



# Fitchburg State University Police Department

<b>Subject:</b> JUVENILE OPERATIONS	
Reference: MPAC:44.2.1, 44.2.2, 44.2.3, 44.2.4 IACLEA: 8.4.1, 8.4.2 Rescinds: Section 49	
<b>Effective Date:</b> November 4, 2019	<b>Review Date:</b>
<b>By Order of:</b> Michael J. Cloutier, Chief of Police	

## General Order

# 8.4.1

### I. GENERAL CONSIDERATIONS AND GUIDELINES

It is generally recognized that juveniles who engage in anti-social conduct present different problems to society than do adults who engage in similar activity. There is, therefore, a modification of police procedures in handling juvenile offenders. This special procedure is based on the concept that the juvenile offender is often not yet hardened and may be more easily influenced to conduct himself/herself within the law. There is no question that the attitude and actions of the police can have considerable impact upon the first offender who is often a badly frightened youngster at the time of his/her arrest. How [s]he is treated at that time by the police can make a lasting impression. At the same time, it must be remembered that the hardened juvenile criminal can be just as dangerous as any adult.

Although the police are not expected to be social workers, they must have an understanding of the social and psychological factors which contribute to juvenile misbehavior and crime. By the nature of their duties, the police should be familiar with any undesirable conditions in the community which breed juvenile delinquency. The prevention of juvenile crime has a high priority and any success in this regard can pay large dividends to the community and to its young people.

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

also cooperate actively with all other agencies, public or private, that can be of assistance in deterring and controlling juvenile delinquency.

Police officers play a very important part in the Juvenile Justice System. Patience, understanding and firmness, together with close cooperation with court officials in the processing of juvenile cases, are necessary for the system to operate most effectively.

Police officers should be aware that one's constitutional rights are never lost by virtue of one's age. Indeed, juveniles merit greater protection, especially in the areas of custodial questioning and the initiation of a waiver of their rights.

The State Legislature has rescinded the law formerly referred to as CHINS (Children in Need of Services) and replaced with numerous provisions concerning Children Requiring Assistance. Rather than arresting certain young persons, the Police may place them in "custodial protection," but not handcuff, shackle **or even bring them to the police station**.

## II. POLICY

A. It is the policy of this department that:

1. Juveniles shall be afforded their constitutional and statutory rights when being questioned, searched, detained or arrested;
2. Juvenile offenders shall not be detained at the police station for any longer than necessary;
3. Children Requiring Assistance shall be provided custodial protection and other required services where this can be done safely.
4. Officers shall, whenever reasonable and justified under this policy, take those measures necessary to effect positive change in juvenile offenders that are consistent with Massachusetts Law and the safety and security interests of the community;
5. The department is committed to the development and perpetuation of programs to prevent and control juvenile delinquency.

## III. DEFINITIONS

A. ***Child Requiring Assistance<sup>i</sup>***: A child between the ages of 6 and 18 **who repeatedly:**

1. Runs away from the home of the child's parent, legal guardian or custodian;

2. Fails to obey the lawful and reasonable commands of the child's parent, legal guardian or custodian, thereby interfering with their ability to adequately care for and protect the child;
  3. Fails to obey the lawful and reasonable regulations of the child's school;
  4. Is habitually truant, or
  5. Is sexually exploited.
- B. **Habitually Truant<sup>ii</sup>:** A school-aged child, not excused from attendance under the lawful and reasonable regulations of such child's school, who willfully fails to attend school for more than 8 school days in a quarter.
- C. **Sexually Exploited Child<sup>iii</sup>:** Any person under the age of 18 who has been subjected to sexual exploitation because such person is:
1. The victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105;
  2. Engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care;
  3. A victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under by section 4A of chapter 272; or
  4. Engages in common night walking or common streetwalking under section 53 of chapter 272.
- D. **Juvenile:** A juvenile, for purposes of Massachusetts criminal law, is anyone between the ages of 12 and 18.<sup>iv</sup>
- E. **Age of Criminal Majority:** The age of Criminal Responsibility is 12 years of age.<sup>v</sup> Therefore juvenile under the age of twelve (12) cannot be charged with a crime.
- F. **"Delinquent Child",** a child between 12 and 18 years of age who commits any offense against a law of the commonwealth; provided, however, that such offense shall not include:
- a civil infraction,
  - a violation of any municipal ordinance or town by-law
  - or a first offense of a misdemeanor

- for which the punishment is a fine, imprisonment in a jail or house of correction for not more than 6 months or both such fine and imprisonment.<sup>vi</sup>

**IMPORTANT PROCEDURAL NOTE:**

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

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

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

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

- c. "A pre-arraignment evidentiary hearing shall then be ordered, at which time the Commonwealth must prove that the charge upon which the complaint has issued is not the juvenile's first offense under 52."

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

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

See *ADDENDUM A attached hereto entitled "Juvenile Arrest/Summons Flow Chart."*

**E. Non-Offenses:** Children held in protective custody because they were found present where controlled substances are kept pursuant to *Mass. Gen. Laws Ch. 94C, § 36*, or are incapacitated due to intoxication pursuant to *Mass. Gen. Laws Ch. 111B, § 8* or incapacitated pursuant to *Mass. Gen. Laws Ch. 111E, § 9A.*

**F. Non-Secure Custody:** A condition under which a juvenile's freedom of movement is controlled by members of the department and, during such time, the juvenile:

1. Is held in an unlocked, multi-purpose room that is in no way designed for residential use;
2. Is not handcuffed to any stationary object;
3. Is held only long enough to complete identification, investigation and processing and then released to a parent or guardian or transferred to a juvenile facility or the court; and
4. Is under continuous supervision until released.

**G. Secure Custody:** A condition under which a juvenile's freedom of movement is controlled by being placed in a cell or locked room (or set of rooms) or being handcuffed to a stationary object.<sup>vii</sup>

- H. **Status Offender:** A juvenile who has committed an offense that would not be a crime if committed by an adult. This includes: runaways, truants, youth curfew violations, and minors in possession of or transporting alcohol.
- G. **Custodial Protection:** A term used but not defined in several parts of MGL c. 119, referring to actions resembling Non-Secure Custody, above, but without handcuffing, restraining or even transporting the young person to a police facility.
- G. **"Restraints":** a device that limits voluntary physical movement of an individual, including leg irons and shackles, which have been approved by the trial court department.<sup>viii</sup>

#### IV. PROCEDURES - CHILD REQUIRING ASSISTANCE MATTERS

The divisions of the juvenile court department may receive and hear requests for assistance stating that there is a child requiring assistance or a family requiring assistance. The law allows applications for assistance to be filed on a child between the ages of six (6) and eighteen (18). Cases must be dismissed on the child's eighteenth (18<sup>th</sup>) birthday with the exception of young adults in D.C.F. (Department of Children and Family) care requiring permanency hearings.

A police officer may not file an application for a Child Requiring Assistance unless the child is "sexually exploited" and is also considered to be a "runaway" or "stubborn child" as defined by *Mass. Gen. Laws Ch. 119*.

##### A. Parent, Guardian, or Custodian of Child<sup>ix</sup>

A parent, legal guardian, or custodian of a child having custody of such child, may initiate an application for assistance if said child is a "Runaway," meaning the child repeatedly runs away from home, or is a Stubborn Child, meaning the child refuses to obey the lawful and reasonable commands of said parent or guardian resulting in the parent or guardian's inability to adequately care for and protect said child.

##### B. Sexually Exploited Child

A parent, legal guardian, or custodian of a child having custody of such child, and a police officer, may file an application for assistance for a sexually exploited child, as defined by *Mass. Gen. Laws Ch. 119, § 21*. The application must also state whether the child is a "runaway" or "stubborn child." The filing of an application for assistance may result in the prostitution charge being placed on file. Any person, before or after an arraignment, in a delinquency or criminal proceeding for a violation of *Mass. Gen. Laws Ch. 272, § 53* or *Mass. Gen. Laws Ch. 272, § 53A(a)* may file a care and protection petition on behalf of a sexually exploited child, including an emergency commitment under *Mass. Gen. Laws Ch. 119, § 24*.

**C. School District**

A representative from a school district may initiate an application for assistance if said child is "Habitually Truant," meaning the student has failed to attend school for more than eight (8) school days in a quarter, or the said student is a "Habitual School Offender," meaning the student fails to obey the lawful and reasonable regulations of the child's school. All school-based offenses must be dismissed on the child's sixteenth (16<sup>th</sup>) birthday.

When a truancy application is filed, the application must state whether or not the child and the child's family have participated in the truancy prevention program, *if one is available*, and provide a statement of the specific steps taken under the truancy prevention program to prevent the child's truancy. When a habitual school offender application is filed, the application must state that the child has repeatedly failed to obey the lawful and reasonable regulations of the school as well as a statement of the specific steps taken by the school to improve the child's conduct. The law allows "a representative from the school district" to file the application which may or may not be a truant officer.

**D. Protective Custody Warrant**

A judge may order a Warrant of Protective Custody after the child fails to respond to a summons issued for the preliminary hearing. The warrant is similar to a Warrant of Apprehension and is to be served in the same manner. Therefore the child must be delivered to the court before 4:30pm.

When an officer takes a child into custody upon the execution of a Warrant of Protective Custody, the officer shall immediately bring the child to the Clerk's Office and shall file the return of service.

**E. Child Taken into "Custodial Protection" by Police**

In accordance with *Mass. Gen. Laws, Ch. 119, § 39H*, a child may be taken into custodial protection for engaging in the behavior described in the definition of "child requiring assistance" only if,

- (1) The child has failed to obey a summons, or
- (2) The law enforcement officer initiating such custodial protection *has probable cause to believe* that such child has run away from the home of his parents or guardian and will not respond to a summons.

After a law enforcement officer has taken a child into custodial protection, the officer shall immediately notify the child's parent, guardian, or other person legally responsible for the child's care. Notification must be made to DCF if the child is in their custody.

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

- (i) To one of the child's parents, or to the child's guardian or other responsible person known to the child, or to the child's legal custodian including the department of children and families or the child's foster home upon the written promise, without surety, of the person to whose custody the child is released that such parent, guardian, person or custodian will bring the child to the court on the next court date; or
- (ii) Forthwith and with all reasonable speed take the child directly and without first being taken to the police station house, to a temporary shelter facility licensed or approved by the department of early education and care, a shelter home approved by a temporary shelter facility licensed or approved by said department of early education and care or a family foster care home approved by a placement agency licensed or approved by said department of early education and care; (Mass 211 Program) or
- (iii) Take the child directly to the juvenile court in which the act providing the reason to take the child into custodial protection occurred if the officer affirms on the record that the officer attempted to exercise the options identified in clauses (i) and (ii), was unable to exercise these options and the reasons for such inability.

**F. A Child in Police Custody**

When a child is taken into custody by police, whether by a Warrant of Protective Custody or Custodial Protection, the child:

- (i) May not be confined in shackles or similar restraints or in a court lockup facility in connection with any proceedings under sections 39E to 39I, inclusive.
- (ii) Shall not be placed in a locked facility or a facility designated or operated for juveniles who are alleged to be delinquent or who have been adjudicated delinquent.
- (iii) May be placed in a facility, which operates as a group home to provide therapeutic care for juveniles, regardless of whether juveniles adjudicated delinquent are also provided care in such facility.
- (iv) If necessary, be taken to a medical facility for treatment or observation.

**NOTE:** See ADDENDUM B attached hereto of a copy of the Department's Juvenile Court Release Form, ADDENDUM C "CRA Warrant Daytime" flow chart and ADDENDUM D "Runaway" flow Chart.



**V. PROCEDURES – DELINQUENCY OFFENSES**

**A. Administration**

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

**B. Enforcement Alternatives**

1. Officers dealing with juveniles in enforcement capacities may exercise reasonable discretion in deciding appropriate action. Officers shall use the least coercive and most reasonable alternative, consistent with preserving public safety, order and individual liberty.
2. Whenever reasonable and possible, an officer will request a summons for a juvenile rather than taking him/her into custody.
3. Alternatives available include the following:
  - a. Release the juvenile with no further action or following informal counseling. Officers will turn the juvenile over to his/her parent or guardian when appropriate;
  - b. Refer the juvenile to the appropriate diversion program,<sup>1</sup> such as:
    - i. Communities for Restorative Justice,
    - ii. Worcester County District Attorney's Diversion Program, or
    - iii. Jail Diversion Coordinator for outside services.
  - c. Limited custody with notification to the parent/guardian. If the juvenile is brought to the station, he/she shall enter the station through the front doors and held in non-secure custody (lobby or training room) until released to his/her parent(s) or guardian;
    - i. Alternate Locations:
      - (i) Emergency Medical Services Office in Hammond Hall
      - (ii) Conference Room at the Community Out Reach Center (Intermodal) ( only if two officers or staff are present)
      - (iii) Any available Resident Assistant or Resident Director's Office

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<sup>1</sup> Prior to referring a juvenile to a particular juvenile diversion program, the Juvenile Officer will review the case with the District Attorney's Diversion Coordinator.

- d. Issue a citation or applying for a summons or complaint with the Juvenile Court; and
  - e. Arrest when appropriate and authorized.
3. Criteria When Choosing an Alternative
- a. In considering a course of action (arrest, summons, diversion, or release with no further action) the officer shall consider the nature of the offense, the age of the juvenile, the juvenile's prior contacts with the police, does the offense meet the requirements of juvenile diversion, and, in some cases, the recommendation of the complainant or victim.

**C. Referral to Juvenile Court**

1. While an officer should recognize the unique and often sensitive nature of juvenile contact, [s]he should not be deterred from properly enforcing the law when required to do so. A decision to arrest should be based on the same legal considerations as the arrest of an adult.
2. Officers may arrest juveniles for acts of delinquency and status offenses.
3. Arrested juveniles are subject to the same security and other transportation requirements as adults and may be handcuffed or otherwise restrained as necessary during transport and processing. See departmental policy on ***Transporting Prisoners 8.3.***
4. When an arrest is made, the juvenile shall be brought to the City of Fitchburg Police Station without delay, unless the juvenile is in need of emergency medical treatment. The On Duty or On Call Lieutenant shall be informed of the arrest as soon as possible.
5. When a juvenile is arrested, with or without a warrant, the Officer-in-charge or his/her designee shall:<sup>x</sup>
  - A. Immediately notify at least one (1) of the child's parents, or, if there is no parent, the guardian or custodian with whom the child resides or the Department of Children and Families (DCF) if the child is in their custody.
  - B. During Court Hours, police must complete the booking process and then transport the juvenile to the Juvenile Court.
  - C. After Court Hours: There is no longer a statutory requirement for police to contact a Juvenile Probation Officer, and as such,

## Chapter 8 - Detainee Processing and Transportation

Probation has ceased its on-call program. Therefore, the On Duty or On Call Lieutenant will make a determination whether to release the juvenile or to detain the juvenile.

- i. Release: If a juvenile has been arrested without a warrant and the Lieutenant determines that the juvenile should be released, such release shall be done so upon the acceptance of the written promise from the parent, guardian, custodian or a representative of DCF who will ensure the juvenile's appearance in court.
- The OIC of the police station will release the juvenile to appear in the Fitchburg Juvenile Court on the following business day.

**NOTE:** See ADDENDUM B attached hereto of a copy of the Department's Juvenile Court Release Form.

- ii. Detain: If a juvenile, between fourteen (14) and eighteen (18) years of age, has been arrested on a warrant or if the OIC of the police station requests in writing for the juvenile to be detained, the OIC shall contact the Bail Magistrate/Bail Commissioner.
  - In accordance with *Mass. Gen. Laws* Ch. 119, § 67, a juvenile age twelve (12) or thirteen (13) who has been arrested without a warrant is prevented from being admitted to bail and therefore must be released to a parent, guardian or custodian.
- D. Bail: The Bail Magistrate/Bail Commissioner will set bail and/or terms and conditions of release based on the juvenile's current charge(s), circumstances of the arrest, criminal history and/or as directed by the arrest warrant.
- E. A juvenile charged with delinquency offenses shall not be held in a police lockup or otherwise securely detained for any longer than six (6) hours. If the juvenile is placed in a cell, the cell must be a certified cell by the Department of Youth Services<sup>2</sup>.
- F. The requirement not to release a defendant for six (6) hours when arrested for a violation of *Mass. Gen. Laws* Ch. 209A or *Mass. Gen. Laws* Ch. 265, §§ 13M (Domestic Assault or Domestic Assault and Battery) or 15D (Strangulation or Suffocation), **DOES NOT apply to juveniles.**

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<sup>2</sup> *Mass. Gen. Laws* ch. 119, § 67

## Chapter 8 - Detainee Processing and Transportation

- G. Juveniles held in police custody must be held sight and sound separate from adult detainees.
- H. Within six (6) hours of the arrest, the juvenile must be either: a) transported to the juvenile court, b) released to his/her parent/guardian/custodian or c) transferred to the custody of the Overnight Arrest Program (after 6pm weeknights and anytime on the weekends/holidays).
- The best practice is for the six (6) hour clock to start when the juvenile is placed in police custody and ends when custody is: a) transferred to the juvenile court, b) the juvenile is released to his/her parent/guardian/custodian or c) custody is transferred to the Overnight Arrest Program.

### **JUVENILE – UNABLE TO MAKE BAIL / UNABLE TO BE RELEASED**

- I. When a juvenile has been charged with a delinquency or youthful offender offense and is unable to make bail or is unable to be released (non-bailable arrest warrant) and court is closed, police must contact the Department of Youth Services (DYS) Central Referral Line at 617-474-8150 or 617-474-8179. (After 6:00pm weeknights and anytime on weekends/holidays).
- J. DYS will speak with the officer regarding the juvenile's arrest and complete the Statewide Awaiting Arraignment/Overnight Arrest Referral Form. Officers will need to specify the bail amount as it relates to the Bail Fee and Bail. See attached Statewide Awaiting Arraignment/Overnight Arrest Referral Form.
- Bail Fee Only: If a juvenile is being held on a Bail Fee only (\$40.00 - Personal Recognizance), DYS has no authority to hold the juvenile in their custody. The OIC of the police station shall inform the Bail Magistrate/Bail Commissioner of this and arrangements will be made to release the juvenile without imposing a Bail Fee.
    - If the juvenile is in the custody of DCF, DCF shall be notified via the DCF Hotline to take custody of the juvenile.
    - If a parent, guardian or custodian refuses to take custody of a juvenile who is otherwise eligible to be released, the officer shall file a 51A and notify DCF via the DCF Hotline for placement.

K. DYS will provide the officer with the location of the Overnight Arrest Program.

- If the juvenile is suffering from any medical condition(s), (such as; under the influence drugs/alcohol, suicidal thoughts, pepper sprayed or tasered) he/she must be medically cleared prior to placement.
- Police are responsible for obtaining any current medications for the juvenile.
- Police must provide a copy of the Booking Sheet prior to placement.
- It is the police department's responsibility to transport the juvenile to the Overnight Arrest Program. Before 9:00am, the police must transport the juvenile from the Overnight Arrest Program to the Juvenile Court.

L. **Jenkins Hearing:** If a juvenile is arrested without a warrant and held in custody (to include while being held at the Overnight Arrest Program), for more than twenty-four (24) hours, he/she is entitled to a Jenkins Hearing to determine whether or not there was probable cause to make the arrest and to continue to hold the juvenile. *Jenkins v. Chief Justice of the District Court*, 416 Mass. 221, 223 (1993).

- The bail magistrate/bail commissioner that set bail on the juvenile cannot be the same magistrate/commissioner who conducts the Jenkins Hearing.
- Officers must call a magistrate/commissioner, if the juvenile will be held over twenty-four (24) hours, to facilitate a *Jenkin's* determination of probable cause to continue to hold the juvenile.

**NOTE:** See ADDENDUM B attached hereto of a copy of the Department's Juvenile Court Release Form as well as ADDENDUM E "Juvenile Arrest – Delinquency Offense" Flow Chart.

7. Juveniles arrested for criminal type offenses are subject to the same booking procedures as adults. See department policy on **DETAINEE PROCESSING AND TEMPORARY DETENTION 8.1**. Juveniles taken into custody for status offenses or for non-criminal offenses shall not be fingerprinted or photographed. <sup>xi</sup>

8. The arresting officer, the juvenile officer and the prosecutor should cooperate in the preparation and presentation of the case if court action is necessary.
9. Any police proceeding involving juveniles shall be treated in a confidential manner.

**D. Holding Juveniles**

All juveniles detained by the department shall be informed by the booking officer of the procedures regarding custody, release, and transportation to another facility or court, as applicable. Before a juvenile is released by the department, the Juvenile Court Release Form is to be completed. See attached ADDENDUM B.

1. Delinquent Offenders

- a. Juveniles between ages fourteen (14) and eighteen (18) accused of delinquent offenses may be held in secure custody for no longer than six (6) hours for the purpose of identifying and processing the juvenile and, if appropriate, transported and held at the Weston Police Department pursuant to the Department's Secure Juvenile Lock-Up Agreement. Juveniles that are going to be held longer than six (6) hours must be transported to the Overnight Arrest Program or to facility or to court.<sup>xii</sup>

i. Records shall be kept that specify:

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

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

- b. No child between the ages of fourteen (14) and eighteen (18) shall be detained in a police station or town lockup unless the detention facilities for children have received the written approval of the Commissioner of Youth Services.<sup>xiv</sup>

- c. Lockup and other detention facilities shall be such as prevent juveniles who are detained from coming in sight and sound contact with adult prisoners.<sup>xv</sup>
  - d. No child under age fourteen (14) shall be placed in a cell or otherwise securely detained for any reason. Such child may be held in a safe environment pending suitable disposition.
2. Status Offenders and Protective Custody
- a. Status offenders and juveniles held for protective custody shall not be held in secure custody.
  - b. Status offenders may only be held long enough to complete identification, investigation and processing and then must be released to parents, guardians or other responsible adults or transferred to an alternative juvenile facility or court.
  - c. A child under the age of eighteen (18) may be taken into protective custody, for a period not exceeding four (4) hours, if an officer:
    - i. Finds the child at a place where the officer reasonably believes there is a controlled substance of Class A, B or C;
    - ii. Reasonably believes the child to be under age eighteen; and
    - iii. Reasonably believes the child knew of the presence of the controlled substance.<sup>xvi</sup>

**Note:** The officer in charge of the police station shall make every reasonable effort to notify the juvenile's parent or guardian or other person having lawful custody. Under these circumstances, the juvenile shall not be placed in a secure cell or restrained in any way.
  - d. For procedures to follow when a person under age eighteen (18) is taken into protective custody due to consumption of alcohol, see the department policy on **Protective Custody.**

**E. Custodial Interrogation of Minors [IACLEA 8.4.2]**

1. For a general review of the standards and procedures to be followed when conducting custodial interrogation see the departmental policy and procedure on **Interview and Interrogations.** It should be remembered that the *Miranda Rules* apply to juveniles.

2. In addition, the police must also follow the special rules and constitutional protections that apply to the interrogation of juveniles.
  - a. **Interested Adult:** In order to obtain a knowing and intelligent waiver by a juvenile, in most cases a parent or interested adult must be present, understand the warnings and have a meaningful opportunity to consult with the juvenile. Before initiating an interrogation, the juvenile's parent, legal guardian, or other interested adult (including an attorney) should be present.<sup>xvii</sup>
    - i. **Under Age Fourteen:** No waiver of rights by a juvenile under age fourteen will be valid if an interested adult is not present, understands the warnings and has an actual opportunity to consult with the juvenile.<sup>xviii</sup>
    - ii. **Fourteen Years of Age or Older:** For juveniles who are at least fourteen but under age eighteen, there should ordinarily be a meaningful opportunity to consult with a parent or interested adult. If there are valid, substantial reasons why an interested adult is not present, officers should ensure, before interrogating the juvenile, that [s]he understands the Miranda warnings and the consequences of waiving them and that any waiver of his/her rights is made intelligently, knowingly and voluntarily. A valid waiver will not occur unless the circumstance "demonstrates a high degree of intelligence, experience, knowledge or sophistication on the part of the juvenile".<sup>xix</sup>
  - b. **Interested Adult Explained:** An interested adult is, most often, a parent of the juvenile. When the parent is unavailable, another interested adult may be called upon, such as, depending on the circumstances, a legal guardian, an adult brother or sister, grandparent, or other adult relative or an attorney.

**NOTE:** It is important to note that the "interest adult" must be eighteen (18) years of age or older.<sup>xx</sup> Furthermore, the adult must be in a position where [s]he is an advocate, meaning [s]he is likely to have the best interests of the juvenile at heart and not in an "enforcement status."<sup>xxi</sup>

**NOTE:** *Officers should be extremely cautious when the "Interested Adult" is also the victim of the crime committed by the juvenile. Officers should seek another person to fill the role as an "Interested Adult" whenever practical.*



- i. A person would not qualify as an interested adult if the adult:
  - [a] Lacks the capacity to appreciate the juvenile's situation (e.g., is intoxicated);
  - [b] Appears to be actually antagonistic to the juvenile; or
  - [c] Is required to report the juvenile's offenses to authorities (e.g., an employee of the Department of Youth Services, or a school official in the case of a weapons violation on school grounds).<sup>xxii</sup>
- ii. A person under the age of eighteen will not satisfy the interested adult rule.<sup>xxiii</sup>
- c. **Opportunity to Consult:** The interrogating officer should explain to the adult that the two of them will be left alone to provide them an opportunity to discuss the juvenile's rights. Then the adult and juvenile must be provided an actual opportunity to discuss the juvenile's rights and the consequences of the waiver. This does not mean the juvenile actually seek the adult's advice, and the adult does not have to expressly offer advice. All that is required is that the police afford the juvenile the opportunity to consult.

### 3. Interrogation

- a. Prior to conducting a custodial interrogation of a juvenile, the interrogating officer shall be particularly careful to read each *Miranda* right distinctly, clearly and in a manner designed to ensure that the juvenile and the parent or "interested adult" follows the words being spoken and comprehends their meaning.
- b. All *Miranda* warnings will be read to the juvenile and parent or "interested adult" from the Departments Juvenile *Miranda* Form. See attached ADDENDUM F. Officers should "explicitly inform" the parent or interested adult that an opportunity is being provided to confer about the juvenile's rights.<sup>xxiv</sup> The juvenile and parent or "interested adult" should sign the Juvenile *Miranda* Form indicating their understanding of each right.<sup>xxv</sup>
- c. Some inquiries shall be made of the juvenile (and any adult present on his/her behalf) as to the juvenile's age, most recent level of schooling and education, whether [s]he has any reading disabilities or mental or emotional conditions and whether [s]he understands the words contained in each *Miranda* warning.

- d. **Under Fourteen:** If the juvenile being interrogated is under the age of fourteen (14), he/she must be given an opportunity to have an actual consultation with an interested adult to discuss the Miranda warnings.<sup>xxvi</sup>
  - f. **Age Fourteen to Eighteen:** If the juvenile is over the age of fourteen (14) and an interested adult is present, the adult shall be given an opportunity to have a meaningful consultation with the juvenile.<sup>xxvii</sup>
4. Officers shall ensure that the interrogation is not unduly coercive, particularly when an interested adult is not present. The Massachusetts Supreme Judicial court has ruled all persons placed in custody that are subjected to custodial interrogations, must be afforded the opportunity to have their confession recorded by tape or audio.<sup>xxviii</sup>
- a. The duration of each interrogation session should be limited and frequent breaks taken.
  - b. Absent extraordinary circumstances, only two officers shall be present at the interrogation.
- NOTE:** Massachusetts courts have not ruled on how long the interrogation session of a juvenile may continue before it becomes unduly coercive. Whether an interrogation is unduly coercive such that a valid waiver of rights cannot be made, is a facts and circumstances inquiry and will be dependent on the age, intelligence and sophistication of the juvenile, as well as the circumstances of the interrogation.<sup>xxix</sup>
5. **Reports:** Included in the arrest record will be the time in which each period of interrogation was commenced and completed, the officers present and the names of parents or responsible adults on hand.

### ***G. Abused or Neglected Children***

1. A police officer who, in his/her professional capacity, has reasonable cause to believe a child under age 18 is suffering serious physical or emotional injury or death from abuse or neglect, including sexual abuse or malnutrition, shall immediately report such condition to the Department of Children and Family (DCF) by oral communication, followed by a written report within 48 hours of the oral communication.<sup>xxx</sup> Said report shall contain the following information:
- a. The names and addresses of the child and parents or other person responsible for the child's care, if known;

- b. The child's age;
  - c. The child's sex;
  - d. The nature and extent of the child's injuries, abuse, maltreatment or neglect;
  - e. The circumstances under which the officer first became aware of the child's condition;
  - f. The action taken, if any, to treat, shelter or otherwise assist the child;
  - g. The name of the officer making the report;
  - h. Any other information which the officer believes may be helpful in establishing the cause of the injuries; and
  - i. The identity, if known, of the person or persons responsible for such injuries.
2. Juveniles may be taken into protective custody in situations where the officer believes that the life or health of the child is in immediate danger. Such cases may involve incapacitation due to intoxication, substance abuse or being present where narcotics are kept. In addition to taking the juvenile into protective custody and notifying the juvenile's parent/guardian, the Department of Children and Family (DCF) shall be immediately contacted and if necessary, to the scene to take custody of the juvenile.<sup>xxx</sup> If DCF does not respond to the scene in a reasonable amount of time, the juvenile may be transported to the station to await DCF.
  3. In serious cases of child neglect or abuse, the officer may file a Care & Protection Petition in the juvenile court to have custody of a child under eighteen taken away from the parents or other neglectful or abusing custodian and have custody transferred, on an emergency basis, to DCF or a licensed child care agency or individual.<sup>xxxii</sup>

**G. School Liaison and Youth Programs**

1. The chief of police may establish and/or maintain a school liaison program and appoint one or more officers to do the following:
  - a. Act as a resource with respect to delinquency prevention;
  - b. Provide guidance on ethical issues in a classroom setting, as requested;

- c. Provide individual counseling and/or mentoring to students; and
  - d. Explain to students the role of law enforcement in society.
2. The department encourages all departmental personnel, as good citizens, to participate on their off-duty time, in any community recreational programs for youths. Where a recreational program is needed but does not exist, officers should encourage citizens and community leaders to organize one.

**H. Record Keeping**

- 1. Officers who select non-custodial alternatives or engage in informal enforcement contacts with juveniles shall complete appropriate incident reports as required by this agency. These reports shall clearly identify the juveniles involved, the nature of the incident and the rationale for the officer's disposition.
- 2. Juveniles taken into custody for criminal-type offenses shall be subject to the same reporting requirements as adults. Such records, including photographs and fingerprints, shall be clearly marked "Juvenile" and will be separated from adult arrest records.

**I. New Statutes of Interest pertaining to Juveniles:**

**Chapter 138 Section 1:**

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

**Chapter 138 Section 34E.**

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

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

**Chapter 272 Section 40:**

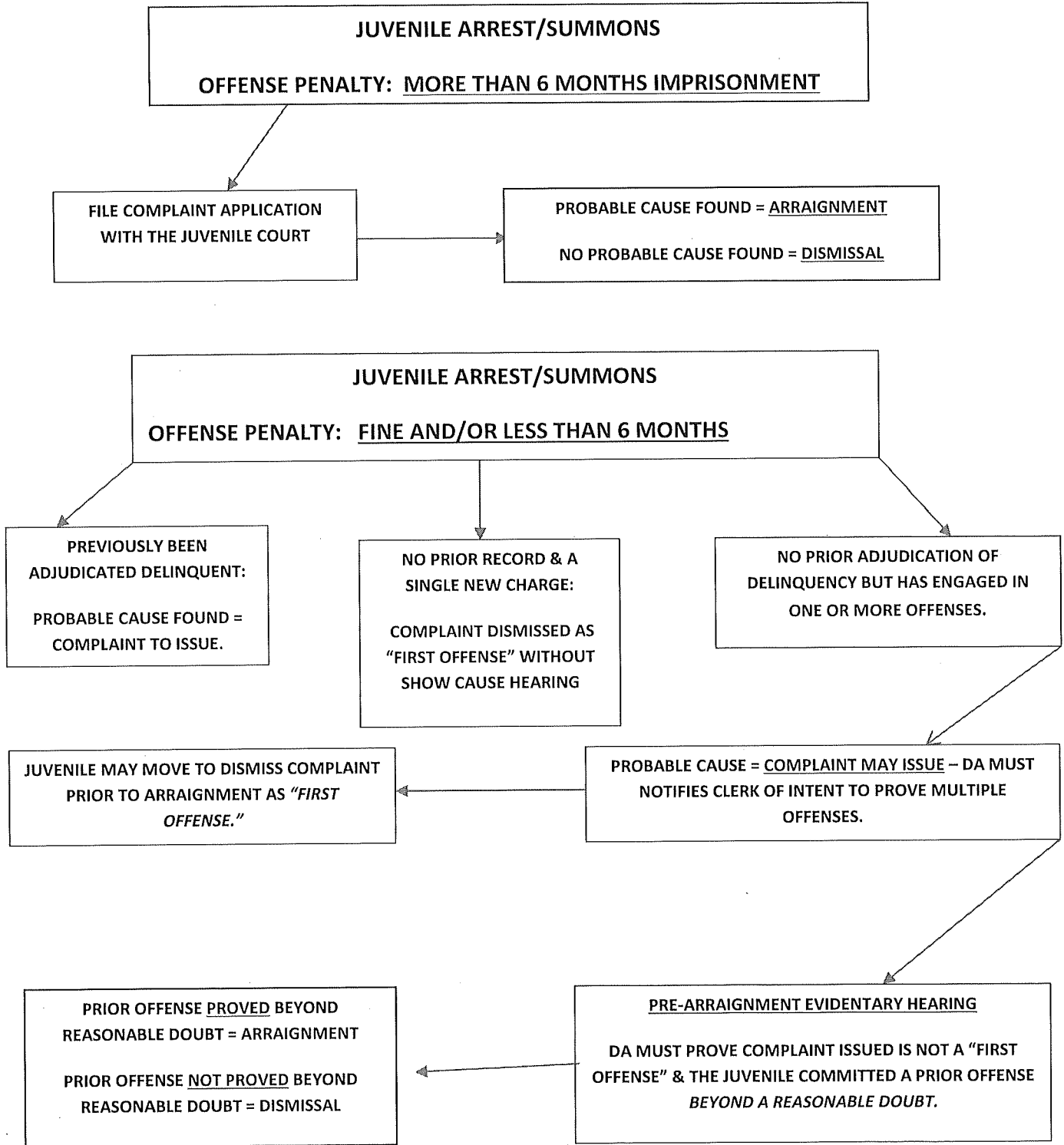
Whoever willfully interrupts or disturbs an assembly of people meeting for a lawful purpose shall be punished by imprisonment for not more than 1 month or by a fine of not more than \$50; provided, however, that an elementary or secondary student shall not be adjudged a delinquent child for an alleged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

**Chapter 272 Section 53:**

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

ADDENDUM A

**JUVENILE ARREST/SUMMONS FLOW CHART**



ADDENDUM B

FITCHBURG STATE UNIVERSITY POLICE  
JUVENILE COURT RELEASE

Case# \_\_\_\_\_

JUVENILE

PARENT and/or GUARDIAN

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

DOB: \_\_\_\_\_

Relationship: \_\_\_\_\_

SS# \_\_\_\_\_

Home Phone: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Work Phone: \_\_\_\_\_

This will certify that the undersigned is the Parent / Legal Guardian / DCF Representative, or a Representative of the Emergency Service Provider (ESP-211 Program) will take responsible for the above-mentioned juvenile, who is currently in the custody by the Fitchburg State University Police Department for a Delinquent Offense or being in the custody of the Fitchburg State University Police Department for a Child Requiring Assistance.

I, being the Parent / Legal Guardian / DCF Representative, or Representative of the Emergency Service Provider (211 Program) hereby promise to be responsible for the above named juvenile's appearance in the Worcester Juvenile Court Fitchburg Division, on \_\_\_\_\_ at \_\_\_\_\_ A.M. At this time, I request that the above named juvenile be released to my custody.

\_\_\_\_\_  
Probation Officer Notified (CRA Only)

\_\_\_\_\_  
Parent / Legal Guardian / DCF  
Representative or ESP Representative

Time: \_\_\_\_\_

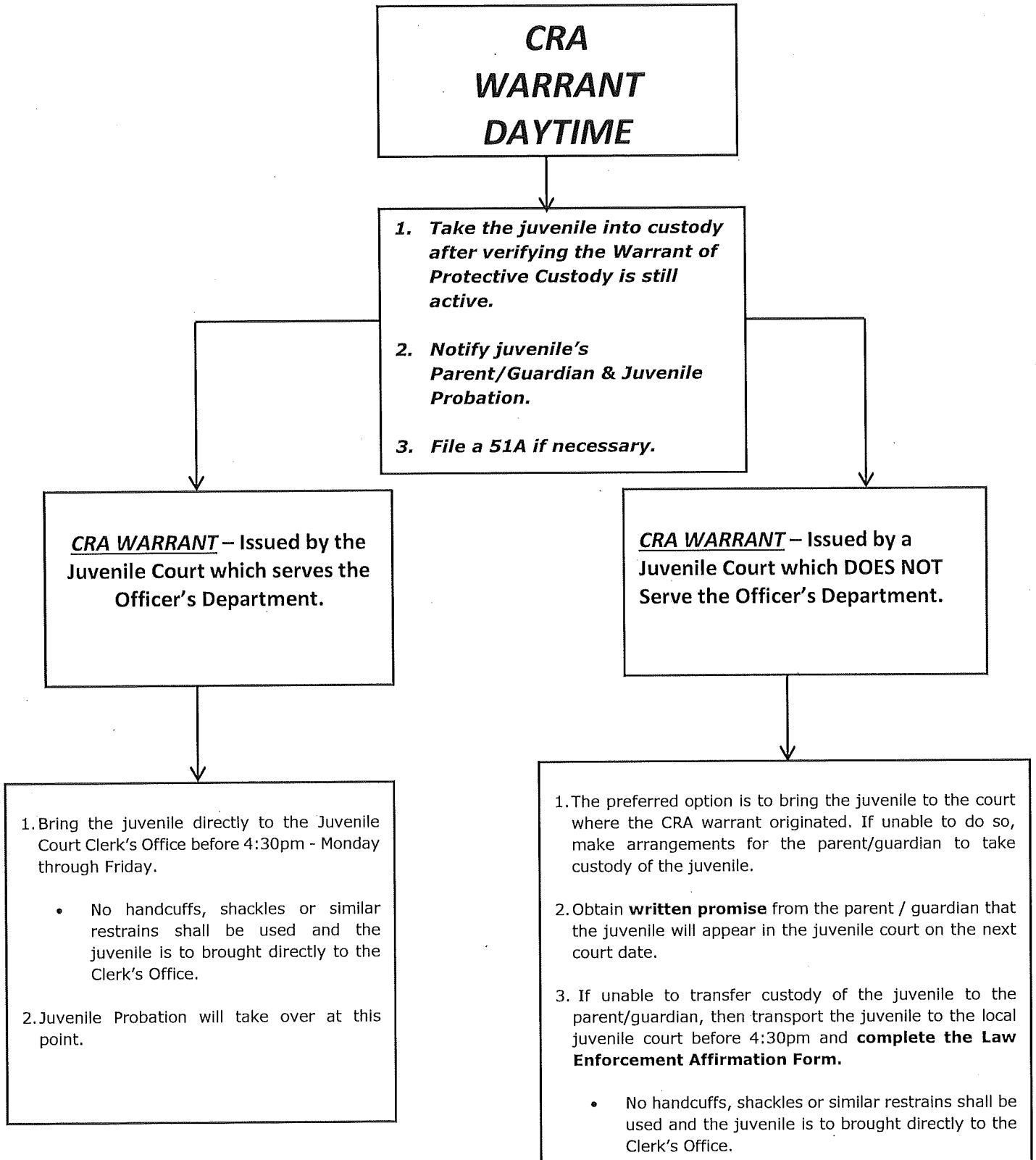
**FITCHBURG STATE UNIVERSITY POLICE USE ONLY:**

In accordance with the above request, the above named juvenile was released from the custody of the Fitchburg State University Police Department on \_\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_  
Officer in Charge

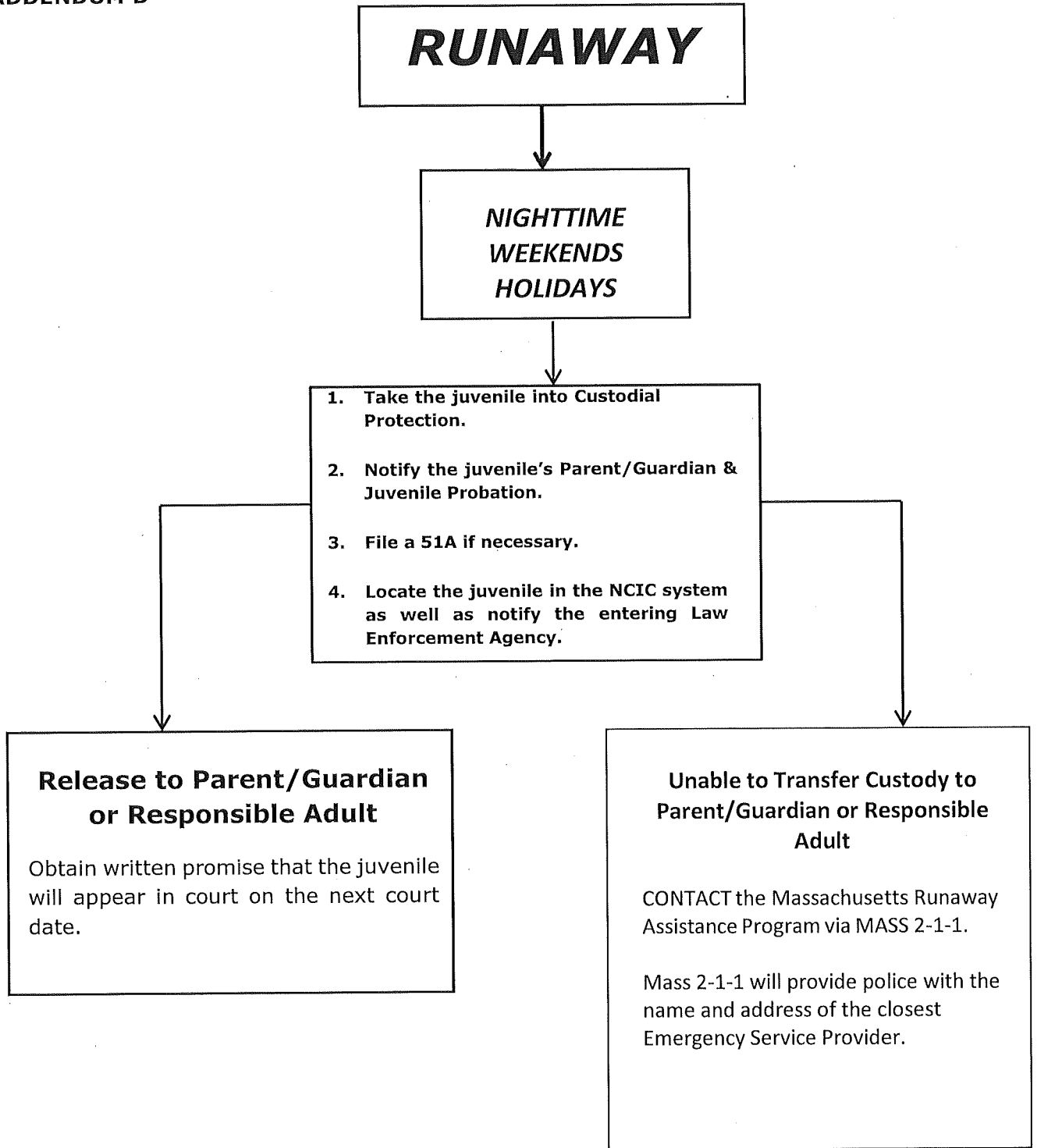
\_\_\_\_\_  
Authorizing Lieutenant

ADDENDUM C





ADDENDUM D



ADDENDUM E

**JUVENILE ARREST - DELINQUENT OFFENSE**

**Notification**

The OIC shall notify:

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

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

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

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

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

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

ADDENDUM: F

JUVENILE - MIRANDA & RECORDING RIGHTS FORM

Name of Parent/Interested Adult & Relationship: \_\_\_\_\_

\_\_\_\_\_ Check if interested adult is unavailable (Juvenile is 14 or older)

*Before asking you any questions, it is my duty to advise both of you of the juvenile's rights and to inform you that you are being recorded.*

1. You have the right to remain silent. That means you do not have to say anything.
2. If you decide to speak, anything you say can be used against you in court.
3. You have the right to get help from a lawyer right now and at any time during this interview.
4. If you cannot afford a lawyer and you want one, a lawyer will be provided to you for free before any questioning.
5. You have the right to stop this interview at any time.
6. You have the right to speak with each other and discuss these rights. (Allow Consultation in private)
7. I will now give you the chance to talk in private.

Do you both understand each of the rights I have just read to you?

Adult: \_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_ Initials    Juvenile: \_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_ Initials

**To Adult:** Do you understand that your role is to advise the juvenile about whether or not to waive these rights? \_\_\_\_\_ YES        \_\_\_\_\_ NO        \_\_\_\_\_ Initials

Describe the opportunity to consult provided \_\_\_\_\_

**To Juvenile:** With these rights in mind, do you wish to speak with me now?

\_\_\_\_\_ YES                      \_\_\_\_\_ NO                      \_\_\_\_\_ Initials

Signature of Juvenile: \_\_\_\_\_

Signature of Adult: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

Date & Time: \_\_\_\_\_ Place: \_\_\_\_\_

**REFUSAL OF RECORDING FORM**

Having been advised that this interview is being recorded, I now decline to be recorded.

Signature of Juvenile: \_\_\_\_\_

Signature of Adult: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

Date & Time: \_\_\_\_\_ Place: \_\_\_\_\_

- 
- i M.G.L. c. 119, s. 21
  - ii M.G.L. c. 119, s. 21
  - iii M.G.L. c. 119, s. 21
  - iv M.G.L. c. 119, s. 52
  - v M.G.L. c. 119, s. 54
  - vi M.G.L. c. 119, s. 52
  - vii 28 CFR Part 31.303 (i)
  - viii M.G.L. c. 119, s. 86
  - ix DCF may file an application for assistance for a child who is a runaway or a stubborn child and is in their custody.
  - x M.G.L. c. 119, s. 67
  - xi M.G.L. c. 263, s. 1A; *Com. v. Shippis*, 399 Mass. 820, 507 N.E.2d 671 (1987)
  - xii Executive Order Number 339, Commonwealth of Massachusetts, Aug. 14, 1992; 28 CFR Part 31.303(f)(5)(iv)(H)
  - xiii M.G.L. c. 119, s. 68
  - xiv M.G.L. c. 119, s. 67
  - xv M.G.L. c. 119, s. 67
  - xvi M.G.L. c. 94C, s. 36
  - xvii *Com. v. A Juvenile*, 389 Mass. 128, 449 N.E.2d 654 (1983)
  - xviii *Comm. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)
  - xix *Comm. v. King*, 17 Mass. App. Ct. 602, 460 N.E.2d 1299, *rev. den.* 391 Mass. 1105, 464 N.E.2d 73 (1984)
  - xx *Comm. v. Guyton*, 405 Mass. 497, 541 N.E.2d 1006 (1989)
  - xxi *Comm. v. Juvenile*, 402 Mass. 275 (1988)
  - xxii *Comm. v. A Juvenile*, 389 Mass. 128, 449 N.E.2d 654 (1983); *Comm. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)
  - xxiii *Comm. v. Guyton*, 405 Mass. 497, 541 N.E.2d 1006 (1989)
  - xxiv *Comm. v. Mark M., a juvenile*, 65 Mass. App. Ct. 703 (2006)
  - xxv *Comm. v. Leon L.*, 52 Mass. App. Ct. 823 (2001)
  - xxvi *Comm. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

xxvii *Id.*

xxviii *Comm. v. DiGiambattista*, 442 Mass. 423 (2004)

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

xxx M.G.L. c. 119, s. 51A

xxxi M.G.L. c. 119, s. 51B

xxxii M.G.L. c. 119, s. 24

Approval:



Chief of Police



Date