



OPERATIONS
SECTION 1.00



USE OF FORCE

POLICY & PROCEDURE NO. 1.01	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.3.1; 1.3.2; 1.3.3; 1.3.4; 1.3.5	EFFECTIVE DATE: _____
	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

Non-deadly Force

Because of their law enforcement and peacekeeping role, police officers will be required at times to resort to the use of physical force to enable them to fully carry out their responsibilities. Police officers are confronted continually with situations requiring or resulting in the use of various degrees of force to effect a lawful arrest, to ensure public safety, or to protect themselves or others from harm. The degree of force used is dependent upon the facts surrounding the situation the officer's face. Only a reasonable and necessary amount of force may be used. The degree of force the officer is forced to use often depends upon the amount of resistance or threat to safety the situation produces.

The objective of the use of force is to maintain and/or reestablish control over a situation. Control is reached when a person complies with an officer's directions and/or the suspect is restrained or apprehended and no longer presents a threat to the officer's or others. Since officers will encounter a wide range of behaviors, they must be prepared to utilize a range of force options that are reasonable and necessary to maintain and/or reestablish control by overcoming resistance to the officer's lawful authority while minimizing injuries.

Because there are an unlimited number of possibilities, allowing for a wide variety of circumstances, no written policy can offer definitive answers to every situation in which the use of force might be appropriate. Rather, this policy will set certain specific guidelines and provide officer's with a concrete basis on which to utilize sound judgment in making reasonable and prudent decisions.

Deadly Force

Police officers are issued firearms, and trained in their use, for self-protection and for the protection of the public in the community in which they serve. The use of a firearm is the highest degree of force a police officer may apply and the decision to use a firearm, in the performance of his duties, is the most critical judgment a police officer is called upon to make.

A police firearms policy should primarily reflect the fact that a police officer is authorized to use deadly force whenever it is reasonable and necessary to combat deadly force, used or threatened, if there is inninent danger or death or serious bodily injury to the officer, or to any other person unlawfully attacked.

The use of firearms to effect the arrest of a known felon, or to prevent the escape of a fleeing felon should be restricted to those offenses where deadly force has been used or threatened and where the police officer has reasonable cause to believe that death or serious bodily injury could result unless the felonies immediately apprehended.

Firearms should not be used if other less dramatic means are possible and all reasonable precautions must be taken to prevent injury to innocent persons.

No set of guidelines for the use of firearms can possibly cover every situation that might arise and every police officer is expected to respond to all such emergencies decisively with the highest level of good judgment and professional competence.

II. POLICY

It is the policy of the department that: {1.3.1}

- A. Officers use only the force that is reasonably necessary to make a lawful arrest, to place a person into protective custody, to effectively bring an incident under control, or to protect the lives or safety of the officer and others.

III. DEFINITIONS

- A. *Deadly Force*: Any use of force that is reasonably intended or likely to cause death or great bodily harm.
- B. *Non-Deadly Force*: Any use of force other than that which is considered deadly force. This includes any physical effort used to control or restrain another, or to overcome the resistance of another.

IV. PROCEDURES

A. Use of Deadly Force

- 1. Officers are authorized to use a firearm in the following circumstances if there is no other reasonable alternative available: {1.3.2}
 - a. Defend the officer or others from unlawful attack when he has reasonable cause to believe there is immediate danger of death or serious bodily injury.
 - b. To apprehend a person who is committing or has committed a felony in which deadly force has been used or threatened and when he/she has reasonable cause to believe that the felon could cause death or serious bodily injury unless immediately apprehended.
 - i. If the felony was not committed in the officer's presence they must have probable cause to believe that the felony has been committed and that the individual being pursued has committed it.

- ii. Firearms are not to be used to effect an arrest on mere suspicion that a crime has been committed or that a particular person committed a crime.
 - iii. Flight in and of itself is not necessarily evidence of the commission of a crime and is not sufficient reason for the use of firearms.
 - iv. If the crime(s) is a crime against property, you are not justified in using deadly force. If it is a crime against a person where deadly force was used or threatened you may use that degree of force necessary to make the arrest.
 - v. Where practicable prior to the use of deadly force, officers shall identify themselves as police officers and through verbalization state their intention to use such force.
 - vi. The mere placing of handcuffs on a prisoner will not be construed to be a use of physical force. Use of restraining devices is mandatory on all prisoners, unless in the officer's judgment unusual circumstances exist which make the use of restraining devices impossible or unnecessary (e.g., very young juvenile, handicapped, injured).
- c. To kill a dangerous animal or an animal so badly injured that as a humanitarian reason requires that it be removed from further suffering. In the case of an injured animal the permission of the owner should be obtained, whenever possible. Great care should be taken to protect the public from a ricocheting bullet and, if possible, the killing of an animal in the presence of children should be avoided.
- d. For target practice or competition, with weapons issued or authorized by the Chief of Police or the department.

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2. A police officer is not authorized to use a firearm in the following circumstances:
 - a. As a warning shot;
 - b. To effect an arrest for a misdemeanor, except as provided in paragraph 1 (a);
 - d. At or from a moving vehicle except to defend themselves when being fired upon or when the occupants of a vehicle being pursued have committed a felony in which deadly force was used and there is probable cause to believe that the occupants are the actual offenders; that there is reasonable cause to believe that there is imminent danger of death or serious bodily injury; that their immediate apprehension is necessary for public safety and there are no other reasonable means available to prevent their escape and secure their arrest.
 - e. Decisions to discharge a firearm at or from a moving vehicle shall be governed by this policy and are prohibited if they present an unreasonable risk to the officer's or the public.
 3. A police officer should avoid the unnecessary display of firearms and not draw a firearm except when there is justification for its use to accomplish a proper police purpose.

Note: In responding to any potentially dangerous situation, such as a robbery or breaking and entering in progress, a police officer should carry their firearm in a position where it can be used speedily and effectively, if necessary.
 4. Under Massachusetts general Laws, Chapter 41, Section 98, a police officer is authorized to carry a firearm that has been issued or authorized by the Chief of Police or the department at all times when on duty and may carry such firearm while off duty within the commonwealth.
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Officers who are issued a license to carry (LTC) firearms and carry their own weapon while off duty intended for official use are required to qualify with their personal weapon with the department firearms instructors/armorer and submit the weapon for safety inspection. Such personal weapons will be registered with the department by manufacturer, model, caliber and serial number.

Those officers who wish to carry their own weapon off duty intended for official use are required to qualify with such weapon on their off duty time and supply their own ammunition.

If it's his/her decision to carry their issued/personal weapon while off duty, they shall refrain from any conduct unbecoming a police officer, contact with any alcoholic beverages and contact with controlled substances of any description. Off duty members must adhere to the issued policies and procedures of firearms and the use of deadly force.

Any officer who elects not to carry a firearm while off duty shall not be subjected to disciplinary action if an occasion should arise in which they could have taken police action if they were armed.

5. A police officer shall only carry firearms and ammunition issued or authorized by this department. An officer shall not alter or modify their firearm or ammunition in any way without the express permission of the Chief of Police or his designee.

Note: The only modification allowed is a rubber grip adaptor that slips over the grip portion of the pistol for better control.

6. A police officer who discharges their authorized firearm for any reason except for target practice or competition shall, as soon as reasonably possible, submit to the Chief of Police a report in accordance with departmental procedures, which should include at least the following information:

Note: See firearms discharge report forms

- a. The names and addresses of any injured person(s) and witness(es). A police officer who injures any person(s) through the discharge of their firearm will ensure that necessary steps are taken to provide the injured person(s) with medical assistance.

- b. The extent and treatment of any injuries, the hospital where treated and/or doctor who provided such treatment.
 - c. The reasons and circumstances which required the use of a firearm(s) and the number of shots fired.
 - d. In the case of an injured animal, the same procedures shall apply.
7. It is the responsibility of all police officers that they must keep their firearms clean and in working order at all times. All officers must from time to time review proper shooting fundamentals and be required to periodically qualify in the use of firearms. All officers will be responsible for the safe handling of their firearms at all times and must properly secure their firearms when they are not under their direct control as per M.G.L. Chapter 140, Section 131L.
8. These procedures are intended to regulate the use of any and all police firearms including revolvers, pistols, shotguns, rifles and automatic weapons, authorized off duty firearms and any related equipment. These procedures will also apply when an off duty officer uses their firearm to perform a valid law enforcement purpose.

B. Use of Non-Deadly Force [1.3.4]

- 1. Where deadly force is not authorized, officers may use only that level of force that is reasonably necessary to bring an incident under control.
- 2. Officers are authorized to use department-approved, non-deadly force techniques and issued equipment to:
 - a. Protect the officer or others from physical harm;
 - b. Restrain or subdue a resistant individual, while making a lawful arrest or placing a person in protective custody; and/or

- c. Bring an unlawful situation safely and effectively under control.

D. Medical Attention

1. After any level of force is used, the officer shall immediately evaluate the need for medical attention or treatment for that person upon whom the force was used and arrange for such treatment when: [1.3.5]
 - a. That person has a visible injury; or
 - b. In the case of use of pepper spray, immediately after spraying a suspect, officers shall be alert to any indications that the individual needs medical care. This includes, but is not necessarily limited to, breathing difficulties, gagging, profuse sweating and loss of consciousness; or
 - c. That person complains of injury or discomfort and requests medical attention.

NOTE: Any person requesting and/or deemed in need of immediate medical attention shall be transported (in accordance with the departmental policy on *Transporting Prisoners* to the appropriate hospital or medical facility. All medical treatment received shall be noted in the officer's report.

2. Injury to Prisoner

- a. The officer shall promptly notify his/her immediate supervisor of the incident.
- b. The officer shall attempt to locate and identify all witnesses, and obtain and document their statements.
- c. The officer shall prepare and submit all required reports. If more than one officer is involved in a use of force incident resulting in an injury, each officer shall complete a report outlining his/her actions and observations in the incident.

3. *Patrol Supervisor*

- a. If available, the Patrol Supervisor shall immediately respond to the scene of any incident where, as the result of the application of physical force, an officer is injured, or a prisoner has a visible injury, or complains of injury or discomfort and requests medical attention, and
- b. [S]he shall:
 - i. Ensure that officers receive any necessary assistance, including medical treatment, and that any injuries to officers are properly documented;
 - ii. Ensure that the need for medical treatment for the prisoner is properly evaluated and provided;
 - iii. Determine if a detective should respond to the scene and the level of investigative services to be utilized (including photos, measurements and diagrams). If an injury or complaint of pain exists, supervisors are encouraged to obtain photographs; and

NOTE: A photograph showing no injury may be as important as one which shows injury.
 - iv. File a report on the incident and his/her observations with the officer-in-charge of the police station.

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The City of
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(413) 592-6341

CHICOPEE POLICE DEPARTMENT
Thomas G. Charette
Chief of Police

SPECIAL ORDER: 13-5

DISTRIBUTION: To All Personnel

FROM:



Chief Thomas G. Charette

DATE: May 16,2013

RE: ADDENDUM TO POLICY/PROCEDURE

The following is an addendum to the policy/procedure 1.01 Use of Force Policy:

Nothing in this policy **will** prevent personnel from utilizing any readily available object (i.e. flashlight, radio, clipboard, etc.) as a weapon in an emergency. These items should not be used as a weapon of choice but rather as a weapon of opportunity **if** exigent circumstances exist that make their use as a weapon: reasonably necessary for the protection of personnel or others. Any item used as a weapon of opportunity will be considered an impact weapon and should be used within the guidelines of standard impact weapons.

Members of the department are to add this special order to their policy and procedure manual and familiarize themselves with the addition.

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POST-SHOOTING INCIDENT PROCEDURES

POLICY & PROCEDURE NO. 1.02	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETIS POLICE ACCREDITATION STANDARDS REFERENCED: 1.3.8	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

Law enforcement duties can often expose officers and support personnel to mentally painful and highly stressful situations that cannot be resolved through normal stress coping mechanisms. Unless adequately treated, these situations can cause disabling emotional and physical problems. It has been found that officer-involved shootings resulting in death or serious bodily injury to a citizen or a fellow officer may precipitate such stress disorders. It is the responsibility of this department to provide personnel with information on stress disorders and to guide and assist in their deterrence.

The purpose of this policy is to provide guidelines that shall be uniformly applied following any officer-involved shooting incident that has resulted in death or serious bodily injury, in order to minimize the chances that involved personnel will develop or suffer from post-traumatic stress disorder.

II. POLICY

It is the policy of this department to:

- A. Take immediate action after officer-involved shooting incidents to safeguard the continued good mental health of all involved personnel.

III. DEFINITIONS

- A. *Stress Disorder*: An anxiety disorder that can result from exposure to short-term severe stress, or the long-term buildup of repetitive and prolonged milder stress. The person must have experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of one's self or others. The person's response to the event(s) will have involved intense fear, helplessness, or horror.

1. *Acute Stress Disorder*. A category of stress disorder lasting for a minimum of two days and a maximum of four weeks occurring within four weeks of the event(s).
2. *Post-Traumatic Stress Disorder*. A category of stress disorder in which the symptoms last more than one month.

- B. *Officer-Involved Shooting Incident*: A line-of-duty incident where shooting causes death or serious bodily injury to an officer or other person.

IV. PROCEDURES

A. Handling of Officers at Scene of Shooting Incident

1. A supervisor shall be dispatched to the scene of the incident, and shall assume primary responsibility in caring for involved personnel.
2. The supervisor shall make appropriate arrangements for all necessary medical treatment.
3. During any period where the involved officer is required to remain on the scene, but has no immediate duties to fulfill, the officer should be taken to a quiet area away from the scene of the incident. If available a peer counselor or other supportive friend or officer should remain with the officers, but should be advised not to discuss details of the incident.

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4. The supervisor should arrange for the officers directly involved in the incident to leave the scene as soon as possible, and be taken to a quiet, secure setting.
 5. Where possible, the supervisor shall briefly meet with the involved officers.
 - a. No stimulants or depressants should be given to the officers unless administered by medical personnel.
 - b. Only minimal, preliminary questions should be asked about the incident. The officers should be advised that a more detailed debriefing will be conducted later (but as soon as possible).
 - c. Any standard investigations that will occur concerning the incident should be discussed with the officers.
 - d. The officers should be advised that they may seek legal counsel.
 - e. The officers should be advised not to discuss the incident with anyone except a personal or agency attorney, union representative, or departmental investigator, until the conclusion of the preliminary investigation.
 6. The supervisor shall determine whether the circumstances of the incident require that the officer's duty weapon be taken for laboratory analysis. Where the duty weapon is taken, the supervisor shall:
 - a. Take custody of the officer's weapon in a discrete manner; and
 - b. Replace it with another weapon, or advise the officer that it will be returned or replaced at a later time, as appropriate.
 7. Involved officers should notify their families about the incident as soon as possible. Where an officer is unable to do so, an agency official shall personally notify the officer's family, and arrange for their transportation to the hospital.
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8. At all times, when at the scene of the incident, the supervisor should handle the officer and all involved personnel in a manner that acknowledges the stress caused by the incident.

B. Post-Incident Procedures [1.3.8]

1. Debriefings shall be held as soon as possible after the incident. The department shall ensure that there is a debriefer on call or on-duty at all times so that someone is available shortly after an incident.
2. Involved personnel shall be removed from line duties pending evaluation but shall remain available for any necessary administrative investigations.
3. Any officer who injures another person by discharging his/her firearm during a shooting incident shall be required to meet with a Department approved specialist for counseling and evaluation as soon as practical after the incident. Involved support personnel will be also be afforded the opportunity for counseling if requested. After the counseling sessions, the specialist shall advise the agency:
 - a. Whether it would be in the officers' best interest to be placed on administrative leave or light duty, and for how long;
 - b. Where the officers were relieved of their duty weapons after an incident, at what point they should be returned; and
 - c. What will be the best continued course of counseling
4. The department strongly encourages the families of the involved officers to take advantage of available counseling services.
5. Any department investigation of the incident shall be conducted in a timely manor..
6. The department should brief other department members concerning the incident so that rumors are kept to a minimum. Department members are encouraged to show

the involved officers their concern.

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7. All personnel involved in a shooting incident should be advised that they are not permitted to speak with the media about the incident. See departmental policy on ***Police Media Relations***.
 8. In order to protect against crank or abusive calls, officers should be advised to have phone calls answered by another person for several days if their names are released to the public.

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USE OF FORCE REPORTING

POLICY & PROCEDURE NO. 1.03	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.3.6; 1.3.7; 1.3.13	EFFECTIVE DATE: _____
	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

The manner in which police officers use deadly force^f firearms is an extremely critical issue to the department and one that generates intense public scrutiny. When these incidents occur they demand a thorough and complete inquiry into all aspects of the incident. Only through an exhaustive inquiry can the facts of the incident evolve and public confidence be maintained.

II. POLICY

It is the policy of this department to: [1.3.6]

- A. Require a report and to investigate every incident regarding the use of issued or authorized firearms or ammunition by any officer, whether accidental or intentional and whether on or off-duty. (Obvious exceptions are during the lawful performance of duties such as, but not limited to: Range Officers, Amorer, Ballistician, training, and hunting.);
- B. Require a written report whenever an employee takes action that results in, or is alleged to result in, the injury or death of another person;
- C. Require the completion of the appropriate department forms: Use of Baton Report, Firearm Discharge for Injured/Dangerous Animal Report, Firearm Discharge^f In Defense of Life Report.

III. PROCEDURES

A. Involved Officer

1. At the scene the officer shall:
 - a. If necessary, request emergency medical aid;
 - b. Promptly notify the dispatcher or officer-in-charge;
 - c. Unless injured, remain at the scene and protect and secure it to the extent possible, pending the arrival of appropriate investigators; and
 - i. If the circumstances are such that the continued presence of the officer at the scene might cause a more hazardous situation to develop, (unruly/violent bystanders/crowd), that officer should be transported to another, more appropriate location.
 - d. Protect the firearm and/or ammunition for examination and submit said items to the appropriate investigator.
 - i. Said items should only be surrendered to another police officer, unless otherwise instructed by the officer-in-charge.
2. The officer should refrain from speaking or discussing the incident with anyone except with those directly involved or with legal counsel.
3. Prepare a detailed report of the incident in a timely manner.
4. The officer should be available, at reasonable times, for interviews and statements regarding the incident.

B. Dispatcher Duties

1. The dispatcher will:
 - a. Notify the officer-in-charge;
 - b. Dispatch officers to the scene;
 - c. Make all appropriate, accurate and complete administrative journal entries; and

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- d. Politely refer all media requests for information to the Chief or the Public Information Officer. (See departmental policy on *Police Media Relations*.)

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C. Patrol Supervisors

1. The Patrol Supervisor will respond to the scene as soon as possible and render assistance to the officer(s) involved.
2. The Patrol Supervisor will determine the type of shooting:
 - a. Accidental, no injuries;
 - b. Accidental death or injury to an officer(s) and/or other(s);
 - c. Intentional, no injuries;
 - d. Intentional, death or injury to an officer(s) and/or other(s);
3. The Patrol Supervisor will advise the officer-in-charge of the type of shooting involved.

D. Officer-in-Charge

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1. When appropriate, the officer-in-charge will proceed directly to the scene and render assistance to the assigned investigators.
 2. The officer-in-charge will:
 - a. Make all resources, facilities, and personnel of the department available to the investigators;
 - b. Ensure that the involved officer(s) is provided with appropriate Federal/State civil rights protection.
 - c. Politely refer all media requests for information to the Chief or the Public Information Officer. (See departmental policy on *Police Media Relations*.)
 3. Upon such notification, the officer-in-charge or a police official designated by him/her or the Chief of Police, shall immediately institute an investigation, and
 - a. If bodily injury has occurred, impound the weapon involved immediately;
 1. In doing so, the investigating officer shall preserve the firearm in the condition in which [s]he finds it.

- ii. THE INVESTIGATING OFFICER MUST USE EXTRAORDINARY CARE IN THIS RESPECT AS THE GUN MAY STILL BE LOADED.
 - iii. Ensure proper chain of custody of the impounded weapon until it is placed in the custody of State Police or other law enforcement agency's crime lab personnel.
- b. The officer(s) involved in the shooting shall complete a full report of the incident in a timely manner. If the officer has been injured, [s]he will file the required reports as soon as [s]he is physically able;
 - c. Interview all injured parties, if possible, to ascertain the circumstances involved in the shooting;
 - d. Assign sufficient officers to secure the scene of the shooting to preserve physical evidence and request the assistance of investigators and/or crime scene technicians as appropriate; and
 - e. The Chief or his designee shall make arrangements for counseling assistance for the officer where appropriate.
 - f. At his/her discretion, the Chief of Police or officer-in-charge may relieve the officer from duty for the remainder of the tour of duty, or such other period as [s]he deems necessary.
5. In those incidents of the use of deadly force *f* firearms where a death results, the District Attorney's office, pursuant to the terms of G.L. c. 38, s. 6, will be notified forthwith and will assist with the investigation.
6. The official conducting the investigation shall file a preliminary report prior to the conclusion of the tour of duty and will complete a detailed investigative report and submit the same to the Chief of Police in a timely manner after the completion of the investigation of the circumstances surrounding the shooting.
7. During the course of the investigation, no police personnel will give any detailed information concerning the incident to any members of the public or news media without express authority from the Chief of Police. In no case shall any information which is prejudicial to any party be released prior to the completion of the investigation. (See departmental policy on ***Police Media RelatForrs.***)

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8. The authority and responsibility for final departmental disposition of a firearms discharge incident rests with the Chief of Police.

E. Chief of Police

1. The Chief of Police or his/her designee shall be responsible for the following: {1.3.7}
 - a. Ensuring that a thorough investigation was conducted and that all reports were prepared and submitted;
 - b. Reviewing all reports submitted to determine whether the use of force was in compliance with department policy and procedures; and
 - c. If the reports were forwarded to an officer designed by the Chief of Police, [s]he shall prepare a report to the Chief regarding the incident and how it was handled, including any comments and recommendations [s]he may have.
2. All reports concerning any use of force incident shall be forwarded to the Chief of Police, who, after reviewing these reports, along with any accompanying comments or recommendations, shall take appropriate action.
3. All statistical information involved in the incident will be forwarded to the FBI through the Crime reporting unit of the State Police. This will be accomplished by completing the **LEOKA** segment of the incident or arrest report.

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CHICOPEE POLICE DEPARTMENT

FIREARMS DISCHARGE / IN DEFENSE OF LIFE REPORT

An officer shall complete this report whenever he/she: Discharges a firearm, shotgun or any weapon used by the department other than at a target practice training session.

Officer involved: _____

Last First Middle initial Rank ID#

Duty Status: On Duty D In Uniform D Alone D Working wfa Partner D Civilian clothes D Off Duty D In Uniform D In Civilian Clothes D

Off Duty Work Assignment D In Uniform D In Civilian Clothes D

Day of the Week: Date of Incident: _/ _f ____ (DD/MM/YY) Time, _____

Address/Location: _____

Incident Number: _____ Call Number: _____ Officer Dispatched to: _____

Lighting Conditions: D Indoors D Good Artificial D Poor Artificial D Other: _____

Outdoors D Clear D Cloudy D Rain D Snow D Fog D Other: _____

Weather Conditions: Clear D Cloudy D Rain D Snow D Fog D Other: _____

Did you have prior knowledge that the situation involved a person with a dangerous weapon?

Y D N D If yes, specify type: _____

Reason for Discharging Firearm: Protect Self _Protect Citizen_ Other Specify _-:-:-:-

Injuries: Superficially Not Wounded Wounded Critical Expired Unknown

Officer: D D D D D D

Suspect: D D D D D D

Other Person: D D D D D D

Hospital taken To: _____ Attending Physician: _____

Who Fired First: Officer D Suspect D

Number of Shots Officer Fired: [1 Did you have time to use front sight? Yes D No D

Which hand was weapon in when fired? Both D Right D Left D

No# of Shots Suspect Fired: [1

Distance between you and the suspect when the first shot was fired: [1 Ft.

Firing Positions: Standing Sitting Crouching Kneeling Other, Specify

Officer: D D D D D _____

Suspect: D D D D D 0, _____

Describe any Protective Cover which was used: _____

Name of Suspect: _____ Arrested: Yes D No D

Last First Middle Initial

Address of Suspect: _____

Street No# Street Name City State Zip

Charges if Arrested, Specify: -:-:-:-

Name of injured person other than

suspect: _____

Last First Middle Initial

Address of injured person: _____

Street No# Street Name City State Zip

Type of Injury: Hospital Taken To: -:-:-:-

Witness #1 Name: _____ Phone Number: _____

Witness #1 Street: _____

Address/City/State: _____

Witness #2 Name: _____ Phone Number: _____

Witness #2 Street: _____

Address/City/State: _____

Officers Signature

Commanding Officers Signature

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**CHICOPEE POLICE DEPARTMENT
USE OF BATON REPORT**

An officer shall complete this report; following any incident involving the use of force: Uses a baton issued by/or authorized by the department, other than for a practice training session.

Officer involved: _____
Last First Middle Initial Rank ID#

Duty Status: On Duty In Uniform Alone Working wfa Partner

In Civilian Clothes: Off Duty In Uniform In Civilian Clothes

Off Duty work Assignment : In Civilian Clothes In Uniform

Day of the Week: _____ Date of Incident: _f__f__ (DDfMMfYY) Time: _____

Incident Number: _____ Call Number: _____

Officer Dispatched to: _____ Location: _____

Was there prior knowledge that the incident involved a person \with a Dangerous Weapon?

No Yes If Yes, specifY type _____

Number of Suspects: _____

Physical Size of suspect:

Height 5'-5'6" 57" Over 6" Weight 140-170 175-200 Over 200

Was Suspect(s) under the influence of drugs or alcohol ?

Had the Suspect been involved in an altercation with another person? Yes No

Name of Suspect #1: _____
Last First Middle Initial

Address: _____
Street Number Street Name City State Zip

Name of Suspect #2: _____
Last First Middle Initial

Address: _____
Street Number Street name City State Zip

Did Suspect(s) strike officer? Yes No If yes, number of times: (

Did Suspect(s) attempt to strike officer? Yes No

Where did you strike the suspect with your baton:

Legs Knees Arms Elbows Torso Other If other specify:, _____

Number of Strikes with your baton: _____

Legs [] Knees [1] Arms [1] Elbows [1] Torso [1] Other [1]

Describe any blocking or evasive moves by you as Suspect(s) attacked you: _____

Witness #1: _____
Last First Middle Initial Phone#

Address: _____
Street Number Street Name City State Zip

Witness #2: _____
Last First Middle Initial Phone#

Address: _____
Street Number Street Name City State Zip

Officers Signature

Commanding Officers Signature

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CHICOPEE POLICE DEPARTMENT
USE OF CHEMICAL AEROSOL REPORT

An officer shall complete this report whenever *he/she* uses a chemical aerosol issued by the department, other than a practice training session.

Officer Involved: _____

Last First Middle Initial Rank ID#

Duty Status: On Duty In Uniform Alone Working w/ Partner

In Civilian Clothes: Off Duty In Uniform In Civilian Clothes

Off Duty work Assignment: In Civilian Clothes In Uniform

Day of the Week: _____ Date of Incident: (DDJMM/YY) Time: _____

Incident Number: _____ Call Number: _____

Officer Dispatched to: _____ Location: _____

Was there prior knowledge that the incident involved a person with a Dangerous Weapon?

No Yes If Yes, specify type _____

Number of Suspects: _____

Physical Size of suspect:

Height 5'-5'6" 5'7" Over 6" Weight 140-170 175-200 Over 200

Was Suspect(s) under the influence of drugs or alcohol ?

Had the Suspect been involved in an altercation with another person? Yes No

Name of Suspect #1: _____
 Last First Middle Initial

Address: _____

Street Number Street Name City State Zip

Name of Suspect #2: _____
 Last First Middle Initial

Address: _____
 Street Number Street Name City State Zip

Did Suspect(s) strike officer? Yes No If yes, number of times:

Did Suspect(s) attempt to strike officer? Yes No

Approximate distance from Suspect when sprayed: _____ Ft. Number of times sprayed:

Where did the spray of the chemical aerosol come in contact with the suspects body:

Face Neck Chest Below waist other, Specify: _____

Care given to Suspect after spraying: Yes No Refused treatment

Hospital taken to: _____

Other treatment Given: _____

Witness #1:

Last First Middle Initial Phone#

Address: _____

Street Number Street Name City State Zip

Witness #2: _____
 Last First Middle Initial Phone#

Address: _____

Street Number Street Name City State Zip

 Officers Signature

 Commanding Officers Signature

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CHICOPEE POLICE DEPARTMENT DISCHARGE OF FIREARM FOR INJURED / DANGEROUS ANIMAL REPORT

An officer shall complete this report whenever he/she discharges a firearm, rifle, shotgun or any other weapon issued by this department other than at a target practice session.

Officer involved: _____
Last First Middle Initial Rank ID#

Duty Status: On Duty In Uniform Alone Working w/a Partner

In Civilian Clothes: Off Duty In Uniform In Civilian Clothes

Off Duty work Assignment : In Civilian Clothes In Uniform

Day of the Week: _____ Date of Incident: _f_ / _f_ / (DD/MM/YYJ Time: _____

Incident Number: _____ Call Number: _____

Officer Dispatched to: _____ Location: _____

Destroyed Animal: Injured Dangerous

Description of Injured or dangerous Animal: _____

Name of Owner: _____
Last First Middle Initial

Address: _____
Street Number Street Name City State Zip

Was owner present? Yes No

If No, were any efforts made to contact the owner? Yes No

Describe efforts to contact **owner**: _____

Weapon Used: Issued Pistol Department .22 Rifle Other, Specify: _____

Number of shots fired: []

Officers Signature

Commanding Officers Signature

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VEHICULAR PURSUIT

POLICY & PROCEDURE NO. 1.04	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 41.2.2, 41.2.3, 61.3.4	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

Vehicular pursuits are necessary to effectuate the enforcement of criminal and motor vehicle laws. Many of these pursuits are inherently dangerous and therefore create some risk of injury to the pursuing officer(s), the occupant(s) of the pursued vehicle, and the public at large.

The primary purpose of this policy is to secure a balance between the need to protect the lives of the public and the occupants of the pursued vehicle and the obligation of police officers to enforce laws and apprehend violators.

This policy also recognizes that vehicular pursuits do not automatically occur when officers activate their emergency warning equipment in an attempt to effectuate a lawful motor vehicle stop. Motorists occasionally may not immediately see or hear an officer's emergency warning equipment, or may not realize that they are the target of the officers' efforts. Officers may be required to follow a motorist with emergency warning equipment activated for a significant distance before that motorist actually stops the vehicle. Consequently, an officer's lawful attempt to stop a motorist is not considered a vehicular pursuit subject to the requirements and restrictions of this policy unless and until such time as the officer reasonably believes that the motorist is intentionally ignoring the officer or actively attempting to elude the officer.

Since numerous unique situations arise in law enforcement, it is impossible for this policy to anticipate all possible vehicular pursuit circumstances. Therefore, in unusual situations an officer should use common sense and consult with a supervisor whenever possible.

II. POLICY

- A. An officer may, within the posted speed, engage in a pursuit of any motor vehicle operating in conformance with posted speed limit and other traffic laws, under any circumstance justifying a lawful motor vehicle stop.
- B. No officer shall engage in a vehicular pursuit that requires the officer to exceed the posted or applicable speed limit or that involves a target vehicle operating in violation of the posted or applicable speed limit or other traffic laws unless the officer reasonably believes:
 - 1. That the continued operation of the vehicle the officer intends to stop poses a risk of physical harm to the officer, the public, or others;
 - 2. That the occupant(s) of the vehicle the officer intends to stop pose(s) a risk of physical harm to the public or others; or
 - 3. That the occupant(s) of the vehicle is/are wanted for the commission of felonious acts that threaten, have threatened, or will threaten the health, life, or safety of a person or persons.
- C. No officer shall initiate or continue a pursuit on a divided highway opposite the direction of the flow of vehicular traffic.
- D. Unless authorized by a supervisor, no officer (other than the officers in the primary and secondary units) shall engage in the main pursuit or pursue on parallel streets.
- E. No officer shall participate in a pursuit with a civilian present in the authorized police vehicle.

- F. *Departments shall choose one of the following options:*
1. No officer operating a motorcycle or ATV will participate in a vehicular pursuit. [41.2.2(d)]
- G. No officer shall participate in a pursuit of a motorcycle for traffic violations if the officer knows the motorcycle's registration number or the identity of the operator.

III. DEFINITIONS

- A. *Authorized Police Vehicle:* A police department issued motor vehicle equipped with operable emergency warning equipment.
- B. *Primary Unit:* An authorized police vehicle that is the first vehicle behind the pursued vehicle.
- C. *Secondary Unit:* An authorized police vehicle that is actively involved in the pursuit behind the primary unit as backup.
- D. *Supervisor:* The officer-in-charge or other person-in-charge.
- E. *Vehicular Pursuit:* An active attempt by an officer in an authorized police vehicle, with emergency warning equipment activated, to apprehend one or more occupants of another moving vehicle, when the officer reasonably believes that the driver of the other moving vehicle is resisting apprehension by increasing the vehicle's speed, intentionally ignoring the officer, or otherwise attempting to elude the officer.

IV. PROCEDURE

A. Pursuit Decisions

1. For an officer to be authorized to engage in a vehicular pursuit requiring or involving the violation of the posted speed limit or other traffic laws, the officer should consider the following factors when practicable:
[41.2.2(a)]

THE RISK TO PUBLIC SAFETY IN THE ABSENCE OF PURSUIT

- severity of crime/offense believed to have been committed by one or more occupants of the pursued vehicle;
- the nature and degree of the threat to public safety should the vehicle not be stopped;
- alternatives to the pursuit;
- whether the identities of the occupants are known to the point where later apprehension is possible and applicable.

vs. THE FORESEEABLE RISK TO PUBLIC SAFETY ARISING FROM THE PURSUIT

- population density (including volume of pedestrian traffic);
- nature of the area (residential, commercial, school zone, and the volume type, speed and direction of vehicular traffic);
- officer's familiarity with the area;
- road and weather conditions;
- time of day;
- speeds involved;
- driving skills of the officer and the performance capabilities of the pursuit vehicle and the vehicle being pursued;
- operational status of emergency warning equipment;
- quality of radio communications;
- the presence of other persons in the pursued vehicle.

B. Pursuit Operations

1. Upon engaging in a pursuit, the primary unit and, if involved, secondary unit shall activate emergency warning equipment.

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2. The primary unit shall notify the dispatcher or communications center of the location, direction and nature of the pursuit, the description of the pursued vehicle, the reason for the pursuit and, if practicable, the estimated speeds of the vehicles. The officer should keep the dispatcher or communications center updated on the pursuit at regular intervals.
 3. When engaged in a pursuit, officers shall exercise due care for the safety of the public and shall comply with all of the provisions of G.L. c. 89, s. 7B (Operation of Emergency Vehicles), as follows:
 - a. The driver of any police department vehicle shall be subject to the provisions of any statute, rule, regulation, ordinance or bylaw relating to the operation or parking of vehicles, including stopping for a school bus with red lights flashing which has stopped to allow passengers to alight or board, except:
 - i. The driver may exceed the speed limit if [s]he exercises caution and due regard under the circumstances for the safety of persons and property; and
 - ii. The driver may drive through an intersection contrary to traffic signs or signals if [s]he first brings the vehicle to a full stop and then proceeds with caution and due regard for the safety of persons and property.
 4. An authorized unmarked police vehicle shall relinquish primary unit status immediately upon becoming aware of the participation of an authorized marked police vehicle.
{41.2.2(d)}

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C. Responsibilities of the Supervisor *[41.2.2(f)]*

- I. Upon becoming aware of the pursuit, the supervisor, if any, shall evaluate the totality of the circumstances and decide, as quickly as possible, whether or not the pursuit should continue pursuant to the criteria of this policy.
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2. If the supervisor concludes that a pursuit should continue, [s]he shall monitor incoming information and coordinate activities as needed to ensure that proper procedures are followed.
3. A supervisor may authorize officers (in authorized police vehicles) in addition to the primary and secondary units, to engage in the pursuit and/or a parallel pursuit, in exceptional circumstances or if the supervisor reasonably believes that there is a substantial likelihood of serious physical injury or death should additional officers not participate.
4. The supervisor shall continually reevaluate the need to continue the pursuit.
5. The supervisor is vested with the authority to terminate the pursuit, at any time, especially when [s]he believes that the foreseeable risks to the pursuing officers and to the public, arising from the continued pursuit, are greater than the foreseeable threat to public safety should the pursued vehicle be allowed to escape. [41.2.2{h}]
6. The supervisor may authorize the resumption of a pursuit when [s]he believes that circumstances have changed, thereby warranting the resumption of the pursuit in accordance with the criteria of this policy.
7. When feasible and authorized, a supervisor should respond to the location where a vehicle has been stopped following a pursuit.

D. **The Responsibilities and Limitations of the Primary and Secondary Units**

1. ***Primary Unit*** [41.2.2{b}]

- a. Subject to the direction of a supervisor, the officer operating the primary unit is vested with the authority to decide and direct the pursuit actions.
- b. The officer operating the primary unit shall continually reevaluate and assess the pursuit. The officer shall terminate the pursuit, even in the absence of an order to terminate by a supervisor, when that officer

reasonably believes that the foreseeable risks to the officer, the public or others arising from a continued pursuit is greater than the threat to public safety should the pursued vehicle be allowed to escape.

- c. Upon receipt of a notice to terminate the pursuit from a supervisor, the primary unit shall discontinue the pursuit.
- d. The pursuing officer shall notify the dispatcher or communications center when it is likely that a pursuit will continue into a neighboring jurisdiction.

2. *Secondary Unit [41.2.2(c)]*

- a. Once the pursuit is engaged, the secondary unit shall maintain a safe distance behind the primary unit, but should remain close enough to provide aid and assume radio communications if and when necessary.
- b. Upon receipt of a notice to terminate the pursuit from the primary unit and/or a supervisor, the secondary unit shall discontinue the pursuit.

E. *Responsibilities of Dispatcher [41.2.2(e)]*

1. Upon being informed of a pursuit in progress, the dispatcher shall:
 - a. Immediately inform the supervisor; if no supervisor is available, the dispatcher shall activate the Vehicular Pursuit Emergency Protocol;
 - b. Receive and record all incoming information on the pursued vehicle;
 - c. Advise all other units that a pursuit is in progress, providing all relevant information;
 - d. Perform relevant record and motor vehicle checks as expeditiously as possible;
 - e. Coordinate assistance of other officers under the direction of the supervisor;

- f. NotifY affected law enforcement agencies over appropriate communications systems and seek their assistance if the pursuit is proceeding into another jurisdiction; and
- g. NotifY all affected agencies when a pursuit has been terminated or if apprehension has been made.

F. Intervention Tactics

(Departments shall choose one option for each intervention tactic described below:)

1. Tire Deflation Devices: A department authorized device (such as a "stop-stick") intended to be placed in the roadway to cause a slow deflation of one or more tires of a motor vehicle passing over it.
 - a. Tire deflation devices may be used, when practicable, where there is an agreement between the primary unit and the officer who will deploy the device. The officer deploying the tire deflation device shall only do so when that officer has been trained in its use and believes that the device can be deployed safely. The deployment of any deflation devices must be approved by the shift commander or his designee.
2. Boxing-In: An active attempt to terminate a pursuit by surrounding the pursued vehicle with the primary, secondary, or other units which are then slowed to a stop.
 - a. Boxing-in may be utilized only when there is a determination that the pursued vehicle must be immediately stopped because the driver and/or occupants of the vehicle pose a clear and immediate threat of death or serious physical injury to the public and/or other occupants of the pursued vehicle. This tactic may be utilized only when authorized by a supervisor and it is reasonable to believe that allowing the vehicle to escape will not reduce the perceived risk

of death or serious physical injury to the public and/or the occupants of the pursued vehicle.

3. Heading Off: An active attempt to terminate a pursuit by the primary unit pulling ahead of the pursued vehicle in a manner to force the pursued vehicle to come to a stop or risk collision with the primary *unit*.

- a. Heading off may be utilized only when there is a determination that the pursued vehicle must be immediately stopped because the driver and/or occupants of the vehicle pose a clear and immediate threat of death or serious physical injury to the public and/or other occupants of the pursued vehicle. This tactic may be utilized only when authorized by a supervisor and it is reasonable to believe that allowing the vehicle to escape will not reduce the perceived risk of death or serious physical injury to the public and/or the occupants of the pursued vehicle

4. Roadblocks: An active attempt to terminate a pursuit through the use of a restriction or obstruction in the roadway that is intended to prevent free passage of motor vehicles on a roadway. [41.2.2(g), 61.3.4]

- a. Roadblocks shall not be utilized by the department.

5. Vehicle Contact Action: Vehicle contact action is an active attempt by the primary *unit* and/or other pursuit vehicles to terminate a pursuit through the use of deliberate contact between the moving police vehicle and the moving pursued vehicle.

- a. Vehicle contact action may only be utilized when the use of deadly force is justified and such action is taken in conformance with the departmental policy on the *Use of Deadly Force*. This tactic may not be

utilized when any of the tactics authorized in this section are viable options.

6. Use of Firearms:

- a. At or from a moving vehicle except to defend themselves when being fired upon or when the occupants of a vehicle being pursued have committed a felony in which deadly force was used and there is probable cause to believe that the occupants are the actual offenders; that there is reasonable cause to believe that there is imminent danger of death or serious bodily injury; that their immediate apprehension is necessary for public safety and there are no other reasonable means available to prevent their escape and secure their arrest.

NOTE: Shooting at a fleeing vehicle or a vehicle that is going away from the officer and is no longer an immediate threat is prohibited. Under such circumstances, officers should be aware of the potential inability of a bullet to penetrate metal or glass surfaces of an automobile and the likelihood of ricocheting bullets causing injury to innocent persons.

G. Inter-Jurisdictional Pursuits [41.2.2(i)]

1. Pursuit may continue into another jurisdiction when done in conformance with applicable Massachusetts General Laws, department policies, and inter-jurisdictional agreements.
- a. Outside the Commonwealth: On fresh and continued pursuit, a police officer may pursue and arrest a person who has committed a felony into any neighboring state.¹The arrested person must remain in the custody of the authority of the neighboring remaining state pending legal provisions to return the suspect to our state.
- b. Within the Commonwealth: A police officer may make an arrest outside his/her jurisdiction on fresh and continued pursuit provided:

- i. The offense is one for which the officer would have the right of arrest without a warrant within his/her jurisdiction;
 - ii. The offense was committed in the officer's presence; and
 - iii. The offense was committed within the officer's jurisdiction.
2. Officers shall not become involved in another agency's pursuit unless specifically authorized by their supervisor.
3. When this department has initiated a pursuit, timely notification of a pursuit in progress shall be provided to any other jurisdiction into which the pursuit enters. Merely notifying another jurisdiction that a pursuit is in progress is not a request to join the pursuit. The department shall advise if assistance is necessary. Whenever the pursuing officers are unfamiliar with the roadways and terrain of the jurisdiction into which the pursuit has entered, or whenever radio communication is lost, the pursuing officers shall, when possible, seek the assistance of, and be prepared to relinquish the pursuit to, the other agency.

H. Termination of a Pursuit

1. *Termination:*

- a. When a decision is made to terminate a pursuit, the primary and secondary units shall immediately reduce their speeds to within the posted speed limits and shall deactivate their emergency warning equipment.
- b. It is recognized that upon terminating a pursuit, the pursuing units are not required to bring their vehicles to a stop and/or head in the opposite direction of the former target vehicle. The primary and secondary units may continue to operate their vehicles in the same direction as the previously pursued vehicle, so long as they maintain a safe distance and their actions do not constitute an active attempt to continue the pursuit.

2. *Resumption of a Terminated Pursuit*

- a. Once a pursuit has been terminated, the primary, secondary, and other units aware of the pursuit may not reengage the pursuit without authorization from a supervisor.

I. After-Action Reporting

1. Whenever an officer engages in a pursuit, [s]he shall file written reports when applicable and always note the circumstances on his/her daily report to the Chief. Supervisor shall file the appropriate report as well. These reports shall be evaluated by a superior officer to determine if there has been compliance with departmental policies and regulations. [41.2.2l)]
2. The department shall periodically analyze pursuit activities for the purpose of identifying any improvements in this pursuit procedure and shall implement modifications to this procedure if warranted. A review of incidents involving vehicle pursuits may reveal patterns or trends that indicate training needs and/or policy modifications. [41.2.3]
3. The departments shall maintain for three years the original or a copy of the radio transmission recordings of pursuits involving personal injury or death.

G. Training

1. The department shall provide training on this pursuit policy.

¹ M.G.L. c. 276, s. 10A

² M.G.L. c. 41, s. 98A

PRELIMINARY INVESTIGATIONS

POLICY & PROCEDURE NO. 1.05	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 41.2.5; 42.1.4; 42.2.2; 42.2.4	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

The ultimate success or failure of police efforts in the identification, apprehension and subsequent prosecution of criminal offenders is often based upon the immediate police response and investigation. The preliminary investigation should never be handled routinely. It is not only a vital link in the criminal investigation process but it can often be the means of uncovering information leading to the solution of other crimes or for initiating crime prevention procedures.

The preliminary investigation is generally the responsibility of officers assigned to patrol duty who are nearly always the first police officers on the scene of a reported crime.

It is the duty of the patrol officer initially to discover facts, to locate and identify witnesses and to preserve physical evidence that is relied upon by the police investigator in the subsequent search for the suspected criminal. It is for this reason that every effort should be made to maintain a cooperative relationship and good communications between the patrol force and the investigative unit. A free flow of information is a necessity in this regard as each of these police functions is dependent upon the other.

The courts often give greater weight to physical evidence than to the direct testimony of witnesses which is subject to human defects. The evidentiary value of physical evidence, however, can be easily destroyed if it is not carefully handled and secured in accordance with departmental procedures. For evidence to be admissible, the prosecutor must be able to establish a "chain of custody" of that evidence from the moment it comes into the possession of the police at the crime scene to the time of the court trial. Every officer who handles this evidence must be prepared to establish how [s]he received it, safeguarded it, and to whom [s]he relinquished it.

A written report of the incident should be as complete, accurate and concise as possible. This is essential if it is to serve its intended purpose of communicating a good understanding of what happened to others who were not present but who must subsequently read this report and act upon it for police or prosecution purposes.

II. POLICY

- A. It is the policy of this department that:
1. Preliminary investigations shall be conducted on all incidents which violate the criminal code of the Commonwealth, town bylaws or have the potential to result in a criminal or civil action; and
 2. All officers understand and comply with the following procedures when conducting initial investigations of crimes.

III. PROCEDURES

- A. Responding to a Crime Scene
1. Officers should not proceed to a crime scene unless:
 - a. They are specifically directed to respond;
 - b. The crime occurs or is discovered within their assigned area of patrol; or
 - c. It is their particular assignment to be generally responsible for conducting investigations.

2. All other officers shall continue their assigned duties. However, they should be ready to assist in the apprehension of the perpetrator or to perform such other duties as directed.
3. Officers proceeding to a crime scene shall be vigilant and watchful in their approach for any signs of suspicious activity, especially for any evidence of a fleeing criminal, persons acting suspiciously or furtively in the vicinity, or objects being thrown from a vehicle leaving the scene. A threshold inquiry is justified when officers observe an individual fleeing from the scene of a crime. ■
4. Responding officers shall record the registration numbers of any suspicious vehicles coming from the scene and the general description and any obvious characteristics of the operator or occupants if possible.
5. The officers proceeding to the crime scene shall be alert for any additional messages from the dispatcher. The dispatcher shall immediately furnish the responding officers with any supplementary information that would be of assistance to them. They shall provide any available information that would indicate the possibility of a dangerous situation or the possible presence of an armed or dangerous criminal.

B. Upon Arrival at Crime Scene

1. *Responsibility*

- a. The first officer arriving at the scene shall be responsible for initiating and conducting the preliminary investigation and shall yield his/her responsibility only when so directed by a superior officer or upon the arrival of a detective or other officer especially assigned to conduct criminal investigations. All information obtained up to that point, and the identity and location of any physical evidence discovered, shall be turned over to the detective or investigator upon his/her arrival. [42.1.4]

2. *Medical Assistance:*

- a. The first officer arriving at the scene shall quickly determine the necessity for obtaining medical assistance or administering first aid.
- b. The officer shall administer first aid to those in need, with priority going to the person with the most serious injury first, even if that person is the suspect. If the injury requires hospital treatment or if the injured person requests to go to a hospital, the officer shall contact the dispatcher without delay to obtain immediate medical assistance.

3. *Communication to Dispatcher:*

- a. As soon as it is practicable under the circumstances, the officer shall communicate to the dispatcher the following information:
 - i. The nature of the crime committed;
 - ii. As complete a description of the offender as possible and the direction of his/her flight;
 - iii. Whether the offender is, or may be, armed and dangerous;
 - iv. A description of any vehicle being used by the offender and of any occupants of that vehicle;
 - v. A description of any firearms or other weapons used in the commission of the crime;
 - vi. A description of any property stolen and whether it may be in the possession of the offender;
 - vii. Any additional information that may lead to the apprehension of the offender; and
 - viii. Whether additional assistance (e.g., fire department, ambulance, coroner) or the services of evidence technicians are needed at the scene.
[41.2.5]

4. *Arresting the Perpetrator*

- a. If the perpetrator is at the scene, the crime is an arrestable offense, and probable cause to arrest exists, the officer shall make the arrest in accordance with the department's *Arrest* policy.
- b. A decision to leave the scene to pursue a perpetrator shall be made based upon the following factors:
 - i. The likelihood that an apprehension can be made;
 - ii. The physical condition of the victim(s);
 - iii. The need to protect the victim from a renewed attack;
 - iv. The potential danger to the public if the perpetrator is allowed to escape;
 - v. The nature of the crime committed;
 - vi. The time and place of occurrence;
 - vii. The lapse of time between the crime and the arrival of the police at the scene;
 - viii. Whether the suspect is known to the officer or a good description of the offender is available; and
 - ix. The availability of other officers to conduct the pursuit and to apprehend the offender.

5. *Preserving Evidence [42.2.2(c)]*

- a. Every effort shall be made to protect the crime scene for the preservation of any physical evidence. (See departmental policy *Collection and Preservation of Evidence*.)
- b. The crime scene shall be maintained in the same manner as it was left by the perpetrator, as far as possible.
 - i. Spectators and bystanders should be kept out of the crime scene.

- i. If it is necessary to move or take custody of any physical evidence, a careful notation shall be made of its exact location and position at the scene.
- ii. If it is necessary to move any item of physical evidence, the item shall be handled in such a manner as to prevent any alteration of its condition or the accidental impression of fingerprints.

6. *Interviewing Witnesses [42.2.2(b)(d)]*

- a. The purpose of a preliminary interview is to obtain as much basic information as quickly as possible in order to identify and, if possible, apprehend the perpetrator and to establish the basis for the follow-up investigation. Every effort should be made to locate, identify and interview reliable witnesses. (See departmental policy and procedure *Interviewing Victims and Witnesses*)
 - b. As soon as possible after arrival on the scene, the officer shall:
 - i. Obtain the name, address and telephone number of all witnesses.
 - ii. Separate witnesses, if possible, to prevent them from discussing what has occurred among themselves before they are interviewed, which may taint individual recollections. The officer may give paper to each witness so that they may begin writing a description of what occurred.
 - iii. Interview each witness separately and in a quiet area if possible.
 - c. Provide information about victim and witness assistance including what to do if the suspect or suspect's companions threaten or otherwise intimidate the victim or witness. See department policy *Victim/Witness Assistance*.
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- d. After all witnesses located at the scene have been interviewed, it may be advisable to canvas residences and businesses in the area in order to locate persons who witnessed some aspect of the crime but who are reluctant to come forward with that information.

7. *Report Writing*

- a. The officer conducting a preliminary investigation shall make an accurate and complete written report of the incident in accordance with departmental procedures.
 - b. An officer making a preliminary investigation should not rely on memory but should note all useful information obtained and, at a minimum, should make a written record of the following data: [42.2.2(a)]
 - i. Date and time of arrival at scene;
 - ii. Weather conditions and visibility, including the location and distance from the nearest street light or artificial lighting and whether the lights were on;
 - iii. Approximate time of commission of the crime and by whom it was discovered;
 - iv. Identity of other police officers present;
 - v. All necessary information concerning any physical evidence discovered;
 - vi. Name, address and telephone number of victims and witnesses;
 - vii. The identity or the best available description of the criminal suspect or suspects, particularly noting any unusual characteristics;
 - viii. The best available description of any vehicle used by the suspect or suspects;
 - ix. Any important measurements made at the scene and a rough crime scene sketch; the name of any police photographer who took pictures, the
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(name and affiliation of any media photographer who took pictures, the name and address of any private individual who took pictures;

- x. The time and location of any interviews of the victim or witnesses and a brief statement as to what they heard or observed. If any such statement appears to be highly informative and the crime is of a serious nature, a verbatim record should be made; and
- xi. Any other information that the officer believes may be useful for the apprehension of the criminal suspect and his/her subsequent prosecution.

8. Checklist [42.2.4]

The following check-list summarizes the duties of a police officer conducting a preliminary investigation at the scene of a crime.

- a. Care for any person who requires medical or first aid attention.
 - b. Arrest the perpetrator of the crime, if possible.
 - c. Arrange for the immediate pursuit of the perpetrator if his/her flight is recent and initiate the pursuit personally if appropriate under the circumstances.
 - d. Furnish to the dispatcher the best possible description of the perpetrator(s), giving a brief outline of the crime committed, the method and direction of the suspect's flight and whether [s]he is considered armed and dangerous.
 - e. Request any necessary assistance, such as backup, detectives, and evidence technicians.
 - f. Carefully secure the crime scene from disturbance or alteration and carefully locate and preserve all physical evidence.
 - g. Seek out witnesses and require that they remain at the scene until interviewed.
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- h. Identify all persons present at the scene and record their names, addresses and telephone numbers.
- i. Record the registration numbers of any motor vehicles at the immediate scene.
- j. Be curious and suspicious, do not take anything for granted and do not jump to conclusions.
- k. Listen for and make note of any unguarded or spontaneous remarks or comments relevant to the incident made by witnesses or others present at the scene.
- l. Note any extreme nervousness, unusual behavior or conflicting statements made by witnesses or others present.
- m. Make inquiry of neighbors or bystanders as to their knowledge of any suspicious persons or vehicles in the vicinity prior to the crime.
- n. Note and record conditions at the crime scene such as time of incident, time of initial report of incident, who made the report, the weather, visibility, street lighting, description of any weapons used or injuries caused, description of any property stolen and all other pertinent information.
- o. Note and record as complete a description as possible of the suspect.
- p. Upon the arrival of a superior officer or detective who will continue the investigation in more depth, inform them of the information already obtained, physical evidence located and the immediate steps that have been taken.
- q. Return to normal patrol duties as soon as practicable and make a written report of the incident and any action taken in accordance with standard department procedures and practices.

NOTE: Officers should be continually aware that any preliminary investigation is just that-- preliminary. No final

conclusion should be reached if contrary possibilities or explanations are still unaccounted for. For example, it is not uncommon for perpetrators, caught shortly after the incident (and especially if the victim has fled) to claim that they are merely a witness and try to direct the police on a wild goose chase. A perpetrator may even pose as a victim (especially if he or she did receive some injury). Also, witnesses and victims may be carrying weapons or may flare up in unexpected anger or aggression toward others or even toward the police. Calling for sufficient backup and a healthy skepticism when questioning persons the officer does not know can be invaluable aids in any "preliminary" investigation.

¹ *Illinois v. Wardlow*, 120 S.Ct. 673 (2000)

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INTERVIEWING VICTIMS AND WITNESSES

POLICY & PROCEDURE NO. 1.06	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.3(a). 42.2.1(b); 42.2.2(d)	EFFECTIVE DATE: _____
	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

The interviewing of a victim or witness is a vital part of the criminal investigation procedure. It can lead directly to the identification, subsequent apprehension and conviction of the guilty offender. It is the task of a police officer to convince witnesses of the need for their testimony by appealing to their sense of civic responsibility and to their duty as a citizen to ensure that the purposes of justice are effectively achieved.

Eyewitness identification is not considered the most reliable form of evidence and will be closely scrutinized by the court. Mistaken identifications are not uncommon occurrences. Eyewitness identifications must be made under strict legal requirements and must avoid any suggestiveness by the police on impressionable witnesses. (See department policy on *Eyewitness Identification*.)

Officers conducting the initial investigation and interviews should be aware that some criminals remain at the scene. If the officer begins to suspect that a person who claims to be only a witness or even a victim may actually be the perpetrator, the officer should be cautious in conducting any questioning. If the suspect is placed in custody, further

questioning must be preceded by administration of the Miranda warnings. See department policies on *Interrogating Suspects and Arrestees* and *Stop and Frisk and Threshold Inquiries [1.2.3(a)]*

II. POLICY

- A. It is the policy of this department that:
1. Officers shall attempt to identify and interview all witnesses and victims of crimes, and
 2. Officers shall obtain as complete and accurate a record of the witness or victim's statement as possible.

III. PROCEDURE

- A. Conducting Interviews [42.2.1(b); 42.2.2(d)]
1. Immediately identify yourself or show your credentials (badge or identification) **if** not in uniform.
 2. Interview witnesses and victims as soon as possible after the incident under investigation.
 3. Interview each witness/victim separately, **if** possible, to ensure independent statements.
 4. Record the date, time and location of each interview.
 5. Obtain an interpreter **if** needed.
 6. Establish a cooperative relationship with the witness/victim.
 7. Consider the physical and emotional state of the witness/victim.
 8. Obtain a **full** description of the incident.
 9. Take notes or tape record the interview.
 - a. If notes are taken, it should be accomplished in a manner that does not interrupt the interviewing process. Some interviewees are reluctant to talk **if** they notice that the officer is taking down every word

they say. Brief notes can be made without deterring or distracting the interviewee. However, if a statement appears highly informative due to its nature and content, a verbatim account should be made.

- b. Before any interview is tape recorded, the interviewee must be told that the conversation will be recorded. G.L. ch. 272, s. 99. If any legal or other questions arise pertaining to the tape recording of an interview, consult with the District Attorney's office.
10. Ask specific questions to clarify the statement or to fill in any omissions.
 - a. Observe and note any emotional outbursts, inflections of the voice and nervous reactions which may indicate areas requiring further probing or clarification.
 - b. Assess each interviewee's objectivity or possible bias.
 - c. Note any relationship or connection the witness might have with the victim or perpetrator or the property or premises involved in the crime; the overall credibility of the witness/victim; his/her opportunity to make observations; and his/her ability to recall details as opposed to general impressions, etc.
 11. Obtain a written statement from the witness/victim, if possible.

B. Interviews at the Scene

1. Witnesses/victims shall be instructed to remain at the scene until interviewed.
2. Obtain the names, addresses and telephone numbers of all persons present at the scene.
3. Witnesses/victims shall be separated, if possible, to prevent them from discussing what has occurred among themselves before they are interviewed, which may taint individual recollections.

4. Paper may be given to each person so that they may begin writing their descriptions of the incident before their interview.

C. Interviews at Other Locations

1. *At Station:* A separate area to interview victims/witnesses should be arranged to ensure privacy and a minimum of interruptions.
2. *Telephone:* Officers are discouraged from conducting telephone interviews.

D. Terminating the Interview

1. Interviews shall be ended in a courteous manner. Do not terminate the interview abruptly or dismiss the witness or victim in a curt manner. This helps to assure further cooperation, particularly if the witness or victim may be needed to testify at a later date.
 - a. Summarize what has been covered. Ask the witness or victim if there is anything they wish to add or emphasize.
 - b. Any written statements shall be signed and dated by the witness and the investigating officer for authentication purposes. The time and place of the statement shall be noted.
 - c. Inform the witness or victim that it is very important to contact the police if [s]he recalls or uncovers additional information about the crime or the criminal at a later time.
 - d. Provide information about victim and witness assistance. (See department policy on *Victim/Witness Assistance*.)
 - e. Where appropriate, inform the victim or witness of the phone number and location of the District Attorney's Victim/Witness Assistance office, especially if the victim or witness has questions of a legal nature.

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- f. Inform the witness that it is a criminal offense for anyone to threaten or intimidate the witness into altering or changing their testimony or to not testify. G.L. ch. 268, s. 13B. If anyone attempts to do so, the witness should be told to contact the police immediately.
 2. Thank the witness or victim for his/her cooperation and impress upon him/her the value of his/her services.

E. Report Writing

1. All information obtained from witnesses shall be passed on to the follow-up investigator, if any.
2. All pertinent data, including notes, tapes, and written statements shall be included in the officer's official report and submitted in accordance with departmental practice and procedures.

IV. INTERVIEW TECHNIQUES

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A. Use of Interpreters

1. Before using any person at the scene as an interpreter, make sure that person chosen to serve as interpreter is reliable.
2. If possible, take the precaution of asking a second person who knows the foreign language to listen to the interpreter and notify the officer if the interpreter fails to translate any question or answer accurately and completely.

B. Consider Physical and Emotional Needs of Witnesses/Victims.

1. Calm the excited and emotionally upset witness or victim. (If necessary, delay the interview until the person has regained composure).
2. Create a favorable atmosphere for the witness or victim to talk freely.
3. Conduct the interview in a quiet area, if available.

4. Maintain privacy to the greatest degree possible.
5. Do not distract the interviewee or interrupt his/her story unnecessarily.
6. Only one officer should conduct the interview. Any other officers present should remain inconspicuous and not interfere with the interview.

C. Establish Cooperative Relationship

1. Display a sincere interest.
2. Be patient, tactful and respectful.
3. Control personal feelings. Do not exhibit surprise or dismay at anything said by a witness or victim.
4. Provide reassurance.
5. Encourage an untalkative interviewee by asking appropriate questions.
6. Encourage witnesses/victims to give a full description of everything that occurred with a minimum of interruption. When the conversation lags or stops, be patient and wait for the interviewee to volunteer additional information.

D. Conducting the Interview

1. Do not take anything for granted and do not jump to conclusions.
2. Listen for and note any obvious omissions or gaps in the statements made by a witness or victim, or for any conflicting or inconsistent statements.
3. Note any extreme nervousness or unusual behavior on the part of a witness or victim or any unguarded or spontaneous remarks.
4. It is important to not only listen to what is said, but also to how it is said. Emotional outbursts and inflections of the voice may give a clue to sensitive areas of the interview. Sudden silence, uncertainty or confusion, or the shifting of

conversation to an unrelated subject may indicate that information is being withheld. Nervous bodily reaction or facial characteristics may also signal that a sensitive area has been reached. By noting these things, an officer will know what portions of the statement may require further probing or clarification.

E. Questioning Victims/Witnesses

1. Withhold any direct questioning until after the witness or victim has given a complete account, then ask specific questions to clarify earlier statements or to fill in any omissions.
 - a. Questions should be clear, definite and in plain language.
 - b. Ask only one question at a time and wait for a complete reply.
 - c. Avoid leading questions that imply or suggest a particular answer.
 - d. Avoid rapid-fire questions that can confuse or bewilder.
 - e. Avoid questions that can be answered by "yes" or "no" which limit response.
 - f. Do not ask questions in a critical or derisive manner which could deter previously cooperative witnesses or victims.
 - g. Do not correct the grammar or the language of the witness or victim, which could cause resentment.
 - h. Do not permit your own emotions, attitudes or opinions to distract the witness or victim or to interfere with your evaluation of his/her response to your questions.

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STOP AND FRISK AND THRESHOLD INQUIRIES

POLICY & PROCEDURE NO. 1.07	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.4(b)	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

A police officer, in appropriate circumstances, may temporarily stop and briefly detain a person for the purpose of inquiring into possible criminal behavior even though the officer does not have probable cause to make a lawful arrest at that time. In addition, an officer may frisk such a person for weapons as a matter of self-protection when the officer reasonably believes that his/her own safety, or that of others nearby, is endangered. The purpose of this temporary detention for questioning is to enable the police officer to determine whether to make an arrest, investigate further, or to take no police action at that time.

A search for weapons is permissible where a police officer has reason to believe that [s]he is dealing with an armed and dangerous individual, regardless of whether the officer has probable cause to arrest for a crime. The officer need not be absolutely certain that the individual is armed. The issue is whether a reasonably prudent person in the circumstances would be warranted in his/her belief that the officer's safety, or that of others, was in danger.¹

Investigatory "stops" by the police are essentially considered to be "forcible" in contrast to "voluntary," and are, therefore, held to be

"seizures" under the Fourth Amendment. The degree of force appropriate to enforce a "stop" in a particular case is dependent upon the surrounding facts and circumstances.

If an officer fails to adequately enforce a "stop", it could result in the escape of a dangerous criminal or pose a serious threat to the lives and safety of other persons. Conversely, the use, display or threatened use of actual force to carry out an investigatory "stop", when such force was not justified under the circumstances, could result in a finding by the court that an arrest had occurred without the necessary element of probable cause and any evidence obtained as a result might be excluded. It should also be noted that a premature or unnecessary "stop" can sometimes destroy a good investigation which could have resulted in a subsequent valid arrest and a successful conviction.

Police officers should never hesitate to make an investigatory stop and a necessary frisk under appropriate circumstances in order to meet the practical needs of effective law enforcement. However, they should avoid the indiscriminate or unjustified use of this authority. Such police action is not only frowned upon by the Courts but it also detracts from the professional image of the police among the citizens of the community in which they serve.

II. POLICY

- A. It is the policy of this department that:
1. Only when an officer has reasonable suspicion of criminal activity based on specific, articulable facts and reasonable inferences may such officer temporarily stop and detain a person or vehicle; and
 2. Once stopped, a suspect may only be frisked for weapons if the officer reasonably believes the person to be armed.

III. DEFINITIONS

- A. *Investigative Detention:* As used in this policy, includes what is commonly referred to as "stop & frisk" and also the very similar procedures often referred to as "threshold inquiry."
- B. *Stop & Frisk:* The warrantless stopping, questioning and frisking of suspicious persons derived from the U.S. Supreme Court case of *Teny v. Ohio*.²

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- C. *Threshold Inquiry*: The warrantless stopping, questioning and frisking of suspicious persons based on a Massachusetts statute – c.41, s.98.

IV. PROCEDURE

A. Stops

1. It is a basic police duty to check on suspicious persons or circumstances, particularly in the nighttime and in crime-prone areas.

2. *Grounds for Making A Stop*

- a. An officer may make a brief investigative stop and inquiry under any of the following circumstances:
- i. When [s]he knows that a crime has been committed.
 - ii. When [s]he reasonably believes that a crime has been or is being committed.
 - iii. When [s]he seeks to prevent a crime which [s]he reasonably believes is about to be committed.
- b. A police officer has the authority to stop a person for an investigative inquiry in any place where the officer has a right to be, including:
- i. Any public place;
 - ii. Any place or area open to the public; and
 - iii. Any private premises entered with a valid warrant, by consent, or under emergency circumstances.
- c. There is no precise formula for determining the legality of an investigatory stop. However, it must be based upon a reasonable belief or suspicion on the part of the officer that some activity out of the ordinary is taking place, that such activity is crime-related and
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that the person under suspicion is connected with or involved in that criminal activity.

- d. An investigatory stop does not require probable cause, rather it requires the lesser standard of reasonable belief based on specific, articulable facts and reasonable inferences. It may be based upon the officer's own observations or information supplied by others. The information on which the officer acts should be well-founded and reasonable. Lastly, a hunch or pure guesswork, or an officer's unsupported intuition, is not a sufficient basis.
- e. No single factor alone is normally sufficient. The following are some of the factors which may be considered in determining the reasonableness of an investigative stop by a police officer in the field:
 - i. Personal observations of the officer and his/her police training and experience;
 - ii. The officer's knowledge of criminal activity in the area;
 - iii. The time of the day or night and the place of observation;
 - iv. The general appearance and demeanor of the person and any furtive behavior which indicates possible criminal conduct;
 - v. The person's proximity to the scene of a recently reported crime;
 - vi. Unprovoked flight of an individual upon noticing the police;³
 - vii. The knowledge of the person's prior criminal record or of his/her association with known criminals;
 - viii. Visible objects in the person's possession or obvious bulges in his/her clothing;
 - ix. Resemblance of the individual to a person wanted for a known crime;

- x. Information received from police sources or from other reasonably reliable sources of information.
3. The fact that the individual has aroused the police officer's suspicion should cause the officer to make his/her approach with vigilance and to be alert for any possibility of danger.
 - a. A routine police check of suspicious circumstances may uncover the commission of a serious crime or the presence of a dangerous criminal.
 - b. If the stopped person has just committed a major crime, [s]he may be an immediate threat to the officer's safety, or may suddenly attempt to flee from the scene.
 4. LENGTH OF STOP: No hard and fast rule can be formulated to determine the period of time required for an investigative detention but it should be reasonably brief under the particular circumstances.⁴
 - a. A stop may only last long enough for the officer to make the threshold inquiry into whether the suspicions were or were not well founded using the least intrusive means possible.
 - b. If the answers given by the suspect are unsatisfactory because they are false, contradictory or incredible, they may serve as elements or factors to establish probable cause.⁵
 - c. The period of investigative detention should be sufficiently brief so that the "stop" cannot be construed as an "arrest," which would require probable cause.⁶

B. Pat-Down Frisks [1.2.4(b)]

1. If a police officer reasonably believes that his/her own safety' or that of others is in danger, [s]he may frisk or pat-down the person stopped and may also search the area within that person's immediate control in order to discover and take control of any weapon that may be used to inflict injury.⁷
 - a. It is not necessary that the officer be absolutely certain that such person is armed. However, the officer must

perceive danger to himself/herself or others because of events leading to the stop or which occurred after or during the stop.

- b. If the officer has a reasonable belief or suspicion, based upon reliable information or personal observation, that a weapon is being carried or concealed in some specific place on the person of the individual, [s]he should immediately check that area before performing a general pat-down.
- c. A frisk should not be made a pretext to search for evidence of crime; it must be a protective measure.
- d. The frisk must initially be limited to an external pat-down of the suspect's outer clothing. However, if such outer clothing is bulky, such as a heavy overcoat, these garments may be opened to permit a pat-down of inner clothing.
- e. When a pat-down is conducted on a member of the opposite sex, officers shall use the preferred method for frisking of a person of the opposite sex (e.g. use the back of the hand or a baton)
- f. If the officer feels an object which could reasonably be a weapon, [s]he may conduct a further search for that particular object and remove it.
- g. If, after completing a pat-down of the suspect, the officer does not feel any object which could reasonably be a weapon, the search shall be discontinued.
- h. If, while frisking a stopped person, the officer discovers an illegal firearm, contraband, stolen property or evidence of a crime and probable cause to arrest develops, an arrest should be made and a full-scale search incident to that arrest should be made.

C. Use of Force

- I. If the person fails or refuses to stop when so directed by a police officer, reasonable force and physical restraint (including handcuffs) may be necessary, depending upon the circumstances.

2. Actual force may be used to "stop" an individual, as long as the force is both necessary and proportionate to the situation.⁹ However, this does not include the discharge of firearms or application of other weapons.
3. If an officer is attacked, sufficient and reasonable force may be used to defend himself/herself and to ensure his/her personal safety.

D. Questioning Stopped Persons

1. When an officer makes a decision to stop a person for investigative purposes, unless the officer is in uniform, [s]he shall identify himself/herself as a police officer as soon as it is safe and practical to do so and also announce the purpose of his/his inquiry unless such information is obvious.
 - a. An investigatory or threshold inquiry should begin with exploratory questions regarding the person's identity and his/her purpose.
 - b. Every officer should acquire the ability to initiate an investigative inquiry in a calm, conversational manner in order to gain as much information as possible without placing the suspect on the defensive.
 - c. Even in a brief conversation with an individual, an alert and perceptive officer can often detect or sense that something is wrong and that further police investigation is required.
 - d. An officer should always bear in mind, however, that [s]he must have a firm foundation for his/her initial suspicions in order to justify an investigative detention and inquiry. [S]he must be able to articulate and to commit his/her reasons to writing.
2. Once a stop is made, any questioning of the stopped person should be conducted at that location.
 - a. Investigative stops are intended to be on-the-spot inquiries.

- b. To verify the information obtained from the person it may be necessary to move a short distance to a radio or telephone.
- c. Under special circumstances, such as the gathering of a hostile crowd, heavy traffic or the necessity to use the police radio, the person may be placed in the rear seat of a police vehicle.
- d. As part of a threshold inquiry, the person may be detained for a short time so that an eyewitness may be brought to the scene to make an in-person identification.
- e. If a stopped person is told to move to another location or tries to leave but the officer orders him/her to stay where [s]he is, the person may, at that point, be considered "in custody" (although not under arrest). Once a person is in custody, additional questioning by police must be preceded by giving the Miranda warnings and eliciting a waiver. (See departmental policy and procedure entitled *Interrogating Suspects and Arrestees*.)

E. Motor Vehicle Stops

- I. When an investigative stop involves a motor vehicle, the vehicle may be stopped and its occupants may be briefly detained and questioned by the police if there is a reasonable suspicion of criminal activity or a motor vehicle violation.¹¹ All police officers must be especially alert and watchful when making an investigative stop of a motor vehicle as many officers have been seriously injured, some fatally, in taking this police action.
 - a. Police cannot randomly stop motorists to check the orderliness of license and registration.
 - b. During the course of the stop, probable cause to search the vehicle may develop – such as through conversation with the occupants or plain view observations.¹²
 - c. During a routine traffic stop, police officers may not order the driver or occupant out of the vehicle without

a reasonable belief that the officer's safety, or the safety of others, is in danger.¹³

- i. If the occupant(s) of a vehicle are ordered out of the vehicle, they may be frisked if there is reasonable belief that they may be armed and dangerous and that the police officers or others nearby may be endangered.¹⁴
- ii. Even after frisking the occupants, if the officers have reason to believe that there is still a possible danger, they should inspect those areas of the motor vehicle readily accessible to an occupant that may contain a dangerous weapon.

d. A protective search of the interior of a motor vehicle must be limited to what is minimally necessary to determine whether the suspect is armed and to remove any weapon discovered.¹⁵

e. A protective search for weapons in a motor vehicle must be confined to the area from which the occupant might gain possession of a weapon.¹⁶

2. With the exception of properly conducted sobriety checkpoints, random stops of motor vehicles in the absence of reasonable suspicion of motor vehicle violations or criminal activity constitutes an unreasonable seizure in violation of the Fourth Amendment and any evidence obtained as a result of such impermissible stops are excludable in court.¹⁷

F. Report Writing

1. In every case of investigative detention (stop and frisk) the police officer involved shall document the circumstances in accordance with departmental procedures to include the identity of the person stopped and all important facts relative to the incident, even in cases where no weapon, contraband or other evidence of crime was discovered or where the person was released after being questioned.

¹Com. v. *Matthews*, 355 Mass. 378, 244 N.E.2d 908 (1969)

² *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968)

³ *Illinois v. Wardlow*, 120 S.Ct. 673 (2000)

⁴ *U.S. v. Shmpe*, 470 U.S. 675, 105 S.Ct. 1568 (1985); *Com. v. Toss* 14 Mass. App. Ct. 901, 442 N.E.2d 419 (1982)

⁵ *Com. v. WUson*, 360 Mass. 557, 276 N.E.2d 283 (1971)

⁶ *Com. v. Torres*, 424 Mass. 153, 674 N.E.2d 638 (1997)

⁷ See M.G.L. c. 41, s. 98

⁸ *Com v. Pandolfino*, 33 Mass. App. Ct. 96, 596 N.E.2d 390, *rev. den.* 413 Mass. 1106, 600 N.E.2d 1000 (1992)

⁹ *Com. v. Reed*, 23 Mass. App. Ct. 294, 502 N.E.2d 147 (1986); *Com. v. Borges*, 395 Mass. 788, 482 N.E.2d 314 (1985)

¹⁰ *Com. v. Salerno*, 356 Mass. 642, 255 N.E.2d 318 (1970)

¹¹ *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979)

¹² *Com. v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995); *Com. v. Jimenez*, 22 Mass. App. Ct. 286, 493 N.E.2d 501 (1986)

¹³ *Com. v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Penn. v. Mims*, 434 U.S. 106, 98 S.Ct. 330 (1977)

¹⁴ *Com. v. Hawkes*, 362 Mass. 786, 291 N.E.2d 411 (1973); *Com. v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995);

¹⁵ *Com. v. SUva*, 366 Mass. 402, 318 N.E.2d 895 (1974)

¹⁶ *Com. v. Almeida*, 373 Mass. 266, 366 N.E.2d 756 (1977)

¹⁷ *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979)

SEARCHES AND SEIZURES

POLICY & PROCEDURE NO. 1.08	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.4	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

The term "searches and seizures" includes the examination of persons or places for the discovery of contraband, property stolen or otherwise unlawfully obtained or held, or of evidence of the commission of crime, and the taking into legal custody of such property or evidence for presentation to the court. Failure to comply with the legal technicalities which govern these procedures results in more failures to obtain convictions than any other source. The Fourth Amendment to the U.S. Constitution has been interpreted by the U.S. Supreme Court to require that, whenever possible and practicable, with certain limited exceptions, a police officer should always obtain a valid search warrant in advance.!

The Fourth Amendment of the U.S. Constitution declares:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article *XN* of the Massachusetts Constitution provides as follows:

Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or object of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.

It is very frustrating to a police officer to learn that evidence which would most certainly lead to a finding of guilty, has been ruled inadmissible and excluded because of the manner in which it was obtained. In order to ensure that their efforts will not become lost in the maze of legal technicalities, it is imperative that all police officers thoroughly understand the basic constitutional and statutory requirements involved in searching for and seizing criminal evidence.

The Fourth Amendment to the U.S. Constitution prohibits "unreasonable" searches and seizures and the Supreme Court has consistently held that unless they come within one of the few carefully limited exceptions to the search warrant requirement, warrantless searches and seizures are considered unreasonable.² Searches with prior judicial approval with a valid search warrant are preferred. The burden of showing that a valid exception exists rests upon the government when the circumstances of a warrantless search are challenged in the courts.

The following procedures have been prepared to provide basic guidelines that are both legal and practical in the technical area of searches and seizures. In their implementation officers should consider all related department policies on the following topics: *Arrests, Stop and Frisk and Threshold Inquiries, Search Warrant Affidavits, the Use of Informants* and the *Collection and Preservation of Evidence*.

II. POLICY

- A. It is the policy of this department that:
1. Warrants shall be obtained for all searches whenever possible and practicable; and

2. Searches shall be conducted in strict observance of the constitutional rights of the parties involved, and with due regard for the safety of all officers, other persons and property involved.

III. DEFINITIONS

- A. *Affidavit* A formal declaration or statement of facts, in writing, made voluntarily and confirmed by oath or affirmation before a person having the legal authority to administer such oath or affirmation.
- B. *Exigent Circumstances*: Situations in which law enforcement officials will be unable or unlikely to effectuate a search or seizure for which probable cause exists unless they act swiftly and without prior judicial authorization.s
- C. *Probable Cause*: The facts observed, information obtained from others and personal knowledge and experience that is sufficient to lead a reasonable and prudent person to believe that a particular crime has been, is being, or is about to be committed, and that seizable evidence of crime is likely to be found in a specific location or on a specific person and which would justify a judge or magistrate to issue a search warrant.

IV. PROCEDURES

A. Search Warrants

1. Obtaining A Search Warrant

The legal procedure specified by M.G.L. c. 276, s. 1 for the issuance of a search warrant is as follows:

- a. A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the commonwealth and territorial waters thereof, if satisfied that there is probable cause for such belief, issue a warrant identifying the property and naming or describing the person or place to be

searched and commanding the person seeking such warrant to search for the following property or articles:

- i. Property or articles stolen, embezzled or obtained by false pretenses, or otherwise obtained in the commission of a crime;
- ii. Property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried or otherwise used, changed or marked in the preparation for or perpetration of or concealment of a crime;
- iii. Property or articles the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty eight;
- iv. The dead body of a human being; and
- v. The body of a living person for whom a current arrest warrant is outstanding.

NOTE: The word "property" as used in this section shall include books, papers, documents, records and any other tangible objects.

- b. A search warrant may also authorize the seizure of evidence.⁴
- c. FORM OF SEARCH WARRANT: A search warrant shall:⁵
 - i. Designate and describe the building, house, place, vessel or vehicle to be searched;
 - ii. Particularly describe the property or articles to be searched for;
 - iii. Be substantially in the form prescribed in G.L. c. 276, s. 2A; and

- iv. Be directed to a sheriff or his/her deputy or to a constable or police officer, commanding him/her to search in the daytime, or if the warrant so directs, in the nighttime, the building, house, place, vessel or vehicle where the property or articles for which [s]he is required to search are believed to be concealed, and to bring such property or articles when found, and the persons in whose possession they are found, before a court having jurisdiction.
- d. An officer requiring a search warrant should consult with his/her superior and obtain his/her advice and guidance before proceeding to court. If the court is not in session, the officer-in-charge shall communicate with an authorized court official to make the necessary arrangements to secure a search warrant.
 - i. If legal assistance is required for the preparation of the search warrant affidavit, the District Attorney's office should be contacted.
 - ii. Every search warrant issued and any action taken on such warrant should be recorded in police department files in accordance with standard departmental procedures.

4. *Executing Search Warrants*

- a. After a search warrant is obtained, a police officer shall:
 - i. Check the warrant to ensure that it is signed and it clearly describes the place to be searched and the articles to be seized;
 - ii. Execute the warrant immediately, or within a reasonable time, but in any case, within seven days from date of issuance;^B
 - iii. Execute the warrant in the daytime unless it specifically provides for nighttime search. Nighttime for this purpose is from 10:00 p.m. until 6:00 a.m.;⁷

- iv. A search begun in the daytime may continue into the nighttime if such activity is reasonable and not for the purpose of harassment.

b. *Service of Search Warrant*

- i. Upon arrival at the location to be searched, officers shall check to make certain that the premises are in fact those described in the warrant.
- ii. Upon entering, show a copy of the warrant (not the original) to the person or persons lawfully on the premises unless the circumstances are such that this is not practical.
- iii. The number of officers assigned to execute a search warrant should be dependent upon the particular circumstances. It is a good practice for at least one of the searching officers to be in police uniform, unless this would jeopardize the success of the search.
- iv. A search warrant should not be executed in or on any premises in the absence of the owners, unless there is good reason to believe that the occupants do not intend to return for an extended period of time (or that they do not intend to return at all); or that the property or articles designated in the search warrant will be removed or destroyed if the premises are not searched immediately. In all such cases, the manner of entry shall be made with the least possible destruction of property and a copy of the warrant left in a conspicuous place on the premises.

c. *Knock and Announce Requirement For Dwellings*

- i. When serving a warrant at a private dwelling, police officers must knock, identify themselves as police officers, announce that they have a warrant to search the premises and demand entrance, except in limited circumstances.^a

([a] Officers may knock on the door and gain entry by deception or by means of a ruse, if this will result in a safe, practical and successful execution of the search warrant with less destruction of property.⁹

ii. Officers shall always seek entry as peacefully as possible, but forcible entry is authorized if, after waiting a reasonable time, it becomes apparent that:

[a] The officers **will** not be admitted voluntarily;

[b] The officers or any other persons are in danger of physical harm;

[c] The occupants are escaping; or

[d] Evidence is being, or is in danger of being destroyed.

(d. *No Knock Entry*

i. An immediate, forcible entry (or one gained by a ruse or trick) is authorized -- and the usual knock and announce procedure may be disregarded if the searching officers are in possession of reliable information that the person inside the dwelling to be entered has knowledge of the officers' purpose and presence or where to follow the knock and announce procedure:

[a] Would be likely to endanger their safety or the safety of others;

[b] Would be likely to enable the wanted person(s) to escape; or

[c] Would be likely to result in the evidence being destroyed during the period between their announcement of purpose and subsequent forcible entry.

- ii. Officers shall apply for a "no knock and announce" warrant, if they have reason to believe the knock and announce rule should not be observed when the warrant will be executed.

Note: If the circumstances which would justify disregarding the knock and announce rule are no longer present when the warrant is executed, the knock and announce rule must be followed.

- iii. Upon gaining entry, the searching officers should immediately identify themselves as police officers and should state that it is their purpose to serve a valid search warrant issued by the court.

e. Search Responsibilities

The police officer responsible for the execution of a search warrant:

- i. Shall not exceed the authority granted by the warrant;
- ii. Shall make a diligent effort to find all the property listed in the warrant;
- iii. Shall not search beyond the area described in the warrant unless consent is obtained or exigent circumstances exist. (If the warrant authorizes a search of the first floor of a building, e.g., a search of the second floor is unlawful.);
- iv. Shall search only those areas capable of containing the property listed in the warrant (if the warrant authorizes a search for a large TV set, do not search in a small bureau drawer);
- v. Shall carry out the search with the least possible damage to the premises;
- vi. Shall remain on the premises only for the time reasonably necessary to thoroughly search for and seize the property listed in the warrant;

- vii. Shall terminate the search when the listed property has been found or when it reasonably appears that such property is not on the premises;
- viii. Shall make adequate provisions for the security of the searched premises before leaving unless the person in control of such premises refuses or rejects such police protection;
- ix. Shall immediately and directly transport to the police station all seized property and ensure that it is properly marked, recorded and safeguarded in accordance with the departmental policies on *Collection and Preservation of Evidence* and *Evidence and Property Control*;
- x. Shall complete the Return section of the warrant and deliver it to the court as soon as reasonably possible after the completion of the search, but no later than seven days from the date it was issued;ll
- xi. Shall note on the warrant the action taken with an inventory of all property seized by authority of the warrant. (If evidence not described in the warrant is seized, attach a separate sheet to the Return listing all such property and state that it was seized during the execution of that warrant); and
- xii. Shall make a full departmental report of all action taken on a search warrant, to be submitted to the officer-in-charge before returning the warrant to the court.

f. *Plain View*

- i. When police officers lawfully enter a dwelling with a valid search warrant, they may seize objects reasonably believed by them to be connected with criminal activity **if** in plain view even though not mentioned in the search warrant.¹² See Section N(B)(9) below for the legal requirements to seize items in plain view.

g. *Search of Persons on the Premises*

- i. In order to ensure an orderly and safe search, all persons present on the premises when the police arrive may be detained and prevented from moving about
- ii. Persons not named in or referred to in the search warrant may not be searched unless either:
 - (a) Probable cause exists in regard to the individual to be searched (however mere presence at a location where criminal activity has taken place is not enough to constitute probable cause);¹³ or
 - (b) The officer has reasonable suspicion to believe that such person is armed and then [s]he may be frisked for weapons.

h. *Search of Area Outside Scope of Warrant*

- i. If during the execution of a search warrant it appears that there is probable cause to believe that seizable property is located in an area of the premises outside of the scope of the present warrant, a new warrant shall be obtained immediately, unless consent is granted or exigent circumstances are present. While the new warrant is being sought, any occupants of the premises may have their activities restricted.

B. Searches Without a Warrant

1. *Exceptions to Warrant Requirement*

- a. Officers may make a warrantless search only when one of the following major exceptions to the search warrant applies:
 - i. Warrantless stopping, questioning and frisking (investigative detention);

- ii. Search incident to arrest (including protective sweep);
 - iii. Exigent or emergency circumstances search (including "hot pursuit");
 - iv. Consent searches;
 - v. Motor vehicle searches;
 - vi. Preincarceration and inventory searches;
 - vii. Protective custody searches; and
 - viii. Administrative searches.
- b. The following are not considered invasions of any privacy interest and, therefore, do not come under the search warrant requirement of the Fourth Amendment generally:
- i. The "plain view" doctrine;
 - ii. The "open fields" doctrine; and
 - iii. Abandoned property.
- c. A police officer should never rely on one of these exceptions whenever it is possible, under the particular circumstances, to obtain a search warrant in advance.
- d. In every case where a search is conducted without a warrant, the police officers involved shall make a written report of the circumstances to include all important facts relative to the incident and an inventory of any evidence seized, in accordance with departmental procedures.

2. Warrantless Stopping, Questioning and Frisking (Investigative Detention) [1.2.4(b)]

- a. Both the Fourth Amendment and Chapter 41, section 98 of the Massachusetts General laws authorize police officers to briefly detain suspicious persons, to

question such persons and, if the officer reasonably believes the person may be armed or dangerous, to frisk that person for weapons. These procedures are sometimes referred to as a "threshold inquiry." This type of warrantless search and seizure is covered in depth in the departmental policy and procedure on *Stop, Frisk and Threshold Inquiries*.

3. *Search Incident to Lawful Arrest [1.2.4(d)]*

- a. CRITERIA: A warrantless search of an arrested person may be conducted under the following conditions:
 - i. The arrest is lawful and the search is reasonably related to the circumstances of the arrest;
 - ii. The search is conducted only for the purposes of:
 - [a] Seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest was made;
 - [b] In order to prevent its destruction or concealment; and/or
 - [c] To remove any weapons that the arrested person might use to resist arrest or to effect his/her escape.;¹⁴
 - iii. The search is limited in scope to the person of the arrestee and the immediate surrounding area. Immediate surrounding area means that area from which the arrestee can either obtain a weapon or destroy evidence; and
 - iv. The search is substantially contemporaneous with the arrest and conducted in the immediate vicinity of the arrest; however, if safety requires, the officer may delay the search and conduct it at a safe location.
- b. USE OF FORCE: The officer conducting the search may use the degree of force reasonably necessary to:

- i. Protect himself/herself and others present;
 - ii. Prevent escape; and
 - iii. prevent the destruction of evidence.
- c. **SEARCH OF POSSESSIONS AND CLOTHING:** A search may also be made of items actually in possession of the arrested person and clothing worn at the time of arrest if such search is related to the offense for which the arrest was made.
- d. **PROTECTIVE SWEEP**
- i. In addition to a careful search of the area within the arrested person's immediate control, an examination of the entire premises may also be justified at the time of or immediately following a valid arrest if there is a reasonable belief that it was imperative for the officers' safety because of the presence of others in the house or apartment.¹⁵
 - ii. This search is limited to areas where an accomplice or other person who might come to the aid of the arrestee might reasonably be hiding.
 - iii. Any item or object recognizable as criminal evidence discovered in plain view during a justifiable "protective sweep" may be properly seized.¹⁶
- e. An arrest shall not be used as a pretext in order to make a search.

4. *Searches In Emergency or Exigent Circumstances [1.2.4(d)(f)]*

- a. **CRIMINAL ACTS:** A police officer is authorized to conduct a search without a warrant when faced with an emergency situation where delay would endanger his/her or the public's safety or might result in the escape of the offender or the destruction of evidence.¹⁷

- i. The authority of the police to make warrantless entries in emergency situations, whether criminal or noncriminal, is based upon their fundamental responsibility to preserve the peace and to protect the public safety.¹⁸
 - ii. The doctrine that permits warrantless entries and searches because of emergency or exigent circumstances requires justification by the police that it was impractical for them to obtain a search warrant in advance and that the warrantless search was truly necessitated by the emergency circumstances which could not have been anticipated.¹⁹
 - iii. While conducting a lawful search justified by emergency or exigent circumstances, a police officer may seize any incriminating evidence inadvertently discovered in plain view.
- b. **PUBLIC SAFETY:** Many emergencies justifying a warrantless entry and search do not necessarily involve criminal acts; for example, when a police officer hears a call for assistance, when [s]he observes smoke or flame, or when [s]he learns of an actual or potential natural or man-made calamity or disaster, [s]he has the duty and obligation to respond immediately.
- i. **BURNING BUILDINGS:** A warrantless entry into a burning building is permissible in an emergency and officials may remain for a reasonable time to investigate the cause of the fire and any evidence of arson discovered is admissible at trial. Any reentry after the fire has been extinguished and officials have left the scene should be made pursuant to a search warrant, unless the reentry is justified by a recognized exception to the warrant requirement such as consent, emergency or abandonment.²⁰
 - ii. **EXPLOSIVES/OTHER DANGEROUS ITEMS:** When an officer has reasonable cause to believe premises contain things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property may, without a search warrant, enter

and search such premises to the extent reasonably necessary for the prevention of such death, bodily harm or destruction.zJ

- c. FRESH AND CONTINUED PURSUIT: The U.S. Supreme Court case of *U.S. v. Santanazz* set out factors supporting justification of exigent circumstances under this doctrine including:
 - i. There is fresh and continued pursuit of the suspect;
 - ii. A crime of violence was involved;
 - iii. There was a strong possibility that the suspect was armed;
 - iv. The suspect was known or reasonably believed to be in the building;
 - v. There was a likelihood that the suspect might escape unless immediately apprehended; and
 - vi. There was sufficient justification for failure to obtain a search warrant.
- d. Where the above or other emergency factors are not present, police may stake out the building or premises until a warrant is obtained.²³

5. *Search by Lawful Consent [1.2.4(a)]*

- a. Because such issues as who may give lawful consent to a police entry and search or whether the consent was given voluntarily will be carefully scrutinized by the court, police should not unduly rely on such consent. On the other hand, when properly elicited, consent to a search may expedite a criminal investigation. Police may engage in a warrantless search after obtaining consent even in circumstances where they do not have probable cause.
- b. For there to be a valid consent to search, the following two elements must be satisfied:

- i. The consenting party must have sufficient lawful authority over the premises or property to be able to give consent to a search of that premises or property, and
 - [a] Consent may be obtained from any person who has the right of ownership, possession or control of the premises or property. If there is serious doubt a search warrant should be obtained.
 - [b] JOINTLY OWNED PROPERTY: Generally, if property, such as a house, apartment or business, is owned jointly by two or more persons, any one of them may consent to a search of the common areas of the premises.²⁴
 - [c] SPOUSE: A spouse may give consent to a police search of a jointly owned home, even without the knowledge or permission of the other spouse.²⁵
 - [d] PARENT: A parent may give consent to search premises under the parent's control although it involves searching a child's room and the parent has general access to the child's room.²⁶ However, where the child, whether or not an adult, has exclusive access, often locked, to certain areas or property, the parent's consent may not be enough.²⁷
 - [e] CHILDREN: Generally, a child may not give consent to a police search of premises or property owned by the child's parents.
 - [f] ROOMMATE: A roommate may be able to give consent to a police search of common areas of the apartment but the roommate probably cannot give consent to a search of areas exclusively reserved for the suspect, such as his/her bedroom, luggage or closet.

[g] LANDLORD: Generally, a landlord cannot give consent to the search of a tenant's apartment.²⁸ However, a landlord may give consent to searches of common areas such as hallways and stairwells.

[h] HOTELS: A hotel or motel owner or manager cannot give consent to a search of a guest's lodgings unless they are checked out.²⁹

ii. Consent must be freely and voluntarily given.³⁰

[a] Officers shall notify the person from whom consent is sought of their right to refuse to give consent.³¹

[b] A consent to search may be given orally but preferably, it should be in writing.³²

[c] Consent cannot be presumed from silence.

[d] Consent must be free of any coercion, intimidation, or threat, so officers must avoid even the appearance of intimidation or duress.

[e] Officers shall not gain consent through the use of misrepresentation or fraud.

[f] Consent shall be requested prior to search and after the police officers have identified themselves.

c. A consent search shall be limited to the area specified.

d. Consent may be revoked at any time and the search shall cease upon revocation, unless additional factors or information have come to light which justify a continued warrantless, nonconsensual search. For example, evidence found prior to revocation of consent may be retained and used as a basis for an immediate arrest or as probable cause for a further search (if exigent circumstances exist) or for obtaining a search warrant.

6. *Motor Vehicle Searches*

- a. Officers are prohibited from stopping motor vehicles without reasonable suspicion of criminal activity or motor vehicle violations.³³
- b. If it is at all possible and practicable, a search warrant should always be obtained in the prescribed manner in advance of a motor vehicle search, as this procedure is generally preferred by the courts.
- c. A warrantless search of a motor vehicle may be conducted under the following circumstances:
 - i. **WARRANTLESS STOPPING, QUESTIONING AND FRISKING OF MOTOR VEHICLE OPERATOR OR OCCUPANTS:** A "stop and frisk" type of protective search when the officer reasonably believes that his/her safety or the safety of others is in danger in order to determine whether a suspect is armed, with the search confined to the area of the motor vehicle from which a suspect might gain possession of a weapon.³⁴
 - ii. **SEARCH OF MOTOR VEHICLE INCIDENT TO ARREST OF OPERATOR OR OCCUPANT:** A search incident to a lawful arrest limited to the area from which the person could obtain a weapon or reach destructible evidence.³⁵
 - iii. **EXIGENT CIRCUMSTANCES SEARCH:** A warrantless search of a vehicle may be made when the following elements are satisfied:³⁶
[1.2.4(c)]
 - [a] The vehicle must be lawfully stopped on a public way or is found parked in a public place,³⁷
 - [b] There is probable cause to believe that the vehicle contains contraband or other evidence at the initiation of the search, and

[c] Exigent circumstances are present.

Note: Where exigent circumstances exist, the courts do not require the police to post a guard and seek a warrant prior to searching the vehicle.³⁸

- iv. CONSENT: A search may be conducted with the voluntary consent of the person in lawful control of the vehicle.³⁹
- v. ROADBLOCKS: Roadblocks stops (for example, to detect drivers under the influence of alcohol) are permissible if the selection of motor vehicles to be stopped is not arbitrary, if the safety of the public is assured by taking necessary precautions, if the motorists' inconvenience is minimized and the roadblock procedure is conducted pursuant to a plan devised by law enforcement supervisory personnel.⁴⁰ In addition, if police have a description of a suspect vehicle, they may stop all vehicles fitting that description.
- vi. PLAIN VIEW OBSERVATIONS: If a police officer has lawfully stopped a motor vehicle and is questioning the operator, any incriminating item in or on the vehicle observed in plain view, including anything observed with the use of a flashlight, may furnish probable cause to search the vehicle and seize the item observed without a warrant.⁴¹
- vii. MOTOR VEHICLE INVENTORY: If the vehicle is impounded, the vehicle shall be searched and all personal property found in the vehicle shall be inventoried and kept in safe custody in accordance with the departmental policy on *Motor Vehicle Inventories*.
- viii. ADMINISTRATIVE SEARCHES: Motor vehicles are subject to various types of administrative searches which do not require search warrants. For example, the annual motor vehicle inspection procedure is, in effect, a warrantless search.

- d. All police officers shall be especially watchful and alert when stopping and searching a motor vehicle or its occupants as many officers have been seriously injured, some fatally, in taking this police action which should never be considered "routine."
- i. In stopping and searching motor vehicles, officers shall take all reasonable precautions for their personal safety, such as directing the occupants to alight from the vehicle and frisking them for weapons when the officer has a reasonable belief that they may be armed and dangerous.⁴²

7. *Booking Inventory Searches [1.2.4(g)]*

- a. Prior to incarcerating a detainee in a police lockup, police shall conduct an inventory search of his/her person and inspection of his/her belongings in accordance with the departmental policies on *Detainee Processing* and *Protective Custody*. This shall be done to uncover and safeguard any weapons or implements the detainee could use to injure himself/herself or others, to safeguard valuables and to protect the police against false claims of theft or loss of the detainee's belongings.

8. *Administrative Searches [1.2.4(g)]*

- a. The police may, under certain circumstances, engage in warrantless searches or inspections as part of their administrative functions. For example, it is proper to search a person who is about to visit a detainee. See departmental policy on *Detaining Prisoners*.

9. *The "Plain View" Doctrine [1.2.4(d)(g)]*

- a. Officers may seize contraband or evidence without a warrant under the "plain view" exception to the warrant requirement if the following conditions are met⁴³:
 - i. There must be a prior lawful entry;

- ii. Such entry must bring the officer within "plain view" of the item seized; and
 - iii. The item seized must be "immediately apparent" as contraband or evidence of crime.
- b. Lawful entry includes:
- i. Entry with a valid warrant;
 - ii. Entry to make a lawful warrantless arrest;
 - iii. Entry as a result of lawful consent; and
 - iv. Entry in an emergency to render necessary aid or assistance.
- c. Items are immediately apparent as contraband if the officer has probable cause to believe they are:
- i. Instrumentalities or means by which any crime was committed, (such as weapons, masks, tools, etc.);⁴⁴
 - ii. Contraband (articles which may not be legally possessed, such as counterfeit money or controlled substances, etc.);⁴⁵
 - iii. Fruits of any crime (such as stolen property);⁴⁶
 - iv. Other evidence of any crime (such as clothing or other items fitting the description of the criminal offender); or
 - v. Property which bears a reasonable relationship to the purpose of the search (such as documents establishing who owns the premises searched if ownership is an element of the crime).⁴⁷

10. Abandoned Property [1.2.4(g)]

- a. Abandoned or discarded property may be searched by the police and seized. Examples of abandoned property include:

- i. Trash in collection area accessible to the public.⁴⁸
- ii. The contents of a hotel room wastebasket once an individual has vacated the room.⁴⁹
- iii. An apartment or hotel room may be searched without a warrant provided the guest or tenant has left with an intention not to return and the landlord or owner has given permission to search.⁵⁰
- iv. Items thrown on the ground by a suspect.⁵¹

11. *Open Fields [1.2.4(g)]*

- a. An open field is that portion of privately owned land surrounding a person's dwelling that is too remote or removed from the physical dwelling to be considered part of the "house" such that it is protected by the Fourth Amendment.⁵²
 - i. The "house" that is protected by the Fourth Amendment includes the grounds and buildings immediately surrounding the dwelling.⁵³
- b. Open fields may be searched without a warrant even though the terrain in question is not easily accessible to the public and even though the owner may have posted "No Trespassing" signs and may even have a locked gate.⁵⁴

12. *Searches by Persons other than Law Enforcement Officers*

- a. PRIVATE INDIVIDUAL: Evidence obtained by a private individual, as a result of searching someone else's property, who is not acting as an employee or agent of the government, is admissible.⁵⁵
- b. POLICE OFFICER ACTING AS SECURITY GUARD: Evidence discovered as a result of the warrantless search conducted by a police officer acting as a private security guard is not admissible if [s]he acts beyond the scope of the private employer's business.⁵⁶

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- ¹*Mincey v. Arizona*, 437 U.S. 385, 89 S.Ct. 2408 (1978)
- ² *Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889 (1964)
- ³ *U.S. v. Campbell*, 581 F.2d 22 (C.A. NY)
- ⁴ *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642 (1967)
- ⁵ M.G.L. c. 276, s. 3A
- ⁶ M.G.L. c. 276, s. 3A
- ⁷ *Com. v. Grimshaw*, 413 Mass. 73, 595 N.E.2d 302 (1992)
- s Richards v. Wisconsin*, 117 S.Ct. 1416 (1997); *Com v. Gondola*, 28 Mass. App. Ct. 286, 550 N.E.2d 880 (1990)
- ⁹ *Com v. Sepulveda*, 406 Mass. 180, 546 N.E.2d 879 (1989)
- ¹⁰ *Com. v. Antwine*, 417 Mass. 637, 632 N.E.2d 818 (1994)
- ¹¹ M.G.L. c. 276, s. 3A
- ¹² *Com. v. Bond*, 375 Mass. 201, 375 N.E.2d 1214 (1978).
- ¹³ *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338 (1979)
- ¹⁴ M.G.L. c. 276, s. 1
- ¹⁵ *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093 (1990)
- ¹⁶ *Com. v. Bowden*, 379 Mass. 472, 399 N.E.2d 482 (1980)
- ¹⁷ *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642 (1967); *Com v. Moran*, 370 Mass. 10. 345 N.E.2d 380 (1976)
- IBThurlow v. Crossman* 336 Mass. 248, 143 N.E.2d 812 (1957)
- ¹⁹ *Com v. Guaba*, 417 Mass. 746, 632 N.E.2d 1217 (1994)
- ²⁰ *Michigan v. Tyler*, 436 U.S. 499, 98 S.Ct. 1942 (1978); *Michigan v. Clifford*, 464 U.S. 287, 104 S.Ct. 641 (1984)
- ²¹ *Com. v. Marchione*, 384 Mass. 8, 422 N.E.2d 1361 (1981)
- ²² *U.S. v. Santana*, 427 U.S. 39, 96 S.Ct. 2406 (1976); *Com v. Moran*, 370 Mass. 10. 345 N.E.2d 380 (1976)
- ²³ *U.S. v. Adams*, 621 F.2d 41 (1st Cir. 1980)

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- ²⁴ *U.S. v. Matlock*, 415 U.S. 164, 94 S.Ct. 988 (1973); *Com v. Maloney*, 399 Mass. 785, 506 N.E.2d 1147 (1987)
- ²⁵ *Com. v. Martin*, 358 Mass. 282, 264 N.E.2d 366 (1970)
- ²⁶ *Com v. Ortiz*, 422 Mass. 64, 661 N.E.2d 926 (1996)
- ²⁷ *U.S. v. DiPrima*, 472 F.2d 550 (1st Cir. 1973)
- ^{2a} *Niro v. U.S.*, 388 F.2d 535 (1st Cir. 1968)
- ²⁹ *Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889 (1964)
- ³⁰ *Com. v. McGrath*, 365 Mass. 631, 310 N.E.2d 601 (1974)
- ³¹ *Com v. Sanna*, 424 Mass. 92, 674 N.E.2d 1067 (1997) (Although there is no legal requirement that a person be advised of their right to refuse to give consent to a police search, this is one of the factors that the court will consider in determining whether the consent was voluntarily given.)
- ³² *Com. v. Reed*, 417 Mass. 558, 631 N.E.2d 552 (1994)
- ³³ *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979)
- ³⁴ *Com. v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Penn. v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977); *Com. v. Suva*, 366 Mass. 402, 318 N.E.2d 895 (1974)
- ³⁵ *Com v. Clermy*, 37 Mass. App. Ct. 774, 643 N.E.2d 1059 (1995)
- ³⁶ *U.S. v. Ross*, 456 U.S. 798, 102 S.Ct. 2157 (1982); *Com. v. Cast*, 407 Mass. 891, 556 N.E.2d 69 (1990)
- ³⁷ *Com. v. Wheeler*, 407 Mass. 909, 556 N.E.2d 65 (1990)
- ³⁸ *Com. v. Ortiz*, 376 Mass. 349, 380 N.E.2d 669 (1978); *Com v. A Juvenile (No.2)*, 411 Mass. 157, 580 N.E.2d 1014 (1991); *Com v. Bakoian*, 412 Mass. 295, 588 N.E.2d 667 (1992)
- ³⁹ *Com. v. Lanoue*, 356 Mass. 337, 251 N.E.2d 894 (1969)
- ⁴⁰ *Com v. McGeoghegan*, 389 Mass. 137, 449 N.E.2d 349 (1983)
- ⁴¹ *Com. v. Cavanaugh*, 366 Mass. 277, 317 N.E.2d 480 (1974); *Com v. Doulette*, 414 Mass. 653, 609 N.E.2d 473 (1993)
- ⁴² *Com. v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Penn. v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977)
- ⁴³ *Horton v. California*, 496 U.S. 128, 110 S.Ct. 2301 (1990)
- ⁴⁴ *Com v. Accaputo*, 380 Mass. 435, 404 N.E.2d 1204 (1980)
- ⁴⁵ *Id.*

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⁴⁶ *Id.*

⁴⁷ *Com. v. Scalise*, 387 Mass. 413, 439 N.E.2d 818 [1982]

⁴⁸ *Com. v Pratt*, 407 Mass. 647, 555 N.E.2d 559 (1990)

⁴⁹*Abel v. U.S.*, 362 U.S. 217, 80 S.Ct. 683 (1960)

⁵⁰ *Com. v. Lanigan*, 12 Mass. App. Ct. 913, 423 N.E.2d 800 (1981)

⁵¹ *Com v. Wedderburn*, 36 Mass. App. Ct. 558, 633 N.E.2d 1058 (1995); *Com. v. Marrero*, 414 Mass. 1102, 606 N.E.2d 915 (1992)

⁵² *Hester v. U.S.*, 265 U.S. 57, 44 S.Ct. 445 [1924]; *Com. v. John G. Grant & Sons, Inc.*, 403 Mass. 151, 512 N.E.2d 522 (1988)

⁵³ *Rozencrantz v. U.S.*, 356 F.2d 310 (1st Cir. 1969)

⁵⁴ *Oliver v. U.S.*, 466 U.S. 170, 104 S.Ct. 1735 (1984); *Hester v. U.S.*, 265 U.S. 57, 44 S.Ct. 445 (1924)

⁵⁵ *Com. v. Leone*, 386 Mass. 329, 435 N.E.2d 1036 [1982]

⁵⁶ *Id.*

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SEARCH WARRANT AFFIDAVIT

POLICY & PROCEDURE NO. 1.09	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETT'S POLICE ACCREDITATION STANDARDS REFERENCED: none	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

An affidavit is a formal declaration or statement of facts, in writing, made voluntarily and confirmed by oath or affirmation before a person having the legal authority to administer such oath or affirmation. It is a written statement of facts sworn to as the truth. Although affidavits have a number of legal purposes, their preparation to establish probable cause for the issuance of a search warrant imposes a most important responsibility on the police. For this purpose an affidavit must contain the facts, information and underlying circumstances which have led a police officer reasonably to believe that a particular crime has been, is being, or is about to be committed, and that seizable property connected with that crime is likely to be found in the place or upon the person to be searched.

The basic requirements for affidavits and search warrants are found in the Fourth Amendment to the U.S. Constitution which provides as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by oath or

affirmation, and particularly describing the place to be searched and the persons or things to be seized."

Similar wording is also found in Article XIV of the Massachusetts Declaration of Rights, contained in the state Constitution.

A police officer seeking a search warrant must appear personally before a judge or other court official authorized to issue search warrants in criminal cases and present an affidavit containing the facts, information and circumstances upon which the officer relies to establish sufficient grounds for the issuance of the warrant.¹ The judge or court official issuing the warrant must retain the affidavit and deliver it to the court to which the warrant is returnable. Upon the return of the warrant, the affidavit must be attached to the warrant and filed therewith. The affidavit is not a public document until the warrant is returned. These requirements were enacted into law "to ensure that the Commonwealth can demonstrate by a writing that any given search and seizure was reasonable and was based on probable cause."² However, the fact that search warrant affidavits are "public records" does not mean that the court lacks impoundment authority. A judge must determine whether good cause for impounding exists and must tailor the scope of the impoundment order so that it does not exceed the need for impoundment.³

Justices of the Supreme Judicial Court, the Superior Court Department and the various District Court Departments, and Clerk/Magistrates, Assistant Clerk/Magistrates, Temporary Clerk/Magistrates, and Temporary Assistant Clerk/Magistrates of the District Court Departments are authorized to determine the justification for and the issuance of search warrants upon the application and suitable affidavit of a police officer.⁴ A judge or clerk may issue a search warrant for execution anywhere in the Commonwealth. However, with respect to body cavity searches, such a warrant may only be issued by a judge on a strong showing of particularized need supported by a high degree of probable cause.⁵

II. POLICY

A. It is the policy of this department that:

1. All officers have a sound knowledge of the legal requirements associated with obtaining a search warrant in order to prevent suppression of evidence, support the Constitutional rights of citizens and to maintain public confidence in the department; and

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2. Officers shall apply for a search warrant whenever practical.

III. PROCEDURES

A. Affidavit Requirements

1. The standard affidavit form provided by the various courts to be prepared to support an application for a search warrant must be substantially in accordance with the provisions of M.G.L. c. 276, s. 2B as set forth in the attached form.
 2. Whenever possible and practicable to do so, a police officer preparing an affidavit to justify the issuance of a search warrant should secure the advice and guidance of the department supervisor or a representative of the District Attorney's Office.
 3. The officer submitting the affidavit shall clearly identify himself/herself and briefly explain in the affidavit any expertise or special training [s]he has which pertains to his/her belief that a given crime has been committed and that given items are connected to that crime.
 4. The officer should disclose all relevant information in the affidavit and do so in a complete (yet concise) and logical (perhaps chronological) fashion.
 - a. The affidavit must disclose facts and information which furnish probable cause to believe that a specific crime has been, is being, or will be committed.
 - i. Many cases have been lost because an officer had sufficient basis for probable cause but did not furnish enough information in his/her affidavit. Any fact that is not set out in the affidavit cannot be inserted or used later for the purpose of establishing probable cause. The Supreme Judicial Court declared that the "contents of an affidavit supporting a search warrant cannot be buttressed by oral testimony as to what was stated to the magistrate at the time the search warrant was issued."⁶
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- b. The affidavit must disclose facts and information which furnish probable cause to believe particular items are connected to that crime and that:
 - i. Those items are (or will be) at a particular place; or
 - ii. Those items are (or will be) found on particular person or persons.
5. Probable cause to justify the existence of a search warrant must exist at the time the warrant is issued. If the information specified in the affidavit is "stale", it may prevent a finding of probable cause to conduct a search.⁷
 - a. A sixteen day lag between the commission of a murder and the issuance of a search warrant for a murder weapon was too long for a finding of probable cause that the gun was still at the defendant's premises.⁸
 - b. The Appeals Court held that where the affidavit furnished information of continuing illegal activity and a substantial basis for concluding that the property sought was probably still on the premises to be searched, the time factor or "staleness" was not found to be of serious importance and the warrant issued in this case was declared valid.⁹
6. The affidavit should disclose how and when the facts and information came to the officer's attention.
 - a. If information from a confidential informant is relied on, the officer should follow the procedures set forth in Section III.B below and the departmental policy on *Use of Confidential Informants*.
 - b. The affidavit must disclose why the persons who provided those facts and information are reliable.
7. If there are additional pages attached to the affidavit, the affidavit should refer to them as "see attached pages" in appropriate places.¹⁰ There is no requirement that all attached pages be signed.¹¹
8. The affidavit must describe with particularity:

- a. The place or person(s) to be searched and
 - b. The item or items to be searched for. The degree of specificity required when describing goods to be seized may necessarily vary according to the circumstances and types of items required.¹²
9. Misstatements in an affidavit that amount to a knowing and intentional falsehood or reckless disregard for the truth will render a search warrant invalid.¹³ However, inaccuracies which do not affect the integrity of an affidavit do not destroy probable cause for a search.¹⁴ Negligent misrepresentations in affidavits do not require suppression.¹⁵
 10. The affidavit should receive the approval of the Officer-in-Charge or supervisor before submission to the court.
 11. The officer submitting the affidavit shall sign the affidavit and personally appear before a judge or magistrate.

B. Information From Informant

- I. In assessing and establishing the credibility of an informant and the reliability of the informant's information, an officer should consider, and disclose in the affidavit, the following factors:
 - a. The basis of the informant's knowledge.
 - i. Did the informant make personal, direct observations, or is the informant relating hearsay information?
 - ii. How recently did the informant acquire his/her information (is it still valid or has it become stale)?
 - iii. How detailed is the informant's information?
 - b. Factors that support the informant's reliability.
 - i. Whether the informant provided accurate, useful information in the past. If so, did that information in the past contribute to successful arrests, searches or convictions?

- ii. Whether the informant is admitting his/her own involvement in crime (this is known as a statement against penal interest). However, if the identify of the informant is unknown, any statements against his/her penal interest cannot buttress his/her credibility,¹⁶
 - iii. Whether the informant is an inherently reliable person, such as the victim, an eyewitness or a reputable citizen, or merely a person making guesses, spreading rumors or engaging in wild speculation.
- c. The existence of any corroboration that supports the informant, such as:
- i. Similar information received from other informants.
 - ii. Direct observations or investigations by the police.

C. Property Which May Be Seized

1. Under the provisions of G.L. c. 276, s. 1. the following different types of property or articles may be seized under a search warrant:¹⁷
 - a. Property or articles stolen, embezzled, obtained by false pretenses, or otherwise obtained in the commission of a crime.
 - b. Property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried, or otherwise used, changed or marked in the preparation for or perpetration of or concealment of a crime.
 - c. Property or articles, the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under Chapter 138 (alcohol)

(beverages). sections 42 through 56, inclusive (see c. 138, s. 56 for warrantless arrest and seizure of alcohol until warrant obtained. Note: c. 138, s. 46 makes it a fineable offense to search for or seize illegal alcoholic beverages in a dwelling without a warrant).

- d. The dead body of a human being.
 - e. The body of a living person for whom a current arrest warrant is outstanding.
2. The word "property" includes books, papers, documents, records and any other tangible objects. As the above list indicates, a Chapter 276 search warrant may authorize searches or seizures of:
- a. The proceeds or "fruits" of a crime,
 - b. Instrumentalities by which the crime was committed,
 - c. Contraband,
 - d. A dead human body, and
 - e. A person for whom there is an outstanding arrest warrant.
3. In addition, the police may seek a search warrant authorizing the seizure of "mere evidence." The phrase "mere evidence" refers to any item or object that would tend to prove the commission of a crime or the identity of the criminal. For example, while executing a search of a murder suspect's home pursuant to a warrant, officers found and seized bloody clothing. Although that clothing did not fit into any of items (a) through (e) above, it was seizable as "evidence" of the commission of a crime and, having been located in the defendant's home, the clothing also tended to establish the identity of the criminal.

Attachment: Sample Form for Search Warrant Affidavit

THE COMMONWEALTH OF MASSACHUSETTS

(COUNTY) SS.

(NAME) COURf.

I, (name of applicant) being duly swom, depose and say:

1. I am (describe position, assignment, office, etc.).
2. I have information, based upon (describe source, facts indicating reliability of source and nature of the information; if based on personal knowledge and belief, so state).
3. Based upon the foregoing reliable information (and upon my personal knowledge) there is probable cause to believe that the property hereinafter described (has been stolen, or is being concealed, etc.) and may be found (in the possession of A.B. or any other person) at premises (identify).
4. The property for which I seek the issuance of a search warrant is the following: (here describe the property as particularly as possible).

Wherefore, I respectfully request that the court issue a warrant and order of seizure, authorizing the search of (identify premises and the persons to be searched) and directing that if such property or evidence or any part thereof be found that it be seized and brought before the court; together with such other and further relief that the court may deem proper.

Signature:

Name

Then personally appeared the above named _____ and made oath that the foregoing affidavit by him subscribed is true.

Before me this ___ day of _____ 200_.

Justice or Special Justice, Clerk/Magistrate or Assistant Clerk/Magistrate of the _____ Court.

¹M.G.L. c. 276, s. 2B

²*Com. v. Monosson*, 351 Mass. 327, 221 N.E.2d 220 (1966)

Newspapers of New England v. Clerk-Magistrate, 403 Mass. 628, 531 N.E.2d 1261 (1988) *cert. den'd* 490 U.S. 1066, 109 S.Ct. 2064 (1989)

⁴M.G.L. c. 218, s. 33

⁵*Rodriguez v. Ftutado*, 410 Mass. 878, 575 N.E.2d 1124 (1991)

⁶*Com. v. Penta*, 352 Mass. 271, 225 N.E.2d 58 (1967)

⁷*Com. v. Higgenbotham*, 11 Mass. App. Ct. 912, 415 N.E.2d 229 (1981); *Com. v. Morton*, 26 Mass. App. Ct. 949, 526 N.E.2d 1074 (1988)

⁸*U.S. v. Charest*, 602 F.2d 1016 (1st Cir. 1979)

⁹*Com. v. Blye*, 5 Mass. App. Ct. 817, 362 N.E.2d 240 (1977); *Com. v. Malone*, 24 Mass. App. Ct. 70, 506 N.E.2d 163 (1987)

¹⁰*Com. v. Dane Entertainment SeIvices*, 23 Mass. App. Ct. 1017, 505 N.E.2d 892 (1987) *rev. den'd* 400 Mass. 1101, 508 N.E.2d 620 (1987)

¹¹*Com. v. Truax*, 397 Mass. 174, 490 N.E.2d 425 (1986)

¹²*Com. v. Rutkowski*, 406 Mass. 673, 675, 550 N.E.2d 362, 364 (1990)

¹³*Franks v. Delaware*, 438 U.S. 154 (1978)

¹⁴*Com. v. Rugaber*, 369 Mass. 765, 343 N.E.2d 865 (1976); *Com. v. Hanneus*, 390 Mass. 136, 453 N.E.2d 1053 (1983)

¹⁵*Com. v. Valdez*, 402 Mass. 65, 521 N.E.2d 381 (1988)

¹⁶*Com. v. Allen*, 406 Mass. 575, 579, 549 N.E.2d 430, 433 (1990)

¹⁷M.G.L. c. 276, s. 1

¹⁸*Com. v. Murray*, 359 Mass. 541, 269 N.E.2d 641 (1971)

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LEGAL PROCESS

POLICY & PROCEDURE NO. 1.10	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETT'S POLICE ACCREDITATION STANDARDS REFERENCED: 74.1.1; 74.1.2; 74.2.1; 74.3.1; 74.3.2; 74.4.1	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

Legal processes served by Massachusetts police departments is primarily criminal process consisting of arrest warrants, search warrant, summonses, and subpoenas relating to a criminal case which are issued by any Court of Law within the Commonwealth. The only civil processes served normally served by Massachusetts police departments are abuse orders, ordinarily issued by Massachusetts Family and Probate Court. These types of processes are sent to police departments for the purpose of being served or executed upon the person or place named within.

Since the functioning of the courts is affected by the prompt service of these documents, and since the department has certain legal responsibilities regarding such service, it is necessary that department personnel maintain precise and appropriate record keeping procedures to minimize potential litigation and liability. A prerequisite for the efficient and effective management of legal process is an organized method of handling processes from the moment they are received from the court to the time they are returned to the court. Key elements of such an organized procedure are centralized control over the document, accountability for handling and executing legal process, proper documentation of unsuccessful as well as successful attempts to serve legal process and accurate, up-to date communication between police

departments, the courts and other law enforcement agencies regarding the validity of the legal process and the whereabouts of persons named in the legal process.

Given the number of warrants issued for the arrest of individuals and the limited police resources available, the police must establish priorities and exercise reasonable discretion in serving arrest warrants. These Policies and Procedures are designed to provide a framework for efficient arrest warrant practices taking into consideration the need for priorities and the necessity of a measure of discretion.

It is an underlying assumption of these Policies and Procedures that police should concentrate primarily on making arrests on warrants for serious offenses, arrests of multiple or potentially dangerous offenders and in other situations meriting the loss of one's personal liberty which an arrest entails. In less critical cases, police resources, at least initially, should be directed toward warning citizens of outstanding warrants for their arrest by providing these citizens a reasonable opportunity to go to court to have the warrant revoked. (See Appendix A.)

II. POLICY

A. It is the policy of this department that:

1. Legal processes shall be properly filed and every reasonable attempt shall be made to make service.
2. Any arrests made on a warrant must be backed up by documentation that some agency has that warrant in their possession, and that to the best of their knowledge it is still in effect or that the warrant is active in the Warrant Management System (WMS).

III. PROCEDURES

A. Management of Legal Processes Documentation

1. The Uniform Division Shift Commander is responsible for the processing and recording of all legal process for the department as described below.
 - a. Legal process in the possession of the department where service is to be executed within the jurisdiction of the department.

- b. Legal processes in the possession of another agency.
- c. Legal processes to be seized outside the jurisdiction of the department.
- d. Seizure of Abuse Orders under General Laws c. 209A, 209C, 208, and 209.

2. *Information Recording*

- a. When each item of legal process is received, the Uniform Shift Commander shall be responsible to see that the processes are assigned for seizure and filed if applicable.: [74.1.1]

3. *Access to Records*

- a. Members of the department shall have twenty-four hour a day access to department criminal records through computer access. Members shall comply with CORI laws. See departmental policy on *Criminal Offender Record Information*.

4. *Record of Execution/Service* [74.1.2]

- a. Legal Process Service Reports shall be returned to this unit and entered in the computer. Legal Process Service Reports shall contain the following information: (See Appendix B for sample Legal Process Service Report)
 - i. Date and time service was executed/attempted;
 - ii. Name of officer(s) executing/attempting service;
 - iii. Name of person on whom legal process was served/executed;
 - iv. Method of service/reason for nonservice; and
 - v. Address of service attempt.

B. Warrants [74.3.1]

1. On July 10, 1994, the Legislature enacted M.G.L. c. 276, s.23A which created the Warrant Management System. This system dramatically changed the way warrants are handled in Massachusetts. Previously all warrants were paper warrants physically delivered to the requesting police department for service. Under the Warrant Management System (WMS), warrants are issued electronically by the court of origin and appear in a statewide master name file. They are further entered automatically into the Criminal Justice Information System (CJIS). The complaining department receives a notice of the issuance of a warrant via CJIS/WMS.
2. The Uniform Shift Commander shall maintain files on all persons named in warrants containing, to the extent possible:
 - a. Full name and address;
 - b. Specific address(es) and telephone number(s);
 - c. Complete physical description with salient identifying characteristics and photograph(s) (upon arrest,

- (booking, interrogation, being brought in on protective custody, etc., new photographs should be taken if the present ones are ineffective as an aid to identification);
- d. Date of birth or approximate age, social security number or other identification verification information;
 - e. Employer's name, address, telephone number; accused's job, work hours, etc.;
 - f. Criminal record of accused; indication if accused should be considered dangerous or may resist arrest;
 - g. Cross references to other arrest warrants and court orders relating to accused;
 - h. Other information which may aid in serving the warrant such as a description of any motor vehicle the accused is known to use, firearms license or other permit or license issued to the accused.
3. All persons taken to the police station under arrest, under protective custody, or for questioning, or persons applying for any sort of licensing, F.I.D. cards, etc., should have a warrant/court order check. This should be done not only to flag warrants, but also to enable the department to update its information.
4. When an arrest warrant check is requested, there should automatically be a check for other outstanding court orders. Conversely, when a request is made for outstanding court orders, an arrest warrant check should be made automatically.
5. *Prioritizing Warrants*
- a. All present warrants and all new warrants shall be treated with equal priority unless otherwise requested by the District Attorney.
6. The Uniform Shift Commander should issue on a regular and frequent basis a printout available to all swam officers containing information on important warrants issued
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recently and outstanding top priority and middle priority warrants of which officers should be aware.

8. *Service Within Jurisdiction*

- a. Arrest warrants shall be executed only by sworn officers within their jurisdiction. [74.3.2]
- b. An officer should not make an arrest on a warrant unless [s]he confirms the present status of the warrant immediately before making the arrest.
- c. All procedures for arrests with warrants in the departmental policy and procedure on *Arrests* shall be followed.
- d. If initial attempts to serve a warrant are unsuccessful and further attempts at the present time appear fruitless, the warrant may be kept on file. If the accused is encountered or apprehended at a later date, an arrest may be made under the original warrant.¹ No time limit is imposed on the validity of an arrest warrant as there is with respect to search warrants. However an eight and one half year delay was too long when the delay was due to government negligence.²
 - i. In such cases, however, care should be taken to make sure the warrant is still valid when the arrest is made.³ Again, there cannot be unreasonable delay in relation to service of the warrant.⁴ There are no Massachusetts cases which define "unreasonable delay."
- e. If officers are successful in serving a warrant, they shall make the proper "return" and submit the warrant to the officer-in-charge. The officer-in-charge shall ensure that the warrant is canceled or located in CJIS/WMS.

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- f. Temporary warrants can be applied for by officers when the courts are closed, with the approval of a supervisor. If the District Attorney has allowed rendition, such as for serious crimes, the warrant shall be entered in both CJIS and NCIC reflecting the fact rendition was authorized. The warrant entry will remain in CJIS/NCIC if rendition is authorized till there is service of the warrant or it is recalled or modified by the court or District Attorney. If rendition is not authorized and service has not been made the warrant will be cancelled in CJIS, and returned to the court at the beginning of the next sitting of the issuing court.

9. *Service Outside Department's Jurisdiction*

- a. Warrants for persons residing outside the jurisdiction of the department shall be processed in accordance with WMS/CJIS regulations and court procedures.
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- 10. When a warrant is removed or otherwise canceled by the court, the officer(s) who obtained that warrant or who are assigned that case shall be promptly notified.
 - 11. Quarterly, the Arrest Warrant and Court Order Unit shall review warrants which have not been served.
 - 12. The Arrest Warrant and Court Order Unit should review newspapers, telephone directories, Registry of Motor Vehicle files, firearms identification card files, lost or missing persons files, city or town files (e.g., taxes, voting lists, permits and licenses not issued by or through the police department) and other files and sources of information to gather useful leads which may aid in determining the whereabouts of the accused and how to verify his/her identity.

C. Other Criminal Processes (Summonses and Subpoenas) [74.3.1)

1. *Service Within Department's Jurisdiction*

- a. When a legal process is served or an attempted service is made, a computer entry (log) shall be made.

- b. The process may be mailed, served in hand, or left at the last and usual place of residence.
- c. When the process is served, a return shall be made to the Court.
- f. If the process cannot be served for any reason (no longer at address, no such person, etc.), the officer attempting service shall complete the appropriate report and return it to the Court.

2. *Service Outside Department's Jurisdiction*

- a. It shall be processed in cooperation with the law enforcement agency having jurisdiction, by forwarding to that agency the appropriate paperwork.
- b. When the process is returned to this department from other police jurisdictions, the process will be forwarded to the proper court.

(D. Abuse Orders [74.2.1]

1. Abuse Orders refer to restraining orders, no contact orders and orders to vacate issued under Chapter 208, Chapter 209, 209A, or 209C.5 Careful attention should be paid to such court orders to determine the date they take effect, the date they expire, when they must be returned to court, specific instructions as to where or when they are to be served or enforced, information regarding the person(s) named as plaintiffs or other protected parties and other details. Officers who serve or enforce such orders should be fully informed as to their obligations under Chapter 209A. (See departmental policy on *Domestic Violence*.)
2. When Abuse Orders are received they will be properly filed.
3. Abuse orders shall be promptly served and returned to the issuing court.⁶
- (4. The officer assigned to serve an abuse orders shall make a concerted attempt to serve the order in hand or leave it at the person's residence during that tour of duty. If the address is incorrect the officer shall attempt to obtain a new address and make the service.
5. Officers that are unsuccessful in serving the abuse order shall, prior to the end of their shift, turn the abuse order into the officer-in-charge for further attempts at service.
6. Every attempt to serve an abuse order, whether successful or unsuccessful shall be documented In the department computer system
7. When an abuse order has been served, the officer making service shall make the return on the abuse order.

E. Property [74.4.1]

- (1. Since the department does not serve civil process with the exception of abuse order, no property is seized through civil process. All property or evidence in custody of the department shall be handled and disposed of in accordance

with the departmental policy on *Evidence and Property Control*

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Chicopee Police Department 209A Checklist

Docket Number:		
Defendant's Name:		
Defendant's Address:		
Plaintiff's Name:		
Plaintiff's Address:		
OFFICERS NAME, DATE, TIME		
1 st Attempt		Served
2 ^{ed} Attempt		Served
3 ^{ed} Attempt		Served
4 th Attempt		Served
stn Attempt		Served
Copy Entered Into Binder? YES NO		
Chicopee Probate Other		
RETURN INFORMATION		
Date & Time returned to Court:		
Officer Making Return:		
Reason Unable to Serve:		
Remarks:		

When attempting to or making service notify dispatch so a call number is generated.

¹ *Com. v. Jones*, 360 Mass. 498, 275 N.E.2d 143 (1971)

² *Doggett v. U.S.*, 505 U.S. 647 (1992)

³ *Com. v. Tisserand*, 5 Mass. App. 383, 363 N.E.2d 530 (1977)

⁴ M.G.L. c. 268, s.s. 22, 23

⁵ M.G.L. c. 208, ss. 18, 34B, 34C; M.G.L. c. 209, s. 32; M.G.L. c. 209A, ss. 3, 4, 5; M.G.L. ss. 15, 20

⁶ M.G.L. c. 209A, s. 7

ARREST

POLICY & PROCEDURE NO. 1.11	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.5; 1.2.6; 1.2.7	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

The authority to arrest, thereby depriving a person of his/her liberty is one of the most serious and sensitive duties of a police officer. Whenever there is sufficient time and opportunity to do so, a warrant should be obtained in advance of an arrest. In any case where the offender does not create a threat to the public, or is not likely to flee, it is good police practice to obtain a warrant prior to arrest. This is particularly true for the less serious offenses.

By the very nature of police work, however, many arrests must be made without a warrant. Police officers should have a clear understanding of their powers, duties and responsibilities under the law of arrest. If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful and any evidence seized declared inadmissible. Any confession or admissions made may also be excluded, if made after an unlawful arrest. In addition, civil liability may also result.

Every police officer must also recognize that there is no such thing as a "routine arrest." Because of the unpredictability of human behavior, there is a potential element of danger in every arrest. Life-threatening struggles have resulted from what appeared to be a simple misdemeanor

or a routine motor vehicle stop. As a fundamental guideline in making arrests, officers should be alert and should anticipate the unexpected.

II. POLICY

- A. It is the policy of this department:
1. To ensure that when persons are arrested and taken into police custody, all constitutional and statutory rights to which they are entitled will be provided at the time of their arrest and while in custody thereafter;
 2. That a warrant should be obtained prior to making an arrest when the offender does not create a threat to the public, or is not likely to flee, and especially where less serious offenders are involved; and
 3. When appropriate circumstances exist, officers may exercise discretion and not make an arrest. In such limited cases, citations, summonses, informal resolutions, warnings and referrals to other agencies may be alternatives to arrest.

III. DEFINITIONS

- A. **Arrest** The taking of a person into custody and depriving him/her of his/her freedom of action, in accordance with law, in order that such person can be brought before the court to answer a to a criminal charge. ■
- B. **Probable Cause:** Probable cause for arrest exists if, at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.²
- C. **Felony:** Any crime punishable by death or imprisonment in the state prison.³
- D. **Misdemeanor:** Any crime where there is no possibility of punishment by death or imprisonment in the state prison.⁴

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- E. *Breach of the Peace*: A violation of public order or decorum which disturbs the public peace and tranquillity; or any act of disorderly conduct which disrupts the public peace.s
 - F. *Arrest Warrant*: An order in writing, issued by an authorized court official, directed to officers authorized to serve criminal process, commanding them to arrest the person named or described therein and to bring such person before the court to answer to a charge of crime.

IV. PROCEDURES

A. Arrests in General

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- 1. Duly sworn police officers of cities and towns gain their authority to make arrests from G.L. c. 41, s. 98.
 - 2. An arrest should never be made to show authority or to vent personal feelings.
 - a. The attitude of the offender should not be the determining factor in making an arrest.
 - b. Verbal abuse alone is not a sufficient justification for an arrest.
 - c. An arrest should not be used to resolve a problem when other options are available.
 - 3. A duly authorized police officer may make a lawful arrest either with or without a warrant. However, whenever possible, arrests should be made with a warrant.
 - a. To effectively and lawfully execute an arrest there must be:
 - i. An intention on the part of the police officer to make an arrest;
 - ii. The knowledge and understanding of that intent must be communicated to the person to be arrested; and

- iii. Either a physical seizure or submission to the officer by the arrested person.⁶
4. Force should only be used when there is resistance or reasonable certainty of resistance. The amount of force shall be restricted to that which is reasonable, necessary, and proper for the safe custody of the arrestee, or for overcoming any resistance that may be offered.⁷ An arrestee has no right to resist arrest, lawful or unlawful, by a police officer, unless the officer uses excessive force.^s (See departmental policy on *Use of Force*.)

B. Arrests with a Warrant

1. A police officer may make a lawful arrest with a warrant when:
 - a. The officer making the arrest and detention has actual knowledge that a warrant then in **full** force and effect for the arrest of such person has in fact been issued, or
 - b. The officer possesses a valid arrest warrant.

2. *Application of Warrant*

- a. An arrest warrant issued pursuant to a complaint must be founded upon probable cause supported by oath or affirmation but it is not necessary to recite the facts that constitute probable cause in the complaint.⁹
- b. A warrant shall be directed to and executed in any place within the Commonwealth. a
- c. On July 10, 1994, the Legislature enacted M.G.L. c. 276, s.23A which created the Warrant Management System. This system dramatically changed the way warrants are handled in Massachusetts. Previously all warrants were paper warrants physically delivered to the requesting police department for service. Under the Warrant Management System (WMS), warrants are issued electronically by the court of origin and appear in a statewide master name file. They are further entered automatically into the Criminal Justice Information System (CJIS). The complaining

department receives a notice of the issuance of a warrant via CJIS.

- d. The warrant must be obtained from the proper authority. The following judicial officers have the statutory authority to issue arrest warrants:
 - i. Justices of the Supreme Judicial Court, the Superior Court, and the District Court Departments; and
 - ii. A Clerk/Magistrate, Assistant Clerk/Magistrate, Temp Clerk/Magistrate, or Temporary Assistant Clerk/Magistrate of a District Court Department.¹²
 - e. An arrest warrant may be issued in any case except where the accused is a juvenile less than twelve years of age, in which case a summons is the appropriate mechanism.¹³
3. Prior to serving an arrest warrant, an officer should examine it carefully to determine what the officer's powers are under it and whether:
- a. It clearly names and describes the person to be arrested or, if his/her name is unknown, any name or description by which [s]he can be identified with reasonable certainty;¹⁴
- NOTE: A so-called "John Doe" warrant without a further satisfactory and sufficient description is unlawful and void.¹⁵
- b. The officer is authorized to serve it; and
 - c. It clearly describes the offense for which the arrest is to be made.
- NOTE: The warrant shall recite the substance of the offense charged and it shall command that the defendant be arrested and brought before the court.
4. A person arrested on a warrant, or otherwise taken into custody by a police officer, has a right to know the true grounds for such arrest.

- a. The officer need not have the warrant in his/her possession at the time of arrest; however, upon request [s]he shall show the warrant to the arrestee as soon as possible.¹⁶ A printout of a warrant from CJIS shall constitute a true copy of the warrant.¹⁷
 - b. If the officer does not have the warrant in his/her possession at the time of arrest, [s]he shall inform the arrestee that a warrant has been issued and of the offense charged.¹⁸
 - c. If the officer does not then know of the offense charged, [s]he shall inform the arrestee thereof Within a reasonable time after the arrest.¹⁹
5. After the warrant has been executed, the officer-in-charge shall ensure that the warrant is located on CJIS/WMS.²⁰
 6. Warrants Issued by Other Jurisdiction
 - a. OTHER COUNTY: When a person subject to a warrant issued by another county is arrested, [s]he shall be brought before a court of the county where the arrest was made in order to be admitted to bail.²¹
 - b. OTHER STATE: A person who is the subject of an out-of-state warrant may not be arrested in Massachusetts on that warrant. Rather, a warrantless arrest shall be made on a Massachusetts Fugitive from Justice charge.

C. Arrests Without a Warrant

1. Warrantless arrests merit much more detailed study because of the subjective factors involved. If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful and any evidence seized may be declared inadmissible. Any confession or admission made by the person arrested may also be excluded, if made after an unlawful arrest.
2. *Lawful Authority*

An arrest without a warrant may be lawfully made when certain circumstances exist:

- a. **FELONY:** For a felony committed in the officer's presence or on probable cause that a felony has been committed.
- b. **MISDEMEANOR:**
 - i. For a misdemeanor committed in the officer's presence and causing or threatening to cause a breach of the peace which is continuing or only briefly interrupted; or
 - ii. For a misdemeanor not amounting to a breach of the peace committed in the officer's presence when such arrest is authorized by statute; or
 - iii. For certain misdemeanors for which arrest is allowed even though such misdemeanors were not committed in the officer's presence.

3. *Probable Cause*

- a. In addition to having lawful authority, it is required under the Fourth Amendment that a police officer have "probable cause" in order to make a valid arrest without a warrant.²² [See definition of "probable cause" in definitions section.]
- b. The element of probable cause must exist at the time of arrest. Subsequent events or information acquired later cannot be used to justify that arrest.²³
- c. The information upon which an officer relies in making an arrest must be more than just rumor or mere suspicion, but it does not require sufficient evidence to justify a conviction.²⁴ It does require a reasonable, common sense approach by a police officer and an honest judgment based upon a combination of factors, any of which standing alone might not be enough to justify an arrest but which, if viewed as a whole, constitute probable cause.

- d. Probable cause to make an arrest is always an overriding consideration for every police officer. Whether or not an arrest is based on probable cause will depend on a variety of factors, and unless the offense is committed in the officer's presence, usually no single fact alone is controlling. Therefore, the totality of circumstances surrounding the arrest is of great importance. Each officer should be aware of the following types of circumstances which have been looked to in establishing probable cause:
- i. Direct observations of the police officer;
 - ii. Knowledge of the prior criminal record or criminal activity of the person arrested;²⁵
 - iii. Flight accompanied by other factors;²⁶
 - iv. Evasive answers and/or conflicting stories;²⁷
 - v. Time of day or night;²⁸
 - vi. History of criminal activity in the particular area;²⁹
 - vii. Experience of the officer applied to observations and firsthand information;³⁰ and
 - viii. Reliable hearsay.³¹
- f. HEARSAY: Hearsay statements often present problems in establishing probable cause and also evidentiary problems during trial. Usually, they are derived from three principal sources:
- i. Statements from the victims and/or witnesses;
 - ii. Statement from other police officers;
 - iii. Statements from informants.
- [a] It is this source that is most closely scrutinized when used to establish probable cause. An officer relying on the hearsay statement of an informant must:

- (1) Show the circumstances establishing the reliability of the informant; and
- (2) Show the circumstances establishing the reliability of the informant's information.³²

D. Extra-Territorial Arrest

1. Other than constitutional safeguards, the other major constraint on the power of arrest is jurisdictional. Generally, the power to arrest ceases at the boundaries of the officer's city or town. Where an officer has been appointed and sworn as a "special police officer" in another (often neighboring) jurisdiction, [s]he has arrest powers in that community as well. However, there are four instances in which an officer may make "extra-territorial" arrests, that is, arrests outside the limits of the city or town where [s]he has been appointed.
2. FRESH PURSUIT IN STATE: An officer may "on fresh and continued pursuit", pursue and arrest an offender in any other city or town in Massachusetts if:³³
 - a. The offense is one for which a warrantless arrest is authorized; and
 - b. The offense was committed in the officer's presence; and
 - c. The offense was committed in the officer's jurisdiction (city or town).
3. MUTUAL AID: If there is a mutual aid agreement in effect between his/her city or town and the city or town to which [s]he has been assigned under the mutual aid agreement, an officer may exercise the same authority in such city or town as [s]he exercises in his/her own city or town.³⁴
4. INTERSTATE FRESH PURSUIT: An officer may "on fresh pursuit" pursue and arrest a person who has committed a felony in Massachusetts and may pursue and arrest such person in any other state if that other state has in force

similar interstate felony fresh pursuit laws.³⁵ (New York and all New England states have such laws).

5. CITIZEN'S ARREST: An officer may exercise his/her citizen's arrest powers. For example, any citizen may make an arrest for a felony if a felony has, in fact, been committed. When a police officer exercises a citizen's arrest powers outside his/her jurisdiction, [s]he need only have probable cause to believe that a felony has been committed and that the person arrested committed it.³⁶ Such citizen's arrest powers may be exercised in another state.³⁷

E. Arrests in Dwellings

1. *Service of Warrant At Dwelling of Named Person*

- a. Police officers may enter the dwelling of a person named in an arrest warrant.
- b. An officer may enter a suspect's home to serve an arrest warrant without obtaining a search warrant, provided there is reason to believe the suspect is there.
- c. To serve an arrest warrant on private property, police officers should first knock and announce their authority and purpose (unless the warrant issued is a "No Knock and Announce Warrant") and wait a reasonable period to be admitted.³⁸
- d. Once a reasonable time has passed and the officers have not been voluntarily admitted, and there is reasonable cause to believe that the wanted person is on the premises, officers may use whatever force is reasonably necessary to gain entrance.³⁹

NOTE: The least amount of force that will accomplish an entrance should always be used.

- e. DISPENSING WITH ANNOUNCEMENT: If the police officers reasonably believe that announcing their presence and purpose will endanger themselves or others, or will result in the escape of the wanted person or the destruction of evidence, they may dispense with the announcement of authority and purpose.⁴⁰

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 - i. In such cases, they may attempt to deceive the suspect into voluntarily opening the door, or gain entrance by a ruse, if this will result in a safe and successful apprehension with less destruction of property or risk of harm to persons.
 - ii. Massachusetts has given recognition to a "Useless Gesture" exception, at least in the narrow situation where the facts known to the officers would justify them in being virtually certain that the occupant already knows the police officers' identity and purpose.⁴¹ Further, violation of the "no-knock" rule may require that the evidence which has been seized, be suppressed.⁴²
- f. NO KNOCK WARRANT: If at the time police make application for an arrest warrant, they reasonably believe that dispensing with the knock and announce rule may be necessary, they should so inform the magistrate, give their reasons, and ask that the arrest warrant be marked "No Knock and Announce Warrant".
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 - i. Valid reasons for requesting a "No Knock and Announce Warrant" would include a reasonable belief that the suspect would escape, or would resist violently if not taken quickly and by surprise or that evidence or contraband would be destroyed if the police have to knock and announce their presence.⁴³
 - ii. A defendant is entitled to suppression of the evidence seized to a "no-knock" search where the officer had knowledge or information available that would have justified dispensation with the rule, but had not presented the evidence to the issuing magistrate.⁴⁴
 - iii. However, when the police seek to execute the no knock and announce warrant, they must reappraise the situation at that time. If the reason or circumstance that justified issuance of the no knock and announce warrant is no longer

present, then they must follow the normal knock and announce procedure.⁴⁵

2. *Service of Arrest Warrant at the Dwelling of a Party Not Named in the Warrant*

- a. If police seek to arrest a person in someone else's dwelling must obtain a search warrant unless;⁴⁶
 - i. Lawful consent to enter is granted; or
 - ii. Exigent circumstances are present which excuse the failure to obtain a search warrant.
- b. Exigent or emergency circumstances necessary to excuse the failure to obtain a warrant before entering a dwelling to make an arrest, are determined by the following factors:
 - i. The crime was one of violence or a showing that the suspect is armed;
 - ii. There is a clear demonstration of probable cause to arrest;
 - iii. There is strong reason to believe the suspect is in the dwelling;
 - iv. The likelihood that the suspect would escape if not apprehended immediately;
 - v. Whether the entry can be made peaceably; and/or
 - vi. Whether the entry would be in the nighttime (or could be made in the daytime when clerk/magistrates are more readily available).

3. *Warrantless Arrest in Dwelling*

- a. Police officers should first determine whether a warrantless entry and arrest is allowed by law. Generally, no arrest warrant (or search warrant) is required to arrest a person who is in public. However,

with regard to making an entry into and arrest in a dwelling, the following standards apply:

- i. If the arrest pursuit was set in motion in public, the officer may make a hot pursuit warrantless entry into a private dwelling if the suspect runs into the dwelling.
- ii. If the police seek to arrest a person in that person's own dwelling they must obtain an arrest warrant unless:
 - [a] Lawful consent to enter is granted; or
 - [b] Exigent circumstances are present which excuse the failure to obtain an arrest warrant.
- iii. If the police seek to arrest a person in someone else's dwelling they must obtain a search warrant unless:
 - [a] Lawful consent to enter is granted; or
 - [b] Exigent circumstances are present which excuse the failure to obtain a search warrant.

F. Police Discretion to Arrest [1.2.6, 1.2.7]

1. Although police officers must always be guided by the intent and purpose of the law, there are limited circumstances in the discretion of the officer involved when the public interest would be better served by not making an arrest, even though there is legal justification for such action.
2. Arrest alternatives include: citations, summonses, informal resolutions, warnings, and referrals to other agencies. Circumstances where alternatives to arrest may be appropriate include the following:
 - a. When an arrest could aggravate community conflict or possibly precipitate a serious disorder.

- b. When there is a greater priority to respond to a more serious crime or to an urgent public emergency.
- c. In neighborhood quarrels, noisy parties, landlord-tenant problems and minor disturbances of the peace where no serious crime has been committed and the officer can successfully act as a mediator.
- d. In minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance. See departmental policy on *Handling Juveniles*.
- e. In other minor offenses where a summons can effectively accomplish the intended purpose.
- f. Minor motor vehicle offenses. See departmental policy on *Traffic*.

G. Officer Safety

1. Arresting officers should not act in a careless or routine manner. They should take all necessary steps to ensure their own personal safety and that of the public and to secure destructible evidence. Such steps shall include, but are not limited to:
 - a. Obtaining assistance when necessary whether before or after the arrest. This is particularly advisable when:
 - i. There is more than one person to be arrested;
 - ii. A dangerous crime is involved, usually a felony of a serious nature; or
 - iii. Prior experience has shown the need for assistance in particular situations.
 - b. Searching for and seizing any instruments capable of inflicting serious bodily injury or causing death, and evidence of any crime;
 - c. Making a search of the area within the immediate reach and control of the persons arrested for weapons or destructible evidence; and

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- d. Keeping the persons arrested in control and in view of the officer at all times. If more than one officer is present, the additional officer shall not pass or position himself/herself between the arresting officer and the person arrested.

H. Following Arrest

1. Once an arrest is made, it is the responsibility of the arresting officer or officers to ensure that arrestees do not injure themselves or others, and that they do not escape or dispose of evidence.
 2. At the time of arrest, a "search incidental to arrest" shall be conducted in accordance with the departmental policy on *Searches and Seizures*.
 3. At the time of arrest, unnecessary conversation should be avoided and any orders or statements to the persons arrested should be clear and brief.
 4. Persons arrested shall be given the Miranda warnings prior to interrogation or any questioning likely to elicit an incriminating response. (See departmental policy on *Interrogating Suspects and Arrestees*.)
 - a. The warnings shall be read from a card or other permanent record of them to ensure that none are omitted. This procedure is beneficial for other reasons:
 - i. The card itself can later be introduced as evidence;
 - ii. Officers have tangible proof that they have not relied solely on memory;
 - iii. The suspect can also be permitted to read the card.
 - b. Each officer giving the warning shall ask and verify that the person arrested has heard and understood the warnings so given.
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- c. No questioning of arrested persons shall take place until these warnings have been given. However, if suspects freely choose to divulge information without questioning there is no violation of rights simply because they were not given these warnings. There is no requirement that an officer prevent suspects from continuing to talk. Whenever statements are made voluntarily and with no compulsion, such statements shall be noted and incorporated as part of the officer's official report. However, if an officer wishes to gain further information through questioning, the warnings shall be given before pursuing the matter further.
5. See department policy on *Handling Juveniles* when a person under the age of seventeen is arrested.
6. The persons arrested shall be handcuffed and promptly and safely transported to the station house in accordance with the departmental policy on *Transportation of Prisoners*.
7. Upon arrival at the station house, the persons arrested shall be booked and processed in accordance with the departmental policy on *Detainee Processing*.
8. REPORTS: Arresting officers will make a full and complete report of any arrests made, with or without warrants, in accordance with standard department procedures.

¹See, 6A C.J.S. "Arrest" §4

² *Beck v. Ohio*, 379 U.S. 89, 85 S. Ct. 223 (1964); *Com. v. Crawford*, 410 Mass. 75, 571 N.E.2d 7 (1991); *Com v. Motta*, 424 Mass. 117, 676 N.E.2d 795 (1997)

³ M.G.L. c. 274, s. 1

⁴ Id.

⁵ See 11 C.J.S. "Breach of the Peace" §1

⁶ *Mass. General Hospital v. Revere*, 385 Mass. 772, 434 N.E.2d 1851 (1982), *rev. on other grounds*, 463 U.S. 239 (1983); *Com v. Cook*, 419 Mass. 192, 644 N.E.2d 203 (1994)

⁷ See *Com v. Klein*, 372 Mass. 823, 363 N.E.2d 1313 (1977)

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- 8 *Com. v. Moreira*, 388 Mass. 596, 447 N.E.2d 1224 (1983)
- 9 *Com. v. Baldassin* 357 Mass. 670, 260 N.E.2d 150 (1970)
- 10 M.G.L. c. 276, s. 23
- 11 M.G.L. c. 276, s. 21
- 12 M.G.L. c. 318, s. 32
- 13 M.G.L. c. 119, s. 54
- 14 *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963)
- 15 *Com. v. Crotty*, 92 Mass. 403 (1865)
- 16 Mass. Rules of Crim. Proc. 6(c)(3)
- 17 M.G.L. c. 276, s. 23A
- 18 *Id.*
- 19 *Id.*
- 20 *Id.* at 6(c)(4)
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- 21 M.G.L. c. 276, s. 29
- 22 *See Whren v. U.S.*, 116 S. Ct. 1769 (1996)
- 23 *Beclv. U.S.*, 385 U.S. 293, 87 S. Ct. 408 (1966); *Com. v. Bottari*, 395 Mass. 777, 482 N.E.2d 321 (1985)
- 24 *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963); *Com. v. Stevens*, 361 Mass. 885, 283 N.E.2d 673 (1972). *Com. v. Roman*, 414 Mass. 642, 609 N.E.2d 1217 (1993)
- 25 *Com. v. Rossem* 349 Mass. 626, 211 N.E.2d 658 (1964); *Com. v. Silva*, 366 Mass. 402, 359 N.E.2d 942 (1974)
- 26 *Won Sun v. U.S.*, 371 U.S. 471. 83 S. Ct. 407 (1963); *Com. v. Thibeau*, 384 Mass. 762, 429 N.E.2d 1009 (1981)
- 27 *U.S. v. Brown*, 457 F.2d 731 (1st Cir. 1972); *Com. v. Chaisson*, 358 Mass. 587, 266 N.E.2d 311 (1971)
- 28 *Com. v Ellis*, 365 Mass. 574, 254 N.E.2d 408 (1970)
- 29 *Com. v. Mercado*, 422 Mass. 367, 773 N.e.2d 243 (1996); *Com. v. Doulette*, 32 Mass. App. Ct. 506, 609 N.E.2d 473 (1992)
- 30 *Com. v. Mitchell*, 353 Mass. 426, 233 N.E.2d 205 (1967); *Com. v. Santaliz*, 413 Mass. 238, 596 N.E.2d 337 (1992)
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- ³¹ *Draper v. U.S.*, 358 U.S. 307, 79 S. Ct. 329 (1959)
- ³² See *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509 (1964); *Spinelli v. U.S.*, 393 U.S. 410, 89 S. Ct. 584 (1969); *Com. v. Frazier*, 410 Mass. 235, 571 N.E.2d 1356.
- 33M.G.L. c. 41, s. 98A
- 34M.G.L. c. 40, s. 8G
- ³⁵ In Massachusetts, see M.G.L. c. 276, ss. 10A-10D (The Uniform Extraterritorial Arrest on Fresh Pursuit Law)
- ³⁶ *Com. v. Claiborne*, 423 Mass. 275, 667 N.E.2d 873 (1996); *Com. v. Hanis*, 11 Mass. App. Ct. 165, 415 N.E.2d 216 (1981)
- ³⁷ *Com. v. Hanis*, 11 Mass. App. Ct. 165, 415 N.E.2d 216 (1981); *Com. v. Gullick*, 386 Mass. 278, 435 N.E.2d 348 (1982); *Com. v. Dise*, 31 Mass. App. Ct. 701, 583 N.E.2d 271 (1991)
- ³⁸ *Com. v. Antwine*, 417 Mass. 637, 632 N.E.2d 818 (1994)
- ³⁹ *Com. v. Reynolds*, 120 Mass. 190 (1876)
- ⁴⁰ *Com. v. Allen*, 22 Mass. App. Ct. 413, 494 N.E.2d 55 (1990)
- ⁴¹ *Com. v. Gondola*, 28 Mass. App. 286, 550 N.E.2d 880 (1990); *rev. den'd* 407 Mass. 1103, 554 N.E.2d 1214 (1990)
- ⁴² *Com. v. Gomes* 408 Mass. 43, 556 N.E.2d 100 (1990)
- ⁴³ *U.S. v. Ramirez*, 523 U.S. 65 (1998)
- ⁴⁴ *Com. v. Gomes*, 408 Mass. 43, 556 N.E.2d 100 (1990)
- ⁴⁵ *Com. v. Scalise*, 387 Mass. 413, 439 N.E.2d 818 (1982)
- ⁴⁶ *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642 (1967); *Com. v. DeRosia*, 402 Mass. 284, 522 N.E.2d 408 (1988)
- ⁴⁷ *Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371 (1980); *Steagald v. U.S.*, 451 U.S. 204, 101 S. Ct. 1642 (1981); *Com. v. Forde*, 367 Mass. 798, 329 N.E.2d 717 (1975)
- ⁴⁸ *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642 (1967); *Com. v. DeRosia*, 402 Mass. 284, 522 N.E.2d 408 (1988)

EYEWITNESS IDENTIFICATION

POLICY & PROCEDURE NO. 1.12	ISSUE DATE:
	EFFECTIVE DATE:
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: none	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

Police identification procedures are an important consideration for establishing the identity of a criminal offender. They are equally significant in clearing an innocent suspect. The police must, therefore, be careful to ensure that their eyewitness identification procedures are not conducted in an unnecessarily or impermissibly suggestive manner and that they do not contribute to mistaken identification.!

The identification of criminal offenders must be approached with extreme caution as the court may exclude evidence if it is improperly obtained. If improper identification procedures are used, a court may not only exclude the out-of-court identification, but can also, in certain circumstances, exclude subsequent in-court identification. The court will carefully examine the identification procedure and the manner in which it was conducted to determine whether the police influenced the witness, intentionally or unintentionally.

II. POLICY

It is the policy of this department that:

- A. Persons subjected to procedures which are intended to lead to the identification of persons who are suspected of or charged with criminal offenses are afforded their Sixth Amendment right to counsel, when required.
- B. The Due Process provisions of the Fifth and Fourteenth Amendments, which require identification procedures utilized by the police to comply

with standards of fairness so as not to be unduly suggestive, are observed.

III. DEFINITIONS

- A. *Show-up*: The presentation of one suspect to an eyewitness in a short time frame following the commission of a crime.
- B. *Photo Array*: The showing of several photographs of different individuals to an eyewitness for the purpose of obtaining an identification.
- C. *Lineup*: The presentation of a number of individuals to an eyewitness for the purpose of obtaining an identification.
- D. *Voice Lineup*: The presentation of a number of individuals to a witness for the purpose of obtaining an identification of a suspect's voice.

IV. PROCEDURES

A. *Right to Counsel During Identification Procedure*

- 1. There is no requirement for an attorney to be present when an identification in the field is made of a suspect who has been apprehended during the period immediately after the commission of a crime. Immediately is generally considered to be within two hours.
- 2. There is no right to counsel under circumstances where an identification takes place accidentally, i.e., in a manner that was not contrived, planned, or anticipated by the police.
- 3. There is no right to counsel for identification procedures involving photographs or composite drawings, whether conducted before or after the initiation of adversarial criminal proceedings.
- 4. Right to counsel begins when any "adversarial judicial proceeding" has been initiated "whether commenced by way of formal charge, preliminary hearing, indictment, information, or arraignment." 2
 - a. Once a suspect has been arraigned or indicted, his/her right to have counsel present at any in-person identification procedure attaches.
 - b. No right to the presence of counsel exists prior, or simply because a complaint has been filed, even if an arrest warrant has issued.
 - 1) If counsel is present or readily available, it may be advisable to have counsel present, unless doing so will seriously delay the police investigation.
 - 2) The presence of the suspect's attorney may contribute to a more fair and objective identification proceeding.

Eyewitness Identification

- 3) If counsel fails to object to certain aspects of the identification when it is conducted, the suspect may be held to have waived any objection later at a court proceeding.

B. Due Process Considerations

1. Due process requirements dictate that identifications be conducted in a fair, objective, and non-suggestive manner. Due process considerations are violated when identification procedures arranged and/or conducted by the police are so unnecessarily suggestive and conducive to irreparable mistaken identification as to deny the defendant due process of law.³
2. In determining whether a specific identification procedure is unnecessarily suggestive, all of the circumstances surrounding the procedure must be considered.
3. The factors which will influence the court's determination of whether a specific identification procedure was unduly or unnecessarily suggestive include:
 - a. Whether police conduct was reasonable in light of the circumstances, e.g., suspect under arrest or only temporarily detained;
 - b. Amount of time between incident and identification;
 - c. Isolation of the suspect; whether the suspect is singled out in some manner;
 - d. Whether the police communicated to the witness their belief that the suspect committed the crime for which identification is sought to be made;
 - e. Whether the suspect is viewed by two or more witnesses simultaneously;
 - f. Existence of police urging witness to make identification; and
 - g. Existence of any exigency.

C. Show-up Identification

1. PROMPTNESS
 - a. Show-up identification procedures are a common police tool and should be used:
 - 1) Promptly after a crime has been committed where it is essential to an on-going police investigation; or
 - 2) Under exigent circumstances, such as the near death of the only available witness.

- b. Show-ups allow a witness to view a suspect while the memory is fresh.
- c. A show-up may be as likely to clear an innocent person as it is to identify a guilty one.

2. FAIRNESS

- a. Every field show-up or other one-on-one confrontation between a suspect and a witness that is arranged by the police must be as fair and non-suggestive as possible.⁴
- b. There is no requirement that an attorney be present.⁵

3. DETAINING THE SUSPECT

- a. A suspect may consent to a show-up.
- b. A person may be stopped and detained pursuant to a valid threshold inquiry. See department policy on ***Stop, Frisk and Threshold Inquiries***.

4. LOCATION OF THE SHOW-UP

- a. Bringing the Suspect to the Victim
 - 1) The suspect may be transported to the victim's location.⁶
 - 2) Although more intrusive than bringing the witness to the suspect, it is permissible if reasonable for the circumstances.
 - a) It is recommended that the suspect not be brought back to a crime scene. The crime scene may be contaminated by the suspect's presence.
 - b) DNA, hairs, or other trace evidence may be left at the scene by the suspect being brought there by police.
 - 3) A suspect should not be brought to the residence of a victim or witness.
- b. Bringing the Witness to the Suspect
 - 1) Transporting the witness to the suspect's location is the preferred method.
 - 2) Detention for a threshold inquiry is less intrusive and suggestive than detention and transportation.
- c. Field Views: Officers may transport victims or witnesses in police vehicles to cruise the area where a crime has just occurred in order for them to attempt to point out the perpetrator.⁷
- d. Emergencies: When a show-up identification is arranged in an emergency situation, where a witness or a victim is in imminent danger of death or in critical condition in a hospital, and the

Eyewitness Identification

circumstances are such that an immediate confrontation is imperative, the emergency identification procedure shall be conducted in an appropriate manner consistent with the following:

- 1) Seek the permission of the hospital authorities or the patient's own physician to conduct the identification.
- 2) Emergency identifications are subject to the fundamental requirements of fairness and must not be tainted by any suggestive remarks or gestures by the police.

5. SHOW-UP

a. Police Actions

- 1) Police officers must not do or say anything that might convey to the witnesses that:
 - a) The suspect has admitted guilt;
 - b) Stolen property has been recovered;
 - c) Physical evidence has been seized; or
 - d) Officers believe that the suspect is guilty.
- 2) Officers shall caution the witness that the subject may not be the offender.

b. Viewing the Suspect

- 1) The suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses.
 - a) Witnesses who have viewed the suspect should not be permitted to communicate with those who have not.
 - b) The same suspect should not be presented to any witness more than once.
- 2) Where multiple witnesses are available to identify the subject, officers should permit the subject to be identified by only one or two witnesses. Once one or two witnesses have identified the subject, further identifications should be attempted by means of a photo array or lineup. The multiple methods of identification will provide corroboration.

- c. Caution: Clothing or articles found at the crime scene should not be placed on or in contact with a suspect.

6. REPORTS

- a. A report of every attempted show-up, whether an identification is made or not, shall be submitted.

- b. Officers shall make written notes of any identification and any statements made by witnesses at the time of show-up with the suspect. Officers should be particularly 'alert to note any spontaneous exclamations.
- c. Once a witness has indicated his/her opinion regarding the identity of the subject, the officer should ask the witness how certain [s]he is of the identification.
 - 1) Officers should not ask the witness to use a numerical scale, but rather encourage him/her to indicate certainty in his/her own words.
 - 2) All statements by the witnesses should be incorporated into the officer's report.
- d. All significant circumstances should be reported, including the time, place, and all persons present at the scene of the show-up.

D. Photographic Identification

1. GENERALLY

- a. The use of photographs to establish or verify the identity of a criminal offender is a valuable investigative procedure. Although there is no right to an attorney during a photographic identification procedure, the same due process considerations requiring the procedure to be fair, objective, and non-suggestive apply.⁸
- b. Photographs for identification purposes should be displayed to witnesses as soon as possible after the commission of a crime. This is when their memory is still fresh and the opportunity for a positive identification is at its greatest.

2. CREATING A PHOTO ARRAY

- a. Place the suspect's photograph in a group of at least six other similar type photographs of individuals (commonly referred to as "fillers").
 - 1) Fillers should be reasonably similar in age, weight, and general appearance.
 - 2) The goal in building the array is not to select filler photographs that look like the suspect, but rather ones that fit the description given by witnesses.
 - 3) Avoid using fillers that so closely match the suspect that a person familiar with the suspect would have difficulty distinguishing the fillers.

Eyewitness Identification

- 4) If the subject has an unusual feature, such as a facial scar or disfiguration, attempt to select some fillers with the same type of feature, or artificially add or conceal the feature.
- 5) Do not include more than one photograph of the same person.
- b. Try to use photographs of the same size and basic composition.
 - 1) It is preferable to avoid mixing color and black and white photographs.
 - 2) Avoid mixing mug' shots with other images.
3. INSTRUCTIONS TO VICTIM/WITNESS
 - a. The officer should carefully instruct the witness prior to showing him/her the array.
 - b. Preferably, the instructions should be read from a departmental form (Photo Array Instruction Form, Appendix B), and the witness should be asked to sign the form indicating that [s]he understands the instructions.
 - c. The officer shall also sign and date the form.
4. SHOWING A PHOTO ARRAY
 - a. Another officer should actually show the photographs.
 - b. If possible, the officer should be unaware of which photograph depicts the suspect.
 - 1) This technique, called blind administration, has been recommended by the National Institute for Justice, and is intended to ensure that the witness does not interpret a gesture or facial expression by the officer as an indication as to the identity of the suspect.
 - 2) The technique also allows the prosecution to demonstrate to the judge or jury at trial that it was impossible for the officer showing the photographs to indicate to the witness, intentionally or unintentionally, which photograph [s]he should select.
 - 3). The investigating officer should either leave the room while the array is being shown by the second officer, or should stand back where the witness will not see him/her.
 - 4) If an investigating officer is present when a second officer is showing an array, [s]he must remain completely silent.
 - c. When showing photographs to a witness:
 - 1) The officer should show them one at a time to the witness.

- 2) The officer should ask the witness simply whether or not [s]he recognizes the person, and tell the witness to take his/her time.
 - 3) When the witness signals for the next photograph, the officer should move the first photograph so that it is out of sight and ask the witness whether [s]he recognizes the next photograph.
 - 4) The procedure should be repeated until the witness has viewed each photograph, or until the witness identifies a subject.
 - 5) If the witness identifies a subject before all the photographs have been viewed,- the officer should ask the witness whether [s]he wishes to view more photographs.
- d. If a witness asks to view the array a second time, the officer administering the identification should ask the witness if [s]he was able to make an identification from the original viewing.
- 1) If the witness is unable to make an identification, but feels that it would be helpful to repeat the procedure, then it is permissible to show the photographs a second time.
 - a) In such a case,. the photographs shall be shown to the witness in a different order.
- e. Once a witness has identified a suspect, the officer should ask the witness how certain [s]he is of the identification.
- 1) Officers should not ask the witness to use a numerical scale, but rather encourage him/her to indicate certainty in his/her own words.
 - 2) All statements by the witnesses should be incorporated into the officer's report.
 - 3) The witness should be asked to initial and date the back of the photograph selected.
- f. In order to ensure the fairness of the procedure and to enhance the reliability of in-court identification, the photo array should be preserved in the same configuration as when the identification was made, together with full information about the identification process.
5. REPORTING
- a. A report of every photo array, whether an identification is made or not, shall be submitted. The report shall include:
 - 1) A summary of the procedure;
 - 2) The persons who were present;

Eyewitness Identification

- 3) Instructions given to the witness by the officer (this should be accomplished by attaching the Photo Array Instruction Form to the report);
 - 4) Any statement or reaction by the witness; and
 - 5) Any comments made by the witness regarding the identification procedure.
- b. When an investigation has failed to identify a suspect, it may be advisable to have those eyewitnesses who had a good opportunity to clearly observe the criminal offender come to the police station to look through photographic files. However, officers should not resort to this procedure until other investigative avenues have been exhausted.
- 1) Remove or hide any information on the photographs that might in any way influence the witness.
 - 2) Ensure that the files contain only one photograph of each individual and that the photographs are reasonably current.
 - 3) Do not refer to the photographs as "mug shots."
 - 4) If photographs of various formats are used, ensure that several of each format are used.
 - 5) Permit the witness to look at a number of photographs before making his/her selection.
 - 6) Do not call to the attention of the witness any particular photograph.
 - 7) A report shall be filed following the procedure, regardless of whether an identification is made. The report should describe the photographs viewed by the witness(es).
 - 8) Officers should be extremely cautious before charging a subject based on this type of identification alone.

E. Lineup Identification

1. GENERALLY

- a. All police lineups for possible eyewitness identification should be conducted under the direction of the Detective Bureau, and, when feasible, after consultation with the District Attorney's office.
- b. A suspect cannot be detained and compelled to participate in a lineup without probable cause to arrest.⁹

2. SUSPECT RIGHTS

- a. Before any suspect who has been arraigned or indicted is shown to eyewitnesses in a lineup, the suspect must be specifically informed of:
 - 1) His/her right to have an attorney present at the lineup; and
 - 2) His/her right to be provided with an attorney without cost if [s]he is unable to afford such legal counsel.
- b. Unless a valid waiver is voluntarily and knowingly made, in writing if possible, no such identification may proceed without the presence of the suspect's attorney.¹⁰
- c. A suspect has no right to have counsel present at a lineup if [s]he has not been arraigned or indicted.
- d. If the suspect has a right to have an attorney present, permit him/her to call for his/her own attorney or take him/her to court so that an attorney may be appointed.
- e. If an attorney has been retained by the suspect or appointed by the court, such attorney shall be notified of the time and place of the identification procedure and the circumstances relating to the offense charged.
- f. If the suspect knowingly and voluntarily waives his/her right to have an attorney present (preferably in writing), the lineup may then be held with every effort to ensure that the suspect is protected from any prejudicial procedures.

3. REFUSAL TO PARTICIPATE IN A LINEUP

- a. After a person has been arrested, [s]he may be required to participate in a lineup regarding the crime for which [s]he was arrested.¹¹
- b. A suspect may lawfully refuse to participate in a lineup only if [s]he has a right to have counsel present (post arraignment/indictment) and the counsel is absent through no fault of the suspect or his/her attorney.
 - 1) If the suspect refuses to participate:
 - a) [S]he should be informed that [s]he has no legal right to do so and that his/her refusal can be used as evidence against him/her in court.
 - b) If the suspect refuses to participate in the lineup, arrangements may be made for an alternative identification procedure.

Eyewitness Identification

- c) In serious criminal cases, the District Attorney's office may be asked to apply for a court order to compel the suspect to participate in a lineup.

4. PREPARING THE LINEUP

- a. Select a group of at least five or six other persons who fit the description of the subject as provided by the witness(es).
 - 1) The goal in building the lineup is not to select fillers that look like the suspect, but rather ones that fit the description given by witnesses.
 - 2) Avoid using fillers that so closely match the suspect that a person familiar with the suspect would have difficulty distinguishing the fillers.
 - 3) If the subject has an unusual feature such as a facial scar or disfiguration, attempt to select some fillers with the same type of feature, or artificially add or conceal the feature.
- b. Do not display a suspect in any lineup that is not suitable and properly composed.
- c. Advise the accused that [s]he may take any position in the lineup that [s]he prefers and may change positions prior to being viewed by each new witness.
- d. If there are two or more suspects of a particular crime, present each suspect to witnesses in separate lineups. Different fillers should be used to compose each lineup.
- e. The witness shall view the suspect and fillers one at a time. The line-up shall be set up in such a way so that the participants who are not being viewed by the witness are out of sight.
- f. All persons in the lineup must be numbered consecutively and be referred to only by number.
- g. A complete written record of the lineup proceedings shall be made and retained, including the name of each lineup participant.
- h. The entire lineup procedure shall be recorded, photographed, or videotaped for possible future court presentation.

5. SUSPECT'S ATTORNEY

- a. When an attorney for the suspect is present, the attorney should be permitted to make reasonable suggestions regarding the composition of the lineup and the manner in which it is to be conducted. Any suggestions made by the suspect's attorney should be included as part of the lineup report.

- b. Allow counsel representing the accused sufficient time to confer with his/her client prior to the lineup.
- c. Once the lineup is commenced, the suspect's attorney should function primarily as an observer and [s]he should not be permitted to converse with the lineup participants, or with the witnesses, while the lineup is underway.
- d. The suspect's attorney at a lineup is not entitled to hear any discussions between a witness and the police.
- e. The suspect's attorney is not legally entitled to the names or addresses of the witnesses attending a lineup if the suspect has not yet been arraigned or indicted.¹² If an attorney in such a situation insists on having information about lineup witnesses, advise him/her to direct his/her request to the District Attorney's office.

6. INSTRUCTIONS FOR THE WITNESS

- a. The officer should carefully instruct the witness prior to showing him/her the lineup.
- b. Preferably, the instructions should be read from a departmental form (Lineup Instruction Form, Appendix A), and the witness should be asked to sign the form indicating that [s]he understands the instructions.
- c. The officer shall also sign and date the form.

7. CONDUCTING THE LINEUP

- a. Ensure that witnesses are not permitted to see the accused or shown any photographs of the accused immediately prior to the lineup.
- b. Ensure that only one witness views the lineup at a time and that witnesses are not permitted to speak with one another during the proceedings.
- c. Scrupulously avoid using statements, clues, casual comments, or providing unnecessary or irrelevant information that in any manner may influence the witness' decision-making process or perception.
- d. If possible, the officer should be unaware of which person in the lineup is the suspect.
 - 1) This technique, called blind administration, has been recommended by the National Institute for Justice, and is intended to ensure that the witness does not interpret a gesture or facial expression by the officer as an indication as to the identity of the suspect.

Eyewitness Identification

- 2) The technique also allows the prosecution to demonstrate to the judge or jury at trial that it was impossible for the officer showing the lineup to indicate to the witness, intentionally or unintentionally, which person [s]he should select.
 - a) The investigating officers may be present during the line-up, but must position themselves in such a way that they cannot be seen by the witness(es).
 - b) If an investigating officer is present, [s]he must remain completely silent while the witness is viewing the lineup.
 - e. The witness shall view the suspect and fillers one at a time. The participants who are not being viewed by the witness should be out of sight.
 - f. Make a written notation of any identification made (or any failure to make an identification), including any spontaneous exclamation or reaction by a witness, and any comments made by the witness regarding the identification procedure.
 - 1) Once a witness has indicated his/her opinion regarding the identity of the subject, the officer should ask the witness how certain [s]he is of the identification.
 - 2) Officers should not ask the witness to use a numerical scale, but rather encourage him/her to indicate certainty in his/her own words.
 - 3) All statements by the witnesses should be incorporated into the officer's report.
 - g. During a lineup, each participant may be directed to wear certain clothing, to put on or take off certain clothing, to take certain positions or to walk or move in a certain way.¹³
 - 1) If officers are to ask the participants to wear an article of clothing, they must guard against circumstances where the article only fits the suspect.
 - 2) All lineup participants shall be asked to perform the same actions.
 - 3) Each lineup participant may also be directed to speak for voice identification purposes. See **Voice Identification** in this policy.
8. REPORTING
- a. A report of every lineup, whether an identification is made or not, shall be submitted.
 - b. The report shall include a summary of the procedure, the persons who were present for it, instructions given to the witness by the officer (this should be accomplished by attaching the Lineup

Instruction Form to the report), any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure.

F. Voice Identification

1. GENERALLY

- a. Although considerably less common than visual identifications, voice identification lineups may be helpful to criminal investigations where the victim or other witness was blind, the crime took place in the dark, the subject was masked, the witness' eyes were covered by the perpetrator, or the witness was never in the same room with the perpetrator but did hear his/her voice.
- b. If officers wish to conduct a voice identification lineup procedure with a witness who also saw the subject, the officer must first consult with the District Attorney's Office.

2. SUSPECT RIGHTS: As with any in-person identification or confrontation, if the suspect has been arraigned or indicted, [s]he has a right to the presence of counsel at the voice identification procedure.

3. PREPARATIONS

- a. Where a voice identification is attempted, the following procedures should be employed to the fullest extent possible:¹⁴
 - 1) At least six persons whose voices will be listened to by the witness should participate in the voice identification lineup. One-on-one confrontations should be avoided.
 - 2) The suspect and other participants shall not be visible to the witness. This may be accomplished by using a partition, or similar means.
 - 3) All participants, including the suspect, shall be instructed to speak the same words in the same order.
 - 4) If the victim or witness recalls hearing the perpetrator use specific words, those words shall not be ones the suspect and other participants are instructed to speak; the lineup participants should speak neutral words in a normal tone of voice.¹⁵
 - 5) When both a visual and voice lineup are done, the lineup participants shall be called in a different order and by different numbers.¹⁶
 - 6) If there are two or more suspects of a particular crime, present each suspect to witnesses in separate lineups. Different fillers should be used to compose each lineup.

Eyewitness Identification

4. CONDUCTING THE VOICE IDENTIFICATION LINEUP

- a. If possible, the officer should be unaware of which person in the lineup is the suspect.
 - 1) This technique, called blind administration, has been recommended by the National Institute for Justice, and is intended to ensure that the witness does not interpret a gesture or facial expression by the officer as an indication as to the identity of the suspect.
 - 2) The technique also allows the prosecution to demonstrate to the judge or jury at trial that it was impossible for the officer showing the lineup to indicate to the witness, intentionally or unintentionally, which person [s]he should select.
 - a) The investigating officers may be present during the line-up, but must position themselves in such a way that they cannot be seen by the witness(es).
 - b) If an investigating officer is present, [s]he must remain completely silent while the witness is viewing the lineup.
- b. Officers should avoid any words or actions that suggest to the voice witness that a positive identification is expected or whom they expect the witness to identify.

5. INSTRUCTIONS TO THE WITNESS

- a. The officer should carefully instruct the witness prior to conducting the voice identification lineup.
- b. Preferably, the instructions should be read from a departmental form (Voice Identification Instruction Form, Appendix D), and the witness should be asked to sign the form indicating that [s]he understands the instructions.
- c. The officer shall also sign and date the form.

6. REPORTING

- a. The result of any voice identification lineup procedure shall be detailed in the officer's report.
- b. The report shall include a summary of the procedure, the persons who were present for it, instructions given to the witness by the officer, any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure.

G. Drawings and Identi-Kit Composites

1. An artist's sketch, computerized drawing, composite, or other depiction should be considered in a major crime investigation when a

witness displays a good recollection of the physical appearance and features of the criminal offender but has not been able to identify a suspect from available photographs.

2. Due process principles applicable to all identification procedures apply to artist's sketches, computerized drawings and composites.
3. Two or more witnesses may collaborate in preparing the drawing or sketch, provided that officers do not use procedures that are unnecessarily or unduly suggestive.
4. Prior to doing so, officers should first separate the witnesses and take a detailed statement and description from each one.

H. Police Station and Courtroom Identification

1. Prior to conducting any courthouse identification procedure, police may consult the District Attorney's office.
 - a. The same right to an attorney and the same due process suggestiveness considerations that apply to all other identification procedures also apply to station house and courtroom identifications.
 - b. If the suspect has been arraigned or indicted, [s]he has a right to have counsel present at any in-person identification/confrontation.
 - c. Prior to arraignment or indictment, no right to counsel exists.¹⁷
2. Live confrontations and informal viewings of the suspects by witnesses must be done in such a manner as to minimize any undue suggestiveness.
 - a. Officers shall not state or suggest that the suspect has been arrested or booked or that [s]he has made any confession or incriminating statement or that any incriminating evidence has been uncovered.
 - b. The witness' identification, particularly if it takes place in a police station or courtroom, must be a result of his/her recollection of the appearance of the perpetrator and must not be unduly influenced by information or suggestions originating from the police.

I. Hypnotically Aided Identification

1. Hypnotically aided testimony is not admissible at trial. Memory recalled prior to hypnosis which was the subject of a hypnotic session may be excluded as hypnotically aided.
2. In light of the serious consequences which could result from asking or permitting a witness to undergo a hypnotic session, such a procedure shall not be undertaken until the entire matter has been reviewed by the District Attorney's office, and appropriate hypnosis experts

Eyewitness Identification

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- ¹ *Com. v. Hill*, 64 Mass. App. Ct. 131, 831 N.E.2d 923 (2005).
- ² *Com. v. Lopes*, 362 Mass. 448, 287 N.E.2d 118 (1972).
- ³ *Com. v. Ellis*, 432 Mass. 746 (2000); *Com. v. Odware*, 429 Mass. 231, 235 (1999).
- ⁴ *Com. v. Storey*, 391 N.E.2d 898, 378 Mass. 312 (1979).
- ⁵ *Com. v. Bumpus*, 238 N.E.2d 343, 354 Mass. 494 (1968).
- ⁶ *Com. v. Crowley*, 29 Mass. App. Ct. 1, 566 N.E. 2d 1043.
- ⁷ *Com. v. Walker*, 14 Mass. App. Ct. 544, 441 N.E. 2d 261 (1982).
- ⁸ *U.S. v. Ash*, 413 U.S. 300 (1973).
- ⁹ *Com. v. Bumpus*, 209 N.E.2d 167, 362 Mass. 672 (1972).
- ¹⁰ *Com. v. Torres*, 442 Mass. 554 (2004).
- ¹¹ *U.S. v. Wade*, 388 U.S. 218 (1967).
- ¹² *U.S. v. Wade*, 388 U.S. 218 (1967).
- ¹³ *U.S. v. Wade*, 388 U.S. 218 (1967).
- ¹⁴ *Com. v. Marini*, 378 N.E.2d 51, 375 Mass. 510 (1978).
- ¹⁵ *U.S. v. Wade*, 388 U.S. 218 (1967).
- ¹⁶ *Com. v. Demaria*, 703 N.E.2d 1203, 46 Mass. App. Ct. 114 (1999).
- ¹⁷ *Com. v. Key*, 19 Mass. App. Ct. 234, 472 N.E. 2d, 1381 (1985).
- ¹⁸ *Com. v. Kater*, 447 N.E.2d 1190, 388 Mass. 519 (1983).

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Chicopee Police Department

110 Church St
Chicopee, Ma
01020



Appendix A

Lineup Instruction

1. You are being- asked tci view a group of people.
 - a. You will be viewing them one at a time
 - b. Please look at all of them.
 - c. They are in random order.
 - d. Please take as much time as needed in making a decision about each person before moving on to the next one.

2. You should remember that it is just as important to clear innocent persons from suspicion as to identifY guilty parties.

3. The individuals you view may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.

4. The person who committed the crime may or rriay not be one of the people you are about to view.

5. Regardless of whether or not you select a person, the police department will continue to investigate the incident.

6. The procedure requires the officer to ask you to state, in your own words, how certain you are of any identification.

7. If you do select someone, please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.

8. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case.

9. Do you have any questions before we begin?

Witness Signatur-e -- --- -""-""-rr- **Date**-----

Officer **Signature**----- **Date**-----

Chicopee Police Department

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Appendix B

Photo Array/Instruction Form

Case# _____ Date: .: _____ Time: _____
Witness: _____ Others present: _____
Officer who composed **array**: __'---- ----
Officer who showed array: _____ ---:--
Location of **presentation**: __-'-'-----Sequential: _____ (or)
Simultaneous: _____

1. You are being asked to view a set of photographs.
 - a. You will be viewing the photographs one at a time.
 - b. Please look at all of them.
 - c. They are in random order.
 - d. Please take as much time as needed in making a decision about each photograph before moving on to the next one.
2. You should remember that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
3. The individuals in the photographs you view may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
4. The person who committed the crime may or may not be in the set of photographs you are about to view.
5. Regardless of whether or not you select a photograph, the police department will continue to investigate the incident.
6. The procedure requires the officer to ask you to state, in your own words, how certain you are of any identification.
7. If you do select a photograph(s), please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
8. Regardless of whether you select a photograph(s); please do not discuss the procedure with any other witnesses in the case.
9. Do you have any questions before we begin?
10. Identification Made: Yes _____ No _____
11. In your own words, how certain are you of the identification? (Write below)

Conducting Officer Signature: _____ Date: _____ Time: .: _____
Witness Signature: _____ Date: _____ Time: _____

Chicopee Police Department

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Chicopee, Ma
01020



Appendix C

Instruction Card for Shot.v-up Identification Attempt

1. You are going to be asked to view someone. Please take as much time as you need.
2. You should remember that it is just as important to clear innocent persons from suspicion, as it is to identify guilty parties.
3. The person who committed the crime may or may not be the person you are about to view.
4. Regardless of whether or not you identify the person, we will continue to investigate the incident.
5. When we are done, our procedures require me to ask you to state, in your own words, how certain you are of any identification.
6. If you do select someone, please do not ask us questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
7. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case.
8. Do you have any questions before we begin?

Chicopee Police Department

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01020



Appendix D

Voice Identification Lineup Instruction Form

1. You are being asked to listen to several people speak
 - a. You will be hearing them one at a time.
 - b. Please listen to all of them.
 - c. They are in random order.
 - d. Please take as much time as needed in making a decision about each person before moving on to the next one.
2. You should remember that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
3. The individuals you hear may not sound exactly as they did on the date of the incident.
4. The person who committed the crime may or may not be one of the people you are about to hear.
5. Please pay no attention to the content of the words spoken. They have been chosen at random.
6. Regardless of whether or not you select a person, the police department will continue to investigate the incident.
7. The procedure requires the officer to ask you to state, in your own words, how certain you are of any identification.
8. If you do select someone, please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
9. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case.
10. Do you have any questions before we begin?

Witness Signature _____ Date _____

Officer Signature _____ Date _____

INTERROGATING SUSPECTS AND ARRESTEES

POLICY & PROCEDURE NO. 1.13	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.3(b); 42.2.1(b); 42.2.3(b)	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

Interrogations of persons who are in police custody must conform to the standards set forth in the *Miranda* decision and to Due Process. Police interrogation techniques include any words or actions which are designed to elicit incriminating statements.

If a police interrogation does not conform to legal standards, it can result in otherwise good evidence being declared inadmissible in court. If the suspect "knowingly and intelligently" waives his/her rights to this constitutional protection, the interrogation can begin. The critical elements to be considered are whether there is a coercive environment and whether the person being questioned is free to leave.

It is important to understand that *Miranda* procedures only apply if both of the following situations are present:

A person is in police custody or is otherwise deprived of his/her freedom of movement in a significant manner and

There is police questioning or its functional equivalent, including any words or actions that are reasonably likely to elicit an incriminating response.

A suspect can stop any police questioning at any time by invoking his/her right of silence or by requesting the services of an attorney.

The ultimate goal of a police interrogation should be to obtain the truth - not just to produce a confession or an admission of guilt.

"Spontaneous" statements made to the police before, during or after the arrest by a person in custody are admissible in evidence even though the arrested person was not warned of his/her rights, provided that such statements are voluntary and are not made in response to police questioning or other actions.

In order to obtain results, every police investigator should recognize the objectives of an interrogation, which should include the following:

1. Learning the truth;
2. Ascertaining the identity of criminal participants and accessories;
3. Obtaining an admission or a confession of guilt;
4. Acquiring all the facts, circumstances and method of operation of the crime under investigation;
5. Gathering information which may corroborate or disprove information obtained from other sources;
6. Eliminating suspects;
7. Uncovering information of any other crimes in which the suspect being questioned is, or has been involved;
8. Recovering evidence or property; and
9. Recording and reporting all information obtained for subsequent court action.

II. POLICY

- A. It is the policy of this department that:
1. Persons in custody shall be given their *Miranda* rights prior to any police interrogation; and
 2. The Due Process rights of persons in custody will be respected.

III. DEFINITIONS

- A. *Custody*: When a person is under arrest, or deprived of his/her freedom in a significant manner.¹
- B. *Interrogation*: Express questioning of a suspect about a crime or suspected crime as well as any words or actions on the part of the police that the officers should know are reasonably likely to elicit an incriminating response.^z

IV. PROCEDURE

- A. Providing Miranda Warnings
1. Officers shall give Miranda warnings as soon as practical whenever a person is placed in custody or deprived of his/her freedom in a significant manner and is subject to interrogation.
 - a. The Miranda warnings shall be read from a preprinted card or form in a clear and unhurried manner prior to questioning.
 - b. Persons who do not speak English must be given these warnings in a language that they understand.
 - c. Sample Miranda Warning Language:

You have the right to remain silent;

Anything that you say can be used against you in a court of law;

You have the right to consult with an attorney before being questioned and to have the lawyer present during the interrogation; and

if you cannot afford a lawyer, one will be appointed for you at government expense and you can consult with the appointed lawyer prior to the interrogation and have the appointed lawyer present during the interrogation.

2. The suspect shall then be asked the following questions:
 - a. Do you understand each of these rights that have been explained to you?
 - b. Having these rights in mind, do you wish to answer questions now?
3. All arrested persons to be interrogated shall have the Miranda warnings read to them when they are booked, whether the warnings were previously given or not. The suspect shall then be asked to sign a form acknowledging that the warnings were given. The officer giving the warnings shall sign the form as a witness, giving the date and time the suspect was advised.
4. If there is any substantial delay between the Miranda warnings and the police questioning, the suspect shall be advised of these rights again before the questioning begins.
5. Whenever an officer has any doubt as to the applicability of the Miranda warnings in any particular case, it is advisable that these warnings be given to the suspect to avoid any subsequent legal barrier to the admissibility of any statements obtained.
6. If, at any time, a suspect requests to read his/her rights or to be informed of his/her rights, these requests shall be granted.
7. JUVENILES: Before a juvenile between the ages of 7 and 17 is questioned, the Miranda warnings shall be given in the presence of both the juvenile and his parent, guardian or other interested adult. The adult must acknowledge that he understands the rights and the juvenile must be given the opportunity to have a meaningful consultation with the adult. See department policy on *Handling Juveniles*.

B. Non-Miranda Situations

1. *Spontaneous Statements*

- a. Officers may note any spontaneous and volunteered statements. When a suspect or prisoner voluntarily makes a statement, officers do not have to prevent him/her from continuing to talk and the Miranda warnings are not a prerequisite for admissibility.
 - i. Spontaneous and volunteered statements are statements made by a suspect of his/her own free will and not made in response to police questioning.
 - ii. A person who voluntarily enters a police station and makes incriminating statements need not be given the Miranda warnings.³
 - iii. Spontaneous and volunteered statements may be taken after the suspect is in custody and before, during, or after actual interrogation so long as the statements are clearly voluntary.

2. *Investigatory Stop and Frisks*

- a. Noncustodial preliminary or investigative questioning need not be preceded by Miranda warnings.⁴ See department policy on *Stop and Frisk and Threshold Inquiries*.

3. *Non-Law Enforcement Questioning*

- a. Miranda does not apply to statements made in response to questioning by private citizens, unless the private citizen is acting on behalf of the police. For a citizen to constitute an agent of the police, the police must initiate the citizen's help.⁵ Thus, where a fellow prisoner initiates questioning about a crime in hopes of trading information for a lighter sentence, any statements made are admissible if the police neither encouraged or sought the prisoner's assistance.^s

4. *Traffic Violations or Traffic Accidents*

- a. A person need not be given Miranda warnings if [s]he has been stopped for violating motor vehicle laws. 7
- b. An officer's request that a motorist perform field sobriety tests does not require that Miranda warnings be given.a

C. Waiver of Rights

1. *Valid Waivers*

- a. Statements made by an arrestee more than six hours after the arrest (safe harbor period) are inadmissible unless the arrestee has been arraigned or has made a valid written waiver of his/her right to be arraigned without unreasonable delay.9
 - i. If the arrestee is incapacitated due to a self-induced disability (such as the use of drugs or alcohol) the six hour safe harbor period does not begin until the disability terminates.10
 - ii. The six hour period is also tolled when interrogation is not possible or must be suspended for reasons not attributable to the police, such as a natural disaster or emergency.I1
- b. The interrogating officers should be certain that the suspect understands the rights which have been read to him/her as the burden will be on the prosecution to prove that the waiver was valid.I2
- c. The waiver must be made voluntarily, knowingly and intelligently to meet the conditions of the Miranda decision.
- d. In determining whether a valid waiver was made, the court examines whether in light of the totality of the circumstances surrounding the making of the waiver, the will of the suspect was overborne such that the statement was not a free and voluntary act. The court considers the circumstances of the interrogation and

the individual characteristics and conduct of the suspect, such as the length of time which transpired between the giving of the Miranda warnings and the waiver, the suspect's age, mental capacity and experience. Is

- e. When the suspect waives his/her rights, the interrogating officers shall obtain a written waiver when possible. A waiver may be made orally or in writing, but a written and properly witnessed waiver is more likely to be upheld in court.
- f. Silence on the part of the suspect does not constitute a valid waiver. I4
- g. The physical and emotional condition of the person being questioned is an important consideration in determining the validity of a waiver. The police should refrain from questioning if the suspect is clearly not capable of understanding his/her rights. J5

2. *Competency*

- a. A suspect must be competent to waive his/her rights prior to police questioning. The question of competency is a question of fact to be determined by the circumstances in each case.
- b. The competency issue is more likely to be raised under the following circumstances:
 - i. **If** the suspect is distraught or very disturbed because of any mental or emotional condition;
 - ii. **If** the suspect has been wounded or is the victim of shock or other physical impairment;
 - iii. If the suspect is so intoxicated or influenced by alcohol or drugs that [s]he cannot think rationally or act sensibly; or
 - iv. **If** the suspect's intelligence level is so low, or his/her learning and education are so minimal, that [s]he does not comprehend his/her rights.

- c. In any of the circumstances enumerated above, any waiver obtained will be carefully scrutinized by the court.

3. *Assessing Competency*

- a. After the Miranda lights have been read and after the suspect has shown an initial willingness to waive those lights, the police may ask the suspect about the following in order to properly assess the suspect's ability to intelligently understand and waive his/her lights:
 - i. His/her age;
 - ii. Whether [s]he is under the influence of any drugs or alcohol;
 - iii. Whether [s]he is suffering from any mental or emotional problem;
 - iv. His/her education and learning;
 - v. His/her employment;
 - vi. Whether [s]he has ever been given Miranda warnings previously; and
 - vii. Whether [s]he understands the words used by the officer in reciting the Miranda warnings or what they mean.

D. Presence of Attorney

- 1. If a suspect states that [s]he wishes to consult an attorney, [s]he must not be questioned further by police **until** [s]he has had an opportunity to consult an attorney. However, if the suspect initiates statements or conversation, the police may respond to those statements or conversation.
- 2. Although a suspect has voluntarily waived his/her light to remain silent, [s]he may still invoke this light by refusing to answer any further questions or by requesting the services of an attorney, and at this point the police questioning must cease.

3. If the police are aware that the suspect is represented by an attorney, even on other matters, and that the attorney desires to be present with his/her client during any questioning, the police must inform the suspect that his/her attorney wishes to be present during questioning. However, once so informed, the suspect may waive his/her right to have his/her attorney present.
4. A suspect may answer some questions and refuse to answer others. The officer is not required to discontinue questioning unless the suspect indicates that [s]he wishes to remain totally silent, to stop the questioning or to consult with a lawyer.
5. Once a suspect has been arraigned, [s]he has the right to counsel, whether or not [s]he is in custody, and [s]he shall not be questioned in the absence of counsel unless [s]he specifically waives his/her right.¹⁶

E. Documenting Statements and Confessions

1. Officers shall take notes or record interrogations. Before recording an interrogation, the suspect shall be notified that the conversation will be recorded.¹⁷
2. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes:
 - a. Location, date, time of day and duration of interview;
 - b. Identities of officers or others present;
 - c. Miranda warnings given, suspect responses and waivers provided, **if** any; and
 - d. The nature and duration of breaks in questioning to provide the suspect food, drink, use of the restroom, or for other purposes.
3. The suspect shall be asked to read, sign and date all written statements and confessions.

4. The interrogating officer(s) shall sign and date all written statements and confessions.
5. The interrogating officer shall prepare and submit a report in accordance with departmental procedures which shall include the above information and any written or recorded statements.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966)

² *Com. v. Morse*, 427 Mass. 117, 691 N.E.2d 566 (1998)

³ *Oregon v. Mathiason*, 429 U.S. 492, 97 S.Ct. 711 (1977)

⁴ *See, Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966); *Com. v. Podlask* 377 Mass. 339, 398 N.E.2d 1379 (1979)

⁵ *Massiah v. U.S.*, 377 U.S. 201, 84 S.Ct. 1199 (1964)

⁶ *Com v. Gqjka*, 425 Mass. 751, 682 N.E.2d 1345 (1997)

⁷ *Berkemere v. McCarty*, 468 U.S. 420. 104 S.Ct. 3138 (1984)

⁸ *Com. v. Whalley*, 429 Mass. 1010, 709 N.E.2d 1117 (1999); See also, *Vanhouton v. Com.*, 424 Mass. 327, 676 N.E.2d 460 (1999)

⁹ *Com. v. Rosario*, 422 Mass. 28, 661 N.E.2d 71 (1996)

¹⁰ *Id.*

¹¹ *Id.*

¹² *Com. v. Nom*, 426 Mass. 152, 686 N.E.2d 1017 (1997)

¹³ *Com. v. Nom*, 426 Mass. 152, 686 N.E.2d 1017 (1997); *Com. v. Haoles*, 38 Mass. App. Ct. 301, 647 N.E.2d 440 (1995)

¹⁴ *Com. v. Roy*, 2 Mass. App. 14, 307 N.E.2d 851 (1974)

¹⁵ *Com. v. Hosey*, 368 Mass. 571, 334 N.E.2d 44 (1975)

¹⁶ *Massiah v. U.S.*, 377 U.S. 201, 84 S.Ct. 1199 (1964)

¹⁷ M.G.L. c. 272, s. 99

TESTIFYING IN COURT

POLICY & PROCEDURE NO. 1.14	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: none	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

The presentation of evidence in court is the final step taken by the police in a criminal case. The effectiveness of this presentation is, to a large degree, dependent upon the competence of the officer on the witness stand. All of the police efforts that precede the court appearance can be nullified by an inadequate, incomplete or unsatisfactory presentation of the facts by the testifying officer.

Officers are also often called upon to testify in civil cases related to a matter in which the officer was involved in his/her official capacity. The officer is called upon to offer unbiased testimony that may aid a judge or jury in determining their findings.

The court will consider not only the quality and quantity of the evidence itself, but also the manner in which it is presented. The officer's personal appearance, demeanor, attitude and ability to express himself/herself in a convincing manner can greatly affect the weight given to his/her testimony and have a significant influence on the outcome of the case.

It is only human for an officer to take a personal interest in a criminal case in which [s]he has been deeply involved and to firmly believe that

the offender is guilty and should be convicted. In his/her testimony, however, [s]he must make every effort to present the facts fairly and impartially without understating or exaggerating any of the circumstances.

The legal technicalities involved in bringing a criminal investigation and subsequent prosecution to a successful conclusion require a team approach. By working together, the prosecutor relies on the investigative skills of the police and the police rely on the skills of the prosecutor in handling the legal aspects.

Every court appearance should be a learning experience for a police officer. [S]he should evaluate his/her testimony objectively and constantly make every effort to improve his/her skills as a testifying officer. After a court proceeding has concluded, particularly if the case has been lost, [s]he should review his/her testimony with the prosecutor to determine where improvements can be made to strengthen similar cases in the future.

II. POLICY

- A. It is the policy of this department that:
1. When testifying in court, officers shall follow the procedures set forth in this policy; and
 2. Officers shall testify truthfully and impartially in all judicial proceedings.

III. PROCEDURES

- A. Prior to Trial
1. Review all aspects of the case, including reports, notes, witness statements and review or obtain all physical evidence needed.
 2. Refrain from discussing the case with the defendant in the absence of his/her attorney, if [s]he has one, or making any agreement with the defendant's attorney for recommendations as to the disposition of the case without the knowledge of and in the presence of the prosecutor and/or the department prosecuting officer.

3. In pretrial conferences with the prosecutor, provide all available information even though it may be beneficial to the defendant. No detail concerning the particular case should be considered too trivial to discuss. This will decrease the likelihood of any surprise developments during the trial.
4. To become skilled and effective in the task of testifying in court, a police officer should be familiar with the basic rules of evidence. See Appendix A for an overview of some of the rules of evidence in Massachusetts.

B. At the Courthouse

1. Officers shall be punctual in reporting at the time and place set for the hearing, trial or other proceeding. Officers physical appearance, personal conduct and professional manner should be aimed at making the best possible impression.
2. If there is a sequestration order applicable to the police and other witnesses, officers shall remain outside the courtroom until called to testify. Officers shall not discuss their testimony or the testimony of any other witness until the completion of the trial or other proceeding. A sequestration order generally requires that each witness testify separately and without having discussed his/her testimony with other witnesses and without having overheard the testimony of any other witness. Violation of a sequestration order could result in the judge declaring a mistrial or even dismissing the case.
3. While waiting to be called to the stand, or after having provided testimony, officers shall refrain from any unnecessary discussion with other officers in the courtroom.

C. Courtroom Attire

1. **JUDGE TRIALS:** In trial before a judge without a jury, patrol officers may wear their uniform or comply with the procedure below applicable to attire in jury trials.
2. **JURY TRIALS:** In jury trials, the following attire requirements apply:

- a. Male officers shall dress neatly in a suit or sports coat and tie.
 - b. Female officers shall dress in a conservative dress or suit.
 - c. Exposed firearms shall not be worn.
3. Exceptions may be made, but only with the approval of the assistant district attorney and/or police prosecutor

D. Conduct as a Witness

1. As soon as [s]he is called, the testifYing officer should go directly to the witness stand in a dignified and alert manner as it is at this point that the jury gains its first impression of the officer.
 - a. During the reading of the oath, the officer should maintain an attitude that reflects the seriousness of the proceedings.
 - b. On the witness stand the officer should take a comfortable position that gives him/her a full view of the jury and the attorneys and should always maintain good posture and an alert appearance.
 - c. [S]he should avoid any movements or sounds that could be distracting to the judge or jury and which may divert their attention from his/her testimony.
2. While on the stand, the officer shall:
 - a. TestifY to what [s]he knows or believes to be the truth.
 - b. Speak naturally and calmly in a distinct and clearly audible tone of voice, describing in a forthright manner the events of the case in the order in which they took place.
 - c. Use plain, clearly understandable conversational language avoiding slang and unnecessary technical terms.

- d. Display a courteous attitude, maintaining self-control and personal composure at all times, avoiding any impression of being contentious, biased or prejudiced, even if defense counsel attempts to berate, belittle or embarrass the officer or his/her efforts.
 - e. Listen carefully to each question and respond accordingly.
 - i. If asked to state facts, state the facts known or believed to be true.
 - ii. If asked to state an opinion or conclusion, do so if the officer has formed an opinion or conclusion which [s]he can articulate and support. Do not give a personal opinion unless asked to do so.
 - iii. If an answer is unknown, state that it is unknown.
 - e. Answer only the questions which are asked.
 - f. Make every effort to avoid errors in his/her testimony or inconsistent statements which could undermine the confidence of the judge or jury in his/her credibility.
3. When a question is asked, the testifying officer:
- a. Should look directly at the person asking the question and then give a deliberate, courteous, well-considered answer, as well as periodically looking at the jury. If [s]he does not hear or clearly understand the question, [s]he should request that the question be clarified or repeated.
 - b. Should pause briefly and consider every question before responding in order to:
 - i. Assure that the question is complete and to prevent misinterpreting or misunderstanding the question;
 - ii. Give the officer an opportunity to analyze the question and to form a complete and accurate answer; and

- iii. Give the other attorney the opportunity to make an appropriate objection to the question, if necessary.
 - c. However, an officer should not be too deliberate in responding to questions as any conspicuous wavering or hesitancy on his/her part may be interpreted as indecision or uncertainty.
 - d. Be as specific as possible in his/her responses, but in testifying as to times or distances [s]he should state that they are approximations unless [s]he has the exact information readily available.
4. When an objection has been made, an officer should immediately cease testifying, look at the judge and await his/her decision.
5. REFER TO NOTES: At the request of the prosecutor or defense attorney, and with the permission of the judge, an officer may refer to his/her notes or a police report to refresh his/her memory on a given point. This is called present recollection refreshed. If the officer has no current recollection on a given point but did make a report or record at an earlier time, the prosecutor or defense attorney may request that report or record be admitted into evidence. This is called past recollection recorded. Continual reliance on notes can detract from the officer's testimony and raise doubts as to the officer's knowledge of the facts.

E. Inaccurate or Omitted Testimony

1. If during or at the conclusion of his/her direct testimony and before cross-examination, an officer realizes that an important point has not been brought out or fully developed by the prosecutor's questions, the officer, while still on the witness stand, may utilize a discreet signal to gain the prosecutor's attention. This will allow the prosecutor to ask the judge for permission to confer with the officer. If that method is unavailable or unsuccessful, the officer may address the judge directly and request permission for a very brief conference with the prosecutor.

- a. The officer should not wait until [s]he has been excused from the witness stand to inform the prosecutor of important matters not brought out in his testimony. At that point, it may be difficult for the prosecutor to get the officer back on the stand or, even if [s]he does so, to ask questions about matters not raised on direct examination. Naturally, these problems should be avoided by close cooperation in the preparation of a case between the officer and the prosecutor.
 - b. If an omission is realized after the officer has left the witness stand, [s]he shall inform the prosecutor as soon as possible in a manner that is not distracting to the court. Writing a note and passing it to the prosecutor is an acceptable method to accomplish this purpose.
2. If a mistake in testimony has been made, the officer shall voluntarily correct any error as soon as possible.

F. Defense Attorney Tactics

1. A defense attorney may resort to a variety of tactics in an effort to confuse or upset the testifying police officer or to discredit his/her testimony. This must be expected and it is permissible within ethical limits. An officer's ability to cope with these tactics improves with experience. As the judge and jury will be closely observing the officer, [s]he should never become argumentative or display anger or animosity towards the defense counsel. [S]he should remain calm and courteous at all times despite any badgering tactics by the defense and take sufficient time to permit the prosecutor to make appropriate objections.
2. The following are some of the most common tactics used by a defense attorney in cross-examination:
 - a. Asking questions in a rapid-fire manner to confuse the witness;
 - b. Intentionally mispronouncing the officer's name or calling him/her by the wrong rank or title in order to affect his/her concentration;

- c. Being overly friendly to give the witness a false sense of security before attempting to lead him/her into inconsistent or conflicting answers;
 - d. Being condescending to the point of ridicule to give the impression that the officer lacks experience or expertise;
 - e. Asking repetitious questions or rephrasing previous questions in order to obtain inconsistent answers or answers which conflict with previous testimony by the witness;
 - f. Asking questions which suggest a particular answer in order to lead the witness into responding;
 - g. Continuing to stare directly at the witness after [s]he has responded in order to provoke the witness into elaborating on his/her answer and providing more information than the question called for;
 - h. Demanding a "yes" or "no" answer to questions that obviously require more explanation;
 - i. Suggesting or indicating that conflicting answers were given in earlier testimony; and
 - j. Belligerent questioning to anger and disconcert the witness.
3. All officers must acquire the ability to remain calm, deliberate and objective despite such provocation and understand that it is the purpose of the defense attorney to diminish or discredit the effect of the officer's testimony on the judge and jury.

G. Testifying in Civil Suits or as a Defense Witness

1. Officers shall refer to the department's rules and regulations regarding testi(ying in civil suits or appearing as a defense witness in a criminal case.

APPENDIX A: OVERVIEW OF MASSACHUSETTS RULES OF EVIDENCE

Evidence may be defined as the legal means by which any alleged matter of fact is established or disproved when submitted to a judicial inquiry. It includes the testimony of witnesses or the introduction of records, documents, exhibits or other objects which are relevant and material to the particular case.

The three primary tests for the admissibility of evidence, as determined by the court, are as follows:

1. It must be *relevant* in that it is legally as well as logically related to the issue in question;
2. It must be *materia[* to the issue before the court in that it establishes the facts in the case and contains sufficient measurable weight to aid the jury in reaching a conclusion; and
3. It must be *competent* in that it meets all required legal standards for admissibility in order to ensure that only information of a reliable nature is presented to the jury for consideration.

Some of the more common classifications of evidence are as follows:

Direct Evidence. As opposed to circumstantial evidence, direct evidence includes testimony from a witness as to what the witness personally observed or personally knows to be a fact; it also includes any physical object or presentation which in itself indicates or proves a given fact or conclusion. For example, if the witness testifies that [s]he saw the defendant operating the motor vehicle in question, that is direct evidence pertaining to that fact. On the other hand, if the witness testifies that [s]he saw the defendant's car being operated, that the defendant had the only set of keys and that the defendant had said [s]he would be using the car that day, that is circumstantial evidence that the defendant was the operator.

Direct evidence is often broken down into four forms:

1. *Ora[Evidence.* Testimony by a competent witness under oath and subject to cross examination.

2. *Real Evidence.* Objects and items that are physically present at court and admitted into evidence for examination and consideration by the judge and jury.
3. *Documentary Evidence.* Any instruments containing written or otherwise recorded entries (e.g. a book, ledger, receipt, report, letter, deed, contract, diary).
4. *Demonstrative Evidence.* This includes any display or Visual presentation such as a map, photograph or **film**, sketch or other depiction.

Circumstantial Evidence. In contrast to direct evidence, circumstantial evidence includes testimony or physical objects or items from which the existence of a fact can be inferred or a certain conclusion drawn but the testimony or physical objects or items do not in and of themselves directly establish that fact or conclusion. For example, if the defendant is found with very recently stolen property in his/her possession the circumstances could warrant a judge or jury in concluding that the defendant must have known the property was stolen.

Best Evidence Rule. Whenever possible, the original of a written document must be produced at court. If the original is not offered, a copy or other secondary evidence of the contents of that document will be accepted only if the absence of the original is adequately explained to the satisfaction of the court. The best evidence rule applies only to written documents and not to photographs, tape recordings, Visual displays, etc.¹

Corroborative Evidence. Evidence which confirms or strengthens other evidence.

Cumulative Evidence. Evidence of the same kind, to the same point or effect which further establishes what has already been indicated or suggested by other evidence.

Prima Facie Evidence. Evidence which is sufficient on its own to establish a given point or conclusion and is legally binding unless it is effectively rebutted or discredited. For example, a properly executed certificate of a chemist of the Department of Public Health is prima facie evidence of (a) the composition, (b) the quality, and (c) the weight of the drug or other chemical analyzed. Once such a certificate is admitted into evidence, the judge or jury must accept what the certificate states pertaining to composition, quality and net weight.²

Present Recollection Refreshed. If a witness has some memory or recall of an event or information but his/her present recollection is incomplete, vague or unsure, [s]he may, with the permission of the court, "refresh" his/her recollection by consulting any report, record, document or other reference. However, the report or document used to refresh the witness' recollection may be examined by opposing counsel.

Past Recollection Recorded. If a witness has no memory or recollection whatsoever of an event or information but [s]he did make reliable notes or records of that event or information at some point in the past, those notes or records may be admitted into evidence (unless they contain hearsay or other objectionable material).

Expert Evidence. Evidence presented by a person who is accepted by the court as having special knowledge of a subject not usually possessed by the average person and derived from his/her training, education and experience in that field. The testimony of an expert, as to facts or opinions, is not binding on the judge or jury; they may give expert testimony whatever weight or credibility they decide that it deserves.

Opinion Evidence. As a general rule, neither expert witnesses nor lay people (non-experts) may testify as to their opinion on any matter. They must restrict themselves to testifying to facts and observations. However, courts recognize that the opinions of certain experts within the scope of their specialty are admissible and may aid the judge or jury in its deliberations and decision. Lay witnesses (the average person) may testify to an opinion on such commonplace matters as:

1. The apparent age of a person;
2. The apparent physical condition of a person;
3. The obvious emotional state of a person;
4. Identity and likeness of appearance, voice or handwriting;
5. Whether a person appeared to be under the influence of alcohol or drugs;
6. Sense recognition, such as whether an object was heavy, red or bulky;
7. The direction from which a sound emanated;
8. The estimated speed of a vehicle or other moving object;

9. The value of an item (if the witness was the owner or has had sufficient dealings with such objects to be able to render a credible opinion as to its value).

Hearsay. Hearsay evidence consists of:

1. Oral or written statements
2. Made by one other than the witness
3. Out of court
4. Not under oath
5. Not subject to cross-examination
6. If offered to prove the truth of the matter asserted therein.

Hearsay statements are unreliable for several reasons. They were made out of court by the person originating the statement. They were not made under oath or while the originator of the statement was subject to cross-examination. And, the person repeating those statements in court may not have recalled them completely or accurately. In addition, if witnesses in a criminal trial are allowed to testify to what someone else said was true and that other person is not available, then the defendant would be deprived of his/her Sixth Amendment right to confront all the witnesses against him/her.

Although hearsay statements are generally objectionable, there are many exceptions to the general rule. Some are listed below:

1. **Dying Declarations** - In a prosecution for homicide, statements made by a dying person regarding the cause and circumstances relating to his/her imminent death are admissible if the dying person believed death to be imminent and [s]he did in fact die shortly after the statements were uttered.
2. **Confessions** - Admissions and declarations against penal interest (all defined below) are admissible if legally and voluntarily made.
3. **Spontaneous Exclamations** (also called excited utterances) - If a person makes a statement during or very shortly after the occurrence of a startling event and while under the

(excitement or stress of that startling event another person may testify to those statements.

4. Public records and reports maintained by legal requirement or duty, if properly authenticated.
5. Business records - These include any entry, record or memorandum if it was made in good faith, in the regular course of business, before the beginning of the litigation in question and if it was a regular business practice to make such entries, records or memoranda. Although this is commonly referred to as the "business records" exception to the hearsay rule, it also applies to records of non-profit organizations and to records maintained by government agencies, including police departments.
6. Unavailable witness -Testimony given previously by a witness who was then under oath and subject to cross examination where the parties and issues are sufficiently similar to the present proceedings, if the witness is presently unavailable through no fault or collusion of the party seeking to admit the former testimony.
7. "Fresh Complaint" (in rape and sexual assault cases) if the victim of a rape or other sexual assault reports the incident to another person within a reasonable time after the incident, the person to whom the victim complained of the rape or assault may testify as to what the victim said had occurred.

(Confession. A statement made by a competent person voluntarily acknowledging that [s]he committed a given offense. A confession, by itself, is sufficient for a conviction, provided there is some evidence that the crime was committed.³

Admission. A statement or declaration in which the accused acknowledges the truthfulness of a fact which may or may not, along with other evidence, prove his/her guilt.

Declaration Against Penal Interest. A statement which would tend to expose the maker of the statement to criminal penalty.

(Joint Venture- Joint Acts and Declarations, If two or more persons join efforts to perpetrate or accomplish a crime, generally, the acts and declarations of each can be used against all in court. Also, an individual is criminally responsible for the actions of his/her joint venturer if [s]he

harbored the same criminal intent and was present at the scene of the crime. There need not be an overt agreement to prove a joint venture. It is enough if two or more persons act together or assist one another in the crime. To prove conspiracy, however, there must be evidence of an overt agreement to commit the crime.⁴

Bruton Rule. The U.S. Supreme Court ruled that it is a violation of a defendant's Sixth Amendment right to confront adverse witnesses to try a defendant jointly with a co-defendant where the co-defendant has made admissions or confessions that implicate the defendant but the co-defendant chooses not to testify (and, therefore, is not subject to cross-examination by the defendant). Thus, where there are two or more persons charged with the same offense, severance (separate trials) sometimes occurs.⁵ This rule was reinforced by the Massachusetts Supreme Judicial Court⁶ which held that the admission in a joint trial of a co-defendant's statement implicating the defendant was reversible error, even though the Commonwealth alleged that the co-defendant's statement was offered only to show consciousness of guilt and argued during trial that the statement should be disbelieved.

Privileges. Under certain limited circumstances, the law protects important rights and special relationships by granting persons a privilege against being compelled to testify, even in criminal prosecutions. The more common are:

1. Lawyer - client
2. Psychotherapist - patient
3. Husband - wife
4. Clergy - penitent
5. Government privilege to withhold identity of informer
6. Social worker - client
7. Sexual assault counselor - rape victim
8. Parent - child

Note: There is no physician - patient privilege presently recognized under Massachusetts law.

Exclusionary Rule. Generally, if it is shown that evidence was obtained by police in a manner which contravened the rights of the defendant,

that evidence will, upon motion of the defendant, be excluded at court. The most common areas involving motions to suppress allegedly unlawfully obtained evidence are interrogation and searches and seizures. See departmental policies on *Search and Seizure*, *Interrogating Suspects and Arrestees* and *Arrest*. However, the police should be aware of several exceptions to the exclusionary rule and should discuss utilizing any of these exceptions with the prosecutor in appropriate cases.

1. **Attenuation** - If the unlawful police action was so far removed or so remotely connected to the incriminatory evidence obtained, the court may rule that any taint due to the initial illegality was "attenuated" and the exclusionary rule should not apply.J4
2. **Independent source** - If the police can establish that they obtained the evidence in question from a source or in a manner completely independent of the unlawful procedure, the exclusionary rule may not apply.J5
3. **Inevitable discovery** - If police can establish that they would have obtained the evidence in question anyway and in a lawful manner, the exclusionary rule may not apply.J6

NOTE: The Supreme Judicial Court has held that this exception cannot be applied to cure an illegal warrantless search on the basis that it was inevitable that a warrant would be obtained.J7 In another Massachusetts case the Court indicated that the inevitable discovery rule may apply to cure or to apply in a situation not requiring a warrant (e.g., protective custody) .IS In implementing the rule, the Court focused on two issues:

- a. the issue of inevitability; and
 - b. the character of the police misconduct.
4. **Procedural uses of otherwise excludable evidence** - If the defendant failed to file it in a timely manner, the prosecutor may be able to defeat a motion to suppress. Also, otherwise excludable evidence can be used to impeach the defendant if [s]he takes the witness stand and denies any knowledge of or connection to the evidence unlawfully seized.
 5. **"Good Faith" exception** - For example, where police reasonably rely on what appears to be a valid search

warrant, the exclusionary rule may not be applied even though a court subsequently determines that the search warrant was defective.

NOTE: Massachusetts has yet to decide whether it will follow the good faith exception.¹⁹

¹ M.G.L. c.233, s.79K

² M.G.L. c.111, s.13

³ *Com. v. Forde*, 392 Mass. 453,466 N.E.2d 510 (1984)

⁴ *Com. v. Clarke*, 418 Mass. 207,635 N.E.2d 1197 (1994); *Com. v. Bianco*, 388 Mass. 358,446 N.E.2d 1041 (1983)

⁵ *U.S. v. Bruton*, 391 U.S. 123, 88 S. Ct. 1620 (1968)

⁶ *Com. v. Hawkesworth*, 405 Mass. 664, 543 N.E.2d 691 (1989)

⁷ M.G.L. c. 233, s. 20B

⁸ M.G.L. c. 233, s. 20

⁹ M.G.L. c. 233, s. 20A

¹⁰ *Com. v. Abdelnour*, 11 Mass. App. Ct. 531,417 N.E.2d 463

¹¹ M.G.L. c. 112, s. 135, 135A and 135B

¹² M.G.L. c. 233, s. 20J

¹³ M.G.L. c. 233, s. 20

¹⁴ *Com. v. Crowe*, 21 Mass. App. 456,488 N.E.2d 780 (1986), *rev. den'd* 397 Mass. 1101, 409 N.E.2d 806 (1986)

¹⁵ *Murray v. U.S.*, 487 U.S. 533 (1988)

¹⁶ *Nix v. Williams*, 467 U.S. 431 (1984)

¹⁷ *Com. v. Benoit*, 382 Mass. 210, 415 N.E.2d 818 (1981)

¹⁸ *Com. v. O'Connor*, 406 Mass. 112, 546 N.E.2d 336 (1989)

¹⁹ *Com. v. Pellegrini*, 405 Mass. 86,539 N.E.2d 514 (1989), *cert. den'd* in 110 S.Ct. 497.

HANDLING JUVENILES

POLICY & PROCEDURE NO. 1.15	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 44.1.1; 44.2.1; 44.2.2; 44.2.3; 44.2.4; 44.2.5; 82.1.1(a); 82.1.1(b)	REVISION DATE: _____

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 constitutional rights are not lost by virtue of one's age. Indeed, juveniles merit greater protection, especially in the areas of questioning and waiver of rights.

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. 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;
 4. The department is committed to the development and perpetuation of programs to prevent and control juvenile delinquency. *[44.1.1.a]*

III. DEFINITIONS

- A. *Child in Need of Services (CHINS)*: Any child below the age of seventeen who:

1. Persistently runs away from the home of his/her parents or legal guardian, or
2. Persistently refuses to obey the lawful and reasonable commands of his/her parents or legal guardian.

Under an alternative definition, a "child in need of services" also covers any child between the ages of six and sixteen who

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

B. Delinquent Child: A juvenile who violates any city ordinance or town by-law or who commits any offense against the Commonwealth.²

C. Juvenile: A juvenile, for purposes of Massachusetts criminal law, is anyone between the ages of 7 and 17.³

D. Non-Offenses: Children held in protective custody because they were found present where controlled substances are kept pursuant to G.L. c. 94C, s. 36, or are incapacitated due to intoxication pursuant to G.L. c. 111B, s. 8.

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

1. Is held in an unlocked, multi-purpose room that is in no way designed for residential use;
2. Is not handcuffed to any stationary object;
3. Is held only long enough to complete identification, investigation and processing and then released to a parent or guardian or transferred to a juvenile facility or the court; and
4. Is under continuous supervision until released.
5. At a location to be determined by the Shift Commander based on the operational needs of the Department .

- F. *Secure Custody*: A condition under which a juvenile's freedom of movement is controlled by being placed in a cell or locked room (or set of rooms) or being handcuffed to a stationary object.⁴
- G. *Status Offender*: A juvenile who has committed an offense that would not be a crime if committed by an adult. This includes: runaways, truants, youth curfew violations, and minors in possession of or transporting alcohol. [44.2.2(a)]

IV. PROCEDURE

A. Administration

1. The chief of police may designate a juvenile officer or juvenile unit to have primary responsibility for juvenile operations.
2. The responsibility for participating in and supporting the department's juvenile operations is shared by all department components and personnel. [44.1.1(b)]

B. Enforcement Alternatives [44.2.1]

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 with no further action or following informal counseling when no arrest has been made. Officers may turn the juvenile over to his/her parent or guardian when appropriate;
 - b. Informal referral to an appropriate community social service agency;

- c. Limited custody and station house warning. The juvenile shall be held in non-secure custody until released to his/her parent(s) or guardian;
 - d. Issue a citation or applying for a summons or complaint; and {44.2.1(b)(c)}
 - e. Arrest.
3. Criteria When Choosing an Alternative
 - a. In considering a course of action, the officer shall consider the nature of the offense, the age of the juvenile, the juvenile's prior contacts with the police, the availability of community-based rehabilitation programs, and, in some cases, the recommendation of the complainant or victim.

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. {44.2.2(a)}
3. Arrested juveniles are subject to the same security and other transportation requirements as adults and may be handcuffed or otherwise restrained as necessary during transport and processing. See departmental policy on *Transporting Prisoners*. {44.2.2(d)}
4. When an arrest is made, the juvenile shall be brought to the processing facility without delay. {44.2.2.(d)}
5. When a juvenile is arrested, with or without a warrant, the officer in charge of the police station shall:
 - a. Notify the probation officer for the District Court or Juvenile Court for the judicial district in which the juvenile was arrested;

- b. NotifY at least one of the parents, or, if there is no parent, the guardian of the child, or the person with whom the child resides; and {44.2.2.(e)}
 - c. Inquire into the situation to ensure that proper cause for the arrest existed and that the juvenile was and is treated in accordance with the law. The juvenile may be detained pending such notice and inquiry.
6. A child shall be released:
- a. To a parent, guardian or other reputable person upon acceptance, by the officer in charge, of the written promise of such person to be responsible for the appearance of the child in court at the required time and place; or
 - b. To a probation officer upon receipt of a request by such officer that the child be released to him/her.
7. A child between the ages of 14 and 17 shall not be released if:
- a. The arresting officer requests in writing that [s]he be detained and the court issuing a warrant for the arrest of such child directs in the warrant that [s]he be held in safekeeping pending his/her appearance in court, or
 - b. A probation officer directs that such child be detained.
- NOTE: Notice of detention shall be given to the parent(s) or guardian or person with whom the child resides and to the probation officer. Nothing contained in this section should be construed to deny the juvenile the right to bail.
8. Juveniles arrested for criminal type offenses are subject to the same booking procedures as adults. See department policy on *Booking Procedure and the Holding Facility*. Juveniles taken into custody for status offenses or for non-criminal offenses shall not be fingerprinted or photographed.⁷ {44.2.2(c)}

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

D. Holding Juveniles

1. Delinquent Offenders
 - a. Juveniles between ages fourteen and seventeen accused of delinquent offenses may be held in secure custody for no longer than six hours for the purpose of identifying and processing the juvenile and, if appropriate, transportation to a juvenile facility or court.⁸
 - 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,⁹

- b. No child between the ages of fourteen and seventeen shall be detained in a police station or town lockup unless the detention facilities for children have received the written approval of the Commissioner of Youth Services,¹⁰

- 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.¹¹
 - d. No child under age fourteen shall be placed in a cell or otherwise securely detained for any reason. Such child may be held in a safe environment pending suitable disposition.
2. Status Offenders and Protective Custody
- a. Status offenders and juveniles held for protective custody shall not be held in secure custody.
 - b. Status offenders may only be held long enough to complete identification, investigation and processing and then must be released to parents, guardians or other responsible adults or transferred to an alternative juvenile facility or court.
 - c. A child under the age of seventeen may be taken into protective custody, for a period not exceeding four hours, if an officer:
 - i. Finds the child at a place where the officer reasonably believes there is a controlled substance of Class A, B or C;
 - ii. Reasonably believes the child to be under age seventeen; and
 - iii. Reasonably believes the child knew of the presence of the controlled substance.¹²
- Note: The officer in charge of the police station shall make every reasonable effort to notify the juvenile's parent or guardian or other person having lawful custody.
- d. For procedures to follow when a person under age eighteen is taken into protective custody due to consumption of alcohol, see the department policy on *Protective Custody*.

3. Children in Need of Services
 - a. A parent, legal guardian or a police officer may file a petition in the district or juvenile court to have a child declared a "child in need of services". If the court so finds, the court may make orders pertaining to custody, counseling and educational, occupational or other services.
 - b. A child may not be arrested for engaging in behavior which constitutes being a child in need of services unless the child has failed to obey a summons or if the arresting officer has probable cause to believe the child has run away from home and will not respond to a summons.
4. All juveniles detained by the department shall be informed by the booking officer [*insert other position if applicable*] of the procedures regarding custody, release, and transportation to another facility or court, as applicable. [42.2.3(c)]

E. Custodial Interrogation of Minors

1. For a general review of the standards and procedures to be followed when conducting custodial interrogation see the departmental policy and procedure on *Interrogating Suspects and Arrestees*. It should be remembered that the Miranda Rules apply to juveniles.
2. In addition, the police must also follow the special rules that apply to the interrogation of juveniles. [44.2.2(c)]
 - a. INTERESTED ADULT RULE: In order to obtain a knowing and intelligent waiver by a juvenile, in most cases a parent or interested adult must be present, understand the warnings and have a meaningful opportunity to consult with the juvenile. Before initiating an interrogation, the juvenile's parent, legal guardian, or other interested adult (including an attorney) should be present.¹³ [42.2.3(a)]
 - i. UNDER AGE FOURTEEN: No waiver of rights by a juvenile under age fourteen will be valid if an interested adult is not present, understands the

warnings and has a meaningful opportunity to consult with the juvenile.¹⁴

ii. **FOURTEEN YEARS OR OLDER:** For juveniles who are at least fourteen but under age seventeen, there should ordinarily be a meaningful opportunity to consult with a parent or interested adult. If there are valid, substantial reasons why an interested adult is not present, officers should ensure, before interrogating the juvenile, that [s]he understands the Miranda warnings and the consequences of waiving them and that any waiver of his/her rights is made intelligently, knowingly and voluntarily. A valid waiver will not occur unless the circumstance "demonstrates a high degree of intelligence, experience, knowledge or sophistication on the part of the juvenile".¹⁵

iii. **SEVENTEEN YEARS OF AGE:** If the suspect is seventeen years of age at the time of the offense, [s]he is considered an adult in the criminal justice system. Thus for *Miranda* purposes, the special protections afforded to juveniles do not apply.¹⁶

b. **INTERESTED ADULT EXPLAINED:** An interested adult is, most often, a parent of the juvenile. When the parent is unavailable, another interested adult may be called upon, such as, depending on the circumstances, a legal guardian, an adult brother or sister, grandparent, or other adult relative or an attorney.

i. A person would not qualify as an interested adult if the adult:

[a] Lacks the capacity to appreciate the juvenile's situation (e.g., is intoxicated);

[b] Appears to be actually antagonistic to the juvenile; or

[c] Is required to report the juvenile's offenses to authorities (e.g., an employee of the Department of Youth Services, or a school

official in the case of a weapons violation on school grounds).¹⁷

- ii. A person under the age of eighteen will not satisfy the interested adult rule.¹⁸
- c. **OPPORTUNITY TO CONSULT:** The interrogating officer should explain to the adult that the two of them will be left alone to provide them an opportunity to discuss the juvenile's rights. Then the adult and juvenile must be provided an actual opportunity to discuss the juvenile's rights and the consequences of the waiver.

3. *Interrogation*

- a. Prior to conducting a custodial interrogation of a juvenile, the interrogating officer shall be particularly careful to read each Miranda right distinctly, clearly and in a manner designed to ensure that the juvenile (and any adult present on his/her behalf) follows the words being spoken and comprehends their meaning.
- b. Preferably, a written card containing the Miranda warnings should be used. This card should be handed to the juvenile (and any adult present on his/her behalf) so that the juvenile can read it slowly and re-read it if necessary.
- c. When an adult acting on behalf of the juvenile is present, the officer shall read the Miranda warnings to the adult.
- d. Some inquiries shall be made of the juvenile (and any adult present on his/her behalf) as to the juvenile's age, most recent level of schooling and education, whether [s]he has any reading disabilities or mental or emotional conditions and whether [s]he understands the words contained in each Miranda warning.
- e. **UNDER FOURTEEN:** If the juvenile being interrogated is under the age of fourteen, he/she must be given an opportunity to have a meaningful consultation with an interested adult to discuss the Miranda warnings.¹⁹

- f. AGE 14 TO 17: If the juvenile is over the age of fourteen and an interested adult is present, the adult shall be given an opportunity to have a meaningful consultation with the juvenile.²⁰
4. Officers shall ensure that the interrogation is not unduly coercive, particularly when an interested adult is not present. *{44.2.3(b)}*
 - a. The duration of each interrogation session should be limited and frequent breaks taken.
 - b. Absent extraordinary circumstances, only two officers shall be present at the interrogation.

NOTE: Massachusetts courts have not ruled on how long the interrogation session of a juvenile may continue before it becomes unduly coercive. Whether an interrogation is unduly coercive such that a valid waiver of rights cannot be made, is a facts and circumstances inquiry and will be dependent on the age, intelligence and sophistication of the juvenile, as well as the circumstances of the interrogation.²¹

6. REPORTS: Included in the arrest record will be the time in which each period of interrogation was commenced and completed, the officers present and the names of parents or responsible adults on hand.

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

1. A police officer who, in his/her professional capacity, has reasonable cause to believe a child under age 18 is suffering serious physical or emotional injury or death from abuse or neglect, including sexual abuse or malnutrition, shall immediately report such condition to the Department of Social Services by oral communication, followed by a written report within 48 hours of the oral communication.²² Said report shall contain the following information:
 - a. The names and addresses of the child and parents or other person responsible for the child's care, if known;
 - b. The child's age;
 - c. The child's sex;

- d. The nature and extent of the child's injuries, abuse, maltreatment or neglect;
 - e. The circumstances under which the officer first became aware of the child's condition;
 - f. The action taken, if any, to treat, shelter or otherwise assist the child;
 - g. The name of the officer making the report;
 - h. Any other information which the officer believes may be helpful in establishing the cause of the injuries; and
 - i. The identity, if known, of the person or persons responsible for such injuries.
2. Juveniles may be taken into custody in situations where the officer believes that the life or health of the child is in immediate danger. In such cases, the Department of Social Services (DSS) shall be immediately contacted and requested to respond to the scene to take custody of the juvenile.²³ If DSS does not respond to the scene in a reasonable amount of time, the juvenile may be transported to the station to await DSS.
3. In serious cases of child neglect or abuse, the officer may apply to an appropriate juvenile court to have custody of a child under eighteen taken away from the parents or other neglectful or abusing custodian and have custody transferred, on an emergency basis, to DSS or a licensed child care agency or individual.²⁴

G. School Liaison and Youth Programs

1. The chief of police may establish and/or maintain a school liaison program and appoint one or more officers to do the following: [42.2.4]
 - a. Act as a resource with respect to delinquency prevention;
 - b. Provide guidance on ethical issues in a classroom setting, as requested;

- c. Provide individual counseling and/or mentoring to students; and
 - d. Explain to students the role of law enforcement in society.
2. The department encourages all departmental personnel, as good citizens, to participate on their off-duty time, in any community recreational programs for youths. Where a recreational program is needed but does not exist, officers should encourage citizens and community leaders to organize one. {42.2.5}

H. Record Keeping

1. Officers who select noncustodial alternatives or engage in informal enforcement contacts with juveniles shall complete appropriate field interview and/or incident reports as required by this agency. These reports shall clearly identify the juveniles involved, the nature of the incident and the rationale for the officer's disposition.
2. Juveniles taken into custody for criminal-type offenses shall be subject to the same reporting requirements as adults. Such records, including photographs and fingerprints, shall be clearly marked "Juvenile" and will be separated from adult arrest records. {82.1.1(a)(b)}

¹ M.G.L. c. 119, s. 39E-J

² M.G.L. c. 119, s. 52

³ M.G.L. c. 119, s. 52

⁴ 28 CFR Part 31.303 (i)

⁵ M.G.L. c. 119, s. 67

⁶ M.G.L. c. 119, s. 67

⁷ M.G.L. c. 263, s. 1A; *Com. v. Shipps*, 399 Mass. 820, 507 N.E.2d 671 (1987)

⁸ Executive Order Number 339, Commonwealth of Massachusetts, Aug. 14, 1992; 28 CFR Part 31.303(f)(5)(iv)(H)

⁹ M.G.L. c. 119, s. 68

^w M.G.L. c. 119, s. 67

"M.G.L. c. 119, s. 67

¹² M.G.L. c. 94C, s. 36

¹³ *Com. v. A Juvenile*, 389 Mass. 128, 449 N.E.2d 654 (1983)

¹⁴ *Com. v. Beny*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

¹⁵ *Com. v. King*, 17 Mass. App. Ct. 602, 460 N.E.2d 1299, *rev. den.* 391 Mass. 1105, 464 N.E.2d 73 (1984)

¹⁶ *Com. v. Carey*, 407 Mass. 528, 554 N.E.2d 1199 (1990)

¹¹ *Com. v. A Juvenile*, 389 Mass. 128, 449 N.E.2d 654 (1983); *Com. v. Beny*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

¹⁸ *Com. v. Guyton*, 405 Mass. 497, 541 N.E.2d 1006 (1989)

¹⁹ *Com. v. Beny*, 410 Mass. 31, 570 N.E.2d 1004 (1991)

²⁰ *Id.*

²¹ *See Com. v. Harris*, 364 Mass. 236, 303 N.E.2d 115 (1973)

²² M.G.L. c. 119, s. 51A

²³ M.G.L. c. 119, s. 51B

²⁴ M.G.L. c. 119, s. 24

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HANDLING THE MENTALLY ILL

POLICY & PROCEDURE NO. 1.16	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: none	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

Reaction to the mentally ill covers a wide range of human response. People afflicted with mental illness are ignored, laughed at, feared, pitied and often mistreated. Unlike the general public, however, a police officer cannot permit personal feelings to dictate his/her reaction to the mentally ill. His/her conduct must reflect a professional attitude and be guided by the fact that mental illness, standing alone, does not permit or require any particular police activity. Individual rights are not lost or diminished merely by virtue of a person's mental condition. These principles, as well as the following procedures, must guide an officer when his/her duties bring him/her in contact with a mentally ill person.

II. POLICY

A. It is the policy of this department that:

1. Officers shall accord all persons, including those with mental illness, all the individual rights to which they are entitled;
and

2. Officers shall attempt to protect mentally ill persons from harm and shall refer them to agencies or persons able to provide services where appropriate.

III. PROCEDURES

A. Recognition and Handling

1. An officer must be able to recognize a mentally ill individual if [s]he is to handle a situation properly.
 - a. Factors that may aid in determining if a person is disturbed are:
 - i. Severe changes in behavioral patterns and attitudes;
 - ii. Unusual or bizarre mannerisms and/or appearance;
 - iii. Distorted memory or loss of memory;
 - iv. Hallucinations or delusions;
 - v. Irrational explanation of events;
 - v. Hostility to and distrust of others;
 - vii. Fear of others such as paranoia;
 - viii. Marked increase or decrease in efficiency;
 - ix. Lack of cooperation and tendency to argue;
 - x. One-sided conversations; and
 - xi. Lack of insight regarding his/her mental illness.
 - b. These factors are not necessarily, and should not be treated as, conclusive. They are intended only as a framework for proper police response. It should be noted that a person exhibiting signs of an excessive intake of alcohol or drugs may also be mentally ill.

2. If an officer believes [s]he is faced with a situation involving a mentally **ill** person, [s]he should not proceed in haste unless circumstances require otherwise.
 - a. An officer should be deliberate and take the time required for an overall look at the situation.
 - b. An officer should ask questions of persons available to learn as much as possible about the individual. It is especially important to learn whether any person, agency or institution presently has lawful custody of the individual, and whether the individual has a history of criminal, violent or self-destructive behavior.
 - c. An officer should call for and await assistance. It is advisable to seek the assistance of professionals such as doctors, psychologists, psychiatric nurses and clergy, if available. The officer should have telephone numbers and locations of crisis centers.
 - d. It is not necessarily true that mentally **ill** persons will be armed or resort to violence. However, this possibility should not be ruled out and because of the potential dangers, the officer should take all precautions to protect everyone involved.
3. It is not unusual for such persons to employ abusive language against others. An officer must ignore verbal abuse when handling such a situation.
4. Avoid excitement. Crowds may excite or frighten the mentally **ill** person. Groups of people should not be permitted to form or should be dispersed as quickly as possible.
5. Reassurance is essential. An officer should attempt to keep the person calm and quiet. [S]he should attempt to show that [s]he is a friend and that [s]he will protect and help. It is best to avoid lies and not to resort to trickery.
6. An officer should at all times act with respect towards the mentally **ill** person. Do not "talk down to" such person or treat such a person as "child-like." A person with mental illness may be both highly intelligent and acting irrationally. Mental illness, because of human attitudes, carries with it a serious stigma. An officer's response should not increase the

likelihood that a disturbed person will be subjected to offensive or improper treatment.

B. Taking a Mentally Ill Person into Custody

1. A mentally ill person may be taken into custody if:
 - a. (S)he has committed a crime.
 - b. The officer has a reasonable belief, under the circumstances, that [s]he poses a substantial danger of physical harm to himself/herself or other persons.¹ Threats or attempts at suicide should never be treated lightly.
 - c. [S]he has escaped or eluded the custody of those lawfully required to care for him/her.
2. At all times, an officer should attempt to gain voluntary cooperation from the individual.

3. *Chapter 123, Section 12(e) Petitions:*

- a. In an emergency situation, if a physician or qualified psychologist is not available, a police officer, who *reasonably believes* under the circumstances that failure to hospitalize a person would create a likelihood of serious harm by reason of mental illness, may restrain such person and apply for the hospitalization of such person for a four day period at a public facility or a private facility authorized for such purpose by the Massachusetts Department of Mental Health.²
- b. Although "any person," including a police officer, may petition a district court to commit a mentally ill person to a facility for a four day period if failure to confine that person would cause a likelihood of serious harm³, generally, a police officer should be the last person to initiate such proceedings. Four day commitment proceedings under section 12(e) of Chapter 123 should be initiated by a police officer only if all of the following procedures have been observed:

- i. Determination has been made that there are no outstanding commitment orders pertaining to the individual; and
 - ii. Every effort has been made to enlist an appropriate physician, psychiatrist, psychologist, social worker or family member to initiate the commitment proceedings; and
 - iii. The officer has received approval from the Chief or the appropriate commanding officer of the department.
- c. Officers may effect a warrantless entry to execute a section 12 application for temporary hospitalization (pink paper) provided:
- i. They are in possession of the pink paper;
 - ii. The entry is of the residence of the subject of the pink paper;
 - iii. The pink paper was issued by a qualified physician, psychologist, or psychiatric nurse in an emergency situation and where the subject refused to consent to an examination; and
 - iv. The warrantless entry is made within a reasonable amount of time after the pink paper has been issued.

NOTE: If any of the above criteria are not met and unless exigent circumstances are present, a warrant shall be obtained prior to any entry of a residence to execute a pink paper.

4. *Escapes from Mental Health Facilities*

- a. If a patient or resident of a facility of the Massachusetts Department of Mental Health is absent without authorization, the superintendent of the facility is required to notify the state and local police, the local district attorney and the next of kin of such patient or resident. 5

- b. Such persons who are absent for less than six months may be returned by the police. This six month limitation does not apply to persons who have been found not guilty of a criminal charge by reason of insanity nor to persons who have been found incompetent to stand trial on a criminal charge.s

5. *Taking Into Custody*

- a. Whenever police take a mentally ill person into custody, the appropriate mental health officials should be contacted. They should be informed of the individual's condition and their instructions sought on how to properly handle and, if necessary, restrain the individual and to what facility [s]he should be taken.⁷
- b. If an officer makes application to a hospital or facility and is refused, or if [s]he transports a person with a commitment paper (section 12 paper) signed by a physician, and that person is refused admission, [s]he should ask to see the administrative officer on duty to have him/her evaluate the patient. If refusal to accept the mentally ill person continues, the officer shall not abandon the individual, but shall take measures in the best interests of that person and, if necessary, take the mentally ill person to the station house. Notification of such action shall immediately be given to the officer-in-charge or the Chief, who can notify the Department of Mental Health.
- c. Police officers are immune from civil suits for damages for restraining, transporting, applying for the admission of or admitting any person to a facility if the officer acts pursuant to the provisions of Chapter 123.8

6. *Interrogating Mentally IU Suspects*

- a. Whenever a mentally ill or mentally deficient person is a suspect and is taken into custody for questioning, police officers must be particularly careful in advising the subject of his/her Miranda rights and eliciting any decision as to whether [s]he will exercise or waive those rights. It may not be obvious that the person does not understand his/her rights. The departmental

policy and procedure on *Interrogating Suspects and Arrestees* should be consulted.

- b. In addition, it may be very useful to incorporate the procedures established for interrogating juveniles when an officer seeks to interrogate a suspect who is mentally ill or mentally deficient. Those procedures are set out in the departmental policy and procedure *Handling Juveniles*.
 - c. Before interrogating a suspect who has a known or apparent mental condition or disability, police should make every effort to determine the nature and severity of that condition or disability, the extent to which it impairs the subject's capacity to understand basic rights and legal concepts such as those contained in the Miranda warnings and whether there is an appropriate "interested adult," such as a legal guardian or legal custodian of the subject, who could act on behalf of the subject and assist the subject in understanding his/her Miranda rights and in deciding whether or not to waive any of those rights in a knowing, intelligent and voluntary manner.
7. CONFIDENTIALITY: Any officer having contact with a mentally ill person shall keep such matter confidential except to the extent that revelation is necessary for conformance with departmental procedures regarding reports or is necessary during the course of official proceedings.
 8. WST OR MISSING: If a mentally ill or deficient person is reported lost or missing, police should provide the family of the telephone number of the National Alliance for the Mentally Ill (NAMI)/Homeless or Missing Persons Service which operates an emergency hotline to assist all families and friends who have a missing relative or friend. The telephone number is (740) 423-4279. See the departmental policy and procedure on *Missing Persons*.
 9. COMPLAINTS WITH NO IMMEDIATE THREAT: An officer who receives a complaint from a family member of an allegedly mentally ill person who is not an immediate threat or is not likely to cause harm to himself or others, should advise such family member to consult a physician or mental health professional.

¹*Ahem v. O'Donnell*, 109 F.3d 809 (1st Cir. 1997)

²M.G.L. c. 123, s. 12(a); *Ahem v. O'Donnell*, 109 F.3d 809 (1st Cir. 1997)

³M.G.L. c. 123, s. 12(e)

⁴*McCabe v. Life-Line Ambulance Service, Inc.*, 77 F.3d 540 (1st Cir. 1996)

⁵M.G.L. c. 123, s. 30

⁶M.G.L. c. 123, s. 30

⁷M.G.L. c. 123, s. 12(a)

⁸M.G.L. c. 123, s. 22

ELDER ABUSE

POLICY & PROCEDURE NO. 1.17	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: none	EFFECTIVE DATE: _____
	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

According to the 2000 census, approximately one of every six Massachusetts residents is age 60 or older. This number is expected to increase as baby-boomers age. Although elders are less likely to be victimized by street crime than most other groups, they are often the victims of abuse; neglect and financial exploitation. In addition, certain elders living in the community have lost the ability for self-care and are unable to meet their essential needs. These self-neglecting elders, as well as elder victims and elder perpetrators, present unique challenges for law enforcement.

Police officers have a special obligation to vulnerable populations, including citizens age 60 and over. Massachusetts law requires police officers to report suspected instances of abuse of persons age 60 or older, living in the community, to the Department of Elder Affairs or to one of its designated protective services agencies.

As they carry out their duties, police officers should be aware that competent elders have the same right to self-determination as do other adults. However, in approaching a situation involving elders, officers should not make assumptions about the elder's capabilities, but should be aware of the potential for diminished capacity and other complicating factors. These may include the following:

- A. Reporting issues - An elder victim may not be competent to tell his or her story, or may be reluctant to report an abusive

family member or caretaker who acts as the victim's sole or primary support, or may simply be too embarrassed to admit that a loved one is abusing him or her. An elder perpetrator may also have diminished capacity and poor impulse control caused by a disease process.

- B. Domestic violence grown old -A longstanding history of domestic violence is unlikely to end just because the perpetrator and victim have grown old. The department's Domestic Violence Policy and Procedure applies to elders. The criminal justice system must prepare for larger numbers of elder victims and perpetrators and recognize the limited placement options currently available for elder victims.
- C. Caretaker stress- Adult children, with family, career and other obligations of their own, may also be responsible for taking care of their parents. The associated stress can occasionally lead to neglect and more dangerous behaviors.

II. POLICY

It is the policy of this department that:

- A. Officers shall accord all persons, including elders, all the individual rights to which they are entitled;
- B. Officers shall attempt to protect elders from harm and shall refer them to agencies or persons able to provide services where appropriate;
- C. Officers shall coordinate their efforts with local protective services agencies to ensure the elder's safety;
- D. Officers shall adhere to the mandated reporting requirements of G.L.c. 19A, §15, the Elder Abuse Reporting Statute, and its implementing regulations found at 651 CMR 5.02; 8pd
- E. Where feasible, the Department shall designate one or more officers to have primary responsibility for elder concerns.

III. THE MANDATED REPORTING LAW

Under the mandated reporting law, police are required to report suspected instances of elder abuse. The statute and regulations, set out at G.L.c.19A, §15 and 651 CMR 5.02, respectively, provide:

If there is reasonable cause to believe that an elder, who is 60 years of age or older, is suffering from or has died from abuse or a reportable condition, a police officer must immediately make a verbal report to the Department of Elder Affairs or the local protective services agency during normal business hours or to the elder abuse hotline (1-800-922-2275) after normal business hours and on weekends.

A written report must be filed within 48 hours of the verbal report. As a mandated reporter, the law grants immunity from civil and criminal liability based on the filing of a report, so long as the reporter did not inflict the abuse. Mandated reporters are informed in writing of the disposition of reports.

For a list of local protective services agencies, see Appendix I.

Officers shall familiarize themselves with the following terms, as defined in the reporting law and its implementing regulations. The failure to report suspected instances of abuse or neglect is punishable by a fine of up to \$1,000. G.L.c.19A, §15.

Definitions (from G.L.c.19A, §14 and 651 CMR 5.02)

- A. Abuse - An act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person, or the failure of an elder to meet one or more of his/her essential needs. The statute provides an exception for treatment provided or refused in accordance with religious beliefs. "Abuse" includes physical, emotional and sexual abuse, caretaker neglect, self-neglect, and financial exploitation. G.L.c.19A, §14
- B. Physical Abuse- The non-accidental infliction of, or threat of, serious physical injury to an elder. 651 CMR 5.02
- C. Sexual Abuse- Sexual assault, rape, sexual misuse, sexual exploitation of an elder, or threats of sexual abuse. 651 CMR 5.02
- D. Emotional Abuse- The non-accidental infliction of serious emotional injury to an elder. There must be an established relationship between the emotional abuse and its effect on the elder. 651 CMR 5.02
- E. Neglect- The failure or refusal by a caretaker to provide one or more of the necessities essential for physical well-being which has resulted in or may immediately result in serious physical harm. 651 CMR 5.02

- F. **Self-Neglect**- The failure or refusal of an elder to provide for himself or herself one or more of the necessities essential for physical and emotional wellbeing, including food, clothing, shelter, or personal care, which has resulted in, or where there is a substantial reason to believe that such failure or refusal will immediately result in serious harm and prevents the elder from remaining safely in the community. 651 CMR 5.02(6) (2004).
- G. **Financial Exploitation** - An act or omission by another person, which causes a substantial monetary or property loss to the elder, or causes a substantial monetary or property gain to the other person which would otherwise benefit the elder. Exploitation may result even if the elderly person consented to the act or omission if the consent was obtained through misrepresentation, undue influence, coercion or the threat of force. G.L. c.19A, §14.

IV. SPECIAL CIRCUMSTANCES

- A. *Physical Limitations*: Many elders, whether self-neglecting, abuse victims or perpetrators, have physical limitations that make it difficult for them to communicate. Some elders have speech impairments caused by stroke or other debilitating conditions. Others suffer from a loss of hearing or vision or other frailties that may impair their ability to communicate. Officers must be aware of and sensitive to the physical limitations of individual elders and make efforts to communicate with them in a sensitive and respectful manner. When needed, assistance from the appropriate protective services agency should be sought.
- B. *Diminished Capacity*: Some elders have diminished cognitive capacity due to the effects of dementia or Alzheimer's disease. Depending on the extent of the dementia or Alzheimer's, an elder may or may not be able to provide reliable information about his or her situation. Some elders suffer from mental illness, which could further impact their cognitive abilities. Police officers need to be able to identify when an elder's diminished capacity prevents him or her from providing reliable information and obtain assistance from the appropriate protective services agency.
- C. *Working with Resistance*: Many elders are resistant to outside intervention. This resistance may be due to any

number of factors, including a life-long sense of independence, the effects of mental illness, fear of embarrassment to admit that they have been abused, or even a desire to protect the perpetrator. When encountering resistance, it is important to build rapport by determining and responding to those issues that are important to the elder. Often, this approach will diminish the resistance and enable the officer to address more serious matters. When needed, assistance should be sought from the protective services agency.

V TAKING INTO CUSTODY

- A. An elderly person may be taken into custody if:
1. The elder has committed a crime;
 2. The officer has reason to believe that the failure to hospitalize the elder would create a likelihood of serious harm by reason of mental illness(G.L. c.123, §12(a)); or
 3. The elder has escaped or eluded the custody of those lawfully required to care for him or her: (G.L. c.123, §12(a)).
- B. If the situation warrants, an officer should consider whether the procedures outlined in G.L. c.123, §12(e) (the Civil Commitment Statute) would be appropriate and refer to the department's Handling the Mentally Ill Policy & Procedure.

VI. INTERROGATING ELDERLY SUSPECTS

- A. Whenever an elderly person is suspected of committing a crime and is going to be questioned, police officers must be particularly careful in advising the subject of his/her Miranda rights and eliciting any decision as to whether he or she will exercise or waive those rights. It may not be obvious that the person does not understand his/her rights. The department's Interrogating Suspects and Arrestees policy and procedure should be consulted.
- B. Before interrogating a suspect who has a known or apparent mental condition or disability, police should make every effort to determine the nature and severity of that condition or disability, the extent to which it impairs the subject's

capacity to understand basic rights and legal concepts such as those contained in the Miranda warnings, and whether there is an appropriate "interested adult," such as a spouse, adult child, guardian or legal custodian of the elder who could assist the elder in understanding his or her Miranda rights and in deciding whether or not to waive any of those rights in a knowing, intelligent and voluntary manner. Where competency may be in question, officers should be aware that any waiver obtained will be carefully scrutinized by the court. Consultation with the local District Attorney's office may be appropriate in such circumstances.

VII. **ARRESTING A CARETAKER**

- A. In cases involving abuse of an elder by a caretaker, officers must address the issue of whether or not the victim can be left alone safely if the abuser is arrested.
- B. If the elder cannot be left alone, the appropriate protective services agency must be contacted in order to arrange for the temporary care of the elder.

VIII. **SELECTED CRIMINAL LAWS**

Following are several of the criminal statutes which officers dealing with the elder population may encounter with some frequency:

- Assault and Battery upon an Elderly or Disabled Person (G.L. c.265, §13K)
- Indecent Assault and Battery on a Person 14 or Older (G.L. c.265, §13H)
- Assault and Battery with Dangerous Weapon; Victim Sixty or Older (G.L. c.265, §15A)
- Assault with Intent to Rob or Murder While Armed; Victim Sixty Years or Older; Minimum Sentence for Repeat Offenders (G.L. c.265, §18)
- Robbery by Unarmed Person; Victim Sixty or Older (G.L. c.265, §19)
 - Entering Dwelling House by False Pretenses; Intent to Commit Felony; Larceny (G.L. c.266, §18A)
- Larceny by Stealing; Victim Sixty-Five or Older (G.L. c.266, §25)
- Larceny; General Provisions and Penalties (G.L. c.266, §30(5))

¹See G.L. c. 19A, §15. Officers are mandated to report abuse and neglect of elders in nursing homes and other long-term care facilities to the Department of Public Health. G.L. c. 111, §72G.

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EXECUTING SEARCH WARRANTS

POLICY & PROCEDURE NO. 1.18	ISSUE DATE:
	EFFECTIVE DATE:
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: None	REVISION DATE:

I. GENERAL CONSIDERATIONS AND GUIDELINES

The execution of search warrants can be a demanding and potentially dangerous task. Sufficient care should be taken in analyzing the circumstances surrounding the offense, the suspects, and the location at which the warrant will be served, and in planning an appropriate response.

Dangers lurk in every size jurisdiction, with guns, explosives and other potentially deadly threats facing unsuspecting or unprepared officers. Assigning an insufficient number of officers, or relying on untrained personnel, may increase the risk of deadly consequences. It is essential to have a process to evaluate and classify search warrants, so as to tailor search warrant execution procedures.

The officer seeking the warrant should make certain that the judicial official contacted has the authority to issue search warrants in that locality and that the official has not made any errors on the face of the warrant or in the course of its issuance. The warrant should be scrutinized with great care to ensure that:

- The correct form has been used.
- All the blanks have been filled in.
- The information set forth is accurate and legally sufficient.
- The warrant has been properly signed by the issuing magistrate or judge.

It is the responsibility of the officer obtaining the warrant to make certain that the warrant is correct and has been issued properly.

H. POLICY

It is the policy of this police department to:

- A. accomplish a thorough and legal search; respect the constitutional rights of the person(s) the warrant is being served upon;
- B. minimize the level of intrusion experienced by those who are having their property/premises searched;
- C. provide for the safety for all persons concerned; and
- D. establish a record of the warrant execution process.

HI. DEFINITIONS

- A. *Search Site*: The premises to be searched, as explicitly stated in the search warrant.
- B. *Search Personnel*: Law enforcement officers and supporting personnel taking part in the execution of a search warrant.
- C. *Evidence Collector*: Member of the search team responsible for the possession, packaging, sealing, and marking of all items seized.
- D. *Case Officer*: The officer primarily responsible for the investigation, and preparing, planning, and implementing the search warrant.
- E. *Tactical Coordinator*: The officer responsible for planning and supervising tactical operations to include dynamic entry and other tasks requiring special weapons and tactically trained officers.
- F. *Protective Sweep*: Quick and limited search of premises incident to an arrest or service of a warrant performed in order to identify weapons or other dangers to officers or others. Officers must be able to articulate a reasonable basis for conducting a protective sweep.

IV. PROCEDURES

A. *Warrant Service Planning*

1. CASE OFFICER

- a. The case officer shall advise and receive approval from his or her supervisor before serving the warrant.
- b. Selection of officers to serve the warrant shall be based on the officers' prior training and experience in conducting warrant service, consistent with the demands of the warrant service in question.
- c. Efforts shall be made to obtain adequate personnel to serve the warrant safely and efficiently.

- d. The case officer shall ensure the complete preparation for serving the warrant, in accordance with its nature and complexity, and in consultation with the prosecutor, if necessary.
- e. The case officer shall determine the best date and time for warrant execution. The warrant shall be executed as soon as practicable as defined by state law.
- f. The case officer shall determine equipment, team personnel, and any specialized team requirements.
- g. The case officer shall ensure that the entire search warrant execution process is documented until the search team leaves the premises. A written record may be supported by photographs and, if practical, videotaping of the entire search process.
- h. Prior to the execution of the warrant, the case officer shall make a final assessment of the warrant's accuracy in relationship to the location to be searched.

2. INTELLIGENCE

- a. Gather intelligence on the target site, to include the structure, immediate area surrounding the structure, and surrounding neighborhood.
- b. Assess the capabilities and backgrounds of suspects, to include criminal records and history of weapons usage and potential for violence.
- c. Prior to execution of the warrant, the case officer shall attempt to determine if any circumstances have changed that make executing the search warrant undesirable at that time.
- d. Where possible, pre-search surveillance shall be conducted up to the point at which the warrant is executed.

3. SEARCH WARRANT

- a. Secure a warrant and ensure that it is thoroughly reviewed for accuracy, legal integrity, and completeness. For further information, see the department policy on *Search Warrant Affidavits*.
- b. Search warrants must be served within seven (7) days of issue.¹
 - 1) The need for a no-knock warrant or a no-knock entry should be considered prior to applying for the warrant and again prior to execution.
 - 2) The need for a no-knock warrant shall be clearly specified in the application and affidavit for a warrant if probable cause exists

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at the time of application. A no-knock entry may be made if the officers have probable cause to believe:

- a) There is a risk to the safety of the officers or persons on the premises if an announcement is made.
 - b) There is a risk of the escape of the person sought in the warrant.
 - c) There is a risk of the destruction of evidence.
- 3) Officers must reassess the need for announcing entry immediately prior to executing the warrant. If the probable cause no longer exists, the officers must announce prior to entry.
- 4) If probable cause should develop after the warrant is issued and before it is executed, officers may enter unannounced.
- c. Should nighttime service, between the hours of 10:00 p.m. and 6:00 a.m. be deemed necessary, justification shall be included in the affidavit and must be authorized in the search warrant.
- d. The use of a tactical team, if available, should be considered whenever a warrant calls for no-knock entry, nighttime entry, or service involving either drugs or subjects deemed particularly dangerous.

B. Preparation for Executing the Warrant

1. BRIEFING

- a. The case officer and tactical coordinator, where required, work cooperatively to ensure proper preparation, planning, and service of the warrant.
 - 1) They shall detail procedures for executing the warrant to all team members in a warrant service briefing. The briefing shall be conducted by both the case officer and tactical coordinator, if participating.
- b. Identify personnel, resources, or armament necessary for gaining entry, safety and security of officers, or for conducting the search.
- c. If a joint agency task force operation, all officers participating in the warrant service shall be present and identified as members of the warrant service team.

2. TARGET

- a. Delineate information concerning the structure to be searched and surroundings, to include floor plans where available, mockups, photos, and diagrams of the location identifying entrances, exits,

obstructions, fortifications, garages, outlying buildings, suspect vehicles, and all other points of concern.

- b. Identify suspects and other occupants who may be present at the location--incorporating photos or sketches whenever possible--with emphasis on suspect threat potential, as well as the presence of children, the elderly or others who may not be involved with suspects.
- c. Make a complete review of the tactical plan, to include the staging area and route of approach.
- d. Develop procedures for exiting the location under emergency conditions.

3. ENTRY AND SEARCH

- a. The entry team should include uniformed officers who shall be conspicuously present where the warrant is served. All non-uniformed officers shall be clearly identified as law enforcement officers by a distinctive jacket or some other conspicuous indicator of office.
- b. All members of the search team shall wear body armor or ballistic vests as designated by the case officer.
- c. Individual assignments shall be made for entry, search, management of evidence, custody and handling of seized vehicles, custody of prisoners, and post-execution duties, such as securing the location and conducting surveillance on the site for additional suspects.
- d. The specific items subject to the search will be defined in the warrant, with any available information on their location.
- e. Contingency plans shall be made for encountering hazardous materials, canines, booby traps, fortifications or related hazards, and shall include measures to take in case of injury or accident, to include the nearest location of trauma or emergency care facilities.

C. Entry Procedures

- 1. If an advance surveillance team is at the target site, contact shall be made to ensure that the warrant can be served according to plan.
- 2. The search personnel shall position themselves in accordance with the execution plan.
- 3. Notification: An easily identifiable police officer shall knock and notify persons inside the search site, in a voice loud enough to be heard inside the premises, that [s]he is a police officer and has a warrant to search the premises, and that [s]he demands entry to the premises at once.

4. Following the knock and announce, officers shall delay entry for an appropriate period of time based on the size and nature of the target site and time of day to provide a reasonable opportunity for an occupant to respond (normally between fifteen and twenty seconds).
5. If there is reasonable suspicion to believe that the delay would create unreasonable risks to the officers or others, inhibit the effectiveness of the investigation, or would permit the destruction of evidence, entry may be made as soon as practicable.

D. On-Premises Activities

1. ENTRY

- a. The supervisory officer shall ensure that a protective sweep of the site is performed immediately.
- b. Upon entry, the occupant shall be given a copy of the search warrant. If the property is not occupied at the time of the search, a copy of the warrant shall be left in a conspicuous location at the site.

2. SEARCH PROCESS

- a. Search personnel shall then follow the plan that details the likely whereabouts of the items to be seized and the order of operation for conducting the search.
- b. Items specified in the warrant may be searched for in places where they may reasonably be expected to be located and seized, as well as other items that are reasonably recognized as evidence.

3. EVIDENCE DOCUMENTATION

- a. The search must be accomplished in an organized fashion.
- b. Evidence may be photographed in place prior to recovery.
- c. An officer, designated in the plan, shall be responsible for collecting, preserving, and documenting all items seized until possession is transferred to the evidence custodian, laboratory, or other authority.
- d. Cash and currency taken as evidence shall be counted, documented, and placed in a sealed envelope or container by two officers.

4. SEARCH CONCLUSION

- a. Officers should exercise reasonable care in executing the warrant to minimize damage to property.
- b. If damage occurs during an entry to premises that will be left vacant, and the damage may leave the premises vulnerable to

security problems, arrangements shall be made to guard the premises until it can be secured.

- c. If items are taken from the search site, an itemized receipt shall be provided to the resident/occupant, or in the absence of the same, left in a conspicuous location at the site.
5. AFTER ACTION BRIEFING: In a timely manner upon conclusion of the warrant service, the case officer and tactical coordinator may conduct a debriefing of all participating officers.
6. REPORTING
- a. The case officer shall, thereafter, prepare and submit an after action report on the warrant service, results of the search, and recommendations for further investigative actions.
 - b. If damage occurs, justification for actions that caused the damage and a detailed description of the nature and extent of the damage shall be documented. Photographs of the damage should be taken where possible.

■M.G.L. c. 276, §2A; M.G.L. c. 276, §3A.

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