

HANDLING JUVENILES

EVERETT POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.15	ISSUE DATE: 22 OCT 2007
	EFFECTIVE DATE: 22 OCT 2007
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 44.1.1; 44.2.1; 44.2.2; 44.2.3; 44.2.4; 44.2.5; 82.1.1(a); 82.1.1(b)	REVISION DATE: 9/22/18; 09/26/19

I. GENERAL CONSIDERATIONS AND GUIDELINES

For purposes of this Policy and Procedure a juvenile (as defined by MGL) is a person who has reached the age of 12 but HAS NOT yet attained their 18th birthday.

The Everett Police Department recognizes that juveniles are psychologically, emotionally, and physically different than adults and occupy a unique legal status in the court system. These differences require officers to be aware of juveniles' special circumstances and needs, and to give special consideration to involving social service agencies as appropriate to address the issues that lead juveniles to become involved with the police.

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.

For most people, the ultimate symbol of authority in a community is the police force. This is probably true for juveniles as well. But while the majority of people accept the presence of such authority with no

problem, juveniles may tend to react in inappropriate ways. It cannot be overemphasized that police contact can be very important in the social development of the young people in a community. Police reaction to this sensitive relationship can solidify favorable attitudes already in existence, and more importantly, help to guide the behavior of the borderline case.

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.

The legislature has rescinded the law formerly referred to as CHINS (Children in Need of Services) and replaced it with numerous provisions concerning Children Requiring Assistance. Rather than arresting certain young persons, the police may place them in "custodial protection" but they may not confine them in shackles or similar restraints or court lock-up, or even bring them to the police station.

NOTE: This does NOT prevent a police officer from using handcuffs when transporting the child. Until the legislature or a court clarifies certain provisions of the new law, the Department will do its best to interpret and comply with the spirit of the legislation, which is clearly aimed at further separating certain "status offenders" from the stigmatizing effects of certain aspects of the criminal justice system.

II. POLICY

The five central principles of the Everett Police Department Handling Juvenile's Policy are:

1. All officers, consistent with preserving public safety and order, will endeavor to use the least coercive and forceful approach when interacting with youth, and may use their discretion in such decision-making according to the factors set forth below.
2. Consistent with the Department's community policing views, officers will explain the reason they are interacting with a youth, be willing to listen and negotiate, and to problem solve.
3. Officers in each unit should be aware that each interaction with youth is an opportunity to develop a relationship with the youth and to promote positive long term relations with the police in Everett.

4. Youth should be taken into custody as a last resort; where possible issuance of written citations and summonses should be used first; officers must notify youth of their constitutional rights and strictly observe these legal requirements.
5. When youth are taken into custody, they will be transported, detained, and housed separately from adults in lock-ups approved by the Department of Youth Services

It is with these tenets in mind, it shall be the policy of the Everett Police Department that:

- A. It shall be the policy of the Everett Police Department that:
 1. Juveniles shall be afforded their constitutional and statutory rights when being questioned, searched, detained or arrested; **44.2.2 c**
 2. Juvenile offenders shall not be detained at the Everett Police Headquarters for any longer than reasonably necessary;
 3. Children Requiring Assistance shall be provided custodial protection and other required services where this can be done safely.
 4. Officers shall, whenever reasonable and justified under this policy, take those measures necessary to effect positive change in juvenile offenders that are consistent with Massachusetts law and the safety and security interests of the community;
 5. The Department shall be committed to the development and perpetuation of programs to prevent and control juvenile delinquency. **44.1.1**
- B. Factors to consider when dealing with juveniles: When dealing with juveniles officers have more options and alternatives than they would when dealing with adults. This difference permits the use of discretion by officers within the following parameters:
 - Nature of the alleged offense;
 - Age of the juvenile;
 - When officers are not taking enforcement actions, consider personal notification of parent/guardian of child/youth in person by phone call or letter;
 - Past police involvement with the juvenile;
 - Possibility of gang affiliation;

- Juvenile's home environment including juvenile's and parents' attitude towards offense, police intervention, and rehabilitation;
- Availability of community based programs for juvenile;
- Likelihood alternative referral (where one exists) will prevent further delinquent behavior;
- Impact on victim(s) regarding harm, loss, and concern for future ramifications;
- Public safety.

Factors Never to Be Considered in Discretionary Decisions: Officers should be careful to avoid consideration of any of the following factors in discretionary decision-making.

- Race and ethnicity of the juvenile and his/her family;
- Consider national origin only insofar as it may affect the child's ability to understand the law and the police officer's enforcement of it;
- Gender;
- Economic status of the juvenile and his/her family.

III. DEFINITIONS

A. "**Child requiring assistance**" (**CRA**) , a child between the ages of 6 and 18 who:

- (i) repeatedly runs away from the home of the child's parent, legal guardian or custodian;
 - (ii) repeatedly fails to obey the lawful and reasonable commands of the child's parent, legal guardian or custodian, thereby interfering with their ability to adequately care for and protect the child;
 - (iii) repeatedly fails to obey the lawful and reasonable regulations of the child's school;
 - (iv) is habitually truant; or (v) is a sexually exploited child.
- [44.2.2a]
1. Persistently runs away from the home of his/her parents or legal guardian, or
 2. Persistently refuses to obey the lawful and reasonable commands of his/her parents or legal guardian.

Under an alternative definition, a "child requiring assistance" also covers any child between the ages of six and eighteen who

1. Persistently and willfully fails to attend school, or
2. Persistently violates the lawful and reasonable regulations of his/her school.¹

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

- **a civil infraction,**
- **a violation of any municipal ordinance or town by-law**
- **or a first offense of a misdemeanor**
 - **for which the punishment is a fine, imprisonment in a jail or house of correction for not more than 6 months or both such fine and imprisonment.**²
- **Important Note:**
 - The previous definition of a "*Delinquent child*" was much broader. Previously it was defined as a child between the ages of seven (7) and eighteen (18) who violates any city ordinance or town by-law or who commits any offense against a law of the commonwealth.
 - The *New **Age of Criminal Responsibility*** has been increased from 7 to **12 years of age.**
 - In addition the new statute states in pertinent part that juveniles shall not be found delinquent in juvenile court for any misdemeanor for which the first offense is punishable by less than 6 months in the House of Correction.
 - With that in mind, there is nothing in this newly modified definition of a "*Delinquent Child*" under Chapter 119 Section 52 that specifically precludes police officers from making an arrest under certain circumstances such as:
 1. when specifically authorized by statute based on "probable cause";
 2. when specifically authorized by statute when the violation occurs in the presence of a police officer; or
 3. when the violation takes place in the presence of a police officer in which said violation amounts to an ongoing or prospective breach of the peace.
 - Therefore, arrests of juveniles for certain types of misdemeanors which carry a penalty for less than six months such as the following:

-
- Indecent Exposure,
 - Disorderly Conduct,
 - Disturbing the Peace,
 - Minor Transporting Alcohol,
 - Operating with a Suspended License,
 - Shoplifting,
 - Threats,
 - Driving without a license
 - Breaking and Entry to Commit a Misdemeanor, or
 - Making Annoying/Harassing Phone Calls
- Until such time as the state legislature provides additional clarity and guidance on this complicated issue, the **preferred response** for a violation of these listed enumerated offenses is to **avoid making an arrest whenever possible**. However, when circumstances warrant, such as to quell an ongoing breach of the peace and an arrest becomes the only viable option, officers of this department shall continue to be authorized to make such an arrest if any of the 3 conditions above exist.
 - If an arrest is made a Clerk Magistrate and/or District Court Judge shall continue to make such a determination in the juvenile session of the district court prior to arraignment as to whether or not a complaint shall issue.
 - Note: Individual police departments are advised to consult with their local city/town counsel for additional guidance on this particular issue in consultation with the local District Attorney and the local Juvenile Court Justice.
- C. ***Youthful Offender***: A person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen (14) and eighteen (18), an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed 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.³

-
- D. *Juvenile*: A juvenile, for purposes of Massachusetts criminal law, is anyone between the ages of 12 and 18.
- E. *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.
- F. *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 [42.2.2a]:
1. Is held in an unlocked, multi-purpose room that is in no way designed for residential use;
 2. Is not handcuffed to any stationary object;
 3. Is held only long enough to complete identification, investigation and processing and then released to a parent or guardian or transferred to a juvenile facility or the court; and
 4. Is under continuous supervision until released.
- G. *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.⁶
- H. *Status Offender*: A juvenile who has committed an offense that would not be a crime if committed by an adult. This includes: runaways, truants, youth curfew violations, and minors in possession of or transporting alcohol. [44.2.2(a)]
- I. **Custodial Protection**: A term used but not defined in several parts of MGL c. 119, referring to actions resembling Non-Secure Custody, above, but without handcuffing, restraining or even transporting the young person to a police facility.
- J. **Age of Criminal Majority**: The age of Criminal Responsibility shall now be **12 years of age**.⁷
- K. **Restraints**: a device that limits voluntary physical movement of an individual, **including leg irons and shackles, which have been approved by the trial court department.**⁸
-

L. Sexually Exploited Child⁹: Any person under the age of 18 who has been subjected to sexual exploitation because such person is:

1. The victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;
2. Engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care;
3. A victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under by section 4A of chapter 272; or
4. Engages in common night walking or common streetwalking under section 53 of chapter 272.

IMPORTANT PROCEDURAL NOTE:

Recently, the Massachusetts Supreme Judicial Court in *Wallace W., a juvenile v. Commonwealth*, 482 Mass. 789 (2019), ruled on the meaning of “first offense” under the revised definition of a Delinquent Child. The Court stated that such a charge is a “first offense” *unless the juvenile has a prior adjudication of delinquency*. Once a juvenile has committed his or her **single “first offense,”** the Juvenile Court may exercise jurisdiction over subsequent six (6) months or less misdemeanors. In its decision, the Court provided examples in which the Juvenile Court may or may not exercise its jurisdiction over an application for a delinquency complaint charging a juvenile with a six (6) months or less misdemeanor.

1. Juveniles who have no prior record and a **single new charge**, a delinquency complaint application charging the juvenile with a single six months or less misdemeanor, shall be dismissed as a “first offense.”

Editor’s Note: The Juvenile Clerk will review the MassCourts internal database to determine whether the juvenile has any prior involvement with the juvenile court. *Such involvement may not appear on the juvenile’s BOP.*

2. Juveniles who have **previously been adjudicated delinquent** may be arraigned in the Juvenile Court since the offense/charge would not be the juvenile’s “first offense.”

-
3. In situations where juveniles have *not been previously adjudicated delinquent* for any offense *but who may nonetheless have engaged in multiple offenses* the Court has set forth the following procedure:
- a. “[A] delinquency complaint application charging the juvenile with a six months or less misdemeanor may issue *upon a finding of probable cause on the charge*, provided that the Commonwealth notifies the clerk-magistrate prior to the issuance of the complaint that it intends to prove multiple offenses during any subsequent proceedings.”
 - b. “If a delinquency complaint issues on the subsequent six months or less misdemeanor, the juvenile may move to dismiss the complaint prior to arraignment on the grounds that the charged conduct is a first offense under §52.”
 - c. “A pre-arraignment evidentiary hearing shall then be ordered, at which time the Commonwealth must prove that the charge upon which the complaint has issued is not the juvenile’s first offense under 52.”

Editor’s Note: A prior offense may be a previous dismissal of a single “first offense” by the Juvenile Clerk due to the fact the juvenile had no prior court involvement. It is important to understand that a prior dismissal on the merits of the case cannot be the basis for a previous dismissal of a “first offense” for the purposes of proceeding on a subsequent offense.

- d. “The Commonwealth must do this” by *proving, beyond a reasonable doubt, that the juvenile has committed a prior offense.*”
- e. If the motion judge finds *beyond a reasonable doubt* that the juvenile has committed a *prior offense*, the Commonwealth may proceed to arraignment on the charge upon which the delinquency case is based.
- f. If the motion concludes that the Commonwealth has not met its burden, the complaint shall be dismissed as a “first offense” under *Mass. Gen. Laws ch. 119, § 52.*

IV. PROCEDURE

A. Administration

1. The responsibility for participating in and supporting the department's juvenile operations is shared by all department components and personnel. [44.1.1(b)]

B. Arresting Juvenile Offenders [44.2.1]

1. Whenever possible, when dealing with juvenile offenders, officers should apply for a summons or a hearing rather than take the juvenile into custody.
2. While an officer should recognize the unique and often sensitive nature of juvenile contact, he/she 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.
3. When a juvenile between the ages of twelve (12) and eighteen (18) is arrested, with or without a warrant, the officer in charge of the police station shall:
 - a. Notify the Juvenile Probation Officer, and 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
 - b. inquire into the situation to ensure that probable cause for the arrest existed and that the juvenile was and is treated in accordance with the law.
 - c. Pursuant to Chapter 119 Section 67(d), **When a child is arrested who is in the care and custody of the department of children and families, the officer in charge of the police station or town lockup where the child has been taken shall immediately contact the department's emergency hotline and notify the on-call worker of the child's arrest.** The on-call worker shall notify the social worker assigned to the child's case who shall make arrangement for the child's release as soon as practicable if it has been determined that the child will not be detained.¹⁰

- d. Juveniles arrested for criminal type offenses are subject to the same booking procedures as adults. Juveniles taken into custody for status offenses or for non-criminal offenses as well as Children Requiring Assistance that are placed in custodial protection shall not be fingerprinted or photographed.¹¹ **44.2.2 c, 82.1.2 b**

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

Note: No arrests are authorized in cases involving *Children Requiring Assistance*.

4. A juvenile shall be released from custody when:
- The Juvenile Probation Officer authorizes the release of the juvenile.
 - The juvenile may be released 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
 - to a probation officer upon receipt of a request by such officer that the child be released to him.
5. A juvenile between the ages of 14 and 18 shall not be released if:
- The court issuing the warrant for the arrest of such child directs in the warrant that he be held in safekeeping pending his appearance in court; or
 - The Juvenile Probation Officer directs that such child be detained.
 - If Juvenile Probation Office directs that the child be detained the OIC shall contact the bail commissioner to determine if the child will be bailable and the amount (if any).

6. Notice of detention shall be given to the parent(s) or guardian or person with whom the child resides.
7. No juvenile may be detained or confined in any adult jail or lockup for any period of time. Juveniles age fourteen and older accused of a crime may be held for up to six hours for processing, only in the juvenile cells. Under no circumstances may a child under fourteen years of age be held in a police lockup for any amount of time. Whenever a juvenile is placed in the juvenile lockup the OIC is required to document the action in the “Juvenile Lockup Log”.
8. Juveniles alleged to have committed acts that would not be against the law if committed by an adult, so-called “status offenders” may be held in a “non-secure area” environment, separated visually and audibly from adult detainees. A minor under the age of 18 in the possession of alcohol is considered a status offender per Federal regulations. In addition a child who is held in protective custody, without having committed a delinquency offense, should be accorded the same treatment as a status offender.
9. The patrol wagon will not be used when transporting a juvenile from his/her home or from any other place to a court or other institution. (MGL c119 s34)
10. Any police proceeding involving juveniles shall be treated in a confidential manner. Names and addresses of juvenile offenders are not public record, and shall NOT be given to the news media.

C. Non-secure custody of “status offenders”

The five specific federal legal requirements for non-secure custody of juvenile status offenders:

1. The area where the juvenile is held must be an unlocked, multi-purpose area such as a report writing room or an office.
2. The area must not be designed or intended for residential use) for | example, it must not contain a bed).
3. The juvenile must not be handcuffed to a stationary object.

4. The juvenile may be held only long enough to complete identification, investigation and processing, and then must be released to a parent, guardian, or other responsible adult, or transferred to an appropriate juvenile facility or court; and
5. The juvenile must be under continuous visual supervision until released.

D. Alternative Remedies

In some circumstances, warnings, informal referrals, consulting and arranging for corrective action by parents, and dropping charges may be employed

Release of juveniles, diversion of juvenile cases, or adjusting cases, will be determined on a case- by-case basis following the procedures established by the court having jurisdiction.

Factors to be considered include:

- the nature and seriousness of the alleged offense;
- whether the act is violent;
- whether the youth is under the influence of drugs or alcohol
- the age and circumstances of the alleged offender;
- the alleged offender's record, if any;
- the availability of community-based rehabilitation programs

E. 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 **3.01 *Transportation of Detainees***. [44.2.2(d)]
4. When an arrest is made, the juvenile shall be brought to the processing facility without delay. The Juvenile Officer, or the Juvenile Division of the department, if any, shall 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:¹³
 - a. Notify the probation officer for the District Court or Juvenile Court for the judicial district in which the juvenile was arrested;
 - 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. 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 of 14 and 18 shall not be released if:¹⁴
 - 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 type offenses are subject to the same booking procedures as adults. See department policy **3.03 Detainee Processing and 3.02 Holding Facility**. Juveniles taken into custody for status offenses or for non-criminal offenses shall not be fingerprinted or photographed.¹⁵ In fact, a child requiring assistance shall not even be brought to the police station. [44.2.2(c)]
9. The arresting officer, the juvenile 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.

D. Holding Juveniles

1. Delinquent Offenders
- a. Juveniles between ages fourteen and seventeen accused of delinquent offenses 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.¹⁶
- 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.
- [d] Fill out EPD form 1.15 Overnight Arrest Referral Form

NOTE: Juveniles accused of first or second degree murder or who will be tried in adult court as a youthful offender are not subject to the six hour detention limit as they are automatically tried in adult court.¹⁷

- b. No child between the ages of fourteen and seventeen 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.¹⁸
 - c. Lockup and other detention facilities shall be such as prevent juveniles who are detained from coming in sight and sound contact with adult prisoners.¹⁹
 - 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.
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. 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.²⁰

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 under age eighteen is taken into protective custody due to consumption of alcohol, see the department policy on **3.06 Protective Custody.**

3. Child Requiring Assistance (CRA)

- a. Children Requiring Assistance shall not be held in secure custody.

- b. A child may be taken into custodial protection for engaging in the behavior described in the definition of "Child Requiring Assistance" in section 21, only if such child has failed to obey a summons issued pursuant to MGL c. 119, section thirty-nine E, or if the law enforcement officer initiating such custodial protection has probable cause to believe that such child has run away from the home of his parents or guardian and will not respond to a summons.

- c. A parent legal guardian, or custodian of a child having custody of such child, BUT NOT A POLICE OFFICER may initiate an application for assistance in one of said courts stating that said child repeatedly runs away from the home of said parent or guardian or repeatedly refuses to obey the lawful and reasonable commands of said parent or guardian resulting in said parent's or guardian's inability to adequately care for and protect said child.

- d. A school district BUT NOT A POLICE OFFICER may initiate an application for assistance in said court stating that said child is not excused from attendance in accordance with the lawful and reasonable regulations of such child's school, has willfully failed to attend school for more than 8 school days in a quarter or repeatedly fails to obey the

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

e. Upon the filing of an application for assistance, the court may issue a summons, to which a copy of the application for assistance shall be attached, requiring the child named in such application to appear before said court at the time set forth in the summons. If such child fails to obey the summons, said court may issue a warrant reciting the substance of the petition and requiring the officer to whom it is directed forthwith to take and bring such child before said court. NOTE: This does NOT prevent a police officer from using handcuffs when transporting the child. Notice of the hearing shall be given to the department of children and families and the department of youth services.

f. Where the court summons such child, the court shall in addition issue a summons to both parents of the child, if both parents are known to reside in the commonwealth, or to one parent if only one is known to reside within the commonwealth, or, if there is no parent residing in the commonwealth, then to the parent having custody or to the lawful guardian of such child. Said summons shall require the person served to appear at a time and place stated therein at a hearing to determine whether or not such child is in need of assistance.

g. Unless service of the summons required by this section is waived in writing, such summons shall be served by the constable or police officer, either by delivering it personally to the person to whom addressed, or by leaving it with a person of proper age to receive the same, at the place of residence or business of such person, and said constable or police officer shall immediately make return to the court of the time and manner of service.

h. A child who is the subject of an application for assistance may not be confined in shackles or similar restraints or in a court lockup facility in connection with any proceedings under sections 39E to 39I, inclusive.

NOTE: This does NOT prevent a police officer from using handcuffs when transporting the child. A child who is the subject of an application for assistance shall not be placed in a locked facility or any facility designated or operated for juveniles who are alleged to be delinquent or

who have been adjudicated delinquent. Such child may, however, be placed in a facility which operates as a group home to provide therapeutic care for juveniles, regardless of whether juveniles adjudicated delinquent are also provided care in such facility.

i. A child may not be arrested for engaging in behavior which constitutes being a child requiring assistance.

j. A child may be taken into custodial protection for engaging in the behavior described in the definition of "Child requiring assistance" in section 21, only if such child has failed to obey a summons issued pursuant to section thirty-nine E, or if the law enforcement officer initiating such custodial protection has probable cause to believe that such child has run away from the home of his parents or guardian and will not respond to a summons.

k. After a law enforcement officer has taken a child into custodial protection, the officer shall immediately notify the parent, other person legally responsible for the child's care or the person with whom the child is domiciled, that such child is under the custodial protection of the officer and a representative of the department of children and families, if the law enforcement officer has reason to believe that the child is or has been in the care or custody of such department, and shall inquire into the case.

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

- (i) to one of the child's parents, or to the child's guardian or other responsible person known to the child, or to the child's legal custodian including the department of children and families or the child's foster home upon the written promise, without surety, of the person to whose custody the child is released that such parent, guardian, person or custodian will bring the child to the court on the next court date;
- (ii) forthwith and with all reasonable speed take the child directly and without first being taken to the police station house, to a temporary shelter facility licensed or

approved by the department of early education and care, a shelter home approved by a temporary shelter facility licensed or approved by said department of early education and care or a family foster care home approved by a placement agency licensed or approved by said department of early education and care; or

- iii.* take the child directly to the juvenile court in which the act providing the reason to take the child into custodial protection occurred if the officer affirms on the record that the officer attempted to exercise the options identified in clauses (i) and (ii), was unable to exercise these options and the reasons for such inability.

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

NOTE: This does NOT prevent a police officer from using handcuffs when transporting the child.

Child Brought to Court Under Custodial Protection to the Court Where the Case is Pending

a) The Clerk:

(i) shall ask the law enforcement officer to complete the Law Enforcement Officer Certification form which records the officer's statement for the record that he/she attempted to exercise the options contained in G.L. c. 119, §39H and the reasons why he/she was unable to exercise such options. The form shall be filed in the child's Child Requiring Assistance court file if the child has a pending case.

(ii) shall accept the Application for Child Requiring Assistance if not already accepted.

(iii) inform the Probation Office that the child is in the Clerk's Office and has a pending Child Requiring Assistance case; request the probation officer to perform an immediate inquiry.

(iv) schedule the Temporary Custody Hearing to be heard that date.

(v) notify the child's parent(s), legal guardian, or custodian that the child is at the Juvenile Court and determine what time the person can come to court.

(vi) notify the child's attorney that the child is present and a temporary custody hearing has been scheduled. If an attorney has not been appointed to represent the child, ask probation to make a preliminary indigency inquiry.

Child Requiring Assistance Case Pending in Another Division

- a) If the Child Requiring Assistance case is pending in another division of the Juvenile Court, the clerk shall:
- (i) ask the law enforcement officer to complete the Law Enforcement Officer Certification form which records the officer's statement for the record that he/she attempted to exercise the options contained in G.L. c. 119, §39H and the reasons why he/she was unable to exercise such options. The form shall be forwarded to the clerk of the court where the case is pending for filing in the court case filed.

Child Brought To Court Under Custodial Protection

Without A Pending Child Requiring Assistance Case1

The clerk shall:

a) ask the law enforcement officer to complete the Law Enforcement Officer Certification form which records the officer's statement for the record that he/she attempted to exercise the options contained in G.L. c. 119, §39H and the reasons why he/she was unable to exercise such options. The form shall be filed in a folder maintained by the clerk's office marked "Law Enforcement Officer Certification Forms for Children Without a Pending Case."

5. All juveniles detained by the department shall be informed by the booking officer of the procedures regarding custody, release, and transportation to another facility or court, as applicable.

[42.2.3(c)]

E. 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 **1.13 Interrogating Suspects and Arrestees**. It should be remembered that the Miranda Rules apply to juveniles.
2. In addition, the police must also follow the special rules that apply to the interrogation of juveniles. [44.2.2(c)]
 - a. INTERESTED ADULT RULE: In order to obtain a knowing and intelligent waiver by a juvenile, in most cases a parent or interested adult must be present, understand the warnings and have a meaningful opportunity to consult with the juvenile. Before initiating an interrogation, the juvenile's parent, legal guardian, or other interested adult (including an attorney) should be present.²¹ [42.2.3(a)]
 - i. UNDER AGE FOURTEEN: No waiver of rights by a juvenile under age fourteen will be valid if an interested adult is not present, understands the warnings and has a meaningful opportunity to consult with the juvenile.²²
 - 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".²³
 - 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 criminal justice system. Thus for *Miranda* purposes, the special protections afforded to juveniles do not apply.²⁴

- b. INTERESTED ADULT EXPLAINED: An interested adult is, most often, a parent of the juvenile. When the parent is unavailable, another interested adult may be called upon, such as, depending on the circumstances, a legal guardian, an adult brother or sister, grandparent, or other adult relative or an attorney.
 - i. A person would not qualify as an interested adult if the adult:
 - [a] Lacks the capacity to appreciate the juvenile's situation (e.g., is intoxicated);
 - [b] Appears to be actually antagonistic to the juvenile; or
 - [c] Is required to report the juvenile's offenses to authorities (e.g., an employee of the Department of Youth Services, or a school official in the case of a weapons violation on school grounds).²⁵
 - ii. A person under the age of eighteen will not satisfy the interested adult rule.²⁶
- c. OPPORTUNITY TO CONSULT: The interrogating officer should explain to the adult that the two of them will be left alone to provide them an opportunity to discuss the juvenile's rights. Then the adult and juvenile must be provided an actual opportunity to discuss the juvenile's rights and the consequences of the waiver.

3. Interrogation

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

-
- b. Preferably, a written card containing the Miranda warnings should be used. This card should be handed to the juvenile (and any adult present on his/her behalf) so that the juvenile can read it slowly and re-read it if necessary.
 - c. When an adult acting on behalf of the juvenile is present, the officer shall read the Miranda warnings to the adult.
 - d. Some inquiries shall be made of the juvenile (and any adult present on his/her behalf) as to the juvenile's age, most recent level of schooling and education, whether [s]he has any reading disabilities or mental or emotional conditions and whether [s]he understands the words contained in each Miranda warning.
 - e. UNDER FOURTEEN: If the juvenile being interrogated is 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.²⁷
 - f. AGE 14 TO 18: If the juvenile is over the age of fourteen and an interested adult is present, the adult shall be given an opportunity to have a meaningful consultation with the juvenile.²⁸
4. Officers shall ensure that the interrogation is not unduly coercive, particularly when an interested adult is not present. [44.2.3(b)]
- a. The duration of each interrogation session should be limited and frequent breaks taken.
 - b. Absent extraordinary circumstances, only two officers shall be present at the interrogation.

NOTE: Massachusetts courts have not ruled on how long the interrogation session of a juvenile may continue before it becomes unduly coercive. Whether an interrogation is unduly coercive such that a valid waiver of rights cannot be made, is a facts and circumstances inquiry and will be dependent on the age, intelligence and sophistication of the juvenile, as well as the circumstances of the interrogation.²⁹

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.

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

1. A police officer who, in his/her professional capacity, has reasonable cause to believe a child under age 18 is suffering serious physical or emotional injury or death from abuse or neglect, including sexual abuse or malnutrition, shall immediately report such condition to the Department of Social Services by oral communication, followed by a written report within 48 hours of the oral communication.³⁰ 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 Social Services (DSS) shall be immediately contacted and requested to respond to the scene to take custody of the juvenile.³¹ If DSS does not respond to the scene in a reasonable amount

of time, the juvenile may be transported to the station to await DSS.

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 DSS or a licensed child care agency or individual.³²

G. School Liaison and Youth Programs

1. The chief of police may establish and/or maintain a school liaison program and appoint one or more officers to do the following: [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.
2. The department encourages all departmental personnel, as good citizens, to participate on their off-duty time, in any community recreational programs for youths. Where a recreation program is needed by does not exist, officers should encourage citizens and community leaders to organize one. [42.2.5]

H. Record Keeping

1. Officers who select noncustodial 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. When parents, guardians, and/or juveniles contact the Everett Police to file an incident report or request a complaint, that initial report shall be taken and authored by the first responding officer or at police headquarters front desk; whichever method the reporting party utilized.
4. Unless there is an exigency, officers shall not bypass the report requirement and refer parents or juveniles to the school administration or school resource officers (SRO) for initial report intake. SRO notifications and/or referrals to school administration should occur after a report is filed and appropriate action taken by the initial officer.
5. If a reported incident qualifies as a criminal offense, contains sufficient Probable Cause, and the parties wish to do pursue the matter, officers shall file the report and take an appropriate course of action. (i.e. arrest, complaint, summons, warrant) Notification should be made via email or other method to the Youth Services supervisor for review.
6. During school hours.....if an incident report needs additional information such as suspect last name or address you may contact the SRO's at that time for assistance.
7. After school hours....refer the report to YSU via the normal report process so that we can attempt to fill in the missing info for you and send the report back to you to finish your complaint.
8. Application for JUVENILE complaints, arrests, Summonses, Hearings, and Warrants. The reporting officer shall sign the original complaint generated by Crime Track AND complete the Parent Information Sheet to include in the packet. (The Juvenile Prosecutor signs the court issued complaint on and after approval by the clerk.) Everett Police Juvenile Case folders from Central Records that are delivered to the Juvenile Court Clerks Office shall be brought back to EPD upon completion by the Clerks Office.

I. New Statutes of Interest pertaining to Juveniles:**Chapter 138 Section 1:**

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

Chapter 138 Section 34E.

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

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

Chapter 272 Section 40:

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

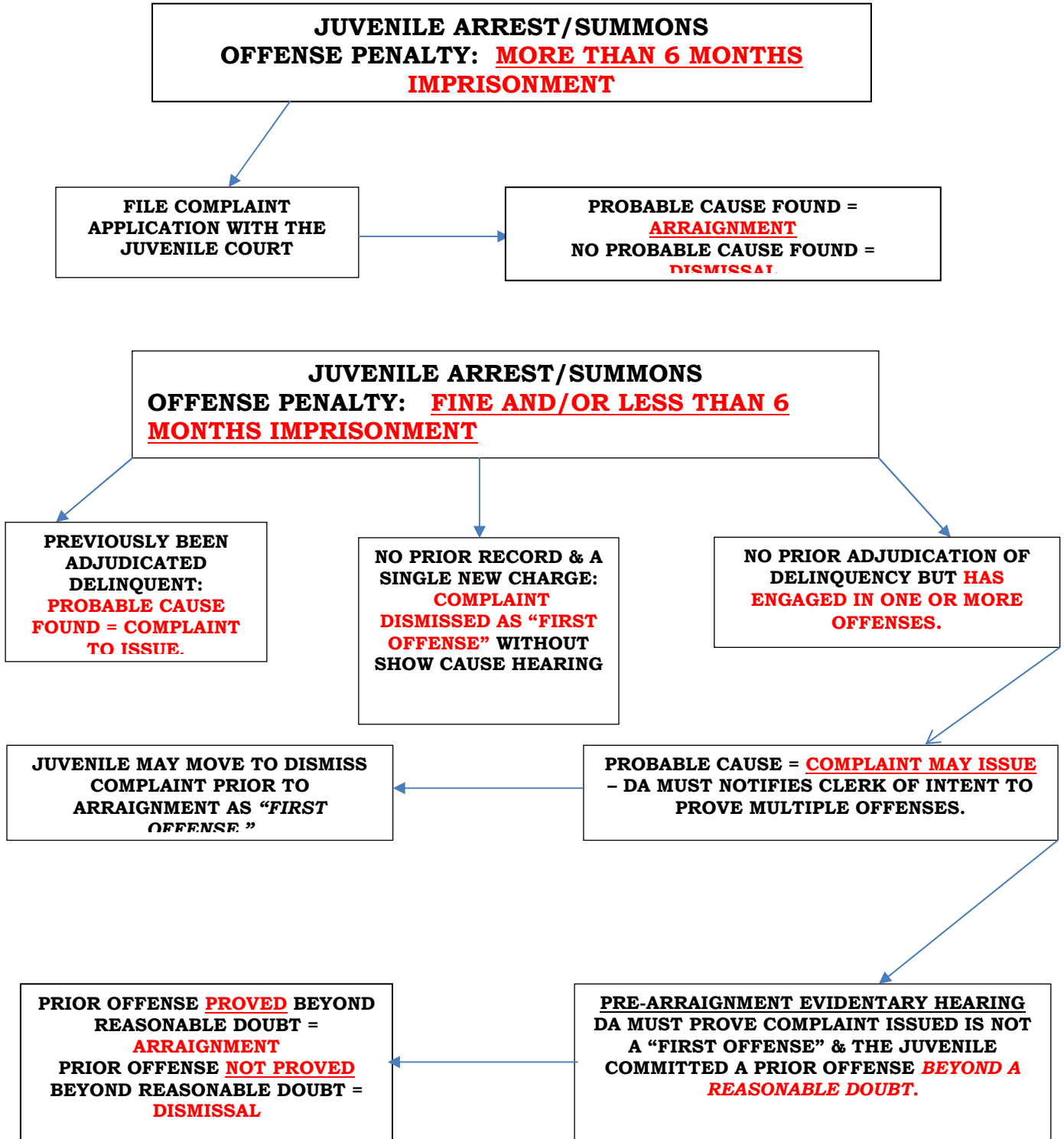
Chapter 272 Section 53:

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

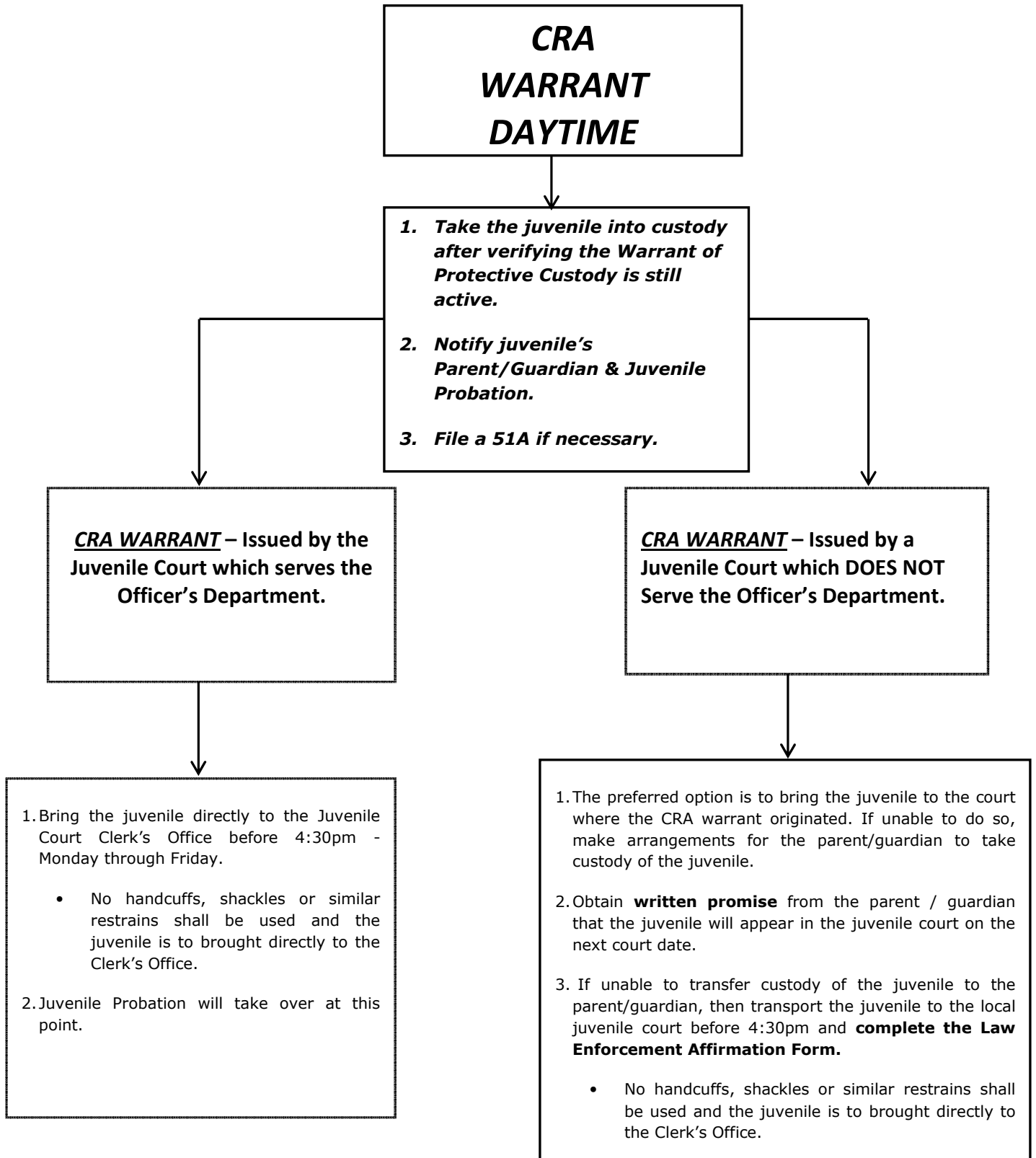
for a violation of this subsection for such conduct within school buildings or on school grounds or in the course of school-related events.

ADDENDUM A

JUVENILE ARREST/SUMMONS FLOW CHART



Addendum B



ADDENDUM C

RUNAWAY



***NIGHTTIME
WEEKENDS
HOLIDAYS***



- 1. Take the juvenile into Custodial Protection.**
- 2. Notify the juvenile's Parent/Guardian & Juvenile Probation.**
- 3. File a 51A if necessary.**
- 4. Locate the juvenile in the NCIC system as well as notify the entering Law Enforcement Agency.**



Release to Parent/Guardian or Responsible Adult
Obtain written promise that the juvenile will appear in court on the next court date.



Unable to Transfer Custody to Parent/Guardian or Responsible Adult

CONTACT the Massachusetts Runaway Assistance Program via MASS 2-1-1.

Mass 2-1-1 will provide police with the name and address of the closest Emergency Service Provider.

ADDENDUM D

JUVENILE ARREST - DELINQUENT OFFENSE**Notification**

The OIC shall notify:

- One of juvenile's parent(s), if no parent, then
- Guardian/Custodian with whom juvenile resides, or
- DCF if the juvenile is in their care & custody

Release: If arrested without a warrant and the OIC determines that the juvenile should be released, release the juvenile upon the written promise from the parent, guardian, custodian or DCF representative who will ensure the juvenile's appearance in court when the court is next open.

Detain: If a juvenile (between 14 & 18 years of age) has been arrested on a warrant or if the OIC of the police station requests in writing for the juvenile to be detained, the OIC shall contact the Bail Magistrate/Bail Commissioner who will set bail and/or terms and conditions of release based on the juvenile's current charge(s), circumstances of the arrest, criminal history and/or as directed by the arrest warrant.

- A juvenile age twelve (12) or thirteen (13) who has been arrested without a warrant cannot be admitted to bail and therefore must be released to either a parent/guardian/custodian.

Juveniles who are Unable to Make Bail or Unable to be Released

- Complete the Booking process.
- The juvenile must be separated by sight and sound from adults in custody.
- No juvenile between fourteen (14) and eighteen (18) years of age, shall be placed in a cell, unless the cell has been certified by the Department of Youth Services. G. L. c. 119, § 67.
- **The juvenile CANNOT be held in police custody for more than six (6) hours.**
- Police must contact the DYS Referral Line for placement of the juvenile in the Overnight Arrest Program (Nights/Weekends/Holidays): (617) 474-8150 or (617) 474-8179
 - DYS will not take custody of a juvenile being held on a Bail Fee only (\$40.00 - Personal Recognizance). The Bail Magistrate/Bail Commissioner shall be notified to release the juvenile without imposing a Bail Fee.
- Transport the Juvenile to the Overnight Arrest Program as directed by DYS. Police must provide a copy of the Booking Sheet prior to placement.
- If suffering from any medical condition, the juvenile must be medically cleared prior to placement. Police must bring any prescription medications prescribed to the juvenile.
- Conduct a **Jenkins Hearing** if the juvenile was arrested without a warrant and will be held longer than 24 hours, including while being held at the Overnight Arrest Program.
- Police must transport the Juvenile from the Overnight Arrest Program to the Juvenile Court.

¹ M.G.L. c. 119, s. 39E-J

² M.G.L. c. 119, s. 52

³ M.G.L. c. 119, s. 52

⁶ 28 CFR Part 31.303 (i)

⁷ M.G.L. c. 119, s. 54

⁸ M.G.L. c. 119, s. 86

⁹ M.G.L. c. 119, s. 21

¹⁰ M.G.L. c. 119, s. 67(d)

¹¹ M.G.L. c. 263, s. 1A; *Com. v. Shipps*, 399 Mass. 820, 507 N.E.2d 671 (1987)

¹² M.G.L. c. 119, s. 68

¹³ M.G.L. c. 119, s. 67

¹⁴ M.G.L. c. 119, s. 67

¹⁵ M.G.L. c. 263, s. 1A; *Com. v. Shipps*, 399 Mass. 820, 507 N.E.2d 671 (1987)

¹⁶ Executive Order Number 339, Commonwealth of Massachusetts, Aug. 14, 1992; 28 CFR Part 31.303(f)(5)(iv)(H)

¹⁷ M.G.L. c. 119, s. 68

¹⁸ M.G.L. c. 119, s. 67

¹⁹ M.G.L. c. 119, s. 67

²⁰ M.G.L. c. 94C, s. 36

²¹ *Com. v. A Juvenile*, 389 Mass. 128, 449 N.E.2d 654 (1983)

²² *Com. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

²³ *Com. v. King*, 17 Mass. App. Ct. 602, 460 N.E.2d 1299, *rev. den.* 391 Mass. 1105, 464 N.E.2d 73 (1984)

²⁴ *Com. v. Carey*, 407 Mass. 528, 554 N.E.2d 1199 (1990)

²⁵ *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)

²⁶ *Com. v. Guyton*, 405 Mass. 497, 541 N.E.2d 1006 (1989)

²⁷ *Com. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

²⁸ *Id.*

²⁹ *See Com. v. Harris*, 364 Mass. 236, 303 N.E.2d 115 (1973)

³⁰ M.G.L. c. 119, s. 51A

³¹ M.G.L. c. 119, s. 51B

³² M.G.L. c. 119, s. 24