



# **POLICE PROCEDURES FOR HANDLING JUVENILES**

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CENTER FOR CRIMINAL JUSTICE  
BOSTON UNIVERSITY  
SCHOOL OF LAW

Police Procedures for Handling Juveniles

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PREFACE

These legal guidelines were prepared by the staff of the Center for Criminal Justice of the Boston University School of Law under the direction of Carol Rosensweig and Roger D. Purdy.

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## INTRODUCTION

Police officers are authorized and encouraged to use the least restrictive or least coercive alternative, when appropriate, in dealing with juveniles. This policy of employing only as much coercive action as the situation requires may influence your decision whether to intervene or the course of action you will take when you do intervene. The following paragraphs are designed to acquaint you with the general concept of the least restrictive alternative. As you read further in the manual, you should note that each section discusses the least restrictive or least coercive option for that kind of contact with juveniles, and the situations in which you should exercise that option.

There may be circumstances in which a juvenile has committed an offense, but arrest is not the appropriate solution. After considering the age of the juvenile, the seriousness of the offense, the role of the juvenile (observer or participant), and whether the juvenile has had any previous contact with the police, you may decide a reprimand or warning will be sufficient. You may also advise the juvenile and his or her parent or guardian to seek treatment or counseling. However, you cannot force anyone to accept treatment, and should not threaten arrest if he or she does not choose to follow your advice.. (See PART FIVE: ARREST.)

Beyond what is minimally required by a particular statute, you should choose among options available, keeping in mind the goal of achieving desired results through use of the least restrictive or least coercive alternative.

PART ONE: DEFINITIONS

100. Juvenile:

Any person under seventeen years of age.

101. Delinquent Child:

A juvenile between seven and seventeen who violates any city ordinance or town by-law or who commits any offense against a law of the Commonwealth (M.G.L. c.119 §52).

102. Felony:

A crime punishable by death or imprisonment in the state prison. All other crimes are misdemeanors (M.G.L. c.274 §1).

103. Misdemeanor:

See Section 102 above.

104. Reasonable Suspicion:

Reasonable suspicion is a standard applied to determine whether a police officer is justified in making an intrusion into an area protected by the Fourth Amendment to the U.S. Constitution. The test is whether a reasonably prudent person under the described circumstances would be warranted in believing that a delinquent act has been, is being, or is about to be committed. Reasonable suspicion must be based on specific facts that lead to a conclusion that a particular situation exists. Hunches are not sufficient. This standard is applied to stop or frisk situations.

105. Probable Cause:

Probable cause is a stricter standard than that of reasonable suspicion. The facts must be so strong that a neutral magistrate will conclude that a certain situation exists. This standard is applied to arrest or search situations.

106. Frisk:

A frisk or pat-down is a reasonable search for weapons. The purpose of a frisk is police protection. Thus, a frisk is limited to places in which a weapon can be concealed and to which a person has immediate access. A person may be asked to remove bulky outer garments in the course of a frisk. A knapsack may be felt if a police officer reasonably believes it may contain a weapon and it is within reach of a suspect. It is not necessary to have a search warrant to frisk as it is not deemed to be as intrusive as a full-fledged search. A frisk will be upheld upon a showing of reasonable suspicion.

107. Child in Need of Services (CHINS):

A juvenile below the age of seventeen who persistently runs away from the home of his parents or legal guardian, or persistently refuses to obey the lawful and reasonable commands of his parents or legal guardian, thereby resulting in said parent's or guardian's inability to adequately care for and protect said child, or a child between the ages of six and sixteen who persistently and willfully fails to attend school or persistently violates the lawful and reasonable regulations of his school (M.G.L. c.119 §21).

PART TWO: STOP, THRESHOLD INQUIRY AND FRISK

200. Introduction

A "stop"--on the street, in a car or in a public place such as a park or playground--is one of the most common kinds of contact you will have with juveniles. You may use a stop when you have a "reasonable suspicion" (as discussed above), which is less than the "probable cause" you need for an arrest. Therefore, you can use a stop in many situations as an investigative tool or to prevent delinquent behavior. Nevertheless, a stop is a seizure to which Fourth Amendment restrictions apply. Therefore, you must be very careful to make sure you have facts sufficient to justify a stop, and that you conduct the stop in a reasonable manner. When you are dealing with a juvenile you should be especially careful, because the child's age, size, strength and maturity may be weighed in determining the reasonableness of a stop and frisk. The fact that the person you stop is a juvenile may also affect decisions regarding the reasonableness of your suspicions, the reasonableness of the method used to detain, whether your threshold questioning was actually a custodial interrogation, and the validity of any consent given.

201. When to Conduct a Stop and Threshold Inquiry

You may stop a juvenile and engage the juvenile in a threshold inquiry whenever you have a "reasonable suspicion" that the juvenile has engaged in, is engaging in, or is about to engage in delinquent behavior. Massachusetts law authorizes police officers to stop, detain, frisk and engage in a threshold inquiry any person reasonably suspected of criminal activity who is "abroad." As long as you have a reasonable suspicion, you may stop a juvenile on the street, in a store, in an auto, or any place you have a right to be. Reasonable suspicion exists when you, as a knowledgeable, trained, and cautious officer using good common sense, drawing upon your own personal observations, knowledge and experience, reach a reasonable con-



clusion that the juvenile has committed delinquent acts, is now committing delinquent acts, or is about to do so. Your conclusion may be based upon any behavior you observe, any reliable report you have, your past experience in detecting delinquency, and any other observable facts. An anonymous tip, report from a very young child or information from a questionable source should be corroborated by information from a better source or your own observations before you make the stop.

You should stop and question a juvenile if you have reasonable suspicion as discussed above and you feel that a stop and threshold inquiry will serve one of the following purposes:

- a. to develop further evidence or information useful to establish probable cause for an arrest at that or a later time, or to clear the juvenile;
- b. to obtain information (usually relating to identity, address, etc.) to enable you or another person to file a delinquency or CHINS complaint;
- c. to gather information about the juvenile and the possible delinquency to further your investigation; or
- d. to prevent commission of a delinquent act or acts.

#### Examples

1. It is 10:30 PM. You are in plain clothes in an unmarked car near a bus stop, the scene of a recent number of handbag snatches. The streets are deserted. You pass by two teenagers you do not recognize standing in the drugstore doorway. You suspect they may be waiting for a victim. You decide to observe them for awhile to see if anything happens. You observe them for 15 minutes and notice them walking up and down the street,

watching the bus stop. When a couple exits from a bus, the youths confer but do not go toward the couple. You now choose to exercise your power to stop and detain them for investigative questioning.

2. While driving on an overpass, you observe two youths walking down the side of a street near Route 2. They are carrying large objects that look like rocks, and seem to be intoxicated. Recently there have been problems with youths hanging out in the woods nearby and throwing rocks at the cars below this overpass. You have reasonable suspicion to stop them and conduct a threshold inquiry.

#### 202. Conducting a Stop

A court is likely to view most juveniles as easy to persuade or coerce, and not as a serious threat to you or others. Therefore, when conducting a stop you should try to be as non-coercive as possible, to avoid use of physical and verbal force, and to detain the juvenile for as short a time as possible.

When you stop a juvenile you should request the juvenile to stay and answer a few questions. You should state you are a police officer and show some identification as soon as possible, unless your uniform makes your status clear. This should help obtain cooperation and will avoid the appearance of coercive subterfuge. It is important to state that the juvenile is not under arrest but that you would like to ask a few questions. You should then complete your threshold inquiry as quickly as possible.

It is best to avoid use of any physical restraint or force beyond the initial command or request that the person stop or come over to you. If you reasonably suspect delinquent behavior, you may use reasonable force to detain a juvenile who refuses to remain. Reasonable force is the minimum amount of force necessary to ensure that the juvenile remains. For example, you may state your authority and command the juvenile to remain, you may stand in such a way as to block the juvenile's exit, or, if necessary, you may place your hands on the juvenile or place the juvenile in the cruiser.

You should usually stop and question a juvenile where you find the juvenile. You may ask the juvenile to accompany you to the cruiser while you check identification, call the station, or call the juvenile's parents. If the stop scene presents a danger to you or the juvenile because of a hostile crowd or dangerous environment, you may choose to move the juvenile a short distance to a safe place.

Once you have stopped the juvenile, you may conduct a frisk or quick pat-down search if you have reason to suspect the child may have a concealed weapon. (See Section 204.)

#### Example

You are on patrol in the early hours of the morning. While walking by the all night donut shop, the scene of a recent series of muggings, you see a youth running from the store's parking lot. You stop him and ask what he is doing. Suddenly a large group of youths surrounds you and starts jeering. You decide that you cannot continue questioning the suspect there without provoking further hostility. You request that he walk down the street with you so that you may ask him a few questions. To ensure that the moving of the suspect is not viewed later as an arrest, you should make it clear to him

that he is not under arrest and that you merely want to ask him a few questions.

#### 203. Conducting a Threshold Inquiry

Once you have stopped the juvenile, you may ask a few questions designed to identify the juvenile and explain the child's actions. First, you should ask the juvenile's name and address. You may ask for identification cards to confirm identity. You may also ask for a parent's name and phone number to check the juvenile's identity and to allow you to follow up your investigation. Keep in mind that the juvenile is not obligated to answer your questions.

You may ask questions about the juvenile's behavior, and specifically about that behavior which caused you to stop the juvenile. Your questioning must be limited to only very preliminary investigative questions. If the suspected delinquent behavior is close in time to the stop, you might ask where the juvenile is going, or from where the juvenile has come. If the suspected delinquency occurred in the more distant past, your questions should be more general. You should avoid accusing the juvenile of delinquent acts. You should also keep in mind that an important and incriminating statement elicited in the parent's or guardian's absence might be inadmissible and may taint evidence obtained later. Therefore, you should not conduct extended questioning or ask questions likely to elicit confessions or incriminating statements.

Your threshold inquiry should only last a few minutes, just long enough to ask a few general questions designed to establish identity and explain actions. If your suspicions are not lessened by the juvenile's answers or actions, you may continue the questioning for a few minutes longer. You may not search the juvenile for identification cards, and you may not arrest a juvenile on the street for merely failing to answer or cooperate. If you have stopped a juvenile operating a motor vehicle, you may arrest the juvenile for refusing to provide iden-

tification (see c.90 §21), but you should only do so when that is the most appropriate response. (See PART FIVE: ARREST.)

Try to avoid continued questioning, questioning focused on the juvenile as a suspect, suggesting that the juvenile is a suspect, questions designed to obtain a confession, or almost anything beyond the initial threshold questions described above. This will minimize the possibility that a later court will view your questioning as a custodial interrogation. If the overall circumstances suggest a lengthy, coercive detention, a court may view your questioning as a custodial interrogation or even an arrest. Therefore, you should release the juvenile after the initial questions, unless you have obtained probable cause to arrest. If you do have probable cause, you may arrest the juvenile in accordance with proper arrest procedures. (See PART FIVE: ARREST.)

If you have established that the juvenile is a CHINS, you may treat the child as described in PART NINE.

#### Examples

1. A merchant comes out of his store, spots you, and runs over to you saying, "that kid just stole a cassette tape." Although you do not have the authority to arrest the juvenile (because the alleged misdemeanor was not committed in your presence), you may stop her for a threshold inquiry. You may ask her name and address and then furnish that information to the merchant. He, in turn, may use that information to file a complaint against the juvenile. Should the juvenile give inadequate answers or refuse to answer your questions, you should not detain her further.

2. While on patrol on Mass. Avenue, you are approached by a woman you do not know who says she just saw three boys trying to break into a blue Volkswagon parked on the corner. You find the Volkswagon with the juveniles around the driver's door. One is hitting the vent window with his fist. You have reasonable suspicion to believe that they may be trying to break into the car. You may conduct a threshold inquiry to determine whether the car belongs to any of them.

#### 204. Frisk

If you reasonably suspect that a juvenile is carrying a weapon, you may conduct a limited pat-down search to protect yourself. You may also look in the nearby area from which the juvenile could easily reach and obtain a weapon. If you stop a juvenile in a car, you may quickly look in that part of the car the juvenile could easily and quickly reach, but again you must reasonably suspect the existence of a weapon.

A frisk is only allowed as a quick check for weapons where you reasonably suspect their existence. You should not use the frisk to search for evidence for use against a juvenile in delinquency proceedings, or to seize drugs or contraband.

In most situations where you contact a juvenile you will not suspect weapons, so you should remain cautious but conduct your questions without a frisk. If possible, you should avoid frisking a juvenile because a court may view it as coercive. You should be especially wary of frisking very young children or children of the opposite sex. However, in some circumstances, specific facts may lead you to believe the juvenile may be armed and dangerous. In those unusual circumstances, you should frisk the juvenile to protect the juvenile, others, and yourself.

Reasonable suspicion to frisk may arise at any point during a stop and may be based on the following facts:

1. The suspected offense and resulting likelihood of the juvenile having a weapon--are you investigating a reported incident in progress involving use of weapons? Or are you investigating a very recent incident involving an easily concealed weapon that you suspect the juvenile may still be carrying?
2. The juvenile's appearance--is there a bulge in the juvenile's clothes, or does the juvenile appear to be concealing an object that could be a weapon?
3. The juvenile's actions and words--does the juvenile act threatening in a way which suggests, based on your experience, that the juvenile may have a weapon? Did the juvenile move as if to hide a weapon when you approached?
4. The juvenile's record or reputation--does the juvenile have a history of armed assaults, use of weapons in resisting arrest, or attacking police officers? Have you known the juvenile to carry weapons in the past?
5. Time, place, and other circumstances--is the area dark or isolated? Are there a number of persons present posing a serious threat to your safety? These factors alone may not justify a frisk if the suspected delinquent act did not involve weapons.
6. The juvenile's companions--do you reasonably suspect other juveniles or adults present of carrying a weapon or of having transferred a weapon to the suspected juvenile?

If you decide you must frisk a juvenile, you should normally limit your frisk to a pat-down of the juvenile's outer clothing. However, you may open an unusually heavy coat or

other garment if you could not feel a possible weapon from outside. You should use sufficient care and strength to allow you to detect any weapons concealed beneath the clothing. If you feel an object you reasonably believe to be a weapon, you may reach into that pocket or area to remove the object. If you have information or have made observations that lead you to reasonably believe a weapon is concealed in a particular spot, you may immediately check that spot before patting-down the juvenile. If you seize an item, you should return it to the juvenile unless you arrest the juvenile, or unless the item is contraband.

If the juvenile is carrying a purse, knapsack, bag, or other such item that you reasonably believe could be used as a weapon you may place it out of the juvenile's reach during the stop. You should not open or search the item unless you reasonably suspect it may contain a weapon that the juvenile could reach and use against you or others in the area. If you suspect such a weapon, you may use the least intrusive means possible to determine whether the item contains a weapon. Patting or squeezing the exterior is preferred, but if that would not reveal whether a weapon were inside, you may open the item and look inside for a weapon. Your search is limited to checking for weapons; you may not open closed containers too small to hold a weapon.

#### Examples

1. You see a youth who matches the description of someone wanted for assault with a dangerous weapon that took place that morning. You stop him, explain that he is not under arrest, and ask him for identification. The youth seems very nervous and you believe he has the weapon on him, probably in his pocket. You pat him down but do not detect the presence of a weapon. You may ask the youth to remove his bulky ski parka so that you

can pat-down his inner clothing. If you still do not detect the weapon you cannot search any further.

2. You are questioning a suspect you found emerging from a closed school building at night. He is wearing gym shorts and a T-shirt and carrying a knapsack. The youth becomes hostile and makes verbal threats against you. You are concerned that his knapsack may contain a weapon. You do not want to merely place the knapsack out of his reach for the duration of the stop and then return it because his threats make you believe that it might contain a weapon. You decide to pat-down the knapsack, which represents the least intrusive means of conducting an examination. The pat-down reveals soft contents that feel like clothing. Since there is no reason to believe a weapon is concealed there, you do not open the knapsack but return it to the youth.

#### 205. Consent

Normally, when you exercise your stop power you may briefly detain the juvenile at the location of the stop. You should not on your own initiative extend the length of detention or move the suspect because a court may view this as an arrest on less than probable cause. However, the juvenile may voluntarily agree to remain with you beyond the short period of time necessary for you to conduct your threshold investigation or voluntarily agree to accompany you elsewhere (e.g., to a cruiser or back to a victim for identification). However, the juvenile must still remain free to leave at any time unless cause to arrest develops.

You must be very careful if you operate under the assumption that a juvenile has given consent as a court will look at such consent very carefully. You should always tell the juvenile, in language the juvenile can understand, that he or she has the right to withhold consent. You should not suggest that it would be in the juvenile's best interests to cooperate. Even with these precautions, a court may find that the juvenile could not or did not give valid consent. Avoid situations where consent is needed, and try to obtain the consent of the juvenile's parents or guardian.

#### Example

You see a girl run out from a department store where there has been a rash of shoplifting. She is carrying a large, full shopping bag. Upon spotting your cruiser, she drops the bag on the sidewalk and starts walking. You pull up next to her and tell her you would like to ask her a few questions. She gives you her name, but refuses to tell you where she is going. You inform her that she is not under arrest and ask her to return to the department store with you. She refuses. If you believe you have probable cause to make an arrest, you should detain her and given her full Miranda warnings. You may then accompany her to the store. If you do not believe you have probable cause for an arrest, you may not detain her further.

### PART THREE: QUESTIONING A JUVENILE

#### 300. Interrogation

Any questioning of a suspect initiated by a law enforcement officer may be considered an interrogation. Miranda warnings are required when the interrogation is custodial in nature (i.e., when the juvenile is in custody or otherwise deprived of freedom in any significant way by a police officer). To determine whether the interrogation was custodial, courts consider whether a suspect in this person's position would have believed he or she was free to leave. Factors important to this determination include the age of the juvenile, the location and length of the questioning, and the number of police present. Courts are more likely to find the interrogation to be custodial in nature when the suspect is a juvenile; therefore, you may want to give the proper warnings earlier in questioning than you would for an adult.

The Miranda warnings are:

1. A juvenile has a right to remain silent.
2. Anything a juvenile says can be used against him or her in a court of law.
3. A juvenile has the right to the presence of an attorney during questioning.
4. If a juvenile cannot afford an attorney, one will be appointed for him or her prior to questioning.

The timing of the warning and waiver of the rights are discussed below.

#### 301. Questioning a Stopped Juvenile

Interrogation may take a variety of forms. You may carry out a "threshold inquiry" when you have stopped a juvenile you reasonably suspect of engaging in delinquent activity. (See PART TWO.) Even though no warnings are necessary initially,

you must be careful not to detain the juvenile too long and not to ask more than general threshold questions. This should prevent a later court from finding the questioning to be custodial interrogation and excluding any information obtained during the discussion. If it appears the juvenile may make incriminating statements, you should stop the discussion and inform the juvenile of his Miranda rights.

### 302. Interviewing a Juvenile Witness or Informant

Situations may arise where you wish to interview a juvenile who you do not suspect of delinquency, but who may be able to provide you with information helpful in your investigation of another juvenile or another person. Miranda warnings are not necessary in this situation. However, you might consider whether a parent's presence would help to obtain the cooperation of the juvenile. In addition, the parent's presence may help protect you from any allegations of coercion, intimidation, or other misconduct.

When you decide to interview such a juvenile, you should politely and clearly explain that you do not suspect the child of wrongdoing, but that you wish to ask a few questions to further your investigation. You should ask the juvenile to cooperate, and, if practical, you should also seek consent from a parent. If the child is very young, he or she is likely to be frightened, and to ensure that the consent is voluntary you should involve a parent.

You should at all times remain sensitive to the juvenile's emotional immaturity. This factor may color the truthfulness of answers you obtain, and may make the juvenile more vulnerable to emotional upset from questioning by the police.

If at any time during your questioning, it appears you may obtain a confession or other statement you may wish to use against the juvenile you are questioning, you should cease

questioning until you have given the Miranda warnings as listed above. (See Section 300.)

### 303. Interrogating a Juvenile Suspected of Delinquent Behavior

Miranda and subsequent cases prohibit the use against a juvenile of statements made by the juvenile during a custodial interrogation unless proper warnings are given and the right to remain silent is knowingly and intelligently waived. The warnings must be given in language the juvenile can understand; you may wish to give the traditional Miranda warnings but explain each part in greater detail.

### 304. The Assertion of Right to Counsel or Right to Remain Silent

If at any time the juvenile or parent/guardian asserts the right to counsel, you must honor that request before proceeding with your questions. This means you must stop questioning the juvenile until counsel is obtained. Because courts have included in their definitions of interrogation a variety of forms of police activity that elicited confessions or statements, you should also avoid any comments, questions, or discussions with the parent/guardian, other officers, or anyone else, that may lead the juvenile to make a confession or other harmful statement. In addition, once the child has asserted the right to counsel, you must wait for appearance of counsel, and may not re-approach the child to seek a waiver of counsel. If the juvenile later approaches you and expresses a desire to continue the interrogation without counsel, you should be very careful to ensure that waiver is completely voluntary, and not suggested in any way by your actions. If there remains the slightest possibility that the juvenile may later claim you suggested the waiver, you should wait for counsel to ensure the admissibility of statements.



Similarly, if the juvenile asserts his or her right to remain silent, that right must be respected. Again, you should be careful not to coerce or intimidate a waiver of this right, as that will endanger admissibility of any statement made and render the interrogation useless.

### 305. Waiver of Rights

The juvenile may waive the right to remain silent and to have counsel present during the interrogation. However, such consent will be closely scrutinized by the court to insure that the consent was knowingly, voluntarily and intelligently made, with an awareness of the circumstances and possible consequences. The court will examine all of the circumstances surrounding such consent and waiver to determine voluntariness.

A court may consider factors such as the following to determine the voluntariness of consent and waiver:

1. Parental Presence. This is the most important factor to the court; it is almost impossible for a juvenile to give valid consent without the advice of his or her parent/guardian. Another close relative or an attorney may be a sufficient substitute.
2. Form of Warning Given. A court may look closely at how you explained the rights to the juvenile. While an adult may grasp a standard Miranda type warning, you may have to give a juvenile a simpler, easier-to-understand explanation of the possible consequences of making a statement, of the advantages of having a lawyer, etc.
3. Age of the Juvenile. This factor can carry considerable weight in determining the ability of the juvenile to make an intelligent waiver.
4. Education.

5. Knowledge of the Substance of the Charge. Again, an adult might be able to understand the idea behind delinquency proceedings, and the nature of a particular charge, but the juvenile may require further explanation to understand what wrongdoing is suspected.

6. Whether Any Counsel is Obtained and Relationship Between Parent and Child. If legal counsel is obtained, the court is likely to find the waiver and consent valid. If only parental advice is available, the court may consider whether the parental interests are adverse. For example, if a parent has initiated the delinquency complaint, or has made statements suggesting that he or she is not interested in protecting the juvenile's interests, a court may find the juvenile's waiver and consent invalid.

7. When Questioning Occurred. A court may consider whether the interrogation occurred at day or at night, or before or after charges were formally made.

8. Place of Questioning. A court may consider where the interrogation was conducted. Although some juveniles may be intimidated by being questioned in the stationhouse, it is departmental policy to conduct interrogation at the stationhouse.

9. Method of Questioning. How the officer conducts the questioning may be very important. Any threat or show of force will be looked upon with disfavor by a reviewing court.

10. Length of Questioning.

11. Any Request for Counsel or a Refusal to Answer Questions.



## PART FOUR: WARRANTLESS SEARCHES

### 400. Preference for Warrants

When you acquire information that you believe creates probable cause to conduct a search, you should obtain a search warrant. Courts have consistently stated the importance of giving an independent magistrate the opportunity to review the facts known to a police officer in order to ensure that these facts justify an intrusion into the suspect's privacy. To encourage the use of warrants, the U.S. Supreme Court has stated first, that the courts should read warrants and affidavits in a common-sense non-technical way, and second, that warrantless searches should be much more closely scrutinized by the courts than searches for which there is a warrant. Moreover, a search warrant will usually permit a far more extensive search than would be the case if a search were permitted only as one of the exceptions to the Constitution's warrant requirement. What all this means to you is that if you take the time to get a warrant, your search is much more likely to stand up in court.

### 401. When a Warrantless Search is Permissible

The exceptions to the constitutional rule that permit a warrantless search include search incident to arrest, search incident to a stop (i.e., a frisk), consent, plain view, exigent circumstances and hot pursuit. Searches incident to arrest and stop are discussed in this section only as they relate to motor vehicle searches (which may also be allowed under other exceptions). Juveniles are entitled to the same procedural protections under these exceptions as are adults.

### 402. Consent Searches

Consent to search an area, whether the area is in a building, on privately owned land or in a motor vehicle, is unnecessary when a search is authorized under any other guideline.

Consent should be used only as a last resort because it is often subject to question after the fact. Courts tend to be especially careful in scrutinizing consent given by a juvenile. If you have sufficient probable cause to get a search warrant, it is preferable to make the search under a warrant rather than base it on consent.

Consent is a question of voluntariness, taking into account all surrounding circumstances. Courts are stricter when considering the possible consent of a juvenile to a search because of the presumption against the ability of a juvenile to knowingly and intelligently waive his constitutional rights.

You should tell the person from whom consent is sought that any evidence found may be used against the juvenile, and that he or she has the right to withhold consent. You should make sure both the juvenile and the consenting adult actually understand this warning.

Other factors (besides age, knowledge of consequences, and parental involvement) that may be used to attack or support the voluntary nature of the consent include:

1. lack of education or fluency in English;
2. below average intelligence;
3. repeated requests for consent; and
4. physical or mental stress.

Generally, valid consent to search in a building or on private land must be obtained from whomever has control over that area. You can probably obtain consent from a parent or guardian to search a juvenile's room, but you should try to obtain the juvenile's consent also. However, the parent or guardian may not be able to give valid consent to search, when, for example, the object of the search is a locked footlocker belonging to the juvenile. Only the juvenile can give valid consent for this search. The parent or guardian cannot give valid consent to search a juvenile's room if that juvenile pays rent.

### Examples

1. A reliable informant has just told you that he knows Susie Smith is planning to sell a large quantity of marijuana hidden in her bedroom. The informant knows that transaction is to take place that day, but does not know where or when. You believe that there is not time to obtain a search warrant because, if you do not go to her house immediately, she may leave with the drugs. You go to her house. Her parents answer the door and tell you she has not returned from school. You inform them of your suspicions and your desire to search her room. They consent to the search. In the search you find no drugs, but you do find a padlocked wooden box under her bed. Even if her parents consent to this search, you should either a) request that another officer remain with the box while you obtain a search warrant; or b) wait for Susie to return and request her consent to search the box.
2. In the course of investigating a series of housebreaks, you go to the home of a juvenile suspect to question him. You believe he is hiding goods that his friend has stolen, and you would like to search his room for the stolen items. The juvenile's parent is not home, and the juvenile does not speak English. You should obtain a search warrant before searching the juvenile's room.

3. While investigating a series of house-breaks, you go to the home of a juvenile suspect to question that juvenile. The suspect is not home, but her guardian answers the door. The guardian is horrified by your story and agrees to let you search the juvenile's room. In the juvenile's room you notice a locked jewelry box. Some of the items stolen were pieces of jewelry. However, because the box is locked, you must obtain a warrant or the juvenile's consent before you can open the jewelry box.

You may search a motor vehicle without a warrant if you have obtained the voluntary consent of (in order of preference):

1. the registered owner; or
2. a person who you have reason to believe is authorized by the registered owner to use the vehicle (e.g., a family member in possession of the keys); or
3. the driver.

A person's consent is not valid if it is obtained in the presence of an individual who objects to the search and who is higher in the above list of preferences. That is, the driver's consent is not sufficient if an objection is raised by the registered owner sitting in the back seat. On the other hand, the registered owner could validly consent to a search of the vehicle even if the present driver objects.

As discussed above, you should always try to obtain the consent of a juvenile's parent or guardian before a search; consent of the juvenile should be relied upon only as a last resort.

#### Example

On routine patrol, at about 2:40 AM, you stop an automobile with one headlight and the license plate light burnt out. Six teenagers are in the car. The driver cannot produce identification. Only one passenger, Pat, is able to produce identification. The registration shows that the vehicle belongs to Pat. You arrest the driver on traffic charges. You smell marijuana and want to search the car. Only Pat can grant permission to search the vehicle. If Pat does not consent to a search of the car, you cannot detain the vehicle any longer.

#### 403. Vehicle Stop and Frisk

Vehicle stop and frisk is one of the most common situations in which you will encounter juveniles. You may stop any vehicle for investigation whenever you have reasonable suspicion to believe that the driver has violated a traffic regulation, that the vehicle is stolen or being operated without authority, or that the vehicle or its occupants are, have been, or are about to become involved in a criminal or delinquent offense. You may not detain the vehicle or its occupants any longer than necessary to ascertain whether a crime, delinquent act, or traffic violation has been committed unless you make an arrest or issue a citation. You may not make random stops of cars without reasonable suspicion.

Whenever you have stopped a vehicle or whenever you make this type of contact with an occupied vehicle that is not moving, and you have reason to suspect that any occupant of the vehicle is armed, you may require that person to leave the vehicle and submit to a frisk for weapons. Before allowing the occupant to re-enter the vehicle you may inspect those parts of the car within that person's reach that could contain weapons.

If there are articles such as pocketbooks or briefcases in the car, you should pat them if that would reveal a weapon; only if this would not be sufficient to determine whether the container holds a weapon may you open the article. A locked, closed or sealed container may not be opened under the authority of a vehicle stop and frisk. For a more detailed discussion see PART TWO: STOP AND FRISK.

#### Examples

1. You stop a car for running a red light. The driver produces a license and registration. The one passenger makes threatening comments to you. You recognize him and remember that he has a delinquency record for A & B DW. You see a bulge in his waistband. To protect yourself, you frisk the passenger and areas of the car from which he could easily take a weapon. The driver need not consent to this search.
2. On patrol you observe a youth, who appears to be 14 or 15 years old, driving a late model car. Suspecting unauthorized use or driving without a license, you stop the vehicle to verify the license and registration. The driver's actions give you reason to suspect that he may be armed. You may order him out of the car and frisk him for weapons before asking him to produce his driver's license and vehicle registration certificate. After the frisk, he produces a valid license and registration but is angry and hostile. Before you let him back into the car, you may examine any area of the car within his reach which could contain a weapon. These areas include: an unlocked

glove compartment; console between bucket seats; above the sun visors; beneath the seat; and under items on the seat. You may also inspect readily opened containers such as bags, purses, packages, or briefcases within his reach that may contain a weapon. If you can determine whether a container, such as a paper bag, has a weapon inside by feeling it without opening it, you should do so. You may not go into an area like the trunk or locked briefcase, since it is not readily accessible, unless the suspect attempts to open it in a manner causing reasonable suspicion that he might be seeking a weapon.

#### 404. Plain View Searches

The plain view exception admits into evidence objects inadvertently seen by an officer who has a right to be in that location. You may seize contraband or evidence in plain view, for example, when executing a valid search warrant, searching to secure premises or in hot pursuit of a suspect.

Anything you happen to observe in, on, or connected to a vehicle may be considered as evidence for probable cause to arrest the occupants, to search the vehicle (subject to limitations discussed in sections 414 and 415), or to seize the observed items. The seizable items would include anything you observe with the use of a flashlight. This applies to vehicles that have been stopped and those that are unoccupied.

#### Examples

1. While placing a parking violation tag under the wiper of a vehicle, you observe what appears to be the edge of a plastic

bag partly under the seat. After looking at it for a moment, you see seeds, leaves and twigs giving you probable cause to conclude that it contains marijuana. You have authority to seize the bag to determine whether it contains contraband.

2. While patrolling a shopping center, you receive a report from dispatch that a store manager has observed two girls conceal clothing on their persons. You see two girls run from a store and enter a car parked directly outside. You approach the vehicle to ask why they were running from the store. The report from the manager and the flight of the two girls gives you the necessary justification to detain the girls and the car. You observe on the back seat discarded price tags marked with the name of one of the stores in the shopping center. You see no sign of any clothing. The presence of the price tags, in addition to the surrounding circumstances, furnish probable cause to search the vehicle for stolen clothing.

#### 405. Searches Incident to Arrest

In general, Massachusetts law allows you to make a search of an arrestee and of the area within the arrested person's reach for weapons. Once you make an arrest you may make a full search of the person and his or her clothing for weapons, as opposed to a limited search authorized under the stop and frisk power. You may also make a protective sweep for persons on private premises in the course of a search incident to arrest. If you have probable cause to believe that the arrestee is concealing on his or her person or in his or her clothing evidence

of the crime for which the arrest was made, you may search those parts of the person and clothing that may conceal the evidence.

When you are arresting a person in a motor vehicle you may order other occupants out of the vehicle to be frisked for weapons if you have reason to suspect that they may be carrying weapons; if your suspicion that the occupants may be armed continues after the frisk, you may assure yourself that the passenger area of the car does not contain weapons that might be used to assault you before you allow them to re-enter the vehicle. Incident to arrest, you may conduct a contemporaneous search of the passenger compartment of the vehicle, and containers found therein.

If you have probable cause to believe that the arrestee is concealing on his or her person or in his or her clothing evidence of the crime for which the arrest was made, you may search those parts of the person and clothing that may conceal the evidence sought. Incident to arrest, you may conduct a contemporaneous search of the passenger compartment of the vehicle, and containers found therein.

In addition to weapons searches, whenever you have probable cause to make an arrest for a delinquent act, you will generally have probable cause to search the vehicle for any evidence associated with that offense. This type of vehicle search is governed by another set of guidelines, the exigent circumstances exception.

#### Examples

1. You have a warrant for the arrest of Kim Young on grounds of the possession of a controlled substance. You see Kim hanging out in the center of town and arrest her. You pat Kim down and Kim appears to be unarmed. However, in Kim's pocket you find a throat lozenge box. You may open

the box because controlled substances can be inside.

2. You are sent on a call for a B & E in progress. As you arrive on the scene, you see two teenagers emerge from a dark building carrying something and get into a car. You follow them and pull the car over. You tell them they are under arrest. You may search the car for items that may have been taken and seize them as evidence.
3. On routine patrol you observe an automobile driving erratically along Pleasant Street. After observing the vehicle run a red light, you stop the vehicle. The driver is a teenager as are the four passengers. When the driver is unable to produce a valid license, you order the driver out of the car and place the driver under arrest. Your pat-down for weapons uncovers a pocket knife. The passengers are hostile and verbally abusive and you suspect they may be carrying dangerous weapons. After another officer arrives, you may order them out of the car and frisk them for weapons. However, since there is no evidence associated with the crime of driving without a license for which the driver was arrested, your search of the vehicle and passengers must be limited to places where you may reasonably expect to find weapons within their reach.

#### 406. Exigent Circumstances

In some situations you may not need a warrant to stop and search a vehicle capable of being moved when you have probable cause to believe that evidence of a crime or delinquent act is contained within it. This is because the mobility and accessibility of the vehicle raise the possibility that the vehicle will not be there or the evidence in it will be destroyed or removed before you can return with a warrant. However, these exigent circumstances do not eliminate the need for probable cause.

When probable cause does exist, the following are some situations that justify a warrantless search:

1. The vehicle is operable, and it is impractical to assign an officer to guard the vehicle pending your return with a warrant.
2. You have reason to believe that persons known or unknown may move the vehicle.
3. The possibility exists that an alerted criminal or delinquent will use the vehicle to flee.
4. The possibility exists that time or the elements might destroy the evidence.
5. It is an emergency situation in which a vehicle must be searched to save life, prevent injury to others, or prevent serious damage to property.

#### Example

You were informed, by a reliable informant, that a known narcotics dealer was observed near the high school on several occasions during the past month taking small quantities of a white powder in glassine bags from

the trunk of a red sedan near the high school baseball field. You now have probable cause to believe there are drugs in the car, and you may search it. You do not need a warrant because the vehicle may be moved or the narcotics removed from it.

In the following situation a warrant is necessary to search a vehicle:

1. The evidence sought has not been tampered with for a significant length of time and there is no reason to believe it will be while a warrant is being sought.
2. It is necessary to seize the whole vehicle and you know where it may be found.
3. The vehicle is not capable of being moved.

Remember that you should search only the parts of the vehicle in which the items might reasonably be found. If it is impractical to search immediately at the scene, you should have the vehicle towed in order to search later. (Keep in mind that any movement of the car by you will probably eliminate the exigent circumstances and make it necessary to obtain a warrant.)

Locked suitcases, briefcases, tool boxes and the like may be seized from the vehicle as part of these probable cause searches. However, a warrant is almost always necessary before the containers can be opened. Although the practical value of this delay may seem slight, courts are strict about this requirement.

## PART FIVE: ARREST

### 500. Definition of an Arrest

Although there is no exact formula for determining when an arrest has occurred, generally a legal arrest is any situation when:

1. you detain a person by force, by verbal commands, or by creating circumstances that implicitly make it clear to the person that he or she is not free to leave; and
2. you detain the person for a longer period of time than the brief period needed to conduct an initial investigation following a stop; or you take any action that exceeds the stop power usually associated with arrest; and
3. you have enough information to give you probable cause to believe that the person has committed an offense for which you have the power to arrest.

It is important to know when an arrest takes place and the requirements for a legal arrest. Not all arrests are legal, that is, in accordance with the Constitution and existing laws. Any situation when the first two factors are present, but not the third, is an illegal arrest. An illegal arrest will not prevent prosecution of the arrested juvenile, but the court will probably not admit any physical evidence or statements obtained as a result of the arrest.

The juvenile court does not have jurisdiction to charge a person who is less than seven years old as a delinquent child; therefore, you should not arrest a child six years of age or younger. If a child under seven is involved in an incident that would be considered delinquent if the child were between the ages of seven and seventeen years, you should remove that child from the scene of the incident and, preferably, take that child home.

#### 501. Difference Between Arrest and Stop

Although both arrest and a stop involve restricting a person's movement, there are three factors that set an arrest apart from a stop: the amount of information you have about the person, your purpose in detaining the person, and the degree to which you interfere with the person's liberty (e.g., detaining the person for a long time, moving the person from the stop site, etc.). A juvenile is detained for a longer period of time when he or she is arrested than when stopped.

When you stop a juvenile, you should have a reasonable suspicion that the juvenile has been involved or is about to become involved in delinquent activity or other misbehavior. Your purpose in conducting a stop is to allay that suspicion, or to gain more information to establish probable cause for an arrest, arrest warrant, or search warrant by questioning the juvenile. If you believe the juvenile is about to become involved in delinquent activity or other misbehavior in the immediate future, your purpose may also be to prevent that juvenile from committing such an act. After you question the juvenile for a short time and you determine there is no probable cause to arrest him or her, you should release that juvenile.

In contrast, when you arrest a juvenile you should have enough information to give you probable cause to believe the juvenile has committed a delinquent act. Your purpose in arresting is to detain that juvenile and to charge him or her with being a delinquent child. You also take the juvenile to the station for booking and possible pre-arraignment detention. The juvenile's parent or guardian and a probation officer shall be telephoned from the station to determine whether it is appropriate to detain the juvenile at the station in the Department of Youth Services (DYS) approved holding area, to transfer the juvenile to a DHS facility, or to release the juvenile to the parent or guardian.

#### Examples

1. You are called to a B & E in progress. You see three figures emerge from a drug-store and split up. You observe one youth carrying a carton. You follow the youth, but lose him. About a half-hour later you observe the youth again and apprehend him. He is nervous and reluctant to talk, but you would like to ask him about what you observed and the two other suspects. It is division policy that a parent or guardian be present during any interrogation and that the parent or guardian is informed of the juvenile's Miranda rights. Since you have probable cause to arrest, you should probably do so and wait until the parent or guardian is present at the station before questioning the suspect.
2. You are on patrol in the early hours of the morning. As you drive through the housing project, where there have been many episodes of vandalism, you see a youth running with a rock in his hand. You stop him and ask what he is doing. Suddenly a large group of youths surrounds the youth you are questioning and start jeering at you. You decide that you cannot continue questioning the suspect there without provoking further hostility from the gang of youths. You request that he walk down the street with you so that you may ask him a few questions. In order that this moving of the suspect is not viewed later as an arrest, you should make it clear to him that he



is not under arrest, that you merely want to ask him a few questions.

#### 502. Definition of Probable Cause

Probable cause is defined as whether, at the moment of arrest, you know facts and circumstances that would warrant a prudent person's believing that a juvenile had committed or was committing a delinquent act. You must have had specific information to believe that it was more likely than not that the juvenile committed a delinquent act. If the legality of the arrest is challenged in court, a judge will review the information you had at the time to determine whether it was sufficient to give you probable cause to arrest. Therefore, you must be able to articulate specific and objective factors upon which you relied to determine that the juvenile more likely than not committed an act of delinquency. Probable cause does not require that you have evidence sufficient to adjudicate the juvenile delinquent, but it does involve more than a reasonable suspicion that the juvenile engaged in a delinquent act.

#### 503. Factors Relevant in Establishing Probable Cause

In determining whether you have probable cause to arrest, you may rely on the sources of information listed below. The significance of the sources will vary, depending upon the circumstances of each case. (See Section 505: When Arrest is Permissible or Mandated.) While one source may provide you with strong enough information to supply probable cause, usually you should have a combination of information from two or more sources:

1. Your personal direct observations, including those made of the suspect and the scene of the criminal or delinquent act, as well as your past experience as a police officer in evaluating these observations.

2. Information received from other police officers based on their observation, collective knowledge within the Division, or radio broadcasts from the dispatcher.
3. Information supplied by the victims or witnesses of the crime or delinquent act.
4. Information supplied by an informant. This information must be corroborated and supported by evidence that the informant can be trusted. The accuracy of the information may be substantiated by further investigation producing additional corroborating information. Sufficiently detailed information that indicates the informant had firsthand knowledge of the information may establish its accuracy. The trustworthiness of the informant may be established by showing that he or she has given good information on past occasions.
5. You may consider the suspect's responses in evaluating probable cause (in order of significance):
  - a. --incriminating statements;
  - b. --contradictory statements; and
  - c. --evasive answers.Neither contradictory statements nor evasive answers alone are sufficient to supply probable cause.

In addition, the following factors may be considered in determining whether there is probable cause to arrest a suspect. These are the least significant of all factors mentioned, and do not, by themselves, establish probable cause.

6. The flight of a suspect upon your approach; and
7. Your knowledge of a suspect's prior criminal or delinquency record.

### Examples

1. Late at night, while in plain clothes, you walk past a movie theatre. Upon hearing the screams of an elderly woman, you turn and see two youths running into the alley near the theatre; one is carrying a purse over his arm. The elderly woman points towards them and shouts, "Those two just stole my purse!" Based on your observations of the scene, and the information supplied by the victim, you have probable cause to arrest the youths seen running into the alley.
2. You hear on your radio that youths have just vandalized the neighborhood elementary school. At the scene, you find broken glass and beer bottles strewn about the parking lot. You then notice Vinnie Martine running from the scene. You know Vinnie has a record of B & E's. However, you have no description nor any witnesses to identify the youths involved in the incident. You do not have probable cause to arrest Vinnie based solely on Vinnie's actions (running from the scene) and your knowledge of Vinnie's delinquency record.
3. Susan Prattle, a highly reliable informant, tells you that Jack McNally is a fence for whom you have been looking. She says that Jack went to Springfield yesterday and will be returning to town tomorrow afternoon with stolen property. She also describes the plain clothes Jack was wearing when he left. You decide to get a warrant for Jack's arrest. When

filing the request that a warrant be issued, you establish the reliability of the information by stating that in the past Susan has given you reliable information leading to arrests of suspects and the information Susan gave you is detailed.

### 504. Arrests For Noncriminal Misbehavior

Juveniles may also be taken into custody by processes other than arrest for criminal or delinquent acts, such as under the authority of the Children in Need of Services Act (See PART NINE: CHILDREN IN NEED OF SERVICES) or when in situations that might endanger their welfare. In such situations, you may take the juvenile into custody without having probable cause to arrest. However, intervention in such circumstances should be limited to the provision of services on a voluntary basis.

### 505. When Arrest is Permissible and/or Mandated

You may arrest a juvenile in situations when you can arrest an adult to enforce federal, state, and local laws defining criminal and traffic offenses. In addition, you may also intervene and take juveniles into custody under the provisions of the Children in Need of Services Act. (See PART NINE.)

In determining whether to take the juvenile into custody or whether to obtain an order from the court and then arrest the juvenile, the following should be considered:

- a. whether the complaint has already been filed;
- b. the seriousness of the alleged offense;
- c. the role of the juvenile in that offense;
- d. the nature and number of contacts the juvenile has had with the juvenile jus-

- tice system and the results of those contacts;
- e. the juvenile's age and maturity; and
- f. the availability of appropriate persons or services outside the juvenile justice system to respond to the juvenile's needs; and
- g. whether custody under CHINS is appropriate (see the Introduction to PART NINE).

#### 506. Arrest With a Warrant

You have the power to arrest a juvenile for whom a valid court order has been issued if you have actual knowledge that the order is in full force and effect.

#### 507. Arrest Without a Warrant

You have the power to make a warrantless arrest only if you have probable cause to believe the juvenile has committed a delinquent act, as described below:

a. Felony: You have the power to arrest a juvenile you have probable cause to believe has committed an act which would be a felony if the juvenile were an adult regardless of whether the felony was committed in your presence. A felony is any offense that is punishable by death or imprisonment in a state prison. All other criminal offenses are misdemeanors, whether they appear in the General Laws passed by the legislature or town by-laws.

#### b. Misdemeanor:

i. Breach of Peace in Your Presence: You have the power to arrest a person for any misdemeanor committed in your presence that constitutes a breach of the peace. "Breach of the peace," although not clearly defined,

generally means that in the circumstances the misdemeanor causes or threatens direct harm to the public. Common misdemeanors include assault and battery (Ch. 265 §13A) and affray (Ch. 277 §53).

ii. Not A Breach of the Peace in Your Presence: If a misdemeanor committed in your presence is not a breach of the peace, you do not have the power to arrest unless the statute specifically gives you power to arrest. You have authority to arrest for the following offenses:

- a. use of a motor vehicle without authority, Ch. 90 §24;
- b. any traffic violation committed by a person driving without a license granted by the Registrar of Motor Vehicles, Ch. 90 §21;
- c. driving after suspension of license, Ch. 90 §23;
- d. leaving the scene of an accident after causing person injury, Ch. 90 §24;
- e. trespass, Ch. 266 §120;
- f. larceny of any amount of property, Ch. 276 §28; and
- g. disorderly conduct, Ch. 272 §53.

iii. Arrest on Probable Cause: For some misdemeanors, the statute gives you the power to arrest based upon probable cause, regardless of whether the misdemeanor was committed in your presence or constitutes a breach of the peace. Examples of these misdemeanors are:

- a. driving under the influence, Ch. 90 §24;
- b. possession of a hypodermic needle or syringe, Ch. 94C §27;

- c. possession with an intent to distribute a Class D or E controlled substance, Ch. 94C §32;
- d. possession of a controlled substance, Ch. 94C §34; and
- e. knowing presence where heroin is kept, Ch. 94C §35.

iv. Town By-Laws: You have the power to arrest a juvenile whose identity you do not know who is in willful violation of a town by-law regulating use of streets, public reservations, or parkways (Ch. 272 §59). You may also arrest any person whose identity you do not know who throws rubbish or other substances on the street or sidewalk in your presence and refuses to obey your request to remove it. However, as soon as you learn the person's identity, you must release that person (Ch. 272 §60).

#### 508. Fresh Complaint

You may arrest without a warrant based on a fresh complaint for felonies and those misdemeanors discussed in the sections immediately above. An arrest based on a fresh complaint will protect you from liability.

A fresh complaint exists when the juvenile could be taken or apprehended in the act or when, promptly after the commission of a delinquent act you have received information (which you have reasonable grounds to accept as true), that the person being arrested is connected with, or implicated in the commission of the offense. A fresh complaint may be based on information from a reliable source or personal observation. If the offense was committed in the past and you receive new information, you should obtain a warrant before you make an arrest.

You are not required to inquire into the authenticity of the information or act at your peril. However, you must have reasonable grounds for accepting the information as accurate.

#### 509. Situations Outside of the Power to Arrest

As a general rule, when you encounter a situation involving a delinquent act where you do not have the power to arrest, you may attempt to ascertain the identity of the person involved in order to seek a complaint or arrest warrant. If a victim or witness is involved, you should inform the person of the procedure for filing a complaint against the juvenile in the district court. A juvenile officer may also choose to file a complaint when an arrest was not made.

There may be times, such as in a family dispute, when it is appropriate to suggest options other than the delinquency process that are available to the parties (e.g., a professional counseling service, etc.). If the activity complained of falls within the jurisdiction of the CHINS Act, you may choose to handle the case as outlined in Part Nine.

#### 510. Arrest on Private Property

In a case where you have the power to arrest a suspect, you may still need to decide whether you may enter private property to make an arrest. Because a police officer's entry into private premises is an intrusion into a place where people have a greater expectation of privacy than on the street, your power to arrest in such places is restricted under the Fourth Amendment.

When law enforcement officials enter private property that is not open to the public to make an arrest, courts assessing the legality of that entry will make a distinction between property in which the suspect lives and property in which the suspect may be found but which is owned by a third person. To

enter private property in which the suspect lives, the general rule is that an arrest warrant is required (absent consent by someone with authority or exigent circumstances such as an emergency that would justify a warrantless entry). (See PART FOUR: WARRANTLESS SEARCHES.) An arrest warrant for the suspect does not give you authority to enter private property in which you believe the suspect may be found, but which is owned or occupied by a third person. In this situation, where you do not have that third person's consent and exigent circumstances do not exist, the third person's constitutionally recognized privacy interest in his or her home requires that you to obtain a search warrant before entering that property to look for, and apprehend, the suspect.

If an area is privately owned, but is open to the public, such as a retail store, you may exercise your power to arrest without meeting further requirements.

A juvenile can give consent to enter a home. However, a court will look more favorably upon an entry based on the consent of the owner or of the parent or guardian. While it is unlikely to occur frequently, if the juvenile has a room separate from the family for which the juvenile pays rent or is otherwise "not under the parent or guardian's roof," the owner cannot consent to a search of the juvenile's room.

#### Example

You answer a call about a fight at the skating rink. When you arrive the manager describes the incident: upon leaving the ice, Bob Brown attacked Darryl Saunders with a hockey stick. Saunders appeared to be seriously injured when he left the rink with his friends. Another witness informs you that Bob's cousin, Kathy Faulkner, drove Bob away from the rink. You know Bob and Kathy live in the same apartment building. You go to that building and ring Bob's apartment; no

one answers. You then ring Kathy's apartment. Kathy answers and you explain that you would like to talk to Bob. Kathy has the capacity to consent to your entry, but she does not allow you to enter to arrest Bob. You cannot enter without a search warrant.

#### 511. Procedures to be Followed After Arrest

After a juvenile has been arrested for delinquent conduct, you should take the following steps at the scene of the arrest:

1. Inform the juvenile of your authority and of the charge for which he or she has been arrested.
2. Ascertain the name and age of the juvenile.
3. Pat-down the juvenile for weapons if you believe the juvenile has a weapon, if the juvenile is known to carry a weapon or if the offense is one in which a weapon is usually involved.
4. Handcuff the juvenile only when necessary to maintain the juvenile's, the public's, or your safety or to prevent the juvenile from escaping. This determination will be made within the circumstances of each arrest. Consider the offense, the juvenile's age, the alleged offense and the circumstances under which the arrest has occurred.
5. If the juvenile is sick or injured, inform the dispatcher, request an ambulance, and administer appropriate first aid. You must wait for the ambulance to arrive and have one officer accompany the juvenile in the ambulance.

6. While you are not required to give Miranda warnings unless you are going to question a juvenile or take any statement from a juvenile in custody and intend to use such statement in court, the juvenile should be given Miranda warnings.

7. You should search the juvenile incident to arrest. (See PART FOUR: WARRANTLESS SEARCHES, especially the sections on Search Incident to Arrest and Exigent Circumstances.)

8. You should note the time when you take the juvenile into custody and record that information. If it appears that physical evidence at the scene will be important in determining the facts, you should take precautions to secure and protect the scene of the incident.

#### 512. Booking Procedures for Juveniles

Whenever you arrest a juvenile, you should bring him or her to the station for booking and contact the juvenile officer. When the juvenile officer arrives and booking is completed, inform the officer of the facts and circumstances of the case. The juvenile officer should then take charge of processing the juvenile and you may complete your preliminary investigation. You should proceed on your own when a juvenile officer is not available and consult the commanding officer on all decisions.

In the absence of a juvenile officer after the suspect is booked, the commanding officer must notify a juvenile probation officer of the district court and the juvenile's parent or guardian. If court is in session, a probation officer can be reached at the court. If court is not in session, the Desk Officer's list of probation officers' names and telephone numbers should be consulted.

The juvenile must be detained in the juvenile holding area approved by the department of Youth Services, separate from

adult offenders, pending release or transfer. (See PART SIX: DETENTION.)

Records should be kept of the length of time the juvenile is detained and turned over to the person responsible for maintaining juvenile records.

#### 513. Release/Detention After Arrest

A police officer may make the decision to release or detain a juvenile on his own or in conjunction with the probation officer. If you have information that is relevant to the decision whether to release the juvenile, you should inform the probation officer. If you have arrested the juvenile pursuant to a warrant that directs that the juvenile be held pending an appearance in court, the juvenile should be detained in the DYS-approved facility.

Unless the juvenile has a long arrest record and is charged with a serious crime (e.g., delinquent acts involving weapons and aggravated assaults and batteries, especially against law enforcement personnel and persons older than sixty), it is likely that the juvenile will be released. If the probation officer decides to release the juvenile, the commanding officer will contact the parent or guardian or other person with whom the juvenile resides. The responsible person should be told when the arrest took place, the reason for the arrest, the time and place of the hearing, and the fact that the juvenile will be released to him or her when he or she comes down to the station and promise, in writing, to be responsible for the juvenile's presence in court. When the person appears at the station and signs the printed release form, the juvenile should be released. If the person who is expected to pick the juvenile up does not arrive at the station in a reasonable period of time, you should take the juvenile to a DYS facility as directed by the probation officer. If the juvenile is arrested and booked while district court is in session, the juvenile may be transported directly to court.

If the probation officer decides not to release the juvenile, the Desk Officer should still contact the parent or guardian or person with whom the juvenile resides. The responsible person should be told when the arrest took place, the reason for the arrest, and where the juvenile will be detained until the juvenile appears in court or bail is obtained. If the probation officer so requests, the juvenile should be released to the probation officer. If a juvenile is detained, you should transport the juvenile by car to the juvenile detention center designated by the probation officer.

## PART SIX: DETENTION

### 600. Introduction

Detention refers to the holding of a juvenile in a lockup, the police station, or house of detention between arrest and initial court action. There is a general presumption against such detention; you may do so only in certain circumstances and when certain procedures are followed. (You may also detain a juvenile under the protective custody statute. See PART SEVEN: PROTECTIVE CUSTODY.) It is important to remember that these procedures pertain to police detention, not court authorized detention. It is also important to remember that after arrest, alleged CHINS and delinquent children are treated alike. (See PART NINE: CHINS.) Most important, at no time may a juvenile be detained in the police station or town lockup with adults. No person between the ages of 14 and 17 may be detained in a police station or town lockup unless its juvenile detention facilities have received DYS approval. The approval area is the only area in which juveniles between the ages of 14 and 17 can be detained legally.

### 601. Procedures

After you arrest a juvenile between the ages of 7 and 17, you should first determine his or her age and then follow proper booking procedure. (See PART FIVE: ARRESTS.) You or the officer in charge must notify the probation officer of the district court within whose district the arrest took place that you have arrested a juvenile. You or the officer in charge must also notify at least one parent or guardian of the child. The purpose of these procedures is to allow inquiry into the case. Until you have completed this initial phase of your investigation, the juvenile should be detained. However, the decision to release or detain should be made as quickly as possible. A police officer may make the decision to release a juvenile without consulting a probation officer. However, if there is any doubt about releasing a juvenile, you should con-

sult a probation officer who will ordinarily have had more experience in making such decisions.

If the parent or guardian promises in writing to supervise the juvenile and insure his or her appearance in court, you may release the juvenile to that parent or guardian. This is the preferred course of action.

The juvenile may also be released to the probation officer upon that probation officer's request. However, if the arresting officer requests in writing that a juvenile between the ages of 14 and 17 be detained or if the court issuing an arrest warrant for the juvenile directs in the warrant that the juvenile shall be held in safekeeping pending the juvenile's appearance in court, the juvenile may be detained in a police station, town lockup, or a DYS detention home pending that juvenile's court appearance. A juvenile between the ages of 14 and 17 can be detained when the probation officer so directs. If the juvenile is detained, the officer in charge of the police station or town lockup should notify the probation officer and the parent or guardian of the detention. The juvenile may be admitted to bail.

You have no authority to detain a juvenile less than 14 years of age beyond an initial inquiry in which the juvenile's age is determined, the juvenile probation office is notified and the juvenile's parent or guardian is notified.

#### Example

While on patrol you see Chris Matthews, age 15, for whom you hold an arrest warrant. You then arrest Chris and bring Chris to the station for booking. The arrest warrant directs that "Chris Matthews be held in safekeeping pending the appearance of Chris Matthews in court." You inform the officer in charge. The officer in charge then calls the juvenile probation office at the dis-

trict court to notify probation that Chris was arrested and is being detained in accordance with the directive of the arrest warrant. That officer then calls the juvenile's parent or guardian to relay the information.



PART SEVEN: PROTECTIVE CUSTODY

700. Authorization

Protective custody (PC) is a method of detaining persons without arresting them. You are authorized to detain juveniles under two state statutes. There may be occasions in which you may choose to arrest or PC a juvenile (e.g., an intoxicated juvenile is transporting alcohol); in other situations, you have the authority to PC a juvenile but not to arrest (e.g., a juvenile is publicly intoxicated). In Massachusetts, public intoxication is no longer a crime. However, it is a statutory violation for a minor to transport alcohol.

701. Protective Custody for Drunkenness

The Alcohol Treatment and Rehabilitation Law (Chapter 111B) authorizes you, as a police officer, to assist an incapacitated person, with or without that person's consent, to his or her residence, to a detoxification facility, or to the police station. An intoxicated person is "incapacitated" if, due to drinking intoxicating liquor, the person is unconscious, in need of medical attention, likely to suffer or cause physical harm or damage to property, or disorderly. In order to determine whether a person is "intoxicated" under this law, you may request the person to submit to reasonable tests of coordination, coherency of speech, and breath.

If you bring a person to the station, you must inform that person, in writing, of his or her right to be given a breathalyzer test. Any person who is administered a breathalyzer test shall be presumed intoxicated if the test results indicate that the percentage of alcohol in his or her blood is ten one hundredths or more. That person shall be placed in protective custody at the station or transferred to a facility. A person shall be presumed to be not intoxicated if the breathalyzer tests indicate the percentage of alcohol in the blood is five one hundredths or less. If the test results show the percen-

tage of alcohol to be more than five and less than ten one hundredths, no presumption shall be made based solely on the breathalyzer test; a reasonable test of coordination or speech coherency may be administered. If the latter test indicates the person is intoxicated, that person shall be placed in PC at the station or transferred to a facility.

Any person presumed intoxicated to be PC'ed at the station shall immediately be informed of his or her right to make a phone call at his or her own expense. Any person assisted by a police officer to a facility shall be informed of this right. In addition, if a person under age eighteen is to be PC'ed at the station, that person's parents or guardian shall be notified as soon as possible upon arriving at the station.

When an incapacitated person is assisted to the station, the officer in charge, or a designee, shall notify the nearest facility that the person is being held in PC. If suitable treatment services are available at the facility, the police shall arrange for the person's transportation there.

No person assisted to the station shall be held in PC against that person's will. However, if suitable treatment at a facility is not available, an incapacitated person may be held in PC at the station for up to twelve hours or until the person is no longer incapacitated, whichever is shorter.

In performing your duties under this act you may use such force as is reasonably necessary. If you reasonably believe that your safety or the safety of others requires it, you may search the person and the surrounding area to the extent necessary to discover and seize any weapon. However, if the person is to be held in PC at the station, all valuables and all articles that may pose a danger to that person may be taken and inventoried.

Any person less than eighteen years of age who is held in PC shall, upon the request of his or her parent or guardian be released to the custody of the parent or guardian. All rights

granted adults under Chapter 111B shall apply to juveniles. Any provision requiring the consent of the person requires the consent of both the juvenile and the parent/guardian. A juvenile who is PC'd must be held separately from adults in a DYS-approved facility.

702. Protective Custody for a Juvenile Found Where Controlled Substances Are Present

You have the authority to place a person in protective custody under the following circumstances:

1. You find a person present where you find a substance that you reasonably believe to be a controlled substance listed in Class A, B, or C;
2. You reasonably believe the person is a juvenile; and
3. You reasonably believe the person knew of the presence of the controlled substance.

You may keep the juvenile in protective custody for up to four hours. When you bring the juvenile to the station, you must immediately notify the juvenile's parent or guardian.

703. Procedures for Placing a Juvenile in Protective Custody

When you place a juvenile in protective custody you should inform the juvenile of the authority under which he or she is being placed in custody. The parent or guardian of the juvenile shall be informed as soon as possible. The juvenile shall be given the opportunity to make a phone call at his or her own expense. The juvenile shall be placed in the DYS-approved holding area.

A juvenile who has been placed in PC shall not be deemed to have been arrested or to have incurred a delinquency or criminal record for any purpose. However, a department record of the custody shall be maintained indicating the circumstances of

detention. You should be careful to note the time at which the juvenile was PC'd because of the statutory limits to length of time the juvenile can remain in PC. The names of the officer who took the juvenile into custody and the officer in charge should be included in the record. You should also note whether the juvenile made a phone call, your attempts to notify the parent/guardian, whether a breathalyzer test was given, and, if so, the results of such test.

#### Examples

1. While patrolling along Pleasant Street at 8 PM, you see three juveniles approximately twelve years of age. One of the juveniles has his arms draped over the shoulders of the other two; he is being half-carried, half-dragged. You stop the car to question the juveniles to see whether the boy is hurt. You ask the boy if he is okay and his response is incoherent. It is obvious to you the boy is drunk. He does not reply when you ask him his name. The other two kids appear to be sober. They tell you the other kid's name and address, and that his parents are home. You then tell them they may go and you take custody of the intoxicated boy. You may take him to the station or to his residence. Because of the boy's age and the fact that his parents are home, you may choose to take the juvenile home.
2. You are arresting three twenty-year olds for possession of amphetamines. Present with the adults, but not in possession of any illegal substance is Georgie, who you believe to be about fifteen. Because of the conversation that you overheard con-

cerning the different types of amphetamines present and the fact that the pills were in plain view, you reasonably believe that Georgie knew of the presence of the drugs. You have the authority to take Georgie into PC. If you take Georgie to the station, you should immediately notify Georgie's guardian. You may only hold Georgie for up to four hours in the DYS-approved holding area.

3. On patrol you see a car weaving across the center line. You stop the car after seeing it go through a red light. The car smells of marijuana. You look at the driver's license and it indicates she is sixteen; the passenger looks younger. You have the driver and the passenger get out of the car; both are unsteady on their feet. When you ask the passenger his age, he starts giggling. Both juveniles appear to be high on marijuana. You do not see any marijuana or paraphernalia in the car. In addition to giving the driver a ticket, you may also arrest her for driving under. You may not take the passenger into protective custody; he does not appear to be incapacitated due to drinking liquor nor is he in the presence of a controlled substance Class A, B, or C.
4. While in a park in the late afternoon you see a teenager sitting under a tree. She is laughing and singing songs. You stop to say hello and ask her name. She answers with slurred speech. She stands up and sways. You detect alcohol on her breath. You tell her you are taking her

into protective custody. You bring her to the station and try to phone the aunt with whom the girl lives. There is no answer. You inform the juvenile of her right to make a phone call and to have a breathalyzer test. She makes the phone call and then tells you she wants to take the test. Her speech is still slurred. She is administered the test and it shows she has two one hundreds percent alcohol in her blood. You must release her from custody as she is presumed to be not intoxicated.

## PART EIGHT: SCHOOLS

### 800. Entering School Grounds

There are two situations in which you may need to enter public school grounds: when called in by the school officials, and when your own investigation leads you there. In the first instance, you should respond to a call from school officials in the same way you would to any citizen complaint or offer of information. In the second instance, you should try to avoid carrying your own investigation onto school property, and especially into the school building. The appearance of uniformed police officers may disrupt normal school routine, and may frighten younger children.

There may be times, however, when you feel it is necessary to conduct your investigation in the school. This could be because of an emergency or the time element, or because evidence itself is in the school. The juvenile with whom you wish to speak could be in danger or could be a danger to other students. You might need information in a hurry to stop an activity before it gets out of hand. If the evidence is in the school, there is a possibility that it may be destroyed. You must balance these factors with the potential disruption of the educational process and your ability to conduct the investigation elsewhere before deciding whether to enter the school.

In all situations you should inform school officials of your presence, and inquire how to conduct your business with a minimal effect on school routine, in the least coercive manner possible.

#### Examples

1. You have received a call from the high school principal. He has learned from a reliable student source that there will be a fight that afternoon in the school parking lot between two students armed

with knives. Because of the potentially dangerous situation, you will want to talk to the students and try to prevent the incident. However, you should try to do so between class periods to minimize classroom disruption.

2. Several merchants in the center of town have complained of two juveniles who routinely shoplift from their stores. Through investigation you have come to believe that they are students at the local junior high. Because there is no danger to any student and no danger that the evidence will suddenly disappear, you should wait to talk to the juveniles at home with their parents present.

#### 801. Interrogation

If you wish to question a student at school, you should ask permission from school officials. You should also contact the juvenile's parent or guardian for the same reason, and if possible, have at least one parent present during the questioning.

The constitutional protection against self-incrimination is fully applicable. Therefore, you must give Miranda warnings when your questioning becomes a custodial interrogation. The school environment, from which the student is not truly free to leave, may make a court more inclined to find the interrogation custodial in nature. (See PART THREE: INTERROGATION.)

#### 802. Searches

The preference for a warrant extends to the school situation. Therefore, you should not treat a search on school grounds any differently from a search off school grounds. You

should use caution before granting a request by school officials for assistance in conducting a search since courts look to the initial purpose of such searches in ruling on the constitutionality of the involvement of the police. When the primary purpose is to search for evidence of illegal acts, rather than to maintain school safety or preserve the educational environment, courts tend to require the same justification as they would for any other warrantless search. In other words, you should be able to justify a search to gather evidence for a delinquency or criminal prosecution under one of the traditional warrantless search exceptions before you accede to a request for assistance by school officials.

You should avoid conducting mass searches of students and lockers. If the school does so, you may not be able to use any evidence that is found. It is preferable to continue your investigation until you can focus on individual students or lockers. (See also PART FOUR: WARRANTLESS SEARCHES.)

#### Example

A biology teacher at the high school has reported to the principal that she saw Wendy take a small baggie filled with marijuana out of her purse and put it in her locker. The principal relays this information to you, adding that other teachers have reported incidents to him in the past involving Wendy and drugs, and that he is sure some of her friends also have marijuana in their lockers. You should try to obtain a warrant or Wendy's permission, but you may search the locker without it after receiving consent from the principal.

### 803. Arrest

You should not arrest a student at school as part of an ongoing investigation. This might be disruptive and upsetting to other students. If it is appropriate to arrest a juvenile at the school, you should do so as unobtrusively as possible. For example, it may be appropriate for you to request that a school official call a juvenile to his office where you can place the juvenile under arrest. (See PART FIVE: ARREST.)

## PART NINE: CHINS

### 900. Child in Need of Services

A child in need of services (CHINS) is a child below the age of seventeen who persistently runs away from home or persistently refuses to obey the lawful and reasonable commands of his or her parent or guardian, and as a result the parent or guardian cannot adequately care for and protect the child. The police officer may apply for a CHINS petition in the juvenile session of the district court to have a juvenile adjudicated a CHINS. Proceedings may be commenced by a police officer's appearing before a clerk of court and signing an application for a petition alleging, in statutory language, that the subject is a stubborn child or a runaway. You need not allege specific misconduct in the application. Note that the misbehavior must be persistent and chronic, not just one or two isolated instances.

When an application is made the clerk will set a date for the preliminary inquiry or hearing, notify the juvenile of the date and substance of the petition, and request the court's probation department to begin an inquiry to determine whether a petition should issue. This preliminary hearing may be called a "CHINS arraignment" and the matter is conducted in a manner similar to a criminal or delinquent arraignment. After you apply for the petition, the Probation Department will handle the remaining procedures.

A CHINS may also be a juvenile between six and sixteen who persistently and willfully fails to attend school or persistently violates the lawful and reasonable regulations of his school. Only an attendance supervisor may apply for a petition alleging this type of behavior.

#### 901. Arrest of a CHINS

Although a police officer may apply for a petition for a run-away or stubborn child, an officer may only arrest a juvenile under the authority of the CHINS statute when that juvenile has failed to obey a summons issued by the court or when the arresting officer has probable cause to believe that the child has run away from home and will not respond to a summons. The statutory language anticipates that a juvenile will be involved in only one CHINS proceedings. Thus, multiple arrests of juveniles as runaways do not require multiple petitions.

Note that the standard for arrest is probable cause, and the same procedures should be followed as for any juvenile arrest. (See PART FIVE: ARREST.)

##### Examples

1. You are aware that the district court has issued a warrant for Mark Kober, an alleged CHINS who failed to answer a summons. One afternoon as you are driving your patrol car past Caldors you see a group of youths in the parking lot. They are gathered around a young boy who is sitting on the open tailgate of a station wagon. The boy appears to be injured. You decide to stop and ask them what happened. One of the youths tells you that they had been taking turns riding around the lot on the open tailgate and that one of them had fallen off during his ride. You ask the injured youth his name so that you can call his parents, but he refuses to tell you and assures you that he is all right. One of his friends, however, is afraid the youth may be hurt badly so he tells you his name is Mark Kober. You call Mark's parents and accompany him to

the hospital. After he is treated for minor injuries, you place him under arrest.

2. Mrs. Lund appears at the station claiming that her daughter Debra has run away. You are assigned to handle the case. Mrs. Lund tells you that Debra has run away several times in the past six months, starting around the time Mrs. Lund remarried. Two days ago, after an argument with her stepfather, Debra told her mother that she was going to "get as far away from here as I can." She has been missing for the past day and a half. You call some of the friends Mrs. Lund has identified for you, and one of them tells you that he is certain Debra has gone to the Greyhound station. You go to the bus station and spot a youth fitting Debra's description about to board a bus to New York City. You stop her, and talk to her for a few minutes. Satisfied that she is indeed the runaway, you place her in the cruiser and return her home. (While you are permitted by statute to make a formal arrest, in this situation the preferred course of action is to return the juvenile to his or her home.)

#### 902. Detention of a CHINS

Police detention of a CHINS between arrest and initial court appearances must also follow the same procedures as any juvenile detention. (See PART SIX: DETENTION.) However, you must not bring a CHINS to court in a patrol wagon; doing so will subject you to a fine of \$25 to \$50, or imprisonment of up to three months. The CHINS statute provides two bases on which

a juvenile accused of being a CHINS can be legally detained. One is a finding by the court that the juvenile is not likely to appear at the preliminary inquiry or a trial on the merits; the other is the failure of a juvenile to respond to a summons without just cause. The juvenile can be detained subject to bail.

## PART TEN: CARE AND PROTECTION OF CHILDREN

### 1000. Introduction

Massachusetts law requires certain professionals who see families in relation to performing their duties to report suspected cases of child abuse or neglect. As a police officer, you are mandated to make a report to the Department of Social Services (DSS) if, during the course of your law enforcement activities, you have reasonable cause to believe that a child under eighteen has been abused, neglected, or is physically dependent on an addictive drug at birth. Failure to report abuse or neglect could subject you to a fine of up to \$1000.

### 1001. Identifying Abused or Neglected Children

Abuse means the occurrence of at least one of the following acts between family or household members:

- a. attempting to cause or causing physical harm;
- b. placing another in fear of immediate serious physical harm; or
- c. causing another to engage involuntarily in sexual relations by force, threat of force, or duress.

#### Examples

1. One Friday afternoon, you are called to intervene in a family dispute. When you arrive at the house, you find that the husband and wife have been drinking and fighting all day. You notice broken dishes are strewn around the living room, the wife has bruises on her face. You then see a small child crouched in the corner of the room; his face is bruised and there are belt marks on his arms and



back. You immediately report the case to DSS.

2. Your 10-year old daughter invites a classmate over for dinner. During dinner, you notice that your daughter's friend is coughing uncontrollably, looks feverish, and is complaining about a headache. When you ask how long she has felt this way, she tells you, "since school started this year, but my parents won't take me to the doctor." It is now early November. You suspect that the parents are failing to provide proper medical care for the child; however, you are not required to report this since you are not seeing the child in your official capacity. (You may report this case to DSS).

3. You are patrolling a neighborhood around 11:00 PM and see a small girl running down the street toward the bus stop. You approach her and notice that she is very dirty and unkempt. When you ask what she is doing out so late by herself, she tells you that she often goes out at night to ride the buses around the city. She mentions that her mother is never home at night and that there are no other adults or older children at home. You suspect that the mother is neglecting to provide supervision and report to DSS as soon as possible.

4. You are called to the scene of a breaking and entering in progress. Upon arrival at the scene, you apprehend a boy who tells you that this is his parents'

house. He tells you that they have been arguing with him lately about the fact that he isn't "pulling his own weight" around the house and they finally locked him out. He also tells you that they have refused to let him eat there for the past two weeks because he wasn't bringing in any money. He is now trying to get into the house to claim his belongings. You suspect that the parents are neglecting to provide proper care for the boy, but you find out that he is 18 years old. You are not required to report the suspected neglect because the boy is not a "child" protected by Massachusetts law.

#### 1002. Procedures for Reporting Suspected Abuse or Neglect

You should immediately contact DSS if you suspect a case of child abuse or neglect. You must then file a written report with DSS within 48 hours. The written report should contain:

- a. names and addresses of the juvenile and parents, if known;
- b. the juvenile's age and sex;
- c. the nature and extent of the injuries, including evidence of prior incidents;
- d. the circumstances under which you became aware of the juvenile's injuries;
- e. whatever action, if any, you took to assist the juvenile; and
- f. your name.

When you, in good faith, report a suspected case of abuse or neglect, you will be immune from civil or criminal liability.

### Example

You are on duty one night when 13 year old Sandy comes into the station and asks to spend the night there. Sandy does not want to go home for fear of being beaten. Sandy does not appear to be bruised at this time. You talk to Sandy to try to determine whether this fear is justified or whether she is trying to escape normal parental discipline for a wrongful act. Sandy tells you that there is no food in the refrigerator and that the man who lives with Sandy's mother (not Sandy's father) will be mad and blame Sandy for eating too much. Sandy says that since the man is often drunk, he doesn't remember that he ate yesterday's leftovers himself. Sandy's mother is not in town this evening and Sandy does not have relatives in town. You should contact DSS immediately to see whether you can find proper shelter for Sandy. You should allow Sandy to stay in the station until arrangements can be made; Sandy should not be held in the DYS holding area.

## APPENDIX PROCESSING DELINQUENCY CASES IN MASSACHUSETTS

### I. Introduction

This appendix describes the processing of a typical delinquency case according to procedures established by Massachusetts statutes and court rules. It discusses subject matter jurisdiction of the juvenile court, including transfer to criminal court; the arrest, detention, bail, and case screening decisions; and the keeping and sealing of records.

### II. Statutory Overview

The policy behind the juvenile laws of Massachusetts is:

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 provide substitute care of children only when the family itself or the resources available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound health and normal physical, mental, spiritual and moral development.<sup>1</sup>

Massachusetts law requires that, with regard to delinquency proceedings, the statutes shall be construed so that the treatment of juveniles brought before the court "shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they should be treated, not as criminals, but as children in need of aid, encouragement, and guidance."<sup>2</sup> Further, this section states that delinquency proceedings are not to be deemed criminal proceedings. The Supreme Judicial Court has also stated that the

principal aims of these statutory sections are the correction and redemption to society of delinquent children.<sup>9</sup>

### III. Jurisdiction

A delinquent child is defined in Massachusetts as "a child between seven and seventeen who violates any city ordinance or town by-law or who commits any offense against the law of the commonwealth."<sup>4</sup> While the jurisdiction of the juvenile court is usually limited to this age group, there are two situations in which the juvenile court has the power to subject a youth over the age of 16 to its authority. If a person is apprehended while still a juvenile, the juvenile court may retain jurisdiction over that person even if that person turns 17 while the case is pending.<sup>5</sup> The juvenile court also retains jurisdiction over a person who commits an offense prior to his or her seventeenth birthday but who is not apprehended until between his or her 17th and 18th birthdays.<sup>6</sup> However, the juvenile court can no longer assert jurisdiction over a person who has reached age 18.<sup>7</sup> While a juvenile, who commits an offense but is not apprehended until after his or her 18th birthday, will initially go before the juvenile court,<sup>8</sup> that court may not retain jurisdiction over the case.

To dispose of its jurisdiction, the court first holds a "probable cause" hearing to determine whether probable cause exists to believe that the accused committed the offense. If probable cause is not found, the complaint is dismissed. If probable cause is found, the court either discharges the youth (if it is satisfied that such discharge is consistent with public protection) or the court may order that the complaint be dismissed if it is of the opinion that the interests of the public require that such person be tried for the offense or violation in criminal court.<sup>9</sup> In this situation the court then causes a criminal complaint to be issued and the juvenile is tried as an adult.<sup>10</sup>

In certain circumstances, the juvenile court may also surrender jurisdiction over a juvenile to adult court.<sup>11</sup> The juvenile must have been previously committed to DYS as a delinquent child and been alleged to have committed: (1) an offense while between the ages of 14 and 17 that, if the juvenile were an adult, would be punishable by imprisonment in state prison, or (2) an offense that involved the infliction or threat of serious bodily harm. In addition, the court must enter a written finding, based upon clear and convincing evidence, that the juvenile presents a significant danger to the public as demonstrated by the alleged offense and that the juvenile is not amenable to rehabilitation as a juvenile.<sup>12</sup>

A surrender of jurisdiction to criminal court is initiated by means of a transfer hearing. First, the Commonwealth must establish, to the court's satisfaction, that either condition of the statute requisite to transfer has been met. Then the transfer hearing, a two-step process, is held. At this hearing, the court first determines whether probable cause exists to believe that the child committed the offense charged.<sup>13</sup> If the court does find probable cause, it proceeds to the next stage: the determination of whether the juvenile complaint should be dismissed and the juvenile tried as an adult in criminal court. The statute identifies several factors for the court to consider in reaching this decision: a) the seriousness of the offense; b) the juvenile's family, school and social history, including his or her court and juvenile delinquency record; c) adequate protection of the public; d) the nature of any past treatment efforts for the juvenile; and e) the likelihood of rehabilitating the juvenile.<sup>14</sup> If the court determines there is clear and convincing evidence that the juvenile presents a significant danger to the public and is not amenable to rehabilitation as a juvenile, it then enters this finding in writing. This finding must also be accompanied by subsidiary findings, indicating the basis for this conclusion.<sup>15</sup> The juvenile complaint may then be dismissed and the juvenile tried as an adult in criminal court.<sup>16</sup> Alternatively, if the court determines that the juvenile should be treated as a delinquent child, then the proceedings remain in juvenile

court. In such a case, the statute directs that the judge who conducts the transfer hearing shall not conduct any subsequent proceeding arising out of the same case.<sup>17</sup>

#### IV. Bringing the Juvenile Before the Court

A juvenile can be brought before the juvenile court through either of two ways.<sup>18</sup> The first is initiating the delinquency complaint process. The second follows from the arrest of a juvenile with or without a warrant.

##### 1. Complaint Process

When no arrest has been made, a police officer or victim may initiate delinquency proceedings by way of a complaint.<sup>19</sup> The complainant must go to the office of the criminal clerk in the district in which the incident allegedly occurred, and fill out an "Application for Complaint." The application will contain a sworn statement by the complainant reciting the facts and circumstances of the alleged offense. In addition, the complainant must supply the accused's address for the purpose of mailing process. The clerk will refer a victim-complainant who does not know the accused's address to the police for further investigation.

Upon receiving the application, the clerk has considerable discretion. The clerk may: a) refer the complaint to the police for further investigation or other assistance; b) seek an extra-judicial resolution; c) reject the application for the complaint; or d) decide to proceed with the application. The General Laws give no guidance and, in fact, fail to recognize these options or to even mention any decision-making by the clerk. In practice it appears the clerks consider the seriousness of the allegations and decide whether the allegations constitute a prima facie case against the accused. If the clerk decides to proceed, the law gives an accused person the right to be heard in opposition to the issuance of process based on the complaint.<sup>20</sup>

Under M.G.L. c.218 §35A, a "person against whom such complaint is made, shall, if not under arrest for the offense for which the complaint is made, upon request in writing, seasonably made,<sup>21</sup> be given an opportunity to be heard. . . ." Although the statute grants an accused the right to a hearing, the accused must make a written request for the hearing within a reasonable time to execute this right. Clerks of the Middlesex County District Court Department of the Trial Court Cambridge Division (hereinafter East Cambridge District Court) have broadened this statutory right:<sup>22</sup> if the police request a hearing for an accused, who has been arrested, the clerk will grant a hearing.<sup>23</sup> If the accused is not under arrest, clerks generally grant the accused a hearing, even if not requested. In addition, the clerks have broadly interpreted this statutory right to apply to adults and juveniles.

The clerk will schedule a hearing on the complaint and send notice of such hearing to the juvenile and the parent or guardian. The clerk's hearing is an informal pre-trial hearing. Usually present at the hearing are the complainant, possibly a police prosecutor or other counsel, and the presiding clerk-magistrate. If the accused does not appear, the complaint normally issues. If the accused does appear, he or she, personally or through counsel, may argue and present evidence against the application for the complaint.<sup>24</sup> At the hearing, the clerk administers the oath to testifying parties. The parties then present their claims, subject to cross-examination. To hasten and simplify the informal hearing, the clerk employs liberal rules of evidence. In theory, the issue at the hearing is whether there exists sufficient evidence to issue process (i.e., a summons or warrant) based upon the complaint. Sometimes, the hearing is referred to as a "show cause hearing," because the complainant must show cause why the complaint should issue. At the hearing the standard of proof is probable cause.

After hearing all of the evidence, the clerk has three options:

1. If there is probable cause, the clerk may assign a date for the case to be bound over for trial.
2. If there is no probable cause (i.e., failure to state a claim), the clerk must dismiss the claim.
3. If the parties voluntarily reach a settlement, the clerk may continue the case without a finding.

The clerk may continue the case without a finding to assure compliance with the settlement agreement. When settlement is made, the clerk dismisses the complaint, diverting the case from the formal court system. However, if any of the parties fails to fulfill the settlement agreement, the clerk may assign a date for the case to be bound over for trial. This option, or leverage, exists because the clerk continued the case thereby maintaining jurisdiction over the parties. While the clerk lacks the legal authority to impose a settlement agreement, the threat of a trial may convince a party to settle. A greater threat exists with cross-complaints, because, depending on the clerk's disposition, each party is a potential defendant in a court action.

If the clerk decides a complaint should issue, the next step is the issuance of process (i.e., a summons or warrant). If the defendant<sup>25</sup> is not under arrest or otherwise in custody, the clerk issues a summons to notify the defendant (and the parent/guardian) of the delinquency proceedings and of the date of the return day. A copy of the complaint accompanies the summons. The summons is a critical process issued to a defendant requiring an appearance in court at a stated time and place to answer charges.<sup>26</sup> The notice also advises the defen-

dant to report in person to the probation department before the return day.<sup>27</sup>

## 2. Arrest

The issuance of process against a juvenile twelve years of age or older may take the form of an arrest warrant. The district court, including a judge, special magistrate or clerk, may authorize such issuance. This decision is based on the representation of a prosecutor, including a police prosecutor, that the juvenile may not appear unless arrested. If the juvenile fails to appear in response to a summons or if the juvenile is not amenable to service, the prosecutor may request that a warrant be issued.

The warrant recites the substance of the offense charged in the complaint. It is executed by the arrest of the named juvenile.<sup>28</sup> It does not appear necessary to serve a copy of the complaint with the warrant, as is required when a summons is served.

Following the arrest of a juvenile a number of procedures must be followed.<sup>29</sup> The law directs the officer in charge to immediately notify the probation officer of the district court or juvenile court and at least one of the juvenile's parents or guardians. Pending such notice the juvenile is to be detained. Upon acceptance of a written promise of the parent/guardian that he or she will be responsible for the presence of the juvenile in court, or upon a request by the probation officer for release of the juvenile to him or her, the juvenile is usually released to that parent/guardian or probation officer. However, in the case of a juvenile between 14 and 17 years of age, if the arresting officer requests detention in writing and if the court issuing the warrant so directs, or if the probation officer so directs, the juvenile is detained.<sup>30</sup> In the event of such a detention, the parent or guardian must be notified.<sup>31</sup>

### 3. Arraignment

The delinquent children statutes do not specifically provide for arraignment of the juvenile against whom a complaint or arrest warrant has been issued. However, in practice arraignment of such a juvenile consists of a separate court proceeding in which the charges alleged against the juvenile are read by the judge. The reading aloud of the charges may be waived. It is at this time that the court appoints counsel for those juveniles determined to be indigent. A trial date is then set. At arraignment the juvenile's plea to the charges is entered. If the court excuses the juvenile from appearing on the return day<sup>32</sup> or if the juvenile does not have counsel, the court will enter a plea of not guilty on the juvenile's behalf.

### 4. Detention by the Court

If after arraignment the court holds the juvenile pending further court proceedings (examination, trial, continuance or prosecution of an appeal) and bail cannot be met, the court can commit that juvenile to DYS, to the probation officer, or to a parent, guardian, or other responsible person.<sup>33</sup> If committed to DYS, DYS, not the court, has the authority to determine the particular facility at which the juvenile will be placed, as long as it is in conformity with the statutory restrictions (as discussed above).<sup>34</sup> The court may not commit a juvenile to a jail or house of correction either pending further proceedings or upon an adjudication of delinquency.<sup>35</sup> The court may order, with the parent or guardian's consent, commitment of the juvenile to DYS, any court clinic, or the Department of Mental Health for diagnostic study, at the completion of which a report and recommendations are forwarded to the court.<sup>36</sup>

## V. Delinquency Proceedings

### 1. Organization

In keeping with traditional juvenile court philosophy, the juvenile court is organized to maximize confidentiality and reduce the stigma of judicial proceedings. Unlike criminal proceedings, juvenile sessions are not public. The court is directed to allow the presence only of persons with a direct interest in the cases.<sup>37</sup> The juvenile docket and court facilities are separate from those used for adult criminal proceedings.<sup>38</sup>

### 2. Due Process Concerns

In order to meet the requirements of due process, juvenile proceedings are similar in many ways to criminal trials. The Fourteenth Amendment due process clause guarantees the following rights to alleged delinquents in court: adequate notice of the charges; notice to both the juvenile and parent/guardian of the juvenile's right to be represented by counsel, the privilege against self-incrimination, and the right to confront and cross-examine witnesses.<sup>39</sup> However, the due process clause does not require that all the protections provided at criminal proceedings be adopted by juvenile courts. Gault requires that due process and fair treatment be afforded juveniles in court proceedings, but emphasizes the special attributes of the juvenile courts: informality, flexibility, confidentiality, and a rehabilitative rather than punitive philosophy of treatment. The United States Supreme Court held in In re Winship<sup>40</sup> that the Fourteenth Amendment due process clause requires that delinquency charges in juvenile court be proved beyond a reasonable doubt.<sup>41</sup> The Constitutional prohibition against double jeopardy applies to juvenile proceedings.<sup>42</sup> Although the United States Supreme Court in McKeiver v. Pennsylvania<sup>43</sup> held that the due process clause does not give delinquency defendants the right to a jury trial, Massachusetts provides this right by statute.<sup>44</sup>

Rule 207 of the District Court Special Rules notes that the right to counsel attaches at any stage of the proceedings at which commitment to the Department of Youth Services may result, bringing Massachusetts in line with Gault and Argersinger v. Hamlin.<sup>55</sup> Counsel must be provided by the state for an indigent juvenile.<sup>56</sup>

### 3. The Hearing

The juvenile's appearance at the trial (and presumably the arraignment) is compelled by a summons.<sup>57</sup> The law directs that when a juvenile is summoned to appear before the court that a summons be issued to at least one of the juvenile's parents or guardians.<sup>58</sup>

The hearing itself is a trial on the merits. The statute directs that "the court shall hear the testimony of any witnesses that appear and take such evidence relative to the case as shall be produced."<sup>59</sup> Because of the extensions to juveniles of many of the constitutional protections afforded to adults (as discussed above), the juvenile hearing is conducted in much the same manner as a criminal trial.<sup>60</sup>

Once the case has been heard, the court has several options. If the allegations of a delinquency complaint are not proven beyond a reasonable doubt, the court issues a finding of not-delinquent and the juvenile is discharged. If the allegations are proven beyond a reasonable doubt, the court may adjudicate the juvenile a delinquent child.<sup>61</sup> Alternatively, the court may continue the case without a finding, and with the consent of the juvenile and parent or guardian, place the juvenile on probation.<sup>62</sup>

### 4. Disposition

If the juvenile is adjudicated delinquent, the court may place the case on file;<sup>63</sup> place the juvenile on probation;<sup>64</sup> or

commit the juvenile to the custody of DYS.<sup>65</sup> When a court finds the juvenile's delinquency included an act involving liability in a civil action and the juvenile is placed on probation, the court can require the juvenile to make restitution as a condition of probation.<sup>66</sup>

If a juvenile is found delinquent as a result of having violated any statute, by-law, ordinance or regulation relating to the operation of motor vehicles, the court can fine the juvenile as it would an adult for that violation.<sup>67</sup>

### 5. Appeal

A juvenile found delinquent has a statutory right to be notified of the right to appeal from that finding; such notification is to be given both at the time of adjudication and again at the time of disposition. The statute provides that any appeal taken shall be tried and determined in the same manner as appeals in criminal cases, except that it shall be held in a session separate from the other business of the court and be known as the juvenile appeals session.<sup>68</sup> The Massachusetts Supreme Judicial Court made it clear in Commonwealth v. A Juvenile, 361 Mass. 214 (1972), that all the evidence produced at the first trial may be used again in the trial de novo. The statute directs that the court on appeal shall not commit the juvenile to any correctional institution or jail even if that court finds that the allegations against the juvenile are proven. The court may adjudicate the juvenile a delinquent child and make any disposition as may be made by the court from which the appeal was taken.<sup>69</sup>

### VI. Recordkeeping

Massachusetts law generally bars the use of a delinquency adjudication, disposition, record or other evidence from another proceeding involving a juvenile against that juvenile in any court proceeding;<sup>70</sup> however, these are several exceptions to the rule. Prior records of such cases may be allowed

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in subsequent delinquency proceedings against the same juvenile,<sup>61</sup> and when imposing a sentence on that person in any criminal proceeding.<sup>62</sup> A further exception has been developed by case law. If a juvenile is a prosecution witness whose motives for testifying may be suspect, the trial judge must permit introduction of his or her past juvenile record if that record is relevant to show bias of the witness.<sup>63</sup> This is necessary to permit the defendant to exercise his or her constitutional right to confrontation of witnesses; full and effective cross examination should reveal the possible bias of an adverse witness.

A person having a record of appearance in juvenile court on file in the office of the Commissioner of Probation may request that the record be sealed. The Commissioner is directed to grant that request if at least three years have passed since the termination of any court supervision, and if in those three years the person has not been adjudicated delinquent or found guilty of any criminal offense within the Commonwealth or in any other jurisdiction.<sup>64</sup> The clerk and the probation officer of the courts in which these appearances have occurred, as well as DYS, must seal records of the proceedings in their files upon notification by the Commissioner.

While there is no statutory provision requiring the sealing or expungement of police juvenile records, the Massachusetts Supreme Judiciary Court has recently held that the juvenile court has jurisdiction to order such sealing if little or no valid law enforcement purpose is served by their maintenance.<sup>65</sup> Such expungement or sealing may be ordered only "in light of a reasoned view" that carefully weights the interests of law enforcement in maintaining the records against the interests of the juvenile in having the records destroyed.<sup>66</sup>

## Notes

<sup>1</sup>M.G.H. c.119 §1. Note, however, that no mention is made of the goal for of protecting society. But, see §61 in which a juvenile court is required to consider whether the juvenile is a danger to society in reaching a decision regarding transfer of certain cases to criminal court.

<sup>2</sup>M.G.L. c.119 §53.

<sup>3</sup>*Metcalf v. Commonwealth*, 338 Mass. 648, 651, 156 N.E.2d 649, 652 (1959).

<sup>4</sup>M.G.L. c.119 §52. In 1973 the Massachusetts legislature established a separate jurisdiction for status offenders, removing "wayward children" from the definition of delinquent children.

<sup>5</sup>M.G.L. c.119 §72.

<sup>6</sup>*Ibid.*

<sup>7</sup>*Ibid.*, but see also M.G.L. c.120 §16 where the Department of Youth Services (DYS) is given the authority to maintain responsibility for any person under age twenty-one for purposes of specific educational or rehabilitative programs under conditions agreed upon by both DYS and the person and which is terminable by either party. See also §17 which authorizes the court to grant a DYS petition for maintaining control over a person who is over the age of eighteen but deemed to be physically dangerous to the public because of a physical or mental abnormality.

<sup>8</sup>M.G.L. c.119 §72A.

<sup>9</sup>*Ibid.*

<sup>10</sup>M.G.L. c.119 §61.

<sup>11</sup>*Ibid.* The only situations in which a case against a juvenile may be originated by a criminal complaint are those involving

certain specified motor vehicle violations; see §74.

<sup>12</sup>*Ibid.* The request for a transfer hearing may be made by the Commonwealth. It must be made, by order of the court, where the offense is one which involved the infliction or threat of serious bodily harm and is one which would be punishable by life imprisonment if committed by an adult. See Special Rules of the District Court, Rule No. 208.

<sup>13</sup>See A Juvenile v. Commonwealth, 370 Mass. 272 (1976), for the Massachusetts Supreme Judicial Court's caution that such a hearing is not intended to resolve the issue of a juvenile's guilt or innocence and that the judge should clarify the probable cause nature advanced at the hearing. This is in accord with the U.S. Supreme Court's holding in Breed v. Jones, 421 U.S. 519 (1975), that the prosecution of a juvenile in superior court after an adjudicatory proceeding in juvenile court violated the juvenile's Fifth Amendment protection against double jeopardy.

<sup>14</sup>The Supreme Judicial Court of Massachusetts recognized that there is no specific requirement that a judge weigh these factors in a certain manner or achieve some predesigned balance. See A Juvenile v. Commonwealth, *supra*, at 282. The court stated that any factor that bears on the protection of the public and the amenability of the child to treatment may be considered.

<sup>15</sup>*Ibid.* The court also pointed out that in keeping with legislative intent that non-criminal treatment of juveniles be favored, transfers should be ordered only when warranted by exceptional circumstances. In the

case before it, the court ruled that to properly achieve this mandate, considering only the seriousness of the charge and the adequacy of existing juvenile facilities in terms of protection of the public was not sufficient. Rather, the transfer judge's finding must also support a conclusion that the juvenile cannot be rehabilitated within the present juvenile structure or that, in the absence of long term supervision and security, the juvenile poses a serious threat to the public.

<sup>16</sup>M.G.L. c.119 §61. But see §83 where the superior court, following such binding over of a youth under the age of 18, is given the discretionary authority to adjudicate that youth as a delinquent child in lieu of conviction and sentence and to make such disposition as may be made by a juvenile court under §58.

<sup>17</sup>*Ibid.*

<sup>18</sup>Not discussed here are the statutory provisions for bringing a juvenile before the court for adjudication as a child in need of services (see §39E authorizing procedure to be commenced by the filing of an application for a petition by a parent, legal guardian or police officer) or a child in need of care and protection (see §24 giving "any person" the authority to petition the court on behalf of the child for commencement of a show cause hearing concerning whether the child should be put into the custody of the Department of Public Welfare; and §51A imposing a duty upon members of certain professions to report instances of child abuse or neglect).

<sup>19</sup>M.G.L. c.218 §37.

<sup>20</sup>M.G.L. c.218 §35A.

<sup>21</sup>In Commonwealth v. Wade, 373 Mass. 91 360 N.E.2d 867 (1977), the court held that failure to request a preliminary hearing within 24 hours of the alleged motor vehicle violations waived the right to a hearing.

<sup>22</sup>Note that the broad reading given to M.G.L. c.218 §35A has made it unnecessary for the clerks to conduct show cause hearings pursuant to M.G.L. c.119 §54.

<sup>23</sup>Note, normally an accused who is arrested is brought before the proper court without a hearing. However, the police may prefer to use the hearing as a scare tactic when they do not find the need to bring the matter to court.

<sup>24</sup>M.G.L. c.218 §35A.

<sup>25</sup>At this point, the "accused" may properly be called the "defendant" because the complaint has commenced a criminal proceeding in the district court. Mass.R.Crim.P. 3. A complaint must contain a caption and a description of the alleged crime or an appropriate legal description thereof. Mass. R.Crim.P. 4(a).

<sup>26</sup>Summons also refers to a process issued to a person requiring that person to (a) appear as a witness in a criminal proceeding or (b) produce designated documents or other objects for use in a criminal proceeding Mass.R.Crim.P. 2(a) (17).

<sup>27</sup>Mass.R.Crim.P. 6(a)(1). "Return day" is the day upon which a defendant is ordered by summons to first appear before a court to answer charges. Mass.R.Crim.P. 2(a) (15).

<sup>28</sup>Mass.R.Crim.P. (6).

<sup>29</sup>M.G.L. c.119 §67.

<sup>30</sup>Ibid. This section makes it clear that juveniles may not be detained in jails or houses of correction. They may be de-

tained in a police station or town lock-up provided that a separate and distinct place in the facility has been approved in writing by the Commissioner of the Department of Youth Services. Juveniles may also be detained in a home maintained by the Department of Youth Services.

<sup>31</sup>Section 67 also stipulates that it does not prevent the admitting of such a child to bail in accordance with law.

<sup>32</sup>Mass.R.Crim.P. 7 (d).

<sup>33</sup>M.G.L. c.119 §68. It was suggested by court personnel that commitment to a probation officer or parent/guardian are options that are rarely utilized.

<sup>34</sup>1976-1977 Op. AG, No.3. This is also true when a juvenile adjudicated delinquent is committed by the court to DYS.

<sup>35</sup>M.G.L. c.119 §66.

<sup>36</sup>M.G.L. c.119 §68A.

<sup>37</sup>M.G.L. c.119 §65.

<sup>38</sup>Ibid. In ECDC the juvenile session is conducted in a section of the building which is devoted exclusively to juvenile proceedings.

<sup>39</sup>In re Gault, 387 U.S. 1 (1967).

<sup>40</sup>397 U.S. 358 (1970).

<sup>41</sup>Although this standard is constitutionally mandated, it was suggested by court officials at ECDC that this standard is not in fact strictly adhered to in juvenile proceedings. It is felt that this is more in keeping with the specialized nature of the juvenile proceedings as described in Gault, supra.

<sup>42</sup>Breed v. Jones, 421 U.S. 519 (1975).

<sup>43</sup>403 U.S. 528 (1971).

<sup>44</sup>M.G.L. c.119 §55A. This section also provides for the waiver of this right by the

juvenile specifying that it must be done in writing and cannot be received unless the juvenile is represented by counsel or has filed through his or her parent/guardian a written waiver of counsel. In practice, juveniles at ECDC customarily waive their right to a jury trial.

<sup>45</sup>407 U.S. 25 (1972).

<sup>46</sup>M.G.L. c.119 §29. Parents who have custody of a minor shall be liable for the reasonable fees and expenses, not exceeding \$300, of an attorney, other than a public defender, incurred by such minor in connection with criminal proceedings. M.G.L. c.119 §29A.

<sup>47</sup>M.G.L. c.119 §54. This section also provides that if the juvenile is over 12 years of age and the court has reason to believe that he or she will not appear upon summons, or if such a juvenile has been summoned and did not appear, the court may issue a warrant.

<sup>48</sup>M.G.L. c.119 §55. Such a summons directs the person served to appear in court and show cause why the juvenile should not be adjudged a delinquent child. The time for such appearance is to be fixed, when practicable, at the same time as that fixed for the juvenile's appearance. When parents or guardians cannot appear, the judges at ECDC have told the juvenile to bring an older sibling, grandparent or other relation even if not a legal guardian, to the court session. This section also authorizes the court to request the attendance, at any proceeding, of any agent of DYS if the court feels that the interests of the juvenile so require.

<sup>49</sup>M.G.L. c.119 §58.

<sup>50</sup>In practice, some procedures, such as certain Rules of Evidence, do not appear to be as rigidly adhered to as would be the case in a criminal trial. This appears to be accepted as in accord with the specialized nature of juvenile hearing.

<sup>51</sup>M.G.L. c.119 §58.

<sup>52</sup>ibid. Continued without a finding means that the judge continues the case for a definite period, at the end of which, if the juvenile has not been in further trouble, the case is dismissed. If the juvenile becomes involved in further misbehavior, the court may again continue the case or make a finding of delinquency and a further disposition. This disposition is accompanied with probation when the court wishes to retain more control over the child. This disposition is used frequently at the juvenile sessions at ECDC. It is used most often when the juvenile has either no prior record or a record of only one or two minor offenses.

<sup>53</sup>ibid. A case placed on file is actually a case held in abeyance; the judge may reactivate it to make a final disposition at any time prior to the juvenile's eighteenth birthday.

<sup>54</sup>M.G.L. c.119 §59. If the juvenile violates a condition of probation and is again brought before the court, the court may make any disposition of the case it might have made originally, or it may extend the period of probation.

<sup>55</sup>M.G.L. c.119 §58. In practice, there are many cases in which a juvenile is committed to DYS and the commitment is suspended, with the juvenile placed in the care

of probation. Such a disposition is made when the offense is thought to be somewhat serious, but perhaps not serious enough to warrant commitment to DYS, and the juvenile may be impressed with the gravity of this type of commitment. This is also a practical solution to the lack of available beds to which the court can commit the juvenile. Where the commitment is not suspended, M.G.L. c.119 §69A requires the court, probation officer, school authorities, and other public and police authorities to make available to DYS all pertinent information concerning a committed juvenile.

<sup>56</sup>M.G.L. c.119 §62.

<sup>57</sup>M.G.L. c.119 §58B. If the juvenile fails or refuses to pay such a fine, the court may place that juvenile on probation or commit him or her to DYS. Unlike an adult, a juvenile does not pay a 25% surcharge on any fines.

<sup>58</sup>M.G.L. c.119 §56. This section provides that the appeal be made to a jury session in the district court in the county where the hearing is held. The justice presiding over such session shall have all the powers that a justice sitting in the superior court department on criminal cases has and may exercise in the trial and disposition of criminal cases.

<sup>59</sup>Ibid. The statute also provides that before making such disposition, the court shall be supplied with a report of any investigation regarding the juvenile made by the probation officer of the court from which the appeal was taken.

<sup>60</sup>M.G.L. c.119 §60. In addition, such evidence cannot operate to disqualify a juvenile in any future examination, appoint-

ment, or application for public service under the Government of the Commonwealth.

<sup>61</sup>The statute restricts the use of these records to delinquency proceedings against the juvenile. However, even within this excepted realm the use of such records is subject to the traditional rules of evidence.

<sup>62</sup>M.G.L. c.119 §58B. Another exception allows records of motor vehicle law violations to be admissible as evidence in a proceeding for the revocation or restoration of the juvenile's license to operate a motor vehicle, for the cancellation of a motor vehicle insurance policy, and in any tort action arising out of the negligent operation of a motor vehicle by the juvenile to the extent that it would be admissible if the child were an adult.

<sup>63</sup>Commonwealth v. Ferrara, 368 Mass. 182, 330 N.E.2d 837 (1975), applying the ruling of Davis v. Alaska, 415 U.S. 308 (1974), regarding a defendant's Sixth and Fourteenth Amendment rights in a proceeding in which the prosecution's adverse witness is a juvenile.

<sup>64</sup>M.G.L. c.276 §100B. There are exceptions for certain motor vehicle violations.

<sup>65</sup>Police Commissioner of Boston v. Municipal Court of the Dorchester District, 374 Mass. 640, 374 N.E.2d 272 (1978).

<sup>66</sup>Ibid. 374 Mass. 640, 669, 374 N.E.2d 272, 288.

NOTES

**END**