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Handling Juveniles			

I. General Considerations and Guidelines

It is generally recognized that juveniles who engage in anti-social conduct present different problems to society than do adults who engage in similar activity. There is, therefore, a modification of police procedures in handling juvenile offenders. This special procedure is based on the concept that the juvenile offender is often not yet hardened and may be more easily influenced to conduct himself/herself within the law. How [s]he is treated at that time by the police can make 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 the police are not expected to be social workers, they must understand the social and psychological factors which contribute to juvenile misbehavior and crime. By the nature of their duties, the police should be familiar with any undesirable conditions in the community which breed juvenile delinquency. The prevention of juvenile crime has a high priority and any success in this regard can pay large dividends to the community and to its young people.

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The legislature has rescinded the law formerly referred to as CHINS (Children in Need of Services) and replaced it with numerous provisions concerning Children Requiring Assistance.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.

II. Policy

A. It is the policy of the Billerica Police Department that:

1. Juveniles shall be afforded their constitutional and statutory rights when being questioned, searched, detained or arrested;
2. Juvenile offenders will not be detained at the police station for any longer than necessary;
3. Children Requiring Assistance will be provided custodial protection and other required services where this can be done safely;

4. Officers will, 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 developing and supporting programs to prevent and control juvenile delinquency.

III. Definitions

- A. **Child Requiring Assistance:** Any child between the ages of six (6) and eighteen (18) who:
 1. Repeatedly runs away from the home of the child's parent, legal guardian or custodian;
 2. Repeatedly fails to obey the lawful and reasonable commands of the child's parent, legal guardian or custodian, thereby interfering with their ability to adequately care for and protect the child;
 3. Repeatedly fails to obey the lawful and reasonable regulations of the child's school; or
 4. Is habitually truant.
- B. **Delinquent Child:** A juvenile who violates any city ordinance or town by-law or who commits any offense against the Commonwealth.
- C. **Juvenile:** Juvenile is anyone under the age of 18.
- D. **Non-Offenses:** Children held in protective custody because they were found present where controlled substances are kept pursuant to GL c 94C, s 36, or are incapacitated due to intoxication pursuant to GL c111B, s8.
- E. **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:
 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.
- F. **Secure Custody:** A condition under which a juvenile's freedom of movement is controlled by being placed in a cell or locked room (or set of rooms) or being handcuffed to a stationary object.
- G. **Custodial Protection:** a term used but not defined in several parts of MGL c 119, referring to actions resembling Non-Secure Custody, above, but without confining

a child in shackles or similar restraints or court lock-up, or even transporting the young person to a police facility.

IV. Procedure

A. Administration

1. The Chief of Police should designate a juvenile officer or juvenile unit to have primary responsibility for juvenile operations.
2. The responsibility for participating in and supporting the department's juvenile operations is shared by all department components and personnel.

B. Enforcement Options

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 option, 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. Options 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/program;
 - c. Limited custody and station house warning. The juvenile shall be held in non-secure custody until released to his/her parent(s) or guardian;
 - d. Issue a citation or applying for a summons or complaint; and
 - e. Arrest.
4. Criteria When Choosing an Option
 - a. In considering a course of action, the officer should 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. Arrest (as a last resort) may be made in cases involving Children Requiring Assistance who are significantly non-compliant during the process and has been warned. Officers may use the common law crime of "Interfering with a Police Officer" and handle these cases as an arrest.

C. 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
2. Officers may arrest juveniles for acts of delinquency but not for traditional “status offenses”.
3. Arrested juveniles are subject to the same security and other transportation requirements as adults and may be handcuffed or otherwise restrained as necessary during transport and processing. See departmental policy on **Transporting Detainees**. Children Requiring Assistance may not be confined in shackles or similar restraints or court lock-up, or even transported to the police station. If the juvenile is compliant, handcuffs should not be used. Arrest is a last resort for a CHIRA child but if the juvenile is significantly non-compliant during the PC process and has been warned, officers may use the common law crime of “Interfering with a Police Officer” and handle these cases as an arrest.
4. When an arrest is made, the juvenile shall be brought to the processing facility without delay. The Juvenile Officer should be informed of the arrest as soon as possible.
5. When a juvenile is arrested, with or without a warrant, the OIC of the police station shall:
 - 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
 - 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 juvenile offender shall be released:
 - a. To a parent, guardian or other reputable person upon acceptance, by the OIC, 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 arrested for a juvenile offense shall not be released if:
 - 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 on **Detainee Processing**. Juveniles taken into custody for non-criminal offenses, as well as Children Requiring Assistance that are placed in custodial protection shall not be fingerprinted or photographed. In fact, a child requiring assistance shall not even be brought to the police station.
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 or Children Requiring Assistance shall be treated in a confidential manner.

D. Holding Juveniles

1. Delinquent Offenders

- a. Juveniles between ages fourteen and eighteen accused of delinquent offenses may be held in secure custody for no longer than **SIX HOURS** for the purpose of identifying and processing the juvenile and, if appropriate, transportation to a juvenile facility or court.

- i. Records shall be kept that specify:

- [a] The time the juvenile entered secure detention and the duration of each period of secure detention;
 - [b] The name of the police officer or custodial officer responsible for visual supervision and the schedule of visual supervision; and
 - [c] A statement of the need for secure detention.

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

- b. No child between the ages of fourteen and eighteen 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.
 - c. Lockup and other detention facilities shall be designed as to prevent juveniles who are detained, from coming into sight and sound contact with adult prisoners.

No child under age fourteen should be placed in a cell or otherwise securely detained. Such child may be held in a safe environment pending suitable disposition.

Placement in secure area, 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.

2. Protective Custody

- a. Juveniles in protective custody shall not be held in secure custody.
- b. A child under the age of eighteen may be taken into protective custody, for a period not exceeding **FOUR HOURS**, if an officer:
 - i. Finds the child at a place where the officer reasonably believes there is a controlled substance of Class A, B or C;
 - ii. Reasonably believes the child to be under age eighteen; and
 - iii. Reasonably believes the child knew of the presence of the controlled substance.

Note: The OIC of the police station shall make every reasonable effort to notify the juvenile's parent or guardian or other person having lawful custody.

- c. 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 **Protective Custody**.
- d. **Juveniles in non-secure custody should be placed in the following areas:**
 1. Interview room adjacent to the records unit
 2. Interview room in the Detective Bureau
- e. Juveniles in non-secure custody will be monitored at all times by a Police Officer or Matron, protected from public visibility, and will not have access to CJIS or confidential information.

3. Children Requiring Assistance

- a. Children Requiring Assistance shall not be held in secure custody.
- b. A child may be taken into custodial protection for engaging in the behavior described in the definition of "Child Requiring Assistance" in paragraph III section A, 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. 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 needs 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. 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 paragraph III section A, 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:
 - 1. To one of the child's parents, or to the child's guardian or other responsible person known to the child, or to the child's legal custodian including 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;

2. 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
3. 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.

m. 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.

Child brought to Court under custodial protection to the Court where the case is pending:

a) The Clerk:

1. 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 GL 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.
2. Shall accept the application for child requiring assistance if not already accepted.
3. 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.
4. Schedule the temporary custody hearing to be heard that date.
5. 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.
6. 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 indigence inquiry.

Child requiring assistance case pending in another division:

- a) The Clerk:
 - 1. 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 GL 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 case

- a) The Clerk:
 - 1. 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 GL 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".

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.

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 on **Interrogating Suspects and Arrestees**. It should be remembered that the Miranda Rules apply to juveniles.
- 2. In addition, the police must also follow the special rules that apply to the interrogation of juveniles.
 - 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.
 - 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.
 - ii. Fourteen years or older: For juveniles who are at least fourteen but under age eighteen, there should ordinarily be a meaningful opportunity to consult with a parent or interested adult. If there are valid, substantial reasons why an interested adult is not

present, officers should ensure, before interrogating the juvenile, that [s]he understands the Miranda warnings and the consequences of waiving them and that any waiver of his/her rights is made intelligently, knowingly and voluntarily. A valid waiver will not occur unless the circumstance "demonstrates a high degree of intelligence, experience, knowledge or sophistication on the part of the juvenile".

- 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).
 - ii. A person under the age of eighteen will not satisfy the interested adult rule.
- 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 copy 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 14: 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.
 - 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.
4. Officers shall ensure that the interrogation is not unduly coercive, particularly when an interested adult is not present.
- a. The duration of each interrogation session should be limited and frequent breaks taken.
 - b. Absent extraordinary circumstances, only two officers will 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.

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

1. A police officer who, in his/her professional capacity, has reasonable cause to believe a child under age 18 is suffering serious physical or emotional injury or death from abuse or neglect, including sexual abuse or malnutrition, shall immediately report such condition to the Department of Children and Families (DCF) by oral communication, followed by a written report within 48 hours of the oral communication. 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 DCF shall be immediately contacted and requested to respond to the scene to take custody of the juvenile. 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.

G. School Resource Officers and Youth Programs

1. See Department Policy **School Resource Officers**.

H. Record Keeping

1. Officers who select noncustodial alternatives or engage in informal enforcement contacts with juveniles shall complete an incident report 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 and placed in a red folder.