



Town of Lexington

Police Department

Subject: Handling Youthful Offenders

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By Order of: Mark J. Corr, Chief of Police

**Policy &
Procedure**

44B

The Municipal Police Institute, Inc. (MPI) is a private, nonprofit charitable affiliate of the Massachusetts Chief's of Police Association. MPI provides training and model policies and procedures for police agencies. This policy is an edited version of MPI Policy 1.15, "Handling Juveniles."

GENERAL CONSIDERATIONS AND GUIDELINES

It is generally recognized that juveniles who engage in anti-social conduct present problems to society that are different from those of adults who engage in similar activity. As a result policy and procedures related to youthful offenders differ from those related to adult conduct and is based on the concept that the juvenile offender is often not yet hardened and may be influenced to voluntarily comply with community standards with appropriate attention. There is no question that the attitude and actions of police can have considerable impact on the first offender who is often a frightened youngster during their first encounter with police. How that child is treated during that time can leave a lasting impression. At the same time, it must be remembered that the hardened juvenile criminal can be just as dangerous as any adult.

Although police officers are not expected to be social workers, they must have an understanding of the social and psychological factors that contribute to juvenile misbehavior and crime. By the nature of their duties, the police should be familiar with undesirable conditions in the community that breed delinquency. The prevention of juvenile crime has a high priority and successfully addressing it can pay large dividends to the community.

As a preventive measure, officers should frequently check those areas, places and buildings that have been particularly prone to delinquent behavior and question juveniles found in suspicious situations. Energetic patrol, impressing the fact of a consistent police presence, can be a most effective deterrent. The Department

should also cooperate 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 and firmness, together with close cooperation with court officials in the processing of juvenile cases, are necessary for the system to operate most effectively.

Police officers should be aware that constitutional rights are not lost by virtue of one's age. Indeed, juveniles merit greater protection, especially in the areas of questioning and waiver of rights.

It is the policy of the Lexington Police Department that:

1. Juveniles shall be afforded their constitutional and statutory rights when being questioned, searched, detained or arrested;
2. Juvenile offenders shall not be detained at the police station for any longer than may be necessary but always in conformance with statutory and constitutional law;
3. Status offenders, juveniles who commit offenses that would not be a crime if they were an adult, will be held in non-secure custody;
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 is committed to the development and perpetuation of programs to prevent and control juvenile delinquency. [44.1.1.a]

PROCEDURE

A. Definitions

1. **Child in Need of Services (CHINS):** Any child below the age of seventeen who:
 - a. Persistently runs away from the home of his/her parents or legal guardian, or
 - b. Persistently refuses to obey the lawful and reasonable commands of his/her parents or legal guardian.

Under an alternative definition, a "child in need of services" also covers any child between the ages of six and sixteen who:

- a. Persistently and willfully fails to attend school, or
 - b. Persistently violates the lawful and reasonable regulations of his/her school.ⁱ
2. **Delinquent Child:** A juvenile who violates any city ordinance or town by-law or who commits any offense against the Commonwealth.ⁱⁱ
 3. **Juvenile:** A juvenile, for purposes of Massachusetts's criminal law, is anyone who is at least 7 years old but not yet 17.ⁱⁱⁱ
 4. **Non-Offenses:** Children held in protective custody because they were found present where controlled substances are kept pursuant to G.L. c. 94C, s. 36, or are incapacitated due to intoxication pursuant to G.L. c. 111B, s. 8.
 5. **Non-Secure Custody:** A condition under which a juvenile's freedom of movement is controlled by members of the department and, during such time, the juvenile:
 - a. Is held in an unlocked, multi-purpose room that is not designed for residential use;
 - b. Is not handcuffed to any stationary object;
 - c. 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
 - d. Is under continuous supervision until released.
 6. **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.^{iv}
 7. **Status Offender:** A juvenile who has committed an offense that would not be a crime if committed by an adult. This includes: C.H.I.N.S., runaways, truants, stubborn child, habitual school offender, youth curfew violations, and minors in possession of or transporting alcohol. [44.2.2(a)]
 8. **Youthful Offender:** A person who is subject to an adult or juvenile sentence for having committed, while aged 14, 15 or 16, 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 an offense 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.

B. Administration

1. The Chief of Police will designate certain officers as School Resource Officers (SRO's). SRO's will be assigned to the schools and will work closely with the school administration, parents/guardians and the student community.
2. All Department components and personnel share the responsibility for supporting the Department's School Resource Officer program and assisting the youths of Lexington. [44.1.1(b)]

C. Enforcement Alternatives [44.2.1]

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.
2. Whenever reasonable and possible, an officer will request a summons for a juvenile rather than taking him/her into custody.
3. Alternatives available include the following:
 - a. Release with no further action or following informal counseling when no arrest has been made. Officers may turn the juvenile over to his/her parent or guardian when appropriate;
 - 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 [44.2.1(b)(c)]
 - e. Arrest.

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. Whenever the School Resource Officer is available he should be contacted in order to determine if he has prior knowledge with the juvenile.

Minors – Adults 17 to 20 Years Old -- Transporting Alcohol

As of October 2010, Massachusetts law permits the arrest of a "minor" adult who is transporting alcohol (as little as one can of beer). This offense is punishable by a \$50 fine. Given the 2009 decriminalization of marijuana, arresting a 17- to 20-year old for alcohol is arguably an inequitable enforcement of the law. Arrest is not the preferred course of action unless the adult has some other significant substance abuse or behavioral problem where intervention by the court or probation is deemed necessary.

- D. Referral to Juvenile Court
 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 and 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 **71A-Transporting Detainees**. [44.2.2(d)]
 4. When an arrest is made, the juvenile shall be brought in for processing without delay. The Commanding Officer should be informed of the arrest as soon as possible. [44.2.2(d)]
 5. When a juvenile is arrested, with or without a warrant, the officer in charge of the police station shall:
 - a. Notify the probation officer for Framingham Juvenile Court, or the on-call juvenile probation officer.

- b. Notify at least one of the parents, or, if there is no parent, the guardian of the child, or the person with whom the child resides; and [44.2.2(e)]
 - c. Inquire into the situation to ensure that proper cause for the arrest existed and that the juvenile was and is treated in accordance with the law and that the juvenile's rights were protected. The juvenile may be detained pending such notice and inquiry.
6. A child shall be released:
- a. To a parent, guardian or other reputable person upon acceptance, by the officer in charge, of the written promise of such person to be responsible for the appearance of the child in court at the required time and place; or
 - b. To a probation officer upon receipt of a request by such officer that the child be released to him/her.
7. A child between the ages 14, 15, or 16 shall not be released if:^{vi}
- a. The arresting officer requests in writing that [s]he be detained and the court issuing a warrant for the arrest of such child directs in the warrant that [s]he be held in safekeeping pending his/her appearance in court, or
 - b. A probation officer directs that such child be detained.
- NOTE: Notice of detention shall be given to the parent(s) or guardian or person with whom the child resides and to the probation officer. Nothing contained in this section should be construed to deny the juvenile the right to bail.
8. Juveniles arrested for criminal violations are subject to the same booking procedures as adults. Juveniles taken into custody for status offenses or for non-criminal offenses shall not be fingerprinted or photographed.^{vii} [44.2.2(c)]
9. The arresting officer and the prosecutor should cooperate in the preparation and presentation of the case if court action is necessary.
10. Any police proceeding involving juveniles shall be treated in a confidential manner.

E. Holding Juveniles

1. Delinquent Offenders

- a. Juveniles who are 14, 15 or 16 years of age accused of delinquent offenses, or who have been indicted as youthful offenders, may be held in secure custody for no longer than six hours for the purpose of identifying and processing the juvenile and, if appropriate, transportation to a juvenile facility or court.^{viii}
 - 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, fourteen years and older, charged with first or second degree murder are not subject to the six hour detention limit as they are automatically tried in adult court.^{ix}

- b. No child who is 14, 15 or 16 years of age shall be detained in a police station or town lockup unless the detention facilities for children have received the written approval of the Commissioner of Youth Services.^x
- c. Lockup and other detention facilities shall be such as to prevent juveniles who are detained from coming in sight and sound contact with adult prisoners.^{xi}
- 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.
- e. Juveniles detained in lock-up will be entered into the Juvenile Lock-up Docket through CJIS at the time of detention.

2. Status Offenders and Protective Custody

- a. Status offenders and juveniles held for protective custody shall not be held in secure custody.
- b. Status offenders may only be held long enough to complete identification, investigation and processing and then must be

released to parents, guardians or other responsible adults or transferred to an alternative juvenile facility or court.

- c. M.G.L. Chapter 94c section 36 states, a child under the age of seventeen may be taken into protective custody, for a period not exceeding four 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 seventeen; and
 - iii. Reasonably believes the child knew of the presence of the controlled substance.^{xii}

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.

- d. For procedures to follow when a person is taken into protective custody due to consumption of alcohol see Department policy **72C - Protective Custody.**

3. Children in Need of Services

- a. A parent, legal guardian or a police officer may file a petition in the district or juvenile court to have a child declared a "child in need of services". If the court so finds, the court may make orders pertaining to custody, counseling and educational, occupational or other services.
- b. A child may not be arrested for engaging in behavior which constitutes being a child in need of services unless the child has failed to obey a summons or if the arresting officer has probable cause to believe the child has run away from home and will not respond to a summons.

- 4. All juveniles detained by the Department shall be informed by the booking officer or Commanding Officer of the procedures regarding custody, release, and transportation to another facility or court, as applicable. [42.2.3(c)]

F. 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 **41K - Interrogating Suspects and Arrestees**. It should be remembered that 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.^{xiii} [42.2.3(a)]
 - i. UNDER AGE FOURTEEN: A waiver of rights by a juvenile under age fourteen is **only valid if** an interested adult is present, understands the warnings and has a meaningful opportunity to consult with the juvenile.^{xiv}
 - ii. FOURTEEN YEARS OR OLDER: For juveniles who are at least fourteen but under age seventeen, 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".^{xv}
 - iii. SEVENTEEN YEARS OF AGE: If the suspect is seventeen years of age at the time of the offense, [s]he is considered an adult in the Massachusetts criminal justice system. Thus for *Miranda* purposes, the special protections afforded to juveniles do not apply.^{xvi}
 - 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, a legal guardian, an adult brother or sister, grandparent, or other adult relative or attorney.
 - i. A person would not qualify as an interested adult if he or she;

- (a) Lacks the capacity to appreciate the juvenile's situation (e.g., is intoxicated);
 - (b) Appears to be 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).^{xvii}
 - ii. A person under the age of eighteen will not satisfy the interested adult rule.^{xviii}
 - c. **OPPORTUNITY TO CONSULT:** The interrogating officer should explain to the adult that the two of them would 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
- 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) comprehends their meaning.
 - b. Preferably, a written card or form 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 the warnings.
 - e. **UNDER FOURTEEN:** If a juvenile being interrogated is under the age of fourteen, he/she must be given an opportunity to have a meaningful consultation with an interested adult to discuss the Miranda warnings.^{xix}

- f. AGE 14 -16: If the juvenile 14, 15 or 16 years of age and an interested adult is already present, the adult shall be given an opportunity to have a meaningful consultation with the juvenile, regardless of the degree of intelligence, experience, knowledge or sophistication on the part of the juvenile.
- 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 should be present at the interrogation.

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

- 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.

G. Abused or Neglected Children [42.2.2(b)]

- 1. M.G.L. Chapter 119 § 51A states, 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 Families (DCF) by oral communication, followed by a written report within 48 hours of the oral communication.^{xxi} 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 Families (DCF) shall be immediately contacted and requested to respond to the scene to take custody of the juvenile.^{xxii} 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.^{xxiii} (Commonly known as a Care and Protection hearing)

H. School Liaison (SRO) and Youth Programs

1. The Chief of Police may establish and/or maintain a school liaison program and appoint one or more officers to perform as School Resource Officers. An SRO or Youth Officer will: **[42.2.4]**
 - a. Act as a resource with respect to delinquency prevention;
 - 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.
 - e. Assume responsibilities for all law enforcement activities within the schools.

2. The Department encourages all personnel, as good citizens, to participate in community recreational programs for youths. Where a recreational program is needed but does not exist, officers should encourage citizens and community leaders to organize one. [42.2.5]

I. Record Keeping

1. Officers who select non-custodial alternatives or engage in informal enforcement contacts with juveniles shall complete appropriate field interview and/or incident reports as required by this agency. These reports shall clearly identify the juveniles involved, the nature of the incident and the rationale for the officer's disposition.
2. 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" and will be separated from adult arrest records. [82.1.1(a)(b)]
3. Juveniles detained in lock-up will be entered into the Juvenile Lock-up Docket through CJIS at the time of detention.

ⁱ M.G.L. c. 119, s. 39E-J

ⁱⁱ M.G.L. c. 119, s. 52

ⁱⁱⁱ M.G.L. c. 119, s. 52

^{iv} 28 CFR Part 31.303 (i)

^v M.G.L. c. 119, s. 67

^{vi} M.G.L. c. 119, s. 67

^{vii} M.G.L. c. 263, s. 1A; *Com. v. Shippis*, 399 Mass. 820, 507 N.E.2d 671 (1987)

^{viii} Executive Order Number 339, Commonwealth of Massachusetts, Aug. 14, 1992; 28 CFR Part 31.303(f)(5)(iv)(H)

^{ix} M.G.L. c. 119, s. 68

^x M.G.L. c. 119, s. 67

^{xi} M.G.L. c. 119, s. 67

^{xii} M.G.L. c. 94C, s. 36

^{xiii} *Com. v. A Juvenile*, 389 Mass. 128, 449 N.E.2d 654 (1983)

^{xiv} *Com. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

^{xv} *Com. v. King*, 17 Mass. App. Ct. 602, 460 N.E.2d 1299, *rev. den.* 391 Mass. 1105, 464 N.E.2d 73 (1984)

^{xvi} *Com. v. Carey*, 407 Mass. 528, 554 N.E.2d 1199 (1990)

^{xvii} *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)

^{xviii} *Com. v. Guyton*, 405 Mass. 497, 541 N.E.2d 1006 (1989)

^{xix} *Com. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

^{xx} *See Com. v. Harris*, 364 Mass. 236, 303 N.E.2d 115 (1973)

^{xxi} M.G.L. c. 119, s. 51A

^{xxii} M.G.L. c. 119, s. 51B

^{xxiii} M.G.L. c. 119, s. 24