H. Technically, the officer must have probable cause that the child is a runaway and will not respond to a summons. Practically, it is hard to imagine a situation where officers will be concerned that a child is a runaway, but then decide that a summons from the court at a later date will be a sufficient response! In addition, this statute also authorizes officers to PC a child who fails to obey a CRA summons. However, since the juvenile court may issue a Warrant of Protective Custody (WPC) if a juvenile defaults on a CRA summons, it is better for officers to simply wait for the court to issue the WPC and execute it at that time.

³⁰ In the only case broaching the issue, the Appeals Court did not reach a decision because the juvenile’s counsel improperly filed the case. *In the Matter of Odetta*, 68 Mass. App. Ct. 862 (2007). However, the Appeals Court did mention that the juvenile court judge ruled that a prior episode of running away is not required in order for police to PC a runaway. The police must simply believe that the child is likely to run away again without intervention.

³¹ Interfering with a Police Officer is a common law crime that appears in the District Court Complaint Manual. It is explained in *Comm. v. Adams*, 482 Mass. 514 (2019). A juvenile who refuses to come with an officer to a “safe place,” after being told that the officer has a duty to bring the child there, engages in the type of “physical obstruction” contemplated by the *Adams*

decision. The right of arrest would apply for this breach of peace in the officer's presence. The sentence for this offense is authorized by G.L. c. 279, § 5.

³² For the purpose of releasing a runaway, the law also authorizes placement with any "other responsible person known to the child." G.L. c. 119, § 39H.

³³ State protocol mandates that police attempt to place the child with a legal custodian or responsible adult, and only call probation if these efforts fail. At the same time, police officers and dispatchers should feel free to contact probation at the first sign of trouble. See G.L. c. 119, § 39H (police may determine where to place the child "in consultation with the [juvenile] probation officer").

³⁴ G.L. c. 111B, § 8.

³⁵ G.L. c. 111B, § 3. *Comm. v. Tomes*, 400 Mass. 23 (1987). *Comm. v. O'Connor*, 406 Mass. 112 (1989).

³⁶ *Comm. v. McCaffery*, 49 Mass. App. Ct. 713 (2000).

³⁷ *Lally v. Carmichael*, 50 Mass. App. Ct. 1103 (2002).

³⁸ G.L. c. 119, § 34.

³⁹ G.L. c. 111B, § 3.

⁴⁰ G.L. c. 111B, § 10.

⁴¹ G.L. c. 119, § 51A.

⁴² *Lucia v. City of Peabody*, 2013 WL 394870 (Mass. D. Ct.).

⁴³ Under G.L. c. 111B, § 13, "[p]olice officers, facility administrators or other persons acting in a reasonable manner and pursuant to the provisions of this chapter shall not be held criminally or civilly liable for such acts." However, failure to act may subject officers to liability. *Comm. v. O'Connor*, 406 Mass. 112 (1989) (a police officer who violates his responsibility to take an incapacitated person into custody "risks tort liability for his employer").

⁴⁴ G.L. c. 111E, § 9A.

⁴⁵ According to Dr. Daniel Muse, Medical Advisor to the Municipal Police Training Committee (MPTC), medical evaluation is mandated for a person who has received a dose of naloxone (aka Narcan) because the effects of Narcan may be temporary; there may be secondary medical complications from the initial overdose; and releasing the person without medical follow up presents a public safety risk.

⁴⁶ G.L. c. 111E, § 9A.

⁴⁷ While not explicitly provided with immunity under G.L. c. 111E, § 9A, officers should receive court protection given the obvious similarity between drug and alcohol PC responsibilities. Compare 111B, § 13 and *Comm. v. O'Connor*, 406 Mass. 112 (1989).

⁴⁸ G.L. c. 94C, § 36.

⁴⁹ G.L. c. 119, § 51A.

⁵⁰ The court must summons at least one parent if either of them reside in Massachusetts. If that is not so, then the court must (in order of preference) summons a guardian, summons an adult who lives with the child, or appoint a guardian for the proceedings. G.L. c. 119, § 55.

⁵¹ G.L. c. 119, § 54.

⁵² G.L. c. 6E, § 14 requires de-escalation methods unless they are not feasible or have failed. The definition of de-escalation is found in 6E, § 1.

⁵³ Proportionate force is consistent with that permitted by the Use of Force Continuum. *Jennings v. Jones*, 499 F.3d 2 (1st Cir., 2007) (in finding that an officer used excessive force during an arrest, the court talked about how the force continuum is a guide to proportionate police responses).

⁵⁴ G.L. c. 6E, § 15.

⁵⁵ G.L. c. 272, § 53 and § 40. Explicit limitation is contained in those statutes. Also see Chapter 69 of the Acts of 2018 (known as “criminal justice reform”).

⁵⁶ Another change in the jurisdiction of the juvenile court is found in G.L. c. 119, § 52. In most cases, the juvenile court must dismiss a first offense misdemeanor for which the penalty is a fine only or not more than 6 months in the house of correction. See Chapter 69 of the Acts of 2018. This limitation on the juvenile court’s jurisdiction is not discussed in these guidelines because it does not affect how officers perform on the street. The decision to dismiss occurs as part of the court process prior to arraignment. For more on the complicated court procedure necessitated by this change, see *Wallace W., a juvenile v. Comm.*, 482 Mass. 789 (2019). *Comm. v. Manolo M., a juvenile*, 486 Mass. 678 (2021) (all minor misdemeanors in the first episode must be dismissed).

⁵⁷ Since these tickets are not subject to juvenile court jurisdiction, they may still be issued by police officers. They are resolved in the district court, which has not had its jurisdiction over these matters limited. See G.L. c. 119, § 52.

⁵⁸ *Illinois v. Lafayette*, 462 U.S. 640 (1983) (search of defendant and his possessions is appropriate after arrest and before placing in jail). *Comm. v. Ford*, 394 Mass. 421 (1985).

⁵⁹ *Comm. v. Shippis*, 399 Mass. 820 (1987).

⁶⁰ G.L. c. 119, § 67.

⁶¹ G.L. c. 119, § 68.

⁶² *Jenkins v. Chief Justice of the District Court*, 416 Mass. 221 (1993).

⁶³ Proper procedures for detaining juvenile criminals appear in the Juvenile Justice and Delinquency Prevention Act (JJDP), 42 U.S.C. 223(a)(14), and G.L. c. 119, § 67. Compliance with the regulations enables jurisdictions to receive federal funding. Non-compliance creates a risk of liability.

⁶⁴ Federal law no longer mandates that juvenile delinquents age 14, 15, 16, or 17 who are charged with being a Minor in Possession of Alcohol, 138, § 34C, be held in non-secure detention following arrest. Now federal law simply recommends this custody arrangement.

⁶⁵ See the note above.

⁶⁶ Similar to adult prisoners, juvenile detainees must be properly supervised and monitored to prevent suicide or injury. The legal standard for juveniles, like adults, is somewhat open-ended. They must be checked at reasonable intervals. See G.L. c. 40, § 36B. *Richardson v. Dailey*, 424 Mass 258 (1997).

⁶⁷ Audits and technical support provided by the Executive Office of Public Safety & Security (EOPSS) at 10 Park Plaza, Boston 02116. Telephone: (617) 725-3364.

⁶⁸ 119, § 66 states that no juvenile “shall be detained by police in a lockup [or] police station . . . pending arraignment” quoted in *Comm. v. Gaye*, 2022 LW 1208622 (Middlesex Superior Court).

⁶⁹ In *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011), the Supreme Court noted that “a frighteningly high percentage of adults confess to crimes they never committed.” Children are even more susceptible to outside pressure. As a result, officers must consider a child’s age in determining whether custody exists. *Comm. v. Zito Z.*, 2020 WL 1542193 (Appeals Court) (even with a parent present, the absence or existence of custody for *Miranda* is assessed from the child’s perspective). The same is true for interrogation. *Comm. v. Quinones*, 95 Mass. App. Ct. 156 (2019) (an officer’s general advice to a 16 year old defendant about “the street life” was not interrogation because it was not designed to get the juvenile to comment on his case).

⁷⁰ *Comm. v. MacNeil*, 399 Mass. 71 (1987).

⁷¹ *Comm. v. Guyton*, 405 Mass. 497 (1989) (juvenile had extensive contact with police and juvenile court but he was “naïve”).

⁷² *Comm. v. Hogan*, 426 Mass. 424 (1998).

⁷³ *Comm. v. Guyton*, 405 Mass. 497 (1989).

⁷⁴ *Comm. v. Leon L.*, 52 Mass. App. Ct. 823 (2001).

⁷⁵ *Comm. v. Berry*, 410 Mass. 31 (1991). *Comm. v. Phillip S.*, 414 Mass. 804 (1993).

⁷⁶ *Comm. v. Alfonso, a juvenile*, 438 Mass. 372 (2003).

⁷⁷ Officers must inform suspects that they will be recorded, but they do *not* need permission. *Comm. v. Morganti*, 455 Mass. 388 (2009) held that simply informing a defendant that you *intend* to record him is sufficient notice. *Comm. v. Ashley*, 82 Mass. App. Ct. 748 (2012) held that a conspicuous sign in the interview room was sufficient notice also.

⁷⁸ *Comm. v. Mark M., a juvenile*, 59 Mass. App. Ct. 86 (2003).

⁷⁹ Although the SJC has not mandated private consultation unless specifically requested by the adult or juvenile, it is the high court's recommended best practice for police investigators to proactively offer private consultation during the waiver process. *Comm. v. Ray*, 467 Mass. 115 (2014). *Comm. v. Weaver*, 474 Mass. 787 (2016). *Comm. v. Pacheco*, 87 Mass. App. Ct. 286 (2015).

⁸⁰ *Comm. v. Pacheco*, 87 Mass. App. Ct. 286 (2015). Also see *S.D. v. State*, 937 N.E.2d 425 (2010) (in this Indiana case, the detective left the interview room to allow the juvenile and his guardian to discuss whether the juvenile would agree to talk and whether the guardian would stay in the room. The consultation between the two was videotaped. Although both the juvenile and the guardian were aware of the video camera, it constituted an improper police presence and infringed on the privacy necessary to any meaningful consultation).

⁸¹ Massachusetts would likely allow police to continue video monitoring (as they do when prisoners meet with lawyers). See generally *Comm. v. Fontaine*, 402 Mass. 491 (1988).

⁸² *Comm. v. Wade W., a juvenile*, 2012 WL 1398617 (Appeals Court).

⁸³ *Comm. v. Ward*, 412 Mass. 395 (1992) (a 16 year old gave an incriminating statement linking him to a brutal murder; prior to his confession, police asked his mother if she wanted to talk with her son about the rights; the son told her that it was "ok" and began to speak; his waiver was valid).

⁸⁴ *Comm. v. Phillip S.*, 414 Mass. 804 (1993) (12 year old manslaughter suspect provided a valid waiver).

⁸⁵ *Comm. v. Phillip S.*, 32 Mass. App. Ct. 720 (1992) (Appeals Court opinion in the case mentioned in the previous note).

⁸⁶ Ideally, an audiovisual recording should be made in which the juvenile and lead interviewer are visible throughout. "Getting It Right: Improving the Accuracy and Reliability of the Criminal Justice System in Massachusetts," Boston Bar Association (December 2009) at page 41.

⁸⁷ The best practice is to leave the recorder on during the entire interview (including short breaks). For longer delays, the investigator should explain *any* time the recorder is shut off and re-started. *Comm. v. Fernette*, 398 Mass. 658 (1986) ("there is a potential for abuse if the tape recorder is started and stopped during an interview . . . The better practice is to record the entire interview, including the defendant's silences and emotional outbursts"). The danger of selective recording was highlighted in the Central Park jogger case, where four young defendants, after long hours of unrecorded interrogation, falsely confessed to the rape on videotape. Leo, R., *Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First Century*, 2006 Wisconsin L. Rev. 479, 535.

⁸⁸ *Comm. v. DiGiambattista*, 442 Mass. 423 (2004) mandated the recording of stationhouse interrogations. According to the SJC, "Given the fine line between proper and improper interrogation techniques, the ability to reproduce the exact statements made during an interrogation is of the utmost benefit." *DiGiambattista* also required that the police record *custodial* interrogations *anywhere*. This is the challenging aspect of this rule. Is it realistic to expect that officers will turn on their tape recorder when they ask questions of a suspect who is in handcuffs on the ground at 2:00 a.m.? Nevertheless, taping suspects and witnesses in the field may soon become standard operating procedure. In the meantime, officers should simply do the best they can to record interrogations.

⁸⁹ Only statements that may be offered into evidence against a suspect must be recorded. *Comm. v. DiGiambattista*, 442 Mass. 423 (2004). There are times when officers seek information from juveniles solely for investigative or intelligence purposes. A common example is the arrested drug dealer who may implicate his supplier in the hope of receiving a more lenient sentence. In these situations, it is counterproductive and legally unnecessary to record. However, officers should fully document the content of these discussions in their investigative notes and, if appropriate, in a supplemental report.

⁹⁰ *Comm. v. Pacheco*, 87 Mass. App. Ct. 286 (2015).

⁹¹ A defendant's refusal to sign a *Miranda* form and to have an interview recorded does not prevent a finding that a valid oral waiver of *Miranda* rights occurred. *Comm. v. Williams*, 456 Mass. 857 (2010). *Comm. v. Raposa*, 440 Mass. 684 (2004).

Attachment

A



_____ Police Department

JUVENILE RELEASE FORM
PROMISE OF LEGAL CUSTODIAN
TO DELIVER CHILD TO THE JUVENILE COURT¹

I, _____ (print your full name), **am**
the _____ (print your relationship to child²)
of _____ (print child's first & last name).
This child is _____ **years of age.**

I am accepting custody of this child and promise to deliver him or her to the
Juvenile Court session located at _____
(print address) **on the** _____ (fill in the correct date)
at 8:30 a.m.

Signature of Person Taking Custody

Time

Date

Signature of Police Officer

Time

Date

¹ This form may be used for Children Requiring Assistance (CRA), other status offenders, or juveniles charged with delinquent offenses.

² IMPORTANT NOTE: In addition to a legal custodian, a CRA child or other status offender may be released to another "responsible person known to the child." G.L. c. 119, § 39H. However, delinquent children may only be released to a legal custodian, which is a parent, guardian, caretaker or agency responsible for the child's care. G.L. c. 119, § 67.

Attachment

B

Statewide Awaiting Arraignment/Overnight Arrest Referral Form

Police Department: _____ Date: _____

Police Contact: _____ Time of Call: _____

Police Department Phone Number: _____

Youth's Name: _____

Youth's Date of Birth: _____ Age: _____ Sex: Male / Female

Guardian Phone Contact Information: _____

Charges:

Where did charge occur? Home, School, Community or Residential Placement

If Residential Placement Name: _____ Bail Clerk: _____

Bail Amount: Fee _____ Bail _____

If fee only DYS does not take these youth. Police call Parent/Guardian or DCF hotline for placement.

If No Bail, Why? Warrant: Default, Superior Court, Violation of Probation

SCOA Screening Referral From P.D.	Questions	Screening at Placement
Yes/No	Does Youth need medical attention?	Yes/No
List All Medications:	What medications is the youth on? Police must bring medications with youth to placement.	Verify Medications:
Yes/No	Is youth suicidal or talking of hurting themselves? (If yes must be screened by MBHP personnel)	Yes/No

Yes/No	Does youth appear to be under the influence of any Drugs, Alcohol? (If yes must be screened by Emergency Room Personnel)	Yes/No
Yes/No	Is co-defendant or victim also being referred to program? (If yes, additional placement options will be considered)	Yes/No

SCOA Staff: _____ Placement Staff: _____

Time of Arrival: _____ Transporting Officer's Name: _____

Booking Sheet must be received by placement prior to accepting youth.

Attachment

C



_____**Police Department**

I, _____ (print full name), am _____ (age)
years old. I was born on _____ (date of birth). Officer
_____ (print full name) is advising me of my constitutional
rights. I understand that:

- I have the right to remain silent.
- If I choose to speak, anything I say can be used against me in court.
- I have the right to consult with a lawyer before answering any questions, and I may have him or her with me during questioning.
- If I cannot afford a lawyer and want one, a lawyer will be provided by the Commonwealth before questioning - at no cost to me.
- I may answer questions now and waive (that means, give up) my right to counsel and my right to remain silent.
- If I decide to talk to the police, I still have the right to stop talking at any time and for any reason.

_____ (print name of adult), who is my
_____ (relationship to you), is present and will
help me decide whether to waive my rights and speak with the police.

Please check one:

I ____ am willing to speak with the police officer now.

I ____ am not willing to speak with the police officer now.

Signature of Juvenile

Time

Date

My signature indicates that I also understand these rights completely:

Signature of Interested Adult

Time

Date

Signature of Police Officer

Time

Date