

Waltham Police Department
CHAPTER 44
JUVENILE OPERATIONS

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Reference: Mass. Gen. Law: Chapter 94C Sec. 36, Chapter 111B Sec. 10, Chapter 119 Sec.

39EI, Sec. 51A, Sec. 74

POLICY:

It shall be the policy of the Waltham Police Department to assign a high priority to the prevention of juvenile crime. To further that end, it shall be the policy of the Waltham Police Department to engage in activities and design programs geared toward preventing and controlling juvenile delinquency.

Further, it shall be the policy of the Waltham Police Department to assist in the strengthening and encouragement of family life for the protection and care of children; to assist and encourage the use by any family of all available resources to this end; and to assist those agencies committed to the provision of substitute care of our children to ensure their protection against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents or parental substitutes.

It shall be the policy of the Waltham Police Department to actively cooperate with all other agencies, public or private, which can be of assistance in deterring and controlling juvenile delinquency.

It shall be the policy of the Waltham Police Department to actively seek review and comment by other elements of the juvenile justice system in the development of the department's policies and procedures pertaining to juveniles.

It shall be the policy of the Waltham Police Department that, when dealing with juvenile offenders, the least coercive methods shall be used, consistent with preserving public safety, the good of the community, and individual constitutional and statutory rights afforded to a juvenile offender.
[44.2.1-1]

DEFINITION:

For the purpose of criminal law, a juvenile is a person who has reached the age of 7, but has not yet attained their 18th birthday.

PROCEDURES:

1. ORGANIZATIONS AND ADMINISTRATION:

- a. JUVENILE OPERATIONS - SHARED RESPONSIBILITY [44.1.1-2A]:** All personnel including clinicians, School Safety Officer and School resource Officers, shall be familiar with dealing with juvenile problems. All department personnel must share the responsibility for participating in and supporting programs relating to juveniles.
- b. COOPERATION WITH OTHER SERVICE AGENCIES:** Many service agencies both in the public and private sector offer services to juveniles. The Investigations Division, along with the School Resource Officers, shall maintain a list of all such social service agencies available. They shall be knowledgeable of the different services these agencies provide, and shall cooperate with and assist personnel from these agencies, in order to prevent and control juvenile delinquency and to assist juveniles in need of assistance.

2. OPERATIONS:

- a. TECHNIQUES FOR INTERACTING WITH JUVENILES:** All members of the Waltham Police Department should be aware that constitutional rights are not lost by virtue of one's age. Rather, juveniles merit greater protection, particularly in the area of questioning and waiver of rights. The combination of legal safeguards and practical response is aimed at beneficial results for the child, the department and the community.

When handling juveniles the following procedures should be followed:

1. Be flexible. Do not flaunt authority, as this will only lead to resentment.
2. A juvenile's reaction to police presence may be distasteful to the individual officer. However, officers should not take personal offense and should ignore abuse. Remember that a juvenile is entitled to the same respect and restraint as an adult, and any other treatment would be counterproductive. Avoid situations that humiliate or embarrass.
3. While an officer should recognize the unique and often sensitive nature of juvenile contact, they 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. DIVERSION ALTERNATIVES RELATING TO JUVENILES:

When interacting with juveniles, members of the department shall use the least coercive and most reasonable alternative, consistent with preserving public safety, order and individual liberty. [44.2.1-1]

Juvenile offenders may be dealt with in one of four ways:

- a. Outright release with no further action; provided, however, that no arrest has been made. It should be the practice to turn the juvenile over to a parent or guardian if possible. [44.2.1-2A]
- b. Simple treatment by the department with a notification to the parent or guardian; in most cases turning the juvenile over to the parent or guardian. [44.2.1-2A]
- c. Prolonged treatment, on a voluntary basis, by social service agencies, with the permission of the parent or guardian.
- d. Referral to the Juvenile Court for cases involving serious criminal conduct or repeated criminal violations. [44.2.1-2C]

When deciding a course of action, officers should consider the nature of the alleged offense, the age and circumstances of the alleged offender, the offender's past record, the advice of the School Resource Officers, the availability of community-based rehabilitation programs, and, in some cases, the recommendation of complainant or victim. [44.2.1]

Apart from diverting juveniles to social service agencies or to court, officers may, for minor offenses employ remedies such as station-house adjustments, warnings, informal referrals, follow-up by the School Safety Officer, School Resource Officers, or clinicians, and consulting with and arranging for corrective actions by parents. [44.2.1-2D]

4. WRITTEN SUMMONSES/CITATIONS JUVENILE OFFENDERS:

The use of summonses rather than physical arrest is the preferred method for referring a juvenile to the court system. When a question exists as to whether to arrest or summons a juvenile, officers should consider the safety of the community, the safety and well-being of the juvenile, their own safety and the totality of the circumstances. The issuance of the summons shall be in accordance with the provisions of Mass. Gen. Law Chap 119 § 54. [44.2.1-2B]

5. SERVICE OF ARREST WARRANTS AT SCHOOL:

Prior to service of any arrest warrants for a student attending a Waltham School, a supervisor and appropriate School Resource Officer shall be contacted to determine how service is to be made.

**6. NON-CRIMINAL CUSTODY OF JUVENILES (STATUS OFFENSES):
[44.2.3B]**

- a. Juveniles may be taken into custodial protection for some non-criminal behavior when a custodial protection order has been issued by the court (runaways, child disobeying the rules of the home, and habitual school offenders) under the authority of Mass. Gen. Law, Chap. 119, and Sec. 39E39I. Additionally, children who are believed to be runaways may also be taken into custodial protection under Chapter 119 (Child Requiring Assistance). [42.2.2-2A]
- b. Current law prohibits handcuffing (or the use of restraints) on a child who has been deemed a Child Requiring Assistance. When an officer comes into contact with a child who meets the criteria of a Child Requiring Assistance (under a Protection Order or a runaway) the child should be brought to the child's parent or guardian, if the parent or guardian are not available the child should be brought to a DCF approved shelter, if a shelter is not available the child should be brought directly to the Juvenile Court, without first being brought to the police station. [44.2.2-2D]
- c. A minor under the age of 18 in possession of or transporting alcohol is considered a status offender under federal regulations.
- d. A child in protective custody, a non-offense, should be afforded the same treatment as a status offender as far as detention. [44.2.2-2B]
- e. If a juvenile is in need of medical treatment, they should be transported to the nearest medical facility. The officer should immediately make every effort to notify the juvenile's parent(s) or legal guardian of the transport.
- f. Juveniles may be taken into custody in situations, where the officer believes that the life or the health of such child is in immediate danger. In such cases the officer should have someone at the station contact the Department of Children and Families (DCF) immediately, and relay the circumstances of the situation. If a representative of DCF does not respond to the scene within a reasonable period of time, the officer may transport the juvenile to the police station. [44.2.2-2B]

- g. Status offenders (non-criminal offenders) **CANNOT** be placed in a secure lockup for any amount of time (MGL 119, Section 39H). A secure lockup is defined as being placed in a cell, locked room or area, or handcuffed to a stationary object such as a booking rail.
- h. Youth charged with delinquency offenses **shall not be held** in a lockup for any longer than six hours for the purpose of identification and processing
- i. Juveniles to be held longer than six hours for a criminal or non- criminal offense must be referred to the Northeast Area Alternative Lockup Program. Juveniles held for a criminal offense are entitled to a Jenkins Hearing after 24 hours even if released to the custody of the alternative lockup program.
- j. Juveniles must be separated by sight and sound from adults in custody. This includes transportation and the booking process.
- k. Juveniles shall not be transported in a Patrol Wagon (MGL CH 119, Section 34). [72.5.4]
- l. Offenders under the age of 14, juvenile status offenders under the age of 18 and other juveniles transported to the Department under protective custody, DCF involvement, found in presence of controlled substances, etc. will be monitored in the Guardroom or Police Operations. Each juvenile shall be personally observed by the Officer in Charge or their designee [44.2.2-3C] and will be protected from public visibility and will not have access to CJIS or other confidential information. [42.2.2-3A, B]
- m. No juvenile under the age of 14 may be detained in a lockup, even for criminal behavior.

7. DETENTION OF JUVENILES:

Whenever a juvenile is arrested by a member of the department, the Officer-In-Charge or designee shall:

- a. Ensure that the juvenile taken into custody is transported to the station without unnecessary delay, unless the juvenile is in need of medical treatment.
- b. If the juvenile is in need of medical treatment, they should be transported to the nearest medical facility. The booking officer should make every effort to notify the juvenile's parent(s) or legal guardian of the transport, including information as to the injury or disability that required the transport.

- c. Inquire into the situation to ensure that proper cause for the arrest existed, and that the juvenile was and is being treated in accordance with law. [44.2.2-2A, B]
- d. Advise the juvenile of all applicable constitutional and legally mandated rights. [44.2.2-2C]
- e. Notify the probation officer of the district court.
- f. Notify the parent, guardian, or the person with whom the juvenile resides. [44.2.2-2E]
- g. Detain the juvenile pending such notice and inquiry.
- h. Ensure that the Juvenile Lockup record is completed in the CJIS database. The record shall include the time of entry into the cell and the release time.

8. CUSTODIAL & NON-CUSTODIAL INTERROGATION OF JUVENILES:
[44.2.3A]

The following procedures shall be adhered to when conducting a custodial interrogation of a juvenile.

- a. Before initiating an interrogation, both the juvenile and the "interested adult," if present, shall be advised of the general procedures that are followed by the department and the courts in matters regarding juvenile offenders. [44.2.3A]
- b. The interrogating officer should 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 their behalf, follows the words being spoken and comprehends their meaning. It is preferable to use the written form or card containing the Miranda warnings. This should be handed over to the juvenile, and to any adult acting on their behalf, so that it can be read slowly, and re-read if necessary. Some inquiries should be made as to the minor's age, their most recent level of education and schooling, whether they have any reading or understanding disabilities, and whether they understand the words contained in the warnings.
- c. The juvenile should be allowed to discuss the meaning of the Miranda warnings, the consequences of waiving them, and the advisability of waiving them with the adult who is present on their behalf. [44.2.3]

- d. Both the juvenile and adult shall be given every reasonable opportunity to discuss the rights and the waiver.
- e. In all instances of custodial interrogation of juveniles, officers shall follow the "interested adult" rule mandated by Comm. v. A Juvenile, 389 Mass. 128, 449 N.E. 2d 654, 1983.
 - 1. An "interested adult" is, most often, a parent of the juvenile. When a parent is unavailable, another interested adult may be called upon, such as a legal guardian, an adult brother or sister, another adult relative, an attorney or a probation officer.
 - 2. If the juvenile being interrogated is under the age of fourteen, an interested adult **MUST** be present, **MUST** be advised of the Miranda warnings, and **MUST** be given an opportunity to discuss them with the juvenile. **[44.2.3]**
 - 3. If the juvenile has attained the age of fourteen or greater, an interested adult should be present if at all possible. If an interested adult is present, that person shall be advised of the Miranda warnings and shall be given an opportunity to discuss them with the minor. If there are valid substantial reasons why an interested adult is not present, officers should ensure, before interrogating the juvenile that they understand the warnings and the consequences of waiving them, and further, that any waiver of their rights is made intelligently, knowingly and voluntarily.

If an interested adult cannot be obtained, officers must be aware that the admissibility of statements obtained may be suppressed.
 - 4. No more than two officers shall interrogate a juvenile at the same time. **[44.2.3]**
 - 5. Interrogations should be limited, when possible, to sessions no longer than twenty minutes. **[44.2.3]**
 - 6. Every possible effort shall be made to eliminate coercion and ensure voluntariness of any confession. This is especially true in the interrogation of juveniles. In determining the voluntariness of a confession, the courts look to the totality of the circumstances, including a review of the following factors related to the juvenile defendant: **[44.2.3]**
 - a. Age, intelligence, educational background.

- b.** Mental capacity, including whether the defendant was nervous and physical condition.
- c.** Prior experience in the criminal system.
- d.** Whether the defendant is suffering from any injury or pain at the time the statement is given.
- e.** The duration of the questioning.
- f.** Time of day.
- g.** Whether the defendant is tired and is desirous of sleep.
- h.** Length of confinement.
- i.** Whether Miranda or police caution warnings were given, when, and whether they understood them.
- j.** Whether the room was of sufficient size and supplied with appropriate furniture.
- k.** Whether defendant was cuffed or threatened.
- l.** Whether defendant was refused use of the bathroom, food, or drink.
- m.** Whether there was a promise of leniency.
- n.** whether the juvenile understood the interrogation process.
- o.** whether a youth officer is present during the interview.
- p.** whether the parents were notified.
- q.** whether the juvenile asked for a parent to be present.
- r.** whether the police prevented a concerned adult from speaking with the juvenile, which is a significant factor.
- s.** Familiarity with English or the official language.

9. COURT ACTION:

Formal complaint applications for referral to the Juvenile Court should be restricted to those cases involving serious criminal conduct or repeated criminal violations. Delinquent acts, which should require referral to the Juvenile Justice System, include:

- a. All acts which, if committed by an adult, would be felonies.
- b. Acts involving dangerous weapons.
- c. Serious gang-related acts.
- d. Aggravated assaults and batteries.
- e. Acts committed by juveniles on probation, on parole or by those with cases pending.
- f. Repeated acts within a twelve (12) month period.
- g. Offenders who have been selected for a diversion program but have refused to participate.
- h. Cases where it is apparent that parental supervision necessary for diversion is lacking.

In all cases wherein an arrest has not been made in the above instances, the Investigations Division should be notified of the intended actions of the investigating officer.

10. SELECTED LAWS REGARDING JUVENILES:

All officers are responsible for knowing and complying with the law. The following Massachusetts General Laws regarding juveniles are by no means all-inclusive but are put forth as an aid.

- a. **MASS. GEN. LAW, CHAP 94C, § 36:** A police officer may take into protective custody, for not more than four hours, any persons whom the officer reasonably believes is under seventeen years of age, if that person is found present where controlled substances in Class A, B or C are kept or possessed, and the child knows of the presence or possession of the controlled substance. Under these circumstances, every effort shall be made to notify the child's parents or guardian, or other person having lawful custody. **[44.2.2-2B]**

- b. **MASS. GEN. LAW, CHAP 111-B, § 10:** Whenever a juvenile is taken into protective custody as an "Incapacitated Person" under the provisions of Mass. Gen. Law, Chap 111-B, the policy and procedures outlined under this subject matter shall be strictly adhered to. **[44.2.2-2B]**

- c. **MASS. GEN. LAW, CHAP 119, 21:** Deals with Children Requiring Assistance.

 "A child requiring assistance" is any child **between the ages of 6 and 18** who (a) persistently runs away from the home of his parents or legal guardian, or (b) persistently refuses to obey the lawful and reasonable commands of his parents or legal guardian; (c) persistently violates the lawful and reasonable regulations of his school; or (d) who is habitually truant.

- d. **MASS. GEN. LAW, CHAP 119, § 24:** Deals with child neglect or abuse. In cases of serious child neglect or abuse, "any person" 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 the Department of Public Welfare, or a licensed child care agency or individual, under the provisions of Mass. Gen. Law, Chap 119, SEC 24 (Care and Protection Order).

- e. **MASS. GEN. LAW, CHAP 119, § 51A:** States in part "Any policeman who, in his professional capacity, shall have reasonable cause to believe that a child under the age of eighteen years is suffering serious physical or emotional injury resulting from abuse afflicted upon them, including sexual abuse, or from neglect, including malnutrition, or who is determined to be dependent upon an addictive drug at birth, shall immediately report such condition to the department of Children and Families by oral communication and by making a written report within forty-eight hours.**[44.2.2b]**

- f. **MASS. GEN. LAW, CHAP 119, § 74:** Makes requirements in juvenile cases for minor motor vehicle offenses, including those which are arrestable, i.e., operating under influence of intoxicating liquors, using motor vehicle without authority, etc.

11. SCHOOL LIAISON PROGRAMS: [44.1.1-2B], [44.2.4]

The School Safety Officer, and the School Resource Officers shall coordinate their efforts in providing support to local schools in the following areas:

- a. Acting as resources with respect to delinquency prevention.

- b. Providing guidance on ethical issues in a classroom setting as requested.
- c. Providing and/or arranging for individual counseling to students.
- d. Explaining the law enforcement role, particularly the role of the Waltham Police Department in society.

12. **PARTICIPATION IN COMMUNITY RECREATIONAL YOUTH PROGRAMS: [44.1.1-2B], [44.2.5-2]**

The Waltham Police Department shall lend all appropriate support to developing and maintaining community recreational programs for juveniles. The PAL Officer, School Safety Officer, and the School Resource Officers shall act as catalysts in the forming of such programs when necessary. They shall encourage and enlist the support and participation by members of the department in such endeavors. Youth programs are subject to change. One such youth program is the Police Athletic League geared to providing youth with opportunity to participate in team competitive sports such as basketball, street hockey, etc.

13. **LIAISON WITH DEPARTMENT OF CHILDREN AND FAMILIES:**

The members of the Investigations Division shall act as liaison with the Department of Children and Families on applicable cases or referrals.

14. **USE OF ALCOHOL BY MINORS:**

Any time an officer has dealings with a juvenile or minor who is or has been involved in the illegal use of alcohol, the following steps are to be taken.

- a. If appropriate, summons or arrest the offender.
- b. If an arrest is not made, or a summons is not sought, at a minimum a full report shall be filed and the officers responsible for reporting the incident shall notify the parent or guardian. In the event that the officer is unable to contact a parent or guardian, they shall request the assistance of the appropriate School Resource Officer, when applicable.
- c. Ensure that all evidence is confiscated, labeled, and placed in an evidence locker.
- d. If the incident is at a private residence and there are adults present, the investigating officer should seek a criminal complaint against the adult or

adults responsible for providing or furnishing the alcohol, in addition to any other relevant charges.

- e. If the incident takes place at a residence without parental knowledge, the parent(s) or guardians of all minor's present are to be contacted by the officer on scene when possible, notifying them of the incident and of the outcome. Reports from officers responding must be complete and accurate in order to allow appropriate follow-up without additional research. This includes the names, DOB of all minor's present, and their parent's names, addresses and phone numbers.

15. JUVENILE RECORDS: [82.1.2-2]

Reference Chapter 13 MIS / Records

- a. Juvenile records are distinguished from adult records through our computer system. Juvenile records are automatically highlighted through the computer system.
- b. All Juvenile fingerprints are sent through the CrossMatch Technologies Electronic Fingerprinting System located in the Booking Area and submitted with the LiveScan device. All fingerprint records derived from criminal arrests and submitted with LiveScan will be checked against State and FBI databases and a "Submitted Request Electronic" subject identification card will be returned to the department. **[82.1.2]**
- c. Persons arrested on FELONY charges will have the F.B.I green Disposition Sheet manually taken, in addition to the electronically scanned fingerprints. Fingerprints, juvenile or adult, are kept electronically by the state.
- d. Juvenile fingerprints and photographs (records) are kept per Records Retention Schedule 14-81. After completion of prosecution and exhaustion of appeals, photos and fingerprints can be destroyed. However, depending on the nature of the crime, records may need to be kept longer (see Record Retention Schedule 14-81). **[82.1.2-3, 4]**
- e. All Juvenile records are located in the computer system and flagged as juvenile. Access is open to police personnel with active permissions and personal login credentials. **[82.1.2-7AII]** Those reports involving sex crimes are only able to be accessed by a designated detective(s). Dissemination shall only be by permission of a Commanding Officer. **[82.1.2-10]** Any hard copies will be located in the file cabinet of the Community Services Division which is a locked office, accessible by FOB access to select personnel. **[82.1.2-6, 7AI]**