2022 School Resource Officer Memorandum of Understanding
Between
Nashoba Regional Public Schools
and
Bolton Police Department

This agreement (the "Agreement") is made by and between Nashoba Regional Public School District (the "District") and Bolton Police Department (the "Police Department") (collectively, the "Parties"). The Chief of Police of the Police Department or the board or officer having control of the police department in a city or town (the "Chief") and the Superintendent of the District ("the Superintendent") are each a signatory to this Agreement. The provisions of this Agreement are specifically required by section 37P of chapter 71 of the General Laws, as amended by Section 79 of chapter 253 of the Acts of 2020.

Purpose

The purpose of this Agreement is to formalize and clarify implementation of the partnership between the school and the School Resource Officer ("SRO")/the District and a Police Department regarding the placement of a police officer at Nashoba Regional High School(s) (the "School") in order to promote school safety; help maintain a positive school climate for all students, families, and staff; enhance cultural understanding between students and law enforcement; promote school participation and completion by students; facilitate appropriate information-sharing (as outlined in Section VI below); and inform the Parties' collaborative relationship to best serve the school community.

This memorandum does not, and may not be relied upon to, create any rights, substantive or procedural, enforceable by any person in any civil or criminal matter. Modifications of this Agreement are permissible when necessary to indicate local practice, so long as they are consistent with state and federal law.

I. Mission Statement, Goals, and Objectives

The mission is to facilitate relationship-building by the SRO such that students, faculty, staff, and community members see the SRO as contributing to a positive school climate. This will be realized by supporting and fostering the safe and healthy development of all students at the School through strategic and appropriate use of law enforcement resources and with the mutual understanding that school participation and completion are indispensable to achieving positive outcomes for youth and public safety.

The Parties are guided by the following goals and objectives (the "Goals and Objectives"):

- To foster a safe and supportive school environment that allows all students to learn and flourish regardless of race, religion, national origin, immigration status, gender, disability, sexual orientation, gender identity, gender expression, or socioeconomic status;
- To promote a strong partnership and communication between school and police personnel and clearly delineate their roles and responsibilities;
- To establish a framework for principled conversation and decision-making by school and police personnel regarding student conduct and students in need of services;
- To ensure that school personnel and SROs have clearly defined roles in responding to student conduct and that school administrators are responsible for code of conduct and routine disciplinary violations;
- To minimize the number of students unnecessarily out of the classroom, arrested at school, or court-involved;

- To provide requirements and guidance for training, including SRO training required by law and consistent with best practices and training for school personnel as to when it is appropriate to request SRO intervention;
- To outline processes for initiatives that involve the SRO and school personnel, such as violence prevention and intervention and emergency management planning, that can be provided upon request; and
- To offer presentations and programming to the school focusing on criminal and juvenile justice issues; community and relationship building; and prevention, health, and safety topics.

Nothing in this Agreement shall limit an officer's ability to exercise lawful authority consistent with all laws of the Commonwealth.

II. Roles and Responsibilities of the SRO and School Administrators and Staff in Student Conduct

A "school resource officer" is a duly sworn municipal police officer, or a special officer appointed by the chief of police, with all necessary training and up-to-date certificates, including special school resource officer certification as required by subsection (b) of section 3 of chapter 6E of the General Laws and is charged with: (i) providing law enforcement; (ii) promoting school safety and security services to elementary and secondary public schools; and (iii) maintaining a positive school climate for all students, families and staff.

The Parties agree that school officials and the SRO play important and distinct roles in responding to student conduct to ensure school safety and promote a positive and supportive learning environment for all students.

Under state law, the SRO shall not (i) serve as school disciplinarian, enforcer of school regulations, or in place of licensed school psychologists, psychiatrists, or counselors; or (ii) use police powers to address traditional school discipline issues, including non-violent disruptive behavior.

The principal or principal's designee shall be responsible for student code of conduct violations and routine disciplinary violations. The SRO shall be responsible for investigating and responding to potential criminal or delinquent offenses as well as student conduct that requires immediate intervention to maintain safety, as described below. The Parties acknowledge that many acts of student conduct that may contain all the necessary elements of a criminal offense are best handled through the school's disciplinary process. The SRO shall read the student code of conduct for both the District and the school and seek clarification on any questions the SRO has.

The principal or principal's designee and the SRO shall use their reasoned professional judgment and discretion to determine whether SRO involvement is appropriate for addressing student conduct. In such instances the guiding principle is whether conduct rises to the level of criminal and delinquent conduct that (1) poses substantial harm to the physical well-being of another person or (2) is willful and malicious and causes substantial harm to the property of the school or (3) constitutes the taking of property of substantial value belonging to another with intent to permanently deprive the property owner of the property. The Parties acknowledge that it may be appropriate for school administrators rather than the SRO deal with low-level offenses including but not limited to misdemeanor allegations of threats, assault and battery, larceny, receiving stolen property, and willful, malicious, or wanton destruction or injury to personal property. School staff shall not ask an SRO to serve as a school disciplinarian or enforcer of school regulations.

In instances of student conduct that do not require a law enforcement response, including any incident involving misconduct by a student under 12 years of age, the principal or principal's designee shall determine the appropriate disciplinary response, allowing the student to remain in school unless doing so would pose a serious safety or security risk. The principal or principal's designee should prioritize school or community-based accountability programs and services, including but not limited to, peer mediation, restorative justice, and mental health resources, whenever possible.

For student conduct that requires immediate intervention to maintain safety (whether or not the conduct involves criminal conduct), the SRO may act to de-escalate the immediate situation (where feasible) and to protect the physical safety of members of the school community. To this end, school personnel may request the presence of the SRO when they have a reasonable and articulable fear of an imminent threat to their safety or the safety of students or other personnel.

The SRO shall inform the principal or principal's designee, where practicable, to facilitate supportive intervention by school staff on behalf of the student in an emergency situation where a student may be in immediate need of emergency medical or psychological assistance. Such intervention is appropriate when a school nurse, psychologist, or social worker is not available, and the SRO believes that failure to intervene would create a substantial likelihood of serious harm to the student, other students, school personnel or result in destruction to school property by reason of mental illness or psychological trauma.

When the SRO or other Police Department employees have opened a criminal investigation, school personnel shall not interfere with such investigation or act as agents of law enforcement. To protect their roles as educators, school personnel shall assist in a criminal investigation only as witnesses or to otherwise share information consistent with Section VI, except in cases of emergency. Nothing in this paragraph shall preclude the principal or principal's designee from undertaking parallel disciplinary or administrative measures that do not interfere with a criminal investigation.

The SRO shall consult with the principal or principal's designee prior to an arrest whenever practicable, and the student's parent or guardian shall be notified as soon as practicable after an arrest. A summons is the preferred method for bringing all juveniles to court unless there is reason to believe the juvenile will not appear upon a summons. In the event of an investigation by the SRO that leads to custodial questioning of a juvenile student, the SRO shall notify the student's parent/guardian or interested adult in advance and offer them the opportunity to be present during the interview.

At least annually, it shall be the responsibility of the District to provide training and information to educators and other school staff on the distinct roles of school administration and SROs in addressing student conduct, consistent with this Section and this Agreement, as well as the Standard Operating Procedures accompanying this Agreement and described in Section X.

III. The Process for Selecting the SRO

The Parties acknowledge that the selection of the SRO is important to achieving the purpose, goals, and objectives of this MOU, and that it is important for the Parties and the school community to have a positive perception of and relationship with the SRO.

In accordance with state law, the Chief of Police shall assign an officer whom the Chief believes would foster an optimal learning environment and educational community and shall give preference to officers who demonstrate the requisite personality and character to work in a school environment with children and educators and who have received specialized training including, but not limited to: continuing professional development in child and adolescent development, conflict resolution and diversion strategies, de-escalation tactics, trauma informed practices, diversity, equity, and inclusion, behavioral

health and any other training required by the Municipal Police Training Committee established in Section 116 of Chapter 6**.** The Chief of Police, or any employee of the state police assigning an officer, shall work collaboratively with the Superintendent in identifying officers who meet these criteria and in selecting the officer who is ultimately assigned as the SRO.

Should the Superintendent request assignment of an SRO and the Chief, in consultation with the Superintendent, determines there are not sufficient resources to assign an SRO to serve the city, town, regional school district, or county agricultural school, the Chief shall consult with the Department of State Police regarding the option of an officer being assigned, subject to appropriation, and pursuant to all requirements under the MOU and governing state law (e.g., regarding SRO training).

The Chief shall consider the following additional factors in the selection of the SRO:

- Proven experience working effectively with youth;
- Demonstrated ability to work successfully with a population that has a similar racial and ethnic makeup and language background as those prevalent in the student body, as well as with persons with physical and mental disabilities, including persons with special educational needs, persons on the autism spectrum, and persons with behavioral health challenges;
- Demonstrated commitment to making students and school community members of all backgrounds feel welcomed and respected;
- Demonstrated commitment to de-escalation, diversion, and/or restorative justice, and an understanding of crime prevention, problem-solving, and community policing in a school setting;
- Knowledge of school-based legal issues (e.g., confidentiality, consent), and demonstrated commitment to protecting students' legal and civil rights;
- Knowledge of school safety planning and technology;
- Demonstrated commitment and ability to engage in outreach to the community;
- Knowledge of school and community resources;
- A record of good judgment and applied discretion, including an absence of validated complaints and lawsuits, documented in annual reviews conducted pursuant to Section VII.

In endeavoring to assign an SRO who is compatible with the school community, the Chief shall receive and consider input gathered by the Superintendent from the school principal(s) and representative groups of teachers, parents, and students, in addition to the Superintendent. In accordance with state law, the Chief shall not assign an SRO based solely on seniority.

The Chief shall consider actual or apparent conflicts of interest, including whether an officer is related to a current student at the school to which the officer may be assigned as an SRO. As part of the application process, officers who are candidates for an SRO position shall be required to notify the Chief about any relationships with current students or staff members or students or staff members who are expected to join the school community (e.g., children who are expected to attend the school in the coming years). Any SRO who has a familial or other relationship with a student or staff member that might constitute an actual or apparent conflict of interest shall be required to notify the SRO's appointing authority at the earliest opportunity. The appointing authority shall determine the appropriate course of action, including whether to assign another officer to respond to a particular situation, and will advise the SRO and the District accordingly. Nothing in this paragraph is intended to limit the ability of the SRO to respond to emergency situations in District schools.

IV. Annual Review of the SRO

In accordance with state law, the Chief and the Superintendent shall annually review the performance of the SRO, including the success and effectiveness in meeting the goals and objectives of this MOU**.** The

review shall be conducted at the end of each school year in a meeting among the SRO, the Chief, and the Superintendent. A copy of the review shall be supplied to each attendee.

The Chief and Superintendent shall jointly develop and agree in advance on the metrics for measuring the SRO's performance. The review shall include measures that reward the SRO's performance, subject to the terms of any applicable collective bargaining agreements, for compliance with the terms of this Agreement and the SRO's contributions to achieving the mission, purpose, goals, and objectives as set forth in Sections I and II. The review shall consider SRO efforts to prevent unnecessary student arrests, citations, court referrals, and other use of police authority. The review shall also assess the extent of the SRO's positive interactions with students, families, and staff and the SRO's participation in collaborative approaches to problem-solving, prevention, and de-escalation.

The Chief and Superintendent shall provide a mechanism for receiving feedback from the school community, including principal(s), teachers, students, and families of the school(s) to which the SRO is assigned. The Chief shall seriously consider any such feedback and shall make a good faith effort to address any concerns raised; however, the final selection and assignment of the SRO shall be within the sole discretion of the Chief. If the Superintendent recommends that the SRO not be assigned to a specific school, the Chief shall provide an explanation of any decision to maintain the SRO's assignment.

V. Mechanisms to Incorporate the SRO into the School Environment, including School Safety Meetings

The Parties acknowledge that proper integration of the SRO can help build trust, relationships, and strong communication among the SRO, students, and school personnel.

The District shall be responsible for ensuring that the SRO is formally introduced to the school community, including students, parents, and staff. The introduction shall include information about the SRO's background and experience, the SRO's role and responsibilities, what situations are appropriate for SRO involvement, and how the SRO and the school community can work together, including how and when the SRO is available for meetings and how and when the school community can submit questions, comments, and constructive feedback about the SRO's work. The introduction for parents shall include written information on procedures for communicating with the SRO in languages other than English. The SRO shall also initiate communications with students and teachers to learn their perceptions regarding the climate of their school.

The SRO shall regularly be invited to and attend staff meetings, assemblies, and other school convenings. The SRO shall also be invited to participate in educational and instructional activities, such as instruction on topics relevant to criminal justice and public safety issues. If the District has access to a student rights training through a community partner or the District Attorney's Office, the school shall consider offering such a training to students, where practicable, at the start of each school year. The SRO shall make reasonable efforts to attend such training. The SRO shall not be utilized for support staffing, such as hall monitor, substitute teacher, or cafeteria duty.

The Parties acknowledge that the SRO may benefit from knowledge of accommodations or approaches that are required for students with mental health, behavioral, or emotional concerns who have an individualized education program ("IEP") under the Individuals with Disabilities Education Act or a plan under Section 504 of the Rehabilitation Act ("504 Plan"). School personnel shall notify parents or guardians of such students of the opportunity to offer the SRO access to the portions of the IEP document or 504 Plan that address these accommodations or approaches. It is within the sole discretion of the parents or guardians to decide whether to permit the SRO to review such documents. The consent of the parent or guardian must be informed and in writing. The consent must specifically designate the exact IEP or 504 Plan documents to be shared, describe the purpose for sharing the record, and specifically

authorize access to the SRO. Whenever possible, the school shall make available a staff member who can assist the SRO in understanding such documents and, as appropriate, take other actions to help the student, the student's family, and the SRO to develop a positive relationship.

The SRO shall participate in any District and school-based emergency management planning. The SRO shall also participate in the work of any school threat assessment team to the extent any information sharing is consistent with obligations imposed by the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g) (see further information in Section VI).

VI. Information Sharing Between SROs, School Staff, and Other Partners

The Parties acknowledge the benefit of appropriate information sharing for improving the health and safety of students and also the importance of limits on the sharing of certain types of student information by school personnel. The Parties also acknowledge there are distinctions between personally identifiable information about students contained in education records and information about students not contained in such records as well as student information shared for law enforcement purposes and student information shared to support students and connect them with necessary mental health, community-based, and related services.

A. Points of Contact for Sharing Student Information

In order to facilitate prompt and clear communications, the Parties acknowledge that the principal (or principal's designee) and the SRO are the primary points of contact for sharing all types of student information in accordance with this Agreement. The Parties also acknowledge that, in some instances, other school officials or Police Department employees may serve as key points of contact for sharing information. Such school officials and Police Department employees are identified below:

Chief of Police
Chief's designee
Principal
Principal's designee

B. Compliance with FERPA and the Massachusetts Student Record Regulations

At all times, school officials must comply with the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) (FERPA), and the Massachusetts Student Records Regulations, 603 CMR 23.00. These rules permit disclosures of personally identifiable information about students ("Student PII") contained in educational records, without consent, under specific circumstances.

When the District "has outsourced institutional services or functions" to the SRO consistent with 34 C.F.R. § 99.31(a)(1)(i)(B) of FERPA and 603 CMR 23.07(3) of the Massachusetts Student Records Regulations, the SRO can qualify as a "school official" who can access, without consent, Student PII contained in education records about which the SRO has a "legitimate educational interest." To demonstrate compliance with 34 C.F.R. § 99.31(a)(1)(i)(B), the Parties affirm and agree to the following:

1. School safety is an institutional service for which the District would otherwise use its employees.
2. The District will only disclose to SROs Student PII in education records for the purposes consistent with Sections I and II of this agreement.

3. The SRO is subject to use and re-disclosure requirements in FERPA and the Massachusetts Student Records Regulations, 34 C.F.R. §99.33(a), 603 CMR 23.07(4). The SRO will use Student PII contained in education records only for the purposes described in paragraph 2 (directly above) of this section and will not re-disclose Student PII contained in education records to outside parties, who are not "school officials," without consent or unless the disclosure satisfies an exception to FERPA or the Massachusetts Student Records Regulations.
4. The District will update its annual notification, required under 34 C.F.R. § 99.37(a) and 603 CMR 23.10, to include SROs as "school officials" and to describe purposes from paragraph 2 (directly above) of this section among "legitimate educational interests" for accessing education records. If the District does not update the annual notification accordingly, the SRO's access will be limited to education records not containing Student PII, non-education records containing Student PII, and education records containing Student PII disclosed for health and safety emergencies, as described in 34 C.F.R. §§99.31(10), 99.36.

Consistent with 34 C.F.R. §§ 99.31(10) and 99.36 of FERPA, the SRO (or other Police Department employee identified in Section V.A.) may gain access, without consent, to Student PII contained in education records "in connection with an emergency if knowledge of the [Student PII] is necessary to protect the health or safety of the student or other individuals."

FERPA and the Massachusetts Student Records Regulations apply only to Student PII contained in education records. These rules do not apply to Student PII contained in records of a Law Enforcement Unit or to communications or conversations about what school staff have observed or derived from sources other than education records.

In addition to FERPA and the Massachusetts Student Records Regulations, the Parties agree to comply with all other state and federal laws and regulations regarding confidentiality, including, as applicable, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other rules that protect data privacy. The Parties agree to collect only that student information necessary and relevant to fulfilling their respective roles, to share such information with each other only where required or allowed under this Agreement, and not to disclose such information beyond what is contemplated in this Agreement unless required by state or federal law. The Parties shall not collect or disclose information on a student's immigration status except as required by law.

C. Disclosure to a Law Enforcement Officer or Agency

As required by section 37L of chapter 71 of the General Laws, school department personnel and SROs shall not disclose to a law enforcement officer or agency, including local, municipal, regional, county, state and federal law enforcement, through an official report or unofficial channels, including, but not limited to, text, phone, email, database and in-person communication, or submit to the department of state police's Commonwealth Fusion Center, the Boston Regional Intelligence Center or any other database or system designed to track gang affiliation or involvement, any information relating to a student or a student's family member from its databases and other recordkeeping systems including: (i) immigration status; (ii) citizenship; (iii) neighborhood of residence; (iv) religion; (v) national origin; (vi) ethnicity; or (vii) suspected, alleged, or confirmed gang affiliation, unless it is germane to a specific unlawful incident or to a specific prospect of unlawful activity the school is otherwise required to report. Nothing in this paragraph shall prohibit the sharing of information: (i) for the purposes of completing a report pursuant to section 51A of chapter 119; (ii) upon the specific, informed written consent of the eligible student, parent or guardian; (iii) to comply with a court order or lawfully issued subpoena; (iv) in connection with a health or safety emergency pursuant to the

provisions of 603 C.M.R. 23.07(4)(e); or (v) for the purposes of filing a weapon report with the local chief of police pursuant to this section.

D. Information Sharing by School Personnel

1. For Law Enforcement Purposes

Where the principal or principal's designee learns of conduct by a student for which a law enforcement response may be appropriate (as described in Section II), the principal should inform the SRO. If a teacher has information related to such conduct, the teacher should communicate such information to the principal or the principal's designee. The Parties agree that the sharing of such information does not necessarily require a law enforcement response on the part of the SRO but shall instead prompt a careful consideration of whether the conduct is best addressed by law enforcement action, by a school disciplinary response, or by other alternative school-based methods that may include but are not limited to: restorative practices, positive behavior interventions and supports, mediation, conflict resolution and other evidence-based strategies.

Notwithstanding the foregoing, if student information is obtained solely during a communication with school staff deemed privileged or confidential due to the staff member's professional licensure, such communication shall only be disclosed with proper consent or if the communication is subject to the limits and exceptions to confidentiality and is required to be disclosed (e.g., mandatory reporting, immediate threats of harm to self or others). Additionally, if such student information is gathered as part of a "Verbal Screening Tool for Substance Abuse Disorders," such information shall only be disclosed pursuant to the requirements of G.L. c. 71, § 97.

The Parties acknowledge that there may be circumstances in which parents or guardians consent to the disclosure of student information for law enforcement purposes (e.g., as part of a diversion program agreement) and that the sharing of information under such circumstances does not violate this Agreement.

The Parties also acknowledge that, from time to time, an emergency situation may arise that poses a real, substantial, and immediate threat to human safety or to property with the risk of substantial damage. School personnel having knowledge of any such emergency situation should immediately notify or cause to be notified both the Police Department (or the SRO if appropriate to facilitate a response) and the principal or principal's designee. This requirement is in addition to any procedures outlined in the school's student handbook, administrative manual, and/or School Committee policy manual.

Nothing in this section or this Agreement shall prevent the principal or principal's designee from reporting possible criminal conduct by a person who is not a student. Nothing in this section or this Agreement shall prevent school personnel from complying with reporting requirements in state law, including those found in G.L. c. 71, § 37L, G.L. c. 269, § 18, and G.L. c. 71 § 37O.

2. For Non-Law Enforcement Purposes

Based on their integration as part of the school community, SROs may periodically require access to student information for purposes that fall outside of the SRO's law enforcement role outlined in Section II.

Student information received by the SRO (or other Police Department employee identified in Section VI.A.) that is not related to criminal conduct risking or causing substantial harm shall not be used to take law enforcement action against a student but may be used to connect a student or family with services or other supports. Prior to such a disclosure, whenever possible, the principal or principal's designee shall notify the student's parent/guardian, the student, or both, when such information will be shared with the SRO.

E. Information Sharing by the SRO with the Principal or Principal's Designee

Subject to applicable statutes and regulations governing confidentiality, the SRO shall inform the principal or principal's designee of any arrest of a student, the issuance of a criminal or delinquency complaint application against a student, the SRO's perception that a student may be in immediate need of emergency medical or psychological assistance, or a student's voluntary participation in any diversion or restorative justice program if:

- The activity involves criminal or delinquent conduct that poses a (present or future) threat of harm to the physical well-being of the student, other students or school personnel, or school property;
- The making of such a report would facilitate supportive intervention by school personnel on behalf of the student (e.g., because the SRO may be aware of a situation outside of school suggesting the student may benefit from supportive services in school).

When the SRO observes or learns of student conduct in school for which a law enforcement response is appropriate (as described in Section II), the SRO shall convey to the principal or principal's designee as soon as reasonably possible the fact of that conduct and where practicable the nature of the intended law enforcement response.

VII. Organizational Structure, including Supervision of SROs, Lines of Communication between the School District and Police Department, and Complaint Resolution

The SRO shall be a member of the Police Department and report directly to Lieutenant. The SRO shall be designated as a special employee of the District and shall report directly to Principle. To ensure clear and consistent lines of communication, the SRO shall meet at least monthly with the principal or principal's designee and any other school officials identified in Section VI.A. The SRO shall ensure that the principal remains aware of material interactions and information involving the SRO's work, including, but not limited to, arrests and searches of students' persons and property, consistent with Section VI.D.

The 69%[1] of salary and benefits of the SRO shall be covered by the District. The costs of the training required by this Agreement and any other training or professional development shall be paid by the Police Department.

The Parties shall develop and implement a simple and objective complaint resolution system for all members of the school community to register concerns that may arise with respect to the SRO. The system shall comply with Police Department policies and shall provide for timely communication of the resolution of the complaint to the complainant. The system shall also allow parents and guardians to submit complaints in their preferred language and in a confidential manner that protects the identity of the complainant from the SRO consistent with the SRO's due process rights and any applicable employment protections.

[1] Formula 2080 hours x hourly wage x 1.3 benefits x .69 (180 days)

All students, parents, guardians, teachers, and administrators shall be informed of the complaint resolution system and procedures at the beginning of each school year. Upon execution, the complaint resolution system should be placed on file at the office of the Chief of Police, the Superintendent, and the Department of Elementary and Secondary Education.

The Parties shall develop and implement a system that allows for the SRO and other Police Department officers to register concerns, including concerns about misconduct by teachers or administrators, that may arise.

VIII. Training for SROs

In accordance with section 23 of chapter 253 of the Acts of 2020, the Municipal Police Training Committee shall provide training for SROs including but not limited to:

(i) the ways in which legal standards regarding police interaction and arrest procedures differ for juveniles compared to adults;
(ii) child and adolescent cognitive development, which shall include instruction on common child and adolescent behaviors, actions and reactions as well as the impact of trauma, mental illness, behavioral addictions such as gaming and gambling disorder, and developmental disabilities on child and adolescent development and behavior;
(iii) engagement and de-escalation tactics that are specifically effective with youth; and
(iv) strategies for resolving conflict and diverting youth in lieu of making an arrest.

Such program shall also include training related to:
(i) hate crime identification and prevention training curriculum including acquisition of practical skills to prevent, respond to and investigate hate crimes and hate incidents and their impact on victim communities;
(ii) anti-bias, anti-racism and anti-harassment strategies;
(iii) identification of youth at risk of or who are being commercially sexually exploited;
(iv) bullying and cyberbullying; and
(v) helping school resource officers interact effectively with school personnel and victim communities and building public confidence with cooperation with law enforcement agencies.

Additional areas for continuing professional development may include:

- Restorative justice practices
- Cultural competency in religious practices, clothing preferences, identity, and other areas
- Positive behavior interventions and supports
- Training in proper policies, procedures, and techniques for the use of restraint
- Teen dating violence and healthy teen relationships
- Relationship building and positive youth development
- Understanding and protecting civil rights in schools
- Special education law
- Student privacy protections and laws governing the release of student information
- School-specific approaches to topics like cyber safety, emergency management and crisis response, threat assessment, and social-emotional learning

The SRO shall attend a minimum of 12 hours of training per year.

Where practicable, the District shall also encourage school administrators working with SROs to undergo training alongside SROs to enhance their understanding of the SRO's role and the issues encountered by the SRO.

IX. Data Collection and Reporting

In accordance with section 37P(d) of chapter 71 of the General Laws, "[a]nnually, not later than August 1, the superintendent shall report to the department of elementary and secondary education and publicly present to the relevant school committee: (i) the cost to the school district of assigning a school resource officer; (ii) a description of the proposed budget for mental, social or emotional health support personnel for the school; and (iii) the number of school-based arrests, citations and court referrals made in the previous year disaggregated as required by the department of elementary and secondary education." To accomplish this, the Parties agree that:

- The Superintendent shall submit such reports and data to the Department annually, not later than August 1, according to the guidance and rules contained in relevant Data Handbooks issued by the Department. With respect to item (iii) above, the Department must receive individual student level data from the District on school-based arrests, citations and court referrals made in the previous academic year.
- The Chief agrees to provide the District with regular access to data in their possession, on an individual level, as needed to fulfill the District's data reporting responsibilities.

X. Accompanying Standard Operating Procedures

The Chief, in consultation with the Superintendent, shall establish operating procedures to provide guidance to SROs about daily operations, policies, and procedures. At a minimum, the operating procedures as established by the Chief shall describe the following for the SRO and shall be consistent with this Agreement:

1. the school resource officer uniform;
2. use of police force, arrest, citation, and court referral on school property;
3. a statement and description of students' legal rights, including the process for searching and questioning students and circumstances requiring notification to and presence of parents and administrators;
4. chain of command, including delineating to whom the SRO reports and how school administrators and the SRO work together;
5. performance evaluation standards, which shall incorporate monitoring compliance with this Agreement and use of arrest, citation, and police force in school;
6. protocols for diverting and referring at-risk students to school and community-based supports and providers; and
7. information sharing between the SRO, school staff, and parents or guardians.

XI. Effective Date, Duration, Applicability, and Modification of Agreement

This Agreement shall be effective as of the date of signing.

This Agreement shall be reviewed annually prior to the start of the school year. This Agreement remains in full force and effect until amended or until such time as either of the Parties withdraws from this Agreement by delivering written notification to the other Party.

Upon execution of this Agreement by the Parties, a copy of the Agreement shall be placed on file in the offices of the Chief and the Superintendent. The District or school shall annually file the Agreement with

the Department of Elementary and Secondary Education. The Parties shall also provide this Agreement to the SRO, the principals of any schools where the SRO will work, and any other individuals whom they deem relevant or who request it.

THERE IS ATTACHED HERETO APPENDICES A, B, C, and D WHICH ARE INCORPORATED HEREIN AND MADE A PART HEREOF BY REFERENCE. <==== This language affirms (and leaves no doubt) that the appendices are thus merged and incorporated into the memorandum and should serve to protect our students and faculty from any changes to any of the policies made by the Bolton Police Department absent notice and consent of the District.

Name: Kirk Downing
Superintendent of Schools
Date: 6/3, 2022

Name: Warren Nelson
Chief of Police
Date: 6/6, 2022

APPENDICES

Appendix A

11.26 School Resource Officer (SRO) Policy

Appendix B

1.05 Threshold Inquiries Policy

Appendix C

1.09 Search and Seizure Policy

Appendix D

1.15 Handling Juveniles

Appendix A

BOLTON POLICE DEPARTMENT	**Department Manual:** **Policy No. 11.26**
Subject: **School Resource Officer ("*SRO*") Policy**	
MASSACHUSETTS POLICE ACCREDITATION STANDARDS **REFERENCED:**	**GENERAL ORDER**

Effective Date: **August 25, 2021** ***An Act Relative to Justice, Equity & Accountability in Law Enforcement in the Commonwealth*** **Revised Date:** **May 17, 2022**	**Issuing Authority** *Warren E. Nelson, Jr.* **Warren E. Nelson, Jr.** **Chief of Police**	

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XIV. SRO Position (Job) Description
XV. Limitation on Sharing of Student Information
XVI. Mandatory SRO In-Service Training Program

I. Definitions:

School Resource Officer (SRO): a duly sworn Bolton Police Officer with all necessary training, up-to-date certificates, including special school resource officer certification as required by subsection (b) of section 3 of chapter 6E or a special officer appointed by the Chief of Police charged with:

- (i) providing law enforcement;
- (ii) promoting school safety and security services to elementary and secondary public schools; and
- (iii) Maintaining a positive school climate for all students, families and staff.
- For the purpose of this section, a school resource officer shall be exempt pursuant to subsection (j) of section 10 of chapter 269, while serving in the officer's official capacity. [Carrying a firearm in a School]

SRO Certification: The **Massachusetts Peace Officer Standards and Training Commission** shall have the power to issue a ***specialized certification*** for an individual acting, or intending to act, as a School Resource Officer [SRO], as defined in section 37P of chapter 71 of the MGLs;

- Provided, however, that a person shall not be appointed as a School Resource Officer, as defined in said section 37P of said chapter 71, unless specially certified as such by the POST Commission.

- Notwithstanding any General or Special Law to the contrary, a person who is appointed as a School Resource Officer, as defined in section 37P of Chapter 71 of the Massachusetts General Laws, as of the effective date of this act may continue in such appointment without receiving a certification to serve as such pursuant to subsection (b) of section 3 of chapter 6E of the General Laws; provided, however, that they **shall receive said certification by December 31, 2021.**

II. Purpose and Scope:

The protocols and procedures stipulated in this policy are applicable to all the participating schools in the Town of Bolton including Nashoba Regional High School, Florence Sawyer School, and Emerson School. We remain committed to the continuing success of the SRO Program always stressing the ongoing respect and confidence that we are able to earn and maintain from the students, their parents and the school administration, faculty and staff of all the schools in the Town. The integrity of each officer of this department, as well as that of the organization as a whole, is absolutely necessary for students, their parents and teachers to give us their unwavering trust and confidence. Without this requisite trust, we cannot expect to form the necessary

partnerships that we need to optimize our success at each school. Fundamental to building this trust within our entire school district is the fair and equitable treatment of all individuals (regardless of their lawful status); whether student, parent, faculty or staff, all persons shall always be treated with highest level of dignity and respect.

As a role model, the SRO is compelled to always present themselves in a professional manner. Through their appearance and actions, the SRO leads by example through their day-to-day contact with students, parents and staff members. They treat everyone in a positive manner that is respectful, fair and consistent regardless of race, national origin, citizenship, religion, ethnicity, age, gender, sexual orientation, or socio-economic status.

III. Policy:

It is the policy of the Bolton Police Department to institute a School Resource Officer (SRO) Program in conjunction with and at the request of the Superintendent of the Nashoba School District. The purpose of the program shall be to (i) provide and foster a safe and healthy environment for all students through the strategic and appropriate use of law enforcement resources, (ii) to achieve positive outcomes for youth and public safety where learning can prosper and (iii) to ensure that no student's right to receive an education is abridged by violence, the threat of violence, harassment, bullying or intimidation. The SRO has the primary responsibility for providing police services to the school community and assisting in the development and implication of programs and activities to promote crime prevention and public safety objectives. The SRO is a liaison between the police department, school administration, students, parents, Town departments, local youth organizations, and other agencies within the community.

Note: School Resource Officers **shall not**:

(i) serve as school disciplinarians, enforcers of school regulations or in place of licensed school psychologists, psychiatrists or counselors; and

(ii) use police powers to address traditional school discipline issues, including non-violent disruptive behavior.

IV. Policy Review and Updating:

In furtherance of continuing reviewing and updating this SRO Policy, the Chief of Police, in consultation with the School Superintendent, shall establish operating procedures pertaining to the duties and responsibilities to provide guidance to the School Resource Officers about their daily operations, policies and procedures. At a minimum, the operating procedures within this policy as established by the Chief of Police, shall describe the following for the School Resource Officer:

(i) the School Resource Officer uniform;

- The SRO shall wear the regulation Bolton Police uniform and when available operate a marked police vehicle while on duty unless

otherwise directed by a supervisor. The SRO has an option of wearing the BDU Uniform with the BPD colored golf shirt with the approval of the Chief of Police.

(ii) use of police force, arrest, citation and court referral on school property; **See Sections VII & XI**.

(iii) a statement and description of students' legal rights, including the process for searching and questioning students and circumstances requiring notification to and presence of parents and administrators;

See Sections IX, X, & XI.

(iv) chain of command, including delineating to whom the school resource officer reports and how school administrators and the school resource officer work together; **See Section V**.

(v) performance evaluation standards, which shall incorporate monitoring compliance with the memorandum of understanding and use of arrest, citation and police force in school; [Pending Statewide MOU]

(vi) protocols for diverting and referring at-risk students to school and community-based supports and providers; [Refer to BOLTON HUB]

(vii) and information sharing between the School Resource Officer, school staff and parents or guardians. **See Section XV.**

V. Authority and Chain of Command:

As a law enforcement officer, the School Resource Officer {SRO) is responsible to the Chief of Police through his/her supervisory chain of command and is subject to adhere to all Bolton Police Department Policies.

SROs also have what is referred to as a "secondary" chain of command while on duty at their assigned school. As an employee of the Bolton Police Department, their primary chain of command begins within their assigned Division starting with their assigned Sergeant and progresses up the chain to the Lieutenant and to the Chief of Police.

Because they work within the schools, the SRO is also considered a member of the school staff. Therefore, their secondary chain of command begins with the assistant principal(s) of the School Resource Officer's assigned school and progresses to the Principal of the School to the NRSD Superintendent of the School District.

- The Bolton Police Department recognizes and respects the authority of the principal, and his or her designee, to be the primary leader and manager of each applicable school where an SRO is assigned. The SRO, however, has the authority and responsibility to ensure proper

decisions are made in reference to crimes, crime scenes, and any incidents that pose a serious threat to public safety.

- During any law enforcement-related event on school grounds, the SRO will consult the principal or designee with law enforcement decisions being made to resolve the incident, when feasible. During any law enforcement-related event, it may become necessary for the SRO to temporarily take charge of the incident and/or school grounds to protect the integrity of the investigation and/or crime scene, and ensure the safety of the students and staff, until properly relieved. The School Resource Officer Program will be commanded by the Lieutenant and Chief of Police.

- All Bolton Police Department SROs will be sworn as certified police officers by the ***Massachusetts Peace Officer Standards and Training Commission*** (POST) and receive such additional SRO Certification as required by POST. As such, the SROs shall possess the same statutory and common law authority and powers of arrest as any other state or local law enforcement official regardless of whether they are on or off school property.

- When performing the duties of a police officer in the school environment, the officer shall have an understanding of the administrative responsibilities the school has in resolving misbehavior.

- The SRO will be familiar with the student handbook of their respective assigned school.

- Conduct and interactions with students should be of a quality that reinforces positive self-image, self-esteem, and professionalism.

VI. Goals and Objectives:

The Bolton Police Department's School Resource Officers intend to provide law enforcement services and law-related education to the designated schools within the Nashoba School District. The SROs also act as liaisons between the schools, the community and the Police Department, as well as various agencies such as Department of Children and Families (DCF), the Worcester District Court Juvenile Probation Department, and other intervention and counseling resources.

Some of the more important significant goals and objectives shall include:

- To keep our schools safe and secure, so that teachers can teach, and students can learn.

- Provide students with a positive role model through the exhibition of Departmental values.
- Interact with students in a setting that builds self-esteem and trust and reinforces the police as positive role models.
- Interact with students, faculty, community, parents, and civic leaders to promote positive relations.
- Provide a classroom resource for instruction, if and when needed.
- Educate students about the law and the importance of individual responsibility as well as teambuilding and cooperation within our community.
- Serve as a resource for the students, teachers, and parents.
- Serve as a primary resource to students who are victims and suspects of unlawful or harmful activity in order to deter and protect them from further harm.
- Partner with the faculty and administrative team to teach the importance of good safety practices through various educational programs.
- Provide an active law enforcement figure on school grounds to deal with any law and safety/public order issues that may develop and take the appropriate enforcement action when necessary.

VII. School Resource Officer Duties and Responsibilities:

1. The SRO serves as a **visible deterrent** to crime and a positive representative of the Bolton Police Department to students, faculty and staff. The SRO shall conduct visible patrolling of the exterior and interior grounds, particularly during the opening and closing of school.
2. The SRO shall assume primary responsibility for handling all **calls for police service** and coordinating the response of other police resources to the school's buildings, grounds, and surrounding areas.

3. Criminal activity that comes to the attention of the principal or school staff shall be reported immediately to the police department and assigned to the SRO unless such criminal activity requires additional personnel resources.

4. The SRO shall **meet at least weekly with the school principal** for the purpose of exchanging information about current crime trends, problem areas, or other areas of concern which have potential for disruption in the school or within the community, and shall be sensitive to the need for confidentiality in certain circumstances.

5. The SRO shall be responsible for monitoring the social and cultural environment to identify **emerging youth gangs** that may be a **threat to the learning environment** of the school and the safety of the students and the general public

6. Any information concerning **unlawful street gangs that is germane to a specific unlawful incident** or to the prospect of unlawful activity shall be forwarded to the Criminal Investigation Division (CID) Gang Unit.

7. The SRO may make **formal presentations** to, or participate in, school-based community organization meetings such as the Parent Teacher Association and School Advisory Council meetings, with prior approval of the SRO Supervisor. Participation in other activities such as panel discussions, mentoring programs, Annual Summer Youth Academy and community coalitions or task forces must be approved by the SRO supervisor assigned to the Community Services Division.

8. Coordinating programs conducted in the schools by other Divisions of the Police Department to avoid redundant services and to ensure equitable distribution of such programs and activities.

9. Provide for the **disposal of illegal substances** recovered by the school and not needed for criminal prosecution.

10. Be familiar with and abide by Bolton Public School and Bolton Police Department Rules and Regulations and Policies and Procedures.

11. As a general rule, SROs will not get involved with the enforcement of school rule violations or act as a disciplinarian unless there is a violation of the State law as well.
12. The SRO, when available, will assist in conducting investigations for other crimes off of school grounds that may have a direct effect on a student or the school community.

13. The SRO, when available, will be the designated case officer for crimes committed at their assigned school. This means the SRO will then complete the investigation and all the necessary follow-up investigatory case work. This may include the collection of evidence and interviewing victims, witnesses and suspects.

14. When necessary, the SRO may make an arrest, detain and or hold those suspected of a crime in police custody as prescribed by state law and Department policy. Some serious crimes require specialized expertise or logistical support to investigate. Under these circumstances, an appropriate detective from CID will be assigned as the case officer. The SRO will then assist the detective, and function as the liaison between the victim, the school staff, and the Department.

15. The SRO shall address parking and traffic concerns that affect the school and surrounding community.

16. The SRO may conduct and or coordinate traffic enforcement details to encourage compliance with State and local traffic laws.

17. The SRO will coordinate with school staff to promote crime prevention programs and enhance the police/community relationship with the surrounding neighborhoods. This may be accomplished by requesting additional police units to conduct foot, bicycle or vehicle patrol of the school grounds and adjacent areas.

18. Conduct classroom instruction on prevention and education on appropriate subjects to high school students, faculty, and staff, in accordance with the Department mission statement, utilizing approved lesson plans by the SRO Supervisors and School Administration.

19. Take appropriate action for any on-sight situations requiring police attention.

20. Act as a liaison and resource between the law enforcement community, other governmental agencies and the school.

21. Interacting with students to promote and reinforce the development of basic life skills and personal control and responsibility for one's actions.

22. Conduct investigations involving threats to the school building and/or students. The main function of the SRO is to be on school grounds during school hours. Follow-up investigations may be conducted; however, these should generally be conducted after school hours.

23. The SRO may leave the school grounds during school hours on certain follow-up investigations only when the factor of time is deemed to be of the essence and then only with the appropriate supervisory approval while always notifying the principal of the necessity of the pending investigation and the temporary absence. The SRO may participate in school conferences, especially when potential delinquency is a factor.

24. The SRO may have input into intervention and preventive strategies and community resources available.

25. Participate in special assignments related to Departmental activities such as point control for major events.

26. Inform the school administration of current student criminal involvement and criminal trends that affect the safe environment of the school, as needed. It is also recommended that the SRO maintain a relationship with the Juvenile Probation Officer of the Worcester District Court.

27. Perform preventive patrol for students in route to and from school. Attention will be directed to observations pertinent to the safety and well-being of children.

28. Interact with the uniform patrol officers in order to share information and work together on matters of mutual concern.

29. Attend special events as necessary to interact and prevent problems.

30. Participate in various Department-sponsored and endorsed activities that foster a positive relationship between the students and the SRO.

31. Maintain contact with the SRO Supervisor in order to facilitate administrative needs.

32. Attend scheduled meetings of all assigned SROs that may be established by the supervisors for information exchange and resolution of special problems.

33. Provide their supervisor with daily activity sheets, on a weekly basis.

34. Be responsible for the proper vehicle use and maintenance as outlined in Directives and in the Department Policy.

VIII. School Resource Officer Supervision:

The Chief of Police has designated the Lieutenant as the Supervisor of all SROs.

The SRO Supervisor shall meet with the SROs on a regular basis.

The SRO Supervisor shall meet with the school principal where an SRO is assigned as follows:

1. Prior to the start of the school year to review school-police department expectations and clarify any operational procedures.

2. Mid-year to evaluate the performance of the SRO and to identify and resolve any developing issues and to improve the effectiveness of the assignment.

3. At the conclusion of the school year to review the program and suggest any and all recommendations for improvements or changes.

IX. Police Investigations:

A.) In appropriate circumstances where the assigned SRO has either reasonable suspicion, reasonable belief or probable cause that a crime has, is or is about to have been committed or that a public safety emergency exists, shall have the authority to take the appropriate police enforcement action without the prior authorization or approval of the school principal or contacting the involved parents, keeping in mind at all times the requisite balance that needs to exist in the educational environment of the school. The investigation and questioning of any student during school hours or at school events should be limited to situations where the investigation is directly related to the school.

The school principal shall always be notified as soon as practical of any significant enforcement events by the SRO. The SRO should coordinate activities so that any action that is taken between agencies is cooperative and in the best interests of the school and public safety.

The SRO shall provide information to the appropriate investigative units of any crimes or leads that come to the attention of the SRO bearing in mind the statutory limitations of information sharing via MGL Chapter 71 Section 37P and Section XI below.

B.) Criteria For Emergency/Non-Emergency Calls:

The following criteria set forth are designed to act as a guide. In most cases, the SRO will take disposition of a call for service at their designated assigned school. However, when booking is necessary or eminent, a patrol officer will be dispatched to the school to handle the transport and the booking of the juvenile. For all situations that require immediate police response, the SRO designated schools should call 911 and then page, text or call the SRO.

Listed below are some examples of situations that **require an immediate police response**:

- Immediate life-threatening emergency (medical or otherwise);
- Large fight in progress;
- Unruly and disruptive crowds;
- Disruptive parent who will not leave voluntarily;
- Bomb threats;
- Child abuse (in progress and threat to the welfare of child};
- Crime in progress where the protection of evidence is essential, or the apprehension of the violator is possible;
- Safety hazards (i.e., chlorine, natural gas leaks);
- Assaults (with serious injury) For the following situations that require police services but where time is not of the essence, the school should call or text the SRO assigned to the school and advise them of the situation. The SRO can then take the information for the police report the next time the SRO is at the school;
- Mandatory Reporting Law (c.119-51A);
- Break and Entry (where the school is the victim and evidence may be present);
- Vehicle breaks where the victim is on scene and standing by.

For those situations that require police services **but do not require an immediate response**, the school should call, or text the SRO assigned to the school. If the SRO is not able to respond, the school should call for an on-duty Day Shift Patrol Officer.

Listed below are some examples of situations that do not require an immediate response:

Note: Students who are found to be in possession of illegal contraband or drugs, and the item has been confiscated (contraband must be placed into evidence the same day)

- Theft (no suspects, no witnesses available)
- Assaults (which are over and under control with little or no injury, or where students have already been sent home, no suspects, no witnesses are available.)
- Threats or intimidation (no suspects, no witnesses.)
- Malicious/Wanton damage to property (no suspects, no witnesses are available)
- And any other incident of a minor nature, status offense, Town Ordinance violation, etc.

X. Search and Seizure:

The School Resource Officer must follow Departmental Policy and respect the school's policy in conducting searches. The rules of criminal evidence apply in school exactly the same as they apply under normal circumstances. The school administration cannot be used as an agent to search a student's locker.

The school administrator has the authority to search a locker prior to there being a confirmation that a crime has been committed. Once an SRO is aware of a potential crime, the SRO must brief the SRO Supervisor and obtain a search warrant for a student's locker.

Unless EXIGENT CIRCUMSTANCES EXIST, or you have CONSENT, get a warrant.

Impound and Chain of Custody

The seizure of drugs and evidence on school property must be dealt with immediately. If an SRO seizes drugs or obtains evidence, they will immediately contact Emergency Communications Center and have a Patrol Officer or Detective respond to the school and collect the property for impoundment at Police Headquarters pursuant to Department policy. SROs will not place the property in their office or assigned vehicle at any time other than in the process of completing the required paperwork and/or during transportation to HQ. Once an SRO comes in contact with seized property, they will maintain immediate control until that property is released to the assisting officer.

Search and Seizure by School Officials

School officials may conduct searches of students' property under their jurisdiction when reasonable suspicion exists that the search will reveal evidence that the student has violated or is violating the law or the rules of the school.

The SRO may stop an individual when there is reasonable suspicion that a criminal act has, is or is about to be committed and may pat frisk that person if the officer has reasonable suspicion that the person may be armed in accordance with Departmental Policy and Procedures, 1.05, Threshold Inquires.

The SRO may only conduct what constitutes a search based on probable cause and in accordance with Departmental Policy and Procedure, 1.09, Search & Seizure.

The SRO shall not become involved in administrative (school related) searches unless specifically requested by school officials to provide security, protection, or for handling of seized contraband:

- These searches must be at the direction and control of the school official and not the SRO.
- At no time shall the SRO request that an administrative search be conducted for law enforcement purposes or have the administrator act as the officer's agent.

XI. Arrest Procedures:

The following procedures shall be adhered to whenever an arrest of any student or staff becomes necessary:

- The arrest of a student or employee of the school with a warrant should be coordinated through the principal and accomplished after school hours whenever possible.
- Persons whose presence on school grounds has been restricted or forbidden or whose presence is in violation of the law shall be arrested for trespassing.
- Arrests of students or staff during school hours or on school grounds shall be reported to the school principal as soon as practical.
- SROs will adhere to Department Policy on Juvenile Operations, for information pertaining to interviews and interrogations.

XII. School Administrative Hearings:

The SRO shall make themselves available to attend any suspension and/or expulsion hearings upon request of the school principal.

The SRO shall:

1. Be prepared to provide testimony on any actions that were taken by the officer and any personally observed conduct witnessed by the officer.
2. Make available any physical evidence in the possession of the police department.

3. Unless otherwise arranged, it will be the responsibility of the SRO to transport and safeguard any physical evidence, such as a weapon, that is needed at the disciplinary hearing.

XIII. SRO Selection Process:

The selection process is the most critical aspect of the SRO Program and shall be conducted as follows:

- In assigning a School Resource Officer, the Chief of Police shall assign an officer that the Chief believes would strive to foster an optimal learning environment and educational community that promotes a strong partnership between school and police personnel.

- The Chief of Police shall give preference to candidates who demonstrate the requisite personality and character to work effectively with children, youth and educators in a school environment with a demonstrated ability to work successfully with a population that has a similar racial and ethnic background as those prevalent in the student body, and who have received specialized training relating to working with adolescents and children, including cognitive development, de-escalation tactics, as defined in section 1 of chapter 6E and alternatives to arrest and diversion strategies.

- The job announcement shall be posted by the Lieutenant.

- Any Patrol Officers that are interested in the SRO position shall submit a written request via an email (on an attached Word Document) stating their specific reason(s) for seeking this important position and representing the Bolton Police Department in one of the schools.

- Each candidate shall also submit a resume and written recommendation from their immediate supervisor to the Lieutenant.

- Each candidate will be scheduled to appear before a selection board consisting of members designated by the Chief of Police and the School Superintendent for an in-person interview to determine whether each candidate is qualified for the position.
- All candidates shall be notified in writing of the selection board's final decision.
- The appointment **shall not** be based solely on seniority.

- The performance of a School Resource Officer shall be reviewed annually by the Superintendent of Schools and the Chief of Police.

XIV. SRO Position (Job) Description:

A. Policy Summary

The School Resource Officer (SRO) has the primary responsibility for providing police services to the school community and development and implementation of programs and activities to promote crime prevention and safety objectives. The SRO is a liaison between the police department, school administration, students, parents, Town departments, youth organizations, and other agencies within the community**.**

B. Duties and Responsibilities {See **Section VII** For a complete list)

The SRO is a sworn Town of Bolton Police Officer assigned to provide the law enforcement expertise and resources to assist school staff.

C. Knowledge, Skills and Abilities:

The School Resource Officer must have excellent oral and written communications skills, the ability to work with diverse groups, possess exceptional conflict resolution skills, be a creative problem solver, be available for after school functions, and have a good knowledge of Juvenile Laws and Juvenile Court procedures.

D. Qualifications:

1. A minimum of three (3) years as a Bolton Police Officer.
2. Minimum of an Associate's degree in Criminal Justice Law Enforcement or a degree in a related field of study is preferred.
3. A spotless police employment record with no disciplinary action.
4. Successful completion of a MPTC School Resource Officer Training Program.
5. SRO Certification approved by POST.

XV. Limitation on Sharing of Student Information

- School department personnel and School Resource Officers, as defined in section 37P of Chapter 71 of the MGL's, shall not disclose to a law enforcement officer or agency, including local, municipal, regional, county, state and federal law enforcement, through an official report or unofficial channels, including, but not limited to, text, phone, email, database and in-person communication, or submit to the department of state police's Commonwealth Fusion Center, the Boston Regional Intelligence Center or any other database or system designed to track gang affiliation or involvement, any information relating to a student or a student's family member from its databases and other recordkeeping systems including:

    - (i) immigration status;
    - (ii) citizenship;
    - (iii) neighborhood of residence;
    - (iv) religion;
    - (v) national origin;
    - (vi) ethnicity; or

- (vii) **suspected, alleged, or confirmed gang affiliation, unless it is germane to a *specific unlawful incident* or to a specific prospect of unlawful activity the school is otherwise required to report.**

Nothing in this paragraph shall prohibit the sharing of information: [**Exceptions**]

(i) for the purposes of completing a report pursuant to **section 51A** of chapter 119;

(ii) upon the specific, informed **written consent** of the eligible **student, parent or guardian**;

(iii) to comply with a **court order** or lawfully issued subpoena;

(iv) in connection with a **health or safety emergency** pursuant to the provisions of 603 C.M.R. 23.07(4)(e)*; or

*Note: "A school **may disclose** information regarding a student to appropriate parties in connection with a **health or safety emergency** if knowledge of the information is necessary to protect the health or safety of the student or other individuals. This includes, but is not limited to, **disclosures to the local police department** and the Department of Social Services under the provisions of M.G.L. c. 71, section 37L and M.G.L. c. 119, section 51A."

(v) for the purposes of **filing a weapon report** with the local Chief of Police pursuant to section 37L of Chapter 71 of the MGLs.

XVI. Mandatory SRO In-Service Training Program

Pursuant to MGL Chapter 6 Section 116H:

(a) The ***Municipal Police Training Committee*** shall establish and develop an in-service training program designed to train School Resource Officers [*SRO*s], as defined in this policy and section 37P of chapter 71 of the MGLs.

Such program shall include training on:

(i) the ways in which **legal standards regarding police interaction and arrest procedures** differ for juveniles compared to adults;

(ii) **child and adolescent cognitive development**, which shall include instruction on common child and adolescent behaviors, actions and reactions as well as the impact of trauma, mental illness, behavioral addictions, such as gaming and gambling disorder, and developmental disabilities on child and adolescent development and behavior;

(iii) engagement and **de-escalation tactics** that are specifically effective with youth; and

(iv) **strategies for resolving conflict and diverting youth in lieu of making an arrest**. Such program shall also include training related to:

(i) **hate crime identification** and prevention training curriculum including acquisition of practical skills to prevent, respond to and investigate hate crimes and hate incidents and their impacts on victim communities;
(ii) **anti-bias, anti-racism and anti-harassment strategies**;
(iii) **bullying and cyberbullying**; and
(iv) comprehensive training to help school resource officers interact effectively with school personnel, victim communities and build public confidence with cooperation with law enforcement agencies.

(b) **The course of instruction**, the learning and performance objectives and the curriculum and standards for training developed pursuant to this section **shall be developed in consultation with *experts* on child and adolescent development and child trauma and with educators and *attorneys experienced in juvenile and education law* and preventing and addressing youth hate crimes.**

Appendix B

	BOLTON POLICE DEPARTMENT	**POLICY NO. 1.05**
Subject: **THRESHOLD INQUIRIES**		
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: **1.2.4 (b)**		DATE OF ISSUE: 10/12/2017
ISSUING AUTHORITY: _____Warren E. Nelson, Jr._____ Chief of Police		EFFECTIVE DATE: 10/12/2017 REVISION DATE:

POLICY

It is the policy of the Bolton Police Department that:

A. 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

B. Once stopped, a suspect may only be frisked for weapons if the officer reasonably believes the person to be armed.

PROCEDURES

I. 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 *Terry v. Ohio*.[2]

C. **Threshold Inquiry:** The warrantless stopping, questioning and frisking of suspicious persons based upon G.L. c. 41, section 98.

II. STOPS

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

B. GROUNDS FOR MAKING A STOP

1. An officer may make a brief investigative stop and inquiry under any of the following circumstances:

   a. When [s]he knows that a crime has been committed.

   b. When [s]he reasonably believes that a crime has been or is being committed.

   c. When [s]he seeks to prevent a crime which [s]he reasonably believes is about to be committed.

2. 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:

   a. Any public place;

   b. Any place or area open to the public; and

   c. Any private premises entered with a valid warrant, by consent, or under emergency circumstances.

3. 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 that the person under suspicion is connected with or involved in that criminal activity.

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

4. 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.

5. 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:

    a. Personal observations of the officer and his/her police training and experience;

    b. The officer's knowledge of criminal activity in the area;

    c. The time of the day or night and the place of observation;

    d. The general appearance and demeanor of the person and any furtive behavior which indicates possible criminal conduct;

    e. The person's proximity to the scene of a recently reported crime;

    f. Unprovoked flight of an individual upon noticing the police;[3]

    g. The knowledge of the person's prior criminal record or of his/her association with known criminals;

    h. Visible objects in the person's possession or obvious bulges in his/her clothing;

    i. Resemblance of the individual to a person wanted for a known crime;

    j. Information received from police sources or from other reasonably reliable sources of information.

C. 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.

    1. A routine police check of suspicious circumstances may uncover the commission of a serious crime or the presence of a dangerous criminal.

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

2. 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.

D. 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]

1. 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.

2. 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]

3. 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]

III. PAT-DOWN FRISKS [1.2.4 (b)]

A. 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]

B. 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.

C. 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.

D. A frisk should not be made a pretext to search for evidence of crime; it must be a protective measure.

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[4] *U.S. v. Sharpe*, 470 U.S. 675, 105 S.Ct. 1568 (1985); *Commonwealth v. Tossi*, 14 Mass. App. Ct. 901, 442 N.E.2d 419 (1982).
[5] *Commonwealth v. Wilson*, 360 Mass. 557, 276 N.E.2d 283 (1971).
[6] *Commonwealth v. Torres*, 424 Mass. 153, 674 N.E.2d 638 (1997).
[7] See G.L. c. 41, section 98.

E. 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.

> **Note:** Police must properly pat frisk a defendant before lifting his clothing to reveal a weapon is present.[8]

F. 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)

G. 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.

H. 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.

I. 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.

IV. USE OF FORCE

A. 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.[9]

B. Actual force may be used to "stop" an individual, as long as the force is both necessary and proportionate to the situation.[10] However, this does not include the discharge of firearms or application of other weapons.

C. If an officer is attacked, sufficient and reasonable force may be used to defend himself/herself and to ensure his/her personal safety.

V. QUESTIONING STOPPED PERSONS

[8] *Commonwealth v. Flemming*, 76 Mass. App. Ct. 632 (2010).
[9] *Commonwealth v. Pandolfino*, 33 Mass. App. Ct. 96, 596 N.E.2d 390, *rev. den.* 413 Mass. 1106, 600 N.E.2d 1000 (1992).
[10] *Commonwealth v. Reed*, 23 Mass. App. Ct. 294, 502 N.E.2d 147 (1986); *Commonwealth v. Borges*, 395 Mass. 788, 482 N.E.2d 314 (1985).

A. 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/her inquiry unless such information is obvious.

   1. An investigatory or threshold inquiry should begin with exploratory questions regarding the person's identity and his/her purpose.

   2. 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.

   3. 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.

   4. 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.

B. Once a stop is made, any questioning of the stopped person should be conducted at that location.

   1. Investigative stops are intended to be on-the-spot inquiries.

   2. To verify the information obtained from the person it may be necessary to move a short distance to a radio or telephone.

   3. 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.

   4. 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.[11]

   5. 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***.)

[11] *Commonwealth v. Salerno*, 356 Mass. 642, 255 N.E.2d 318 (1970).

VI. MOTOR VEHICLE STOPS

A. 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.[12] 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.

1. Police cannot randomly stop motorists to check the orderliness of license and registration.

2. 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.[13]

3. During a routine traffic stop, police officers may not order the driver or occupant out of the vehicle without at least a reasonable belief that the officer's safety, or the safety of others, is in danger.[14]

    a. 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.[15]

    b. 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.

4. 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.[16]

5. 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.[17]

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[12] *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979).
[13] *Commonwealth v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995); *Commonwealth v. Jimenez*, 22 Mass. App. Ct. 286, 493 N.E.2d 501 (1986).
[14] *Commonwealth v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977).
[15] *Commonwealth v. Hawkes*, 362 Mass. 786, 291 N.E.2d 411 (1973); *Commonwealth v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995).
[16] *Commonwealth v. Silva*, 366 Mass. 402, 318 N.E.2d 895 (1974).
[17] *Commonwealth v. Almeida*, 373 Mass. 266, 366 N.E.2d 756 (1977).

B. 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.[18]

VII. REPORT WRITING

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.

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

Appendix C

	BOLTON POLICE DEPARTMENT	**POLICY NO. 1.09**
Subject: **SEARCHES & SEIZURES**		
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: **1.2.4 (a); 1.2.4 (b); 1.2.4 (c); 1.2.4 (d); 1.2.4 (e); 1.2.4 (f); 1.2.4 (g); 74.3.1**		DATE OF ISSUE:8/1/2018 EFFECTIVE DATE:
ISSUING AUTHORITY: _____Warren E. Nelson, Jr._____ Chief of Police		REVISION DATE:

GENERAL CONSIDERATIONS & 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 of the **U.S. Constitution** 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*.

Article XIV 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.[19] 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***.

POLICY

It is the policy of the Police Department that:

- Warrants shall be obtained for all searches, whenever possible and practicable; and

- 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.

PROCEDURES

VIII. DEFINITIONS

[19] Stoner v. California, 376 U.S. 483, 84 S.Ct. 889 (1964).

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.[20]

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 sizable 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.

IX. SEARCH WARRANTS

A. OBTAINING A SEARCH WARRANT

1. Legal Requirements (Per G.L. c. 276, section 1)

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:

- Property or articles stolen, embezzled or obtained by false pretenses, or otherwise obtained in the commission of a crime;

- 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;

- 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

[20] U.S. v. Campbell, 581 F.2d 22 (C.A. NY).

search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty eight;

- The dead body of a human being; and

- 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.

2. A search warrant may also authorize the seizure of evidence.[21]

3. Requisites of Warrant (Per G.L. c. 276, section 2)

A search warrant shall:

a. Designate and describe the building, house, place, vessel or vehicle to be searched;

b. Particularly describe the property or articles to be searched for;

c. Be substantially in the form prescribed in G.L. c. 276, section 2A; and

d. 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.

4. 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.

a. If legal assistance is required for the preparation of the search warrant affidavit, the District Attorney's office should be contacted.

b. Every search warrant issued and any action taken on such warrant should be recorded in accordance with standard departmental procedures.

B. EXECUTING SEARCH WARRANTS [74.3.1]

[21] Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642 (1967).

1. After a search warrant is obtained, a police officer shall:

a. Check the warrant to ensure that it is signed and it clearly describes the place to be searched and the articles to be seized;

b. Execute the warrant immediately, or within a reasonable time, but in any case, **within seven days** from date of issuance;[22]

c. Execute the warrant in the daytime unless it specifically provides for nighttime search. Nighttime for this purpose is from 10:00p.m. until 6:00 a.m.;[23]

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

2. Service of Search Warrant

a. 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.

b. 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.

c. 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.

d. 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.

3. Knock and Announce Rule

a. When serving a warrant at a private dwelling, police officers must **knock**, **identify themselves as police officers**, **announce** that they have a warrant to

[22] G.L. c. 276, section 3A; Commonwealth v. Cromer, 365 Mass. 519 (1974).
[23] Commonwealth v. Grimshaw, 413 Mass. 73, 595 N.E.2d 302 (1992).

search the premises and demand entrance, except in limited circumstances.[24]

b. 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.[25]

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

   i. The officers will not be admitted voluntarily;

   ii. The officers or any other persons are in danger of physical harm;

   iii. The occupants are escaping; or

   iv. Evidence is being, or is in danger of being destroyed.

4. No Knock Entry

a. 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[26] or where to follow the knock and announce procedure:

   i. Would be likely to endanger their safety or the safety of others;

   ii. Would be likely to enable the wanted person(s) to escape; or

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

b. 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.[27]

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[24] Richards v. Wisconsin, 117 S.Ct. 1416 (1997); Commonwealth v. Gondola, 28 Mass. App. Ct. 286, 550 N.E.2d 880 (1990).
[25] Commonwealth v. Sepulveda, 406 Mass. 180, 546 N.E.2d 879 (1989).
[26] Commonwealth v. Antwine, 417 Mass. 637, 632 N.E.2d 818 (1994).
[27] Commonwealth v. Chamberlin, 86 Mass.App.Ct. 705 (2014).

c. 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.

5. Search Responsibilities

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

a. Shall not exceed the authority granted by the warrant;

b. Shall make a diligent effort to find all the property listed in the warrant;

c. 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, a search of the second floor is unlawful.);

d. 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);

e. Shall carry out the search with the least possible damage to the premises;

f. Shall remain on the premises only for the time reasonably necessary to thoroughly search for and seize the property listed in the warrant;

g. Shall terminate the search when the listed property has been found or when it reasonably appears that such property is not on the premises;

h. 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;

i. 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***;

j. 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;[28]

[28] G.L. c. 276, section 3A.

k. 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

l. 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.

6. Plain View

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.[29] See Section III(I) below for the legal requirements to seize items in plain view. [**1.2.4 (g)**]

7. Search of Persons on the Premises

a. 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. However, at least one of the occupants should be permitted to witness all aspects of the search, if this is practical under the particular circumstances

b. Persons not named in or referred to in the search warrant may not be searched unless either:

i. 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);[30] or

ii. The officer has reasonable suspicion to believe that such person is armed and then [s]he may be frisked for weapons.

8. Search of Area Outside Scope of Warrant

If during the execution of a search warrant it appears that there is probable cause to believe that seize-able 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.

9. Photographs of Search Location

[29] Commonwealth v. Bond, 375 Mass. 201, 375 N.E.2d 1214 (1978).
[30] Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338 (1979).

a. Before and after executing a search warrant, officers should take photographs or video of any rooms, places, or vehicles to be searched.

b. One overall photograph of each room before and after the search should be sufficient.

c. Only department-issued cameras should be utilized in taking the photographs or videos.

X. SEARCHES WITHOUT A WARRANT [1.2.4]

A. EXCEPTIONS TO THE WARRANT REQUIREMENT

1. Officers may make a warrantless search only when one of the following major exceptions to the search warrant applies:

   a. Warrantless stopping, questioning and frisking (investigative detention);

   b. Search incident to arrest (including protective sweep);

   c. Exigent or emergency circumstances search (including "hot pursuit");

   d. Consent searches;

   e. Motor vehicle searches;

   f. Pre-incarceration and inventory searches;

   g. Protective custody searches; and

   h. Administrative searches.

2. 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:

   a. The "plain view" doctrine;

   b. The “open fields” doctrine; and

   c. Abandoned property.

3. 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.

4. 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.

B. WARRANTLESS STOPPING, QUESTIONING, AND FRISKING (INVESTIGATIVE DETENTION)

Both the Fourth Amendment and G.L. c. 41, section 98 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 pat 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 ***Threshold Inquiries***. [**1.2.4 (b)**]

C. SEARCH INCIDENT TO LAWFUL ARREST [**1.2.4 (d)**]

1. **Criteria**: A warrantless search of an arrested person may be conducted under the following conditions:

   a. The arrest is lawful and the search is reasonably related to the circumstances of the arrest;

   b. The search is conducted only for the purposes of:

      i. Seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest was made;

      ii. In order to prevent its destruction or concealment; and/or

      iii. To remove any weapons that the arrested person might use to resist arrest or to effect his/her escape;[31]

   c. 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

[31] G.L. c. 276, section 1.

d. 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.

2. **Use of Force**: The officer conducting the search may use the degree of force reasonably necessary to:

   a. Protect himself/herself and others present;

   b. Prevent escape; and

   c. prevent the destruction of evidence.

3. **Search of Possessions & 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.

4. **Protective Sweep**

   a. 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.[32]

   b. 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.

   c. Any item or object recognizable as criminal evidence discovered in plain view during a justifiable "protective sweep" may be properly seized.[33]

5. An arrest shall not be used as a pretext in order to make a search.

D. SEARCHES IN EMERGENCY OR EXIGENT CIRCUMSTANCES [**1.2.4 (d); 1.2.4 (e)**]

1. **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.[34]

[32] Maryland v. Buie, 494 U.S. 325, 110 S.Ct. 1093 (1990).
[33] Commonwealth v. Bowden, 379 Mass. 472, 399 N.E.2d 482 (1980).
[34] Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642 (1967); Commonwealth v. Moran, 370 Mass. 10, 345 N.E.2d 380 (1976).

a. The authority of the police to make warrantless entries in emergency situations, whether criminal or not criminal is based upon their fundamental responsibility to preserve the peace and to protect the public safety.[35]

b. 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.[36]

c. While conducting a lawful search justified by emergency or exigent circumstances, a police officer may seize any incriminating evidence inadvertently discovered in plain view.

2. **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.

   a. *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 re-entry is justified by a recognized exception to the warrant requirement such as consent, emergency or abandonment.[37]

   b. *Explosives / Other Dangerous Weapons*: 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.[38]

3. **Fresh and Continued Pursuit**: The U.S. Supreme Court case of U.S. v. Santana[39] set out factors supporting justification of exigent circumstances under this doctrine including:

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[35] Thurlow v. Crossman, 336 Mass. 248, 143 N.E.2d 812 (1957).
[36] Commonwealth v. Guaba, 417 Mass. 746, 632 N.E.2d 1217 (1994).
[37] Michigan v. Tyler, 436 U.S. 499, 98 S.Ct. 1942 (1978); Michigan v. Clifford, 464 U.S. 287, 104 S.Ct. 641 (1984).
[38] Commonwealth v. Marchione, 384 Mass. 8, 422 N.E.2d 1361 (1981).
[39] U.S. v. Santana, 427 U.S. 39, 96 S.Ct. 2406 (1976); Commonwealth v. Moran, 370 Mass. 10, 345 N.E.2d 380 (1976).

a. There is fresh and continued pursuit of the suspect;

b. A felony or jailable misdemeanor was involved;[40]

c. There was a strong possibility that the suspect was armed;

d. The suspect was known or reasonably believed to be in the building;

e. There was a likelihood that the suspect might escape unless immediately apprehended; and

f. There was sufficient justification for failure to obtain a search warrant.

4. Where the above or other emergency factors are not present, police may stake out the building or premises until a warrant is obtained.[41]

E. SEARCH BY LAWFUL CONSENT [**1.2.4 (a)**]

1. 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.

2. For there to be a valid consent to search, the following **three elements** must be satisfied:

   a. **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**

      i. 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.

      ii. *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.[42]

[40] Commonwealth v. Jewett, 471 Mass. 624 (2015).
[41] U.S. v. Adams, 621 F.2d 41 (1st Cir. 1980).
[42] U.S. v. Matlock, 415 U.S. 164, 94 S.Ct. 988 (1973); Commonwealth v. Maloney, 399 Mass. 785, 506 N.E.2d 1147 (1987).

iii. *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.[43]

iv. *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.[44] 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.[45]

v. *Children*: Generally, a child may not give consent to a police search of premises or property owned by the child's parents.

vi. *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.[46]

vii. *Landlord*: Generally, a landlord cannot give consent to the search of a tenant's apartment.[47] However, a landlord may give consent to searches of common areas such as hallways and stairwells.[48]

viii. *Hotels*: A hotel or motel owner or manager cannot give consent to a search of a guest's lodgings.[49]

b. **Consent must be freely and voluntarily given; and**[50]

i. Officers shall notify the person from whom consent is sought of their right to refuse to give consent.[51]

ii. A consent to search may be given orally but preferably, it should be in writing.[52] See Department Consent to Search Form.

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[43] Commonwealth v. Martin, 358 Mass. 282, 264 N.E.2d 366 (1970); Commonwealth v. Rooney, 365 Mass. 484 (1974).
[44] Commonwealth v. Ortiz, 422 Mass. 64, 661 N.E.2d 926 (1996).
[45] U.S. v. DiPrima, 472 F.2d 550 (1st Cir. 1973); U.S. v. Robinson, 999 F.Supp. 155 (D. Mass. 1998).
[46] Commonwealth v. Rodriguez, 364 Mass. 87 (1973).
[47] Niro v. U.S., 388 F.2d 535 (1st Cir. 1968).
[48] Commonwealth v. Ploude, 44 Mass.App.Ct. 137 (1998).
[49] Stoner v. California, 376 U.S. 483, 84 S.Ct. 889 (1964).
[50] Commonwealth v. McGrath, 365 Mass. 631, 310 N.E.2d 601 (1974).
[51] Commonwealth 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.)
[52] Commonwealth v. Reed, 417 Mass. 558, 631 N.E.2d 552 (1994).

iii. Consent cannot be presumed from silence.

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

v. Officers shall not gain consent through the use of misrepresentation or fraud.

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

c. **The officers must be lawfully present at the time consent is requested.[53]**

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

4. 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.

F. MOTOR VEHICLE SEARCHES [**1.2.4 (c)**]

1. Officers are prohibited from stopping motor vehicles without reasonable suspicion of criminal activity or motor vehicle violations.[54]

2. 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.

3. A warrantless search of a motor vehicle may be conducted under the following circumstances:

a. *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.[55]

[53] Commonwealth v. McGrath, 365 Mass. 631 (1974).
[54] Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391 (1979).
[55] Commonwealth v. Gonsalves, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting Pennylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977); Commonwealth v. Silva, 366 Mass. 402, 318 N.E.2d 895 (1974).

b. *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.[56]

c. *Exigent Circumstances Search*: A warrantless search of a vehicle may be made when the following elements are satisfied:[57]

   i. The vehicle must be lawfully stopped on a public way or is found parked in a public place,[58]

   ii. There is probable cause to believe that the vehicle contains contraband or other evidence at the initiation of the search, and

   iii. Exigent circumstances are present, movable vehicle exception.

   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.[59]

d. *Consent:* A search may be conducted with the voluntary consent of the person in lawful control of the vehicle.[60]

e. *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.[61] In addition, if police have a description of a suspect vehicle, they may stop all vehicles fitting that description.

f. *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

[56] Commonwealth v. Clermy, 37 Mass. App. Ct. 774, 643 N.E.2d 1059 (1995).
[57] U.S. v. Ross, 456 U.S. 798, 102 S.Ct. 2157 (1982); Commonwealth v. Cast, 407 Mass. 891, 556 N.E.2d 69 (1990).
[58] Commonwealth. v. Wunder, 407 Mass. 909, 556 N.E.2d 65 (1990).
[59] Commonwealth v. Ortiz, 376 Mass. 349, 380 N.E.2d 669 (1978); Commonwealth v. A Juvenile (No.2), 411 Mass. 157, 580 N.E.2d 1014 (1991); Commonwealth v. Bakoian, 412 Mass. 295, 588 N.E.2d 667 (1992).
[60] Commonwealth v. Lanoue, 356 Mass. 337, 251 N.E.2d 894 (1969).
[61] Commonwealth v. McGeoghegan, 389 Mass. 137, 449 N.E.2d 349 (1983).

flashlight, may furnish probable cause to search the vehicle and seize the item observed without a warrant.[62]

g. *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***.

h. *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.

4. 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."

5. 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.[63]

G. BOOKING INVENTORY SEARCHES [**1.2.4 (f)**]

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 or herself or others, to safeguard valuables and to protect the police against false claims of theft or loss of the detainee's belongings.

H. ADMINISTRATIVE SEARCHES [**1.2.4 (g)**]

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.

I. PLAIN VIEW DOCTRINE [**1.2.4 (d); 1.2.4 (g)**]

[62] Commonwealth v. Cavanaugh, 366 Mass. 277, 317 N.E.2d 480 (1974); Commonwealth v. Doulette, 414 Mass. 653, 609 N.E.2d 473 (1993).
[63] Commonwealth v. Gonsalves, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977).

1. Officers may seize contraband or evidence without a warrant under the "*plain view*" exception to the warrant requirement if the following conditions are met:[64]

    a. There must be a prior lawful entry;

    b. Such entry must bring the officer within "*plain view*" of the item seized; and

    c. The item seized must be "*immediately apparent*" as contraband or evidence of crime.

2. Lawful entry includes:

    a. Entry with a valid warrant;

    b. Entry to make a lawful warrantless arrest;

    c. Entry as a result of lawful consent; and

    d. Entry in an emergency to render necessary aid or assistance.

3. Items are immediately apparent as contraband if the officer has probable cause to believe they are:

    a. Instrumentalities or means by which any crime was committed, (such as weapons, masks, tools, etc.);[65]

    b. Contraband (articles which may not be legally possessed, such as counterfeit money or controlled substances, etc.);[66]

    c. Fruits of any crime (such as stolen property);[67]

    d. Other evidence of any crime (such as clothing or other items fitting the description of the criminal offender); or

    e. 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).[68]

J. ABANDONED PROPERTY [**1.2.4 (g)**]

[64] Horton v. California, 496 U.S. 128, 110 S.Ct. 2301 (1990).
[65] Commonwealth v. Accaputo, 380 Mass. 435, 404 N.E.2d 1204 (1980).
[66] Id.
[67] Id.
[68] Commonwealth v. Scalise, 387 Mass. 413, 439 N.E.2d 818 (1982).

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

1. Trash in collection area accessible to the public.[69]

2. The contents of a hotel room wastebasket once an individual has vacated the room.[70]

3. 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.[71]

4. Items thrown on the ground by a suspect.[72]

K. OPEN FIELDS [**1.2.4 (g)**]

1. 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.[73] The "house" that is protected by the Fourth Amendment includes the grounds and buildings immediately surrounding the dwelling.[74]

2. 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.[75]

L. SEARCHES BY PERSONS OTHER THAN LAW ENFORCEMENT OFFICERS [**1.2.4 (g)**]

1. **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.[76]

2. **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

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[69] Commonwealth v Pratt, 407 Mass. 647, 555 N.E.2d 559 (1990).
[70] Abel v. U.S., 362 U.S. 217, 80 S.Ct. 683 (1960).
[71] Commonwealth v. Lanigan, 12 Mass. App. Ct. 913, 423 N.E.2d 800 (1981).
[72] Commonwealth v. Wedderburn, 36 Mass. App. Ct. 558, 633 N.E.2d 1058 (1995); Commonwealth v. Marrero, 414 Mass. 1102, 606 N.E.2d 915 (1992).
[73] Hester v. U.S., 265 U.S. 57, 44 S.Ct. 445 (1924); Commonwealth v. John G. Grant & Sons, Inc., 403 Mass. 151, 512 N.E.2d 522 (1988).
[74] Rozencrantz v. U.S., 356 F.2d 310 (1st Cir. 1969).
[75] 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).
[76] Commonwealth v. Leone, 386 Mass. 329, 435 N.E.2d 1036 (1982).

guard is not admissible if [s]he acts beyond the scope of the private employer's business.[77]

[77] Id.

Appendix D

BOLTON POLICE DEPARTMENT	**Department Manual:** **Policy No. 1.15**
Subject: **HANDLING JUVENILES**	
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: **See: Wallace W. v Commonwealth (2019)**	**GENERAL ORDER**

Effective Date: **October 27, 2021** Amended 12/22/2016 **Amended 8/30/19** **Amended 10/27/2021**	**Issuing Authority** *Warren E. Nelson, Jr.* **Warren E. Nelson, Jr.** **CHIEF OF POLICE**	

I. GENERAL CONSIDERATIONS AND GUIDELINES

It is generally recognized that juveniles (>=12 and <18 years of age) who engage in anti-social conduct present different problems to society than do adults who engage in similar types of activities. There is, therefore, a modification of police procedures in handling juvenile offenders who come in contact with the police. 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 confines of 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 times a frightened youngster at the time of their initial arrest which may their first contact with law enforcement. How [s]he is treated at that specific time by the police can absolutely have a lasting impression as it pertains to the police and the criminal justice system in general. At the same time, it must always be remembered that the so-called "hardened" juvenile arrestee 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 and responsibilities, the police should be familiar with any undesirable conditions in the community which tend to have the capacity to 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 as a whole 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 conduct field encounters of all juveniles found in suspicious situations. Energetic and proactive patrol, impressing the fact of a consistent police presence, can be a most effective deterrent to juvenile delinquency. The members of the Bolton Police Department, both sworn and non-sworn, should also cooperate and collaborate 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, compassion and when necessary, firmness, together with close cooperation with court officials in the processing of juvenile cases, are necessary for the system to operate most effectively and efficiently.

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

The State Legislature has rescinded the law formerly referred to as CHINS (Children in Need of Services) and replaced with numerous provisions concerning Children Requiring Assistance. Rather than arresting certain young persons, the Police may place them in "custodial protection", but not handcuff, shackle or even bring them to the Police Station. Until the legislature or a court clarifies certain provisions of the new law, the Department will do its best to interpret and comply with the spirit of the legislation, which is clearly aimed at further separating certain so-called "status offenders" from the stigmatizing effects of certain aspects of the criminal justice system.

II. POLICY

A. It shall be the policy of the Bolton Police 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 Bolton Police Headquarters for any longer than reasonably necessary;

3. Children Requiring Assistance shall be provided custodial protection and other required services where this can be done safely.

4. Officers shall, whenever reasonable and justified under this policy, take those measures necessary to effect positive change in juvenile offenders that are

consistent with Massachusetts law and the safety and security interests of the community;

5. The Department shall be committed to the development and perpetuation of programs to prevent and control juvenile delinquency.

6. The Department shall implement all the suggested guidelines as promulgated by the Massachusetts Peace Officer Standards and Training Commission on June 30, 2021 titled "*Guidance on Developmentally Appropriate De-escalation and Disengagement Tactics, Techniques and Procedures and Other Alternatives to the Use of Force for Minor Children"* and incorporated in this policy in Sections C-F. [Amended 6/30/21]

III. DEFINITIONS

A. ***Child Requiring Assistance*** **(CRA)** Any child between the ages of 6 and 18 who:

1. Repeatedly **runs away** from the home of the child's parent, legal guardian or custodian;
2. Repeatedly **fails to obey** the **lawful and reasonable commands of the child's parent**, legal guardian or custodian, thereby interfering with their ability to adequately car for and protect the child;
3. Repeatedly fails to obey the lawful and reasonable regulations of the child's school; or
4. Is habitually truant.

B. "***Delinquent child***"**, a child between 12 and 18 years of age who commits any offense against a law of the commonwealth; provided, however, that such offense shall not include:**

- **a civil infraction,**
- **a violation of any municipal ordinance or town by-law**
- **or a first offense of a misdemeanor**
  - **for which the punishment is a fine, imprisonment in a jail or house of correction for not more than 6 months or both such fine and imprisonment**.[i]

- **Important Note:**

  - The previous definition of a *"Delinquent child"* was much broader. Previously it was defined as a child between the ages of seven (7) and eighteen (18) who violates any town ordinance or town by-law or who commits any offense against a law of the commonwealth.
  - The *New* **Age of Criminal Responsibility** has been increased from 7 to **12 years of age**.
  - In addition the new statute states in pertinent part that juveniles shall not be found delinquent in juvenile court for any misdemeanor for which the first offense is punishable by less than 6 months in the House of Correction.

- With that in mind, there is nothing in this newly modified definition of a "*Delinquent Child*" under Chapter 119 Section 52 that specifically precludes police officers from making an arrest under certain circumstances such as:

    1. when specifically authorized by statute based on "probable cause";
    2. when specifically authorized by statute when the violation occurs in the presence of a police officer; or
    3. when the violation takes place in the presence of a police officer in which said violation amounts to an ongoing or prospective breach of the peace.

- Therefore, arrests of juveniles for certain types of misdemeanors which carry a penalty for less than six months such as the following:

    - Indecent Exposure,
    - Disorderly Conduct,
    - Disturbing the Peace,
    - Minor Transporting Alcohol,
    - Operating with a Suspended License,
    - Shoplifting,
    - Threats,
    - Driving without a license
    - Breaking and Entry to Commit a Misdemeanor, or
    - Making Annoying/Harassing Phone Calls

- Until such time as the state legislature provides additional clarity and guidance on this complicated issue, beyond that outlined in the 2019 Wallace W Decision, the **preferred response** whenever possible for a violation of these listed enumerated offenses is to **avoid making an arrest whenever possible.** However, when circumstances warrant, such as to quell as ongoing breach of the peace and an arrest becomes the only viable option and there is no reasonable alternative available, officers of this department shall continue to be authorized to make such an arrest if any of the 3 conditions above exist.

- Recently, in the case of Commonwealth v Wallace (2019), the SJC concluded that the amendment to § 52 of Chapter 119 was plainly designed to give juveniles a so-called "***second chance***" with regard to a "first offense of a misdemeanor" that carries a maximum punishment of six months' imprisonment or a fine. In other words, the Legislature intended to excuse a juvenile's first isolated instance of such misconduct. **This means that the Juvenile Court may not exercise jurisdiction where the juvenile's first-offense is one such misdemeanor.** However, once a juvenile has committed his/her "first offense," the Juvenile Court may exercise jurisdiction over all other offenses not otherwise excluded under § 52, including subsequent six months or less misdemeanors. The SJC further concluded that, consistent with the purpose of the statute and the rule of lenity, the term "first offense" under

§ 52 means a **first adjudication of delinquency** and not just one where a complaint was issued and the case was resolved short of adjudication (e.g., dismissed, diverted, continued without a finding, etc.).

- Further, by way of logistical implication in procedure outlined by the SJC for determining the "first-offense" misdemeanor in the Wallace W. decision, Police Officers **shall retain the Right of Arrest** for any "***first offense misdemeanor***" specifically allowable by existing statutes – whether in presence or on probable cause - in furtherance with this procedure as outlined by the SJC.

- If an arrest is made a Clerk Magistrate and/or District Court Judge shall continue to make such a determination in the juvenile session of the district court prior to arraignment as to whether or not a complaint shall issue.

- Note: Individual police departments are advised to consult with their local town/town counsel for additional guidance on this particular issue in consultation with the local District Attorney and the local Juvenile Court Justice.

C. ***Youthful Offender****:* A person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen (14) and eighteen (18), an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine; provided that, nothing in this clause shall allow for less than the imposition of the mandatory commitment periods provided in section fifty-eight of chapter one hundred and nineteen.[ii]

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 Bolton Police Department and, during such time, the juvenile:

1. Status offenders are held in an unlocked, multi-purpose room that is in no way designed for residential use. Monitored and under the supervision of the arresting officer, prisoner (detainee) control officer or the officer-in-charge

2. Is not handcuffed to any stationary object;

3. Is held only long enough to complete identification, investigation and processing and then released to a parent or guardian or transferred to a juvenile facility or the court; and

4. Is under continuous supervision until released.

F. ***Secure Custody:*** A condition under which a juvenile's freedom of movement is controlled by being placed in a cell or locked room (or set of rooms) or being handcuffed to a stationary object.[iii]

G. **Custodial Protection:** A term used but not defined in several parts of MGL c. 119, referring to actions resembling Non-Secure Custody, above, but without handcuffing, restraining or even transporting the young person to a police facility.

H. ***Age of Criminal Responsibility:*** The age of Criminal Responsibility shall now be **12 years of age**.[iv]

I "***Restraints***": a device that limits voluntary physical movement of an individual, **including leg irons and shackles, which have been approved by the trial court department.**[v]

IV. PROCEDURE / *POST COMMISSION* GUIDANCE

A. Administration

1. The responsibility for participating in and supporting the department's juvenile operations is shared by all department components and personnel.

B. Enforcement Alternatives

1. Officers dealing with juveniles in enforcement capacities may exercise reasonable discretion in deciding appropriate action. Officers shall use the least coercive and most reasonable alternative, consistent with preserving public safety, order and individual liberty.

2. Whenever reasonable and possible, an officer will request a summons for a juvenile rather than taking him/her into custody.

3. Alternatives available include the following:

   a. Release with no further action or following informal counseling when no arrest has been made. Officers may also 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

e. Arrest when appropriate and authorized.

4. 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.

b. **Note:** No arrests are authorized in cases involving ***Children Requiring Assistance.***

Note: Sections (C.) through (F.) that immediately follow come directly from the ***Official Guidance*** offered from the Massachusetts ***Peace Officer Standards and Training Commission*** "***Guidance on Developmentally Appropriate De-escalation and Disengagement Tactics, Techniques and Procedures and Other Alternatives to the Use of Force for Minor Children***."

C. DE-ESCALATION & DISENGAGEMENT[78]

1. When appropriate, safe, and feasible in determining how to respond to minor children, Law Enforcement Officers should use de-escalation strategies in an attempt to problem solve and provide alternatives to arrest.

2. Law Enforcement Officers should consider all approved diversion options and select the alternative which least restricts the minor child's freedom and provides an alternative compatible with the best interests of the minor child and the community. When interacting with minor children, Law Enforcement Officers should make every reasonable effort to prevent an incident from escalating.

[78] The Municipal Police Training Committee (MPTC) in their current lesson plan, *Police Response to Mental Illness and Emotional Disturbances,* defines de-escalation as an "interactive process where the goal is to guide an individual to a calmer state of mind and to get to solution-based thinking. De-escalation refers to establishing and maintaining control of a situation in order to increase the safety of all and to build rapport with a person in order to increase cooperation." This concept of de-escalation is embedded in the MPTC's current Use of Force and Integrating Communications, Assessment and Tactics (ICAT)[i] curricula. It is generally understood that de-escalation techniques require Law Enforcement Officers to make a shift away from transactional, "quick resolution" tactics and slow down their interactions to build rapport and provide support to an emotionally dysregulated individual.

3. Any Law Enforcement Officer involved in a situation with a minor child should remain calm, engage the minor child in dialogue, and attempt to gain cooperation and trust from the minor child whenever safe and feasible.

4. When appropriate and feasible, Law Enforcement Officers should approach a minor child in a manner that is slower and more deliberate than a Law Enforcement Officer would approach an adult, in order to begin a process of de-escalation and to encourage and promote mutual cooperation and trust.

5. Law Enforcement Officers should attempt to engage the minor child in conversation, explain their role as peacekeeper, and encourage the minor child to partner with the officer in keeping the peace and managing the situation by using the timing, language, and physical bearing that is least likely to escalate the minor child's response.

6. Law Enforcement Officers' attempts to keep the peace should provide the minor child with the opportunity to understand and comply with their instructions, encourage questions and provide answers, and minimize the likelihood for confrontation by engaging in and facilitating non-threatening dialogue.

7. When it is safe and feasible, Law Enforcement Officers should adopt a calm, collaborative, respectful, and firm demeanor with minors to prevent a fight, flight or freeze response, slow down the interaction, and de-escalation the situation.

8. When interacting with a minor child, Law Enforcement Officers should explain the interaction in an age or developmentally appropriate manner, use developmentally appropriate language, maintain a non-threatening demeanor, and treat the minor child with courtesy, professionalism, dignity, respect, and equality.

9. When interacting with a minor child, officers should avoid tactics that are demeaning or likely to humiliate the minor child.

D. EDUCATION & TRAINING

1. Training of Law Enforcement Officers should address child and adolescent development, brain development, and trauma informed, age-appropriate, and culturally relevant tactics to prevent escalation of Law Enforcement Officer-minor child interactions. Training should include, but is not limited to:

    a. Implicit and explicit bias training to address racial, age-based, gender, cultural, linguistic, and economic bias and the disproportionate impact of such biases on minor children of color;

b. Trauma training that includes strategies for effective, trauma-informed responses to minor child behavior. Training should provide a basic understanding of emotional and/or traumatic stress presentation in minor children;

c. Scenario based training involving interactions with minor children;

d. Training should include special considerations that officers should take when encountering special populations including minor children suffering from cognitive/and or mental health issues, minor children under the influence of substances, minor children with disabilities, and minor children for whom English is not a first language; and

e. Training in communication, stabilization, and crisis intervention strategies and techniques. Strategies/techniques should encompass:

- active, reflective, and empathic listening;
- rapport building;
- affect management; and
- crisis negotiation and response.

2. Law Enforcement Agencies should develop a specific academy training on how to interact and engage with minor children. Academy training should include the following as it relates to minor children:

- Conflict resolution and problem solving;
- Alternatives to arrest; and
- Impact of child development and trauma on minor children's ability to process, take directives, and respond to Law Enforcement Officers.

E. TRAUMA

1. Law Enforcement Officers should be encouraged to access support and debriefing following critical incidents involving minor children.

2. Partnerships between Law Enforcement Officers and behavioral health professionals should be encouraged and Law Enforcement Officers should have access to accurate information about community resources for minor children and their families.

F. COMMUNITY

1. Law Enforcement Agencies should encourage and provide resources for Law Enforcement Officers of all ranks to establish community relationships through non-enforcement interactions among Law Enforcement Officers, minor children, and other community members.

2. Law Enforcement Agencies should make identified community resources for minor children available and accessible to Law Enforcement Officers.

3. Law Enforcement Agencies should periodically review and update procedures for effective Law Enforcement Officer-minor child interactions that include effective communication strategies for children.

4. Law Enforcement Agencies should support initiatives that increase positive Law Enforcement Officer-minor child interactions and engagement in communities that increase community trust in Law Enforcement Officers.

G. Referral to Juvenile Court (or Juvenile Session of the District 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 and authorized to do so. A decision to arrest should be based on the same legal considerations as the arrest of an adult.

5. Officers may arrest juveniles for acts of delinquency but not for traditional "status offenses".

6. 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**.
Note: Children Requiring Assistance may not be handcuffed, shackled or transported to the police station.

7. When an arrest is made, the juvenile shall be brought to the booking room without significant delay.

8. Pursuant to Chapter 119 Section 67(a), **Whenever a child between 12 and 18 years of age is arrested with or without a warrant, as provided by law, and the court or courts having jurisdiction over the offense are not in session, the officer in charge shall immediately notify at least 1 of the child's parents, or, if there is no parent, the guardian or custodian with whom the child resides or if the child is in the custody and care of the department, the department of**

children and families. Pending such notice, such child shall be detained pursuant to subsection (c) of Chapter 119 Section 67 [section 7 below].[vi]

9. Pursuant to Chapter 119 Section 67(b), Upon the acceptance by the officer in charge of the police station or town lockup of the written promise of the parent, guardian, custodian or representative of the department of children and families to be responsible for the presence of the child in court at the time and place when the child is ordered to appear, the child shall be released to the person giving such promise; provided, however, that if the **supervisor of the arresting officer** requests in writing that a child between 14 and 18 years of age be detained, and if the court issuing a warrant for the arrest of a child between 14 and 18 years of age directs in the warrant that the child shall be held in safekeeping pending the child's appearance in court, the child shall be detained in a police station, town lockup, a place of temporary custody commonly referred to as a detention home of the department of youth services or any other home approved by the department of youth services pending the child's appearance in court; provided further, that in the event any child is so detained, the officer in charge of the police station or town lockup shall notify the parents, guardian, custodian or representative of the department of children and families of the detention of the child. Nothing contained in this section shall prevent the admitting of such child to bail in accordance with law. [vii]

10. Pursuant to Chapter 119 Section 67(c), no child between 14 and 18 years of age shall be detained in a police station or town lockup pursuant to subsections (a) or (b) [5 and 6 above] unless the detention facilities for children at the police station or town lockup have received the approval in writing of the commissioner of youth services. The department of youth services shall make inspection at least annually of police stations and town lockups where children are detained. If no approved detention facility exists in a city or town, the city or town may contract with an adjacent town or town for the use of approved detention facilities to prevent children who are detained from coming in contact with adult prisoners. A separate and distinct place shall be provided in police stations, town lockups or places of detention for such children. Nothing in this section shall permit a child between 14 and 18 years of age to be detained in a jail or house of correction.[viii]

11. Pursuant to Chapter 119 Section 67(d), **When a child is arrested who is in the care and custody of the department of children and families, the officer in charge of the police station or town lockup where the child has been taken shall immediately contact the department's emergency hotline and notify the on-call worker of the child's arrest.** The on-call worker shall notify the social worker assigned to the child's case who shall make arrangement for the child's release as soon as practicable if it has been determined that the child will not be detained.[ix]

9. Juveniles arrested for criminal type offenses are subject to the same booking procedures as adults. Juveniles taken into custody for status offenses or for non-

criminal offenses as well as Children Requiring Assistance that are placed in custodial protection shall not be fingerprinted or photographed.[x]

10. The arresting officer and the prosecutor should cooperate in the preparation and presentation of the case if court action is necessary.

11. Any police proceeding involving juveniles or Children Requiring Assistance shall be treated in a confidential manner.

H. Holding Juveniles

1. **Delinquent Offenders**

   a. Juveniles between ages fourteen and eighteen accused of delinquent offenses may be held in secure custody for no longer than six (6) hours for the purpose of identifying and processing the juvenile and, if appropriate, transportation to a juvenile facility or court.[xi]

      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.[xii]

   b. No child between the ages of fourteen and eighteen shall be detained in a police department unless the detention facilities for children have received the written approval of the Commissioner of Youth Services.[xiii]

   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.[xiv]

   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. **Protective Custody** {Where Drugs are found}

   a. Status offenders and juveniles held for protective custody shall not be held in secure custody.

b. A child under the age of eighteen may be taken into protective custody, for a period not exceeding four (4) hours, if an officer:

i. Finds the child at a place where the officer reasonably believes there is a controlled substance of Class A, B or C;

ii. Reasonably believes the child to be under age eighteen; and

iii. Reasonably believes the child knew of the presence of the controlled substance.[xv]

Note: The Officer in Charge of the police station shall make every reasonable effort to notify the juvenile's parent or guardian or other person having lawful custody. Under these circumstances, the juvenile shall NOT be placed in a secure cell or restrained in any way.

3. **Children Requiring Assistance**

a. Children Requiring Assistance shall not be held in secure custody.

b. A child may be taken into custodial protection for engaging in behavior described in the definition of "Child Requiring Assistance" in Section 21, only if such child has failed to obey a summons issued pursuant to MGL c 119 § 39E or if the law enforcement officer initiating such custodial protection has probable cause to believe that such child has run away from the home of his parents or guardian and will not respond to a summons.

c. A parent, legal guardian or custodian of a child having custody of such child, may initiate an application for assistance in one of said courts stating that said child repeatedly runs away from home of said parent or guardian or repeatedly refused to obey the lawful and reasonable commands of said parent or guardian resulting in said parent's or guardian's inability to adequately care for and protect said child.

d. A school district may initiate an application for assistance in said court stating that said child is not excused from attendance in accordance with the lawful and reasonable regulations of such child's school, has willfully failed to attend school for more than 8 school days in a quarter or repeatedly fails to obey the lawful and reasonable regulations of the child's school. The application for assistance shall also state whether or not the child and the child's family have participated in the truancy prevention program, if one is available, and a statement of the specific steps taken under the truancy prevention program to prevent the child's truancy; and if the application of assistance states that a child has repeatedly failed to obey the lawful and reasonable regulations of the school, a statement of the specific steps taken by the school to improve the child's conduct.

e. Upon the filing of an application for assistance, the court may issue a summons, to which a copy of the application for assistance shall be attached, requiring the child named in such application to appear before said court at the time set forth in the summons. If such child fails to obey the summons, said Court may issue a warrant reciting the substance of the petition and requiring the officer to whom it is directed forthwith to take and bring such child before said Court. Notice of the hearing shall be given to the Department of Children and Families and the Department of Youth Services.

f. Where the Court summons such child, the court shall in addition issue a summons to both parents of the child, if both parents are known to reside in the Commonwealth, or to one parent if only one is known to reside within the Commonwealth, or, if there is no parent residing in the Commonwealth, then to the parent having custody or to the lawful guardian of such child. Said summons shall require the person served to appear at a time and place stated therein at a hearing to determine whether or not such child is in need of assistance.

g. Unless service of the summons required by this section is waived in writing, such summons shall be served by the constable or police officer, either by delivering it personally to the person to whom addressed or by leaving it with a person of proper age to receive the same, at the place of residence or business of such person, and said constable or police officer shall immediately make return to the court of the time and manner of service.

h. A child who is the subject of an application for assistance may not be confined in shackles or similar restraints or in a court lockup facility in connection with any proceeding under Sections 39E to 39I, inclusive. A child who is the subject of an application for assistance shall not be placed in a locked facility or any facility designated or operated for juveniles who are alleged to be delinquent or who have adjudicated delinquent. Such child may, however, be placed in a facility which operates as a group home to provide therapeutic care for juveniles, regardless of whether juveniles adjudicated delinquent are also provided care in such facility.

i. A child may not be arrested for engaging in behavior which constitutes being a Child Requiring Assistance.

j. A child may be taken into custodial protection for engaging in the behavior described in the definition of "Child Requiring Assistance" in Section 21 only if such child has failed to obey a summons issued pursuant to Section 39E or if the law enforcement officer initiating such custodial protection has probable cause to believe that such child has run away from home of his parents or guardian and will not respond to a summons.

k. After a law enforcement officer has taken a child into custodial protection, the officer shall immediately notify the parent, other person legally responsible for the child's care or the person with whom the child is domiciled, that such child is under the custodial protection of the officer and a representative of the Department of Children and Families, if the saw enforcement officer has reason to believe that the child is or has been in the care of custody of such department and shall inquire into the case.

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

(i) To one of the child's parents or to the child's guardian or other responsible person known to the child or to the child's legal custodian including the Department of Children and Families or the child's foster home upon written promise, without surety, of the person to whose custody the child is released that such parent, guardian, person or custodian will bring the child to the Court on the next court date

(ii) Forthwith and with all reasonable speed take the child directly and without first being taken to the police station house, to a temporary shelter facility licensed or approved by the Department of Early Education and Care, a shelter home approved by a temporary shelter facility licensed or approved by said Department of Early Education and Care or a family foster care home approved by a placement agency licensed or approved by said Department of Early Education and Care: or

(iii) Take the child directly to the juvenile court in which the act providing the reason to take the child into custodial protection occurred if the officer affirms on the record that the officer attempted to exercise the options identified in clauses (i) and (ii), was unable to exercise these options and the reasons for such inability.

Notwithstanding the foregoing requirement for placement, any such child who is taken into custodial protection shall, if necessary, be taken to a medical facility for treatment or observation.

4. When juveniles are detained by the Bolton Police Department the juvenile, parent or guardian shall be informed by the Prisoner Control Officer about the department's juvenile procedures regarding custody and release to a parent or guardian. The officer will also inform the juvenile/parent/guardian about juvenile justice system procedures regarding transportation to another facility, or court procedures as applicable.

I. Custodial Interrogation of Minors

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

2. In addition, the police must also follow the special rules that apply to the interrogation of juveniles.

   a. "**INTERESTED ADULT RULE"**: In order to obtain a knowing and intelligent waiver by a juvenile, in most cases a parent or interested adult must be present, understand the warnings and have a meaningful opportunity to consult with the juvenile. Before initiating an interrogation, the juvenile's parent, legal guardian, or other interested adult (including an attorney) should be present.[xvi]

      i. UNDER AGE FOURTEEN: No waiver of rights by a juvenile who is **12 years of age or older and 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.[xvii]

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

   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).[xix]

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 **twelve years of age or older and under the age of fourteen**, he/she must be given an opportunity to have an **actual consultation** with an interested adult to discuss the Miranda warnings.[xx]

f. AGE 14 TO 18: If the juvenile is over the age of fourteen and an interested adult is present, the adult shall be given an opportunity to have a meaningful consultation with the juvenile.[xxi]

4. Officers shall ensure that the interrogation is not unduly coercive, particularly when an interested adult is not present.

a. The duration of each interrogation session should be limited and frequent breaks taken.

b. Absent extraordinary circumstances, only two officers 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 wavier 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.[xxii]

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

J. Abused or Neglected Children

1. A police officer who, in his/her professional capacity, has reasonable cause to believe a child under age 18 is suffering serious physical or emotional injury or death from abuse or neglect, including sexual abuse or malnutrition, shall **immediately report** such condition to the Department of Children and Family Services (DCF) by **oral communication**, followed by a **written report within 48 hours** of the oral communication.[xxiii] (51A, 111B, 94C). 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

Children and Family Services (DCF) shall be immediately contacted and requested to respond to the scene to take custody of the juvenile.[xxiv] If DCF does not respond to the scene in a reasonable amount of time, the juvenile may be transported to the station to await DCF.

3. In serious cases of child neglect or abuse, the officer may apply to an appropriate juvenile court to have custody of a child under eighteen taken away from the parents or other neglectful or abusing custodian and have custody transferred, on an emergency basis, to DCF or a licensed child care agency or individual.[xxv]

K. 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: (see School Resource Officer Policy # 11.26)

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 youth i.e. (P.A.L., G.R.E.A.T programs and community organized youth basketball, little league and football programs). Where a recreational program is needed but does not exist, officers should encourage citizens and community leaders to organize one.

L. Record Keeping

1. Officers who select noncustodial alternatives or engage in informal enforcement contacts with juveniles shall complete appropriate incident reports as required by this agency. These reports shall clearly identify the juveniles involved, the nature of the incident and the rationale for the officer's disposition.

3. 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 physically separated from adult arrest records and copies sent to the Central Records Bureau. Central Records Bureau will scan all pertinent files into the computer system and shred all data once scanned. All juvenile records are password protected in the IMC System. Dissemination of juvenile records shall be consistent with existing MGL and Public Records Dissemination Guide 14-81.

M. New State Statutes of Interest pertaining to Juveniles:

Chapter 138 Section 1:

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

Chapter 138 Section 34E.

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

Chapter 272 Section 40:

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

Chapter 272 Section 53:

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

Endnotes:

[i] M.G.L. c. 119, s. 52
[ii] M.G.L. c. 119, s. 52
[iii] 28 CFR Part 31.303 (i)
[iv] M.G.L. c. 119, s. 54
[v] M.G.L. c. 119, s. 86
[vi] M.G.L. c. 119, s. 67(a)

[vii] M.G.L. c. 119, s. 67(b)
[viii] M.G.L. c. 119, s. 67(c)
[ix] M.G.L. c. 119, s. 67(d)
[x] M.G.L. c. 263, s. 1A; *Com. v. Shipps,* 399 Mass. 820, 507 N.E.2d 671 (1987)
[xi] Executive Order Number 339, Commonwealth of Massachusetts, Aug. 14, 1992; 28 CFR Part 31.303(f)(5)(iv)(H)
[xii] M.G.L. c. 119, s. 68
[xiii] M.G.L. c. 119, s. 67
[xiv] M.G.L. c. 119, s. 67
[xv] M.G.L. c. 94C, s. 36
[xvi] *Com. v. A Juvenile*, 389 Mass. 128, 449 N.E.2d 654 (1983)
[xvii] *Com. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)
[xviii] *Com. v. King*, 17 Mass. App. Ct. 602, 460 N.E.2d 1299, *rev. den.* 391 Mass. 1105, 464 N.E.2d 73 (1984)
[xix] *Com. v. A Juvenile*, 389 Mass. 128, 449 N.E.2d 654 (1983); *Com. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)
[xx] *Com. v. Berry*, 410 Mass. 31, 570 N.E.2d 1004 (1991)
[xxi] *Id.*
[xxii] *See Com. v. Harris*, 364 Mass. 236, 303 N.E.2d 115 (1973)
[xxiii] M.G.L. c. 119, s. 51A
[xxiv] M.G.L. c. 119, s. 51B
[xxv] M.G.L. c. 119, s. 24

Appendix A

Peace Officer Standards and Training Commission
Guidance on Developmentally Appropriate De-escalation and Disengagement Tactics, Techniques and Procedures and Other Alternatives to the Use of Force for Minor Children

Introduction

In Section 119 of the Chapter 253 of the Acts of 2020, the Legislature instructed the Massachusetts Peace Officer Standards and Training Commission ("Commission") to: "issue guidance as to developmentally appropriate de-escalation and disengagement tactics, techniques, and procedures and other alternatives to the use of force for minor children that may take into account contextual factors including, but not limited to, the person's age, disability status, developmental status, mental health, linguistic limitations or other mental or other mental or physical condition."

The purpose of this guidance is provide Massachusetts Law Enforcement Officers and Law Enforcement Agencies[xxv] with guidelines for the use of developmentally appropriate de-escalation and disengagement tactics, techniques and procedures and other alternatives to use of force with minor children (i.e. children under the age of 18). This guidance does not have the force of a statute or regulation, and does not express requirements with which Law Enforcement Officers or Agencies must comply.

The Commission recognizes that in issuing such guidance, it must balance the goals of improving the safety of children, the needs of the community, and the well-being of Law Enforcement Officers,[xxv] while increasing trust between Law Enforcement Officers and the communities they serve. The Commission expects that this guidance will be modified and refined as new knowledge, facts, and scientific evidence inform the understanding of factors that influence the outcomes of Law Enforcement Officer-minor child interactions.

Moreover, the Commission believes that these Law Enforcement Officer-minor child interactions are best understood in a broader context that acknowledges the convergence of multiple factors, primarily minor child factors, community factors, and Law Enforcement Officer factors, in determining the outcome of these interactions.

Context of the Interaction between Minor Children and Law Enforcement Officers

Minor Children

Minor children are uniquely vulnerable to violence and trauma. Interactions between Law Enforcement Officers and minor children often represent a minor child's earliest experiences with the legal or law enforcement system and may impact a minor child's development, sense of security and regard for authority. Law Enforcement Officers who are well trained and supported to embrace and understand developmentally appropriate interventions with minor children are likely to engage in positive and culturally-competent interactions with minor children that increase their well-being and promote successful outcomes.

It is well documented that minor children are developmentally distinct from adults. These developmental differences are related to the biological immaturity of children, including their lack of life experience relative to adults. According to the National Academy of Sciences' *Reforming Juvenile Justice* report (2013), children are developmentally distinct from adults in at least three ways: (1) they demonstrate less emotional self-regulation in emotionally charged situations; (2) they have increased susceptibility to external influences such as peer pressure and immediate incentives; and (3) they are less able to make judgments and decisions that require future orientation. Minor children have a propensity for "rash, impulsive and poorly considered actions" especially when faced with "emotionally-charged situations where the time for deliberation is limited, and they lack access to an adult or other person who can help them consider options and consequences - often when with peers." (Kinscherff, 2021). Due to their developmental immaturity, they are less likely than adults to respond favorably to transactional policing approaches, accurately appraise officer behavior and experience police stops as a deterrent to criminal behavior (Thurau and Fine, 2021).

Community

It is also well-established that factors associated with the community environment such as crime level, police patrol presence, socioeconomic level and neighborhood disorganization affect police behavior and arrest rates. (Sanborn and Salerno, 2005). Research on race and policing indicates that Black Americans experience a greater frequency of police contacts, discretionary stops, and police harassment when these stops occur (Maynard and Haider-Markel, 2014; Fagan et al., 2010; Fagan and Tyler, 2005; Meares, 2014). Discretionary stops by police that are interpreted as

harassing, unfair, or discriminatory undermine the public trust in police, encourage avoidance of police and negatively impact community and individual mental health (Geller et al., 2014; Sewell, Jefferson and Lee, 2016). Research has found that community factors and perceptions of procedural justice also impact the attitudes that minor children have toward police (Office of Juvenile Justice and Delinquency Prevention, 2018). When Law Enforcement Officer-minor child interactions are unbiased, respectful and built on a foundation of positive community experiences, they are more likely to elicit cooperation, foster trust and decrease a minor child's experience of fear and trauma during contacts with Law Enforcement Officers.

Law Enforcement Officers

Factors associated with individual officer characteristics such as an officer's years of experience on the job and the overall culture of a police department also influence Law Enforcement Officer-minor child interactions. (Office of Juvenile Justice and Delinquency Prevention, 2018). Law Enforcement Officers who are well trained, properly supported in their job, and emotionally regulated are more likely to communicate effectively with children, make sound assessments of risk and options for intervention, and slow down when necessary to de-escalate a crisis incident.

The increased exposure to violence and threats to the personal safety of self and the safety of others on the job creates high levels of occupational stress for Law Enforcement Officers. On the job exposure to the serious injury or death of a child has been recognized as one of the most stressful critical incidents Law Enforcement Officers may encounter in the course of their careers. Law Enforcement Officers should have access to support and post-encounter crisis debriefing of critical incidents involving minor children to prevent stress reactions.

During interactions with minor children, Law Enforcement Officers should be particularly aware of minor children's normal developmental tendencies to react anxiously and distrustfully to police presence. When feasible, they should approach minor children in a non-confrontational manner to diffuse tension while maintaining safety. Law Enforcement Officers should be trained in developmentally appropriate, trauma-informed and racially equitable tactics to de-escalate minor children, including communication strategies which avoid threats and intimidation and promote calm age-appropriate language, provide choices and allow ample time for compliance. It is also critical that Law Enforcement Officers are aware of their own stress level and the impact of their presence and behavior on the outcome of interactions with minor children.

GUIDANCE:

DE-ESCALATION & DISENGAGEMENT[xxv]

1. When appropriate, safe, and feasible in determining how to respond to minor children, Law Enforcement Officers should use de-escalation strategies in an attempt to problem solve and provide alternatives to arrest.
2. Law Enforcement Officers should consider all approved diversion options and select the alternative which least restricts the minor child's freedom and provides an alternative compatible with the best interests of the minor child and the community. When interacting with minor children, Law Enforcement Officers should make every reasonable effort to prevent an incident from escalating.
3. Any Law Enforcement Officer involved in a situation with a minor child should remain calm, engage the minor child in dialogue, and attempt to gain cooperation and trust from the minor child whenever safe and feasible.
4. When appropriate and feasible, Law Enforcement Officers should approach a minor child in a manner that is slower and more deliberate than a Law Enforcement Officer would approach an adult, in order to begin a process of de-escalation and to encourage and promote mutual cooperation and trust.
5. Law Enforcement Officers should attempt to engage the minor child in conversation, explain their role as peace-keeper, and encourage the minor child to partner with the officer in keeping the peace and managing the situation by using the timing, language, and physical bearing that is least likely to escalate the minor child's response.
6. Law Enforcement Officers' attempts to keep the peace should provide the minor child with the opportunity to understand and comply with their instructions, encourage questions and provide answers, and minimize the likelihood for confrontation by engaging in and facilitating non-threatening dialogue.
7. When it is safe and feasible, Law Enforcement Officers should adopt a calm, collaborative, respectful, and firm demeanor with minors to prevent a fight, flight or freeze response, slow down the interaction, and de-escalation the situation.
8. When interacting with a minor child, Law Enforcement Officers should explain the interaction in an age or developmentally appropriate manner, use developmentally appropriate language, maintain a non-threatening demeanor, and treat the minor child with courtesy, professionalism, dignity, respect, and equality.
9. When interacting with a minor child, officers should avoid tactics that are demeaning or likely to humiliate the minor child.

EDUCATION & TRAINING

10. Training of Law Enforcement Officers should address child and adolescent development, brain development, and trauma informed, age-appropriate, and culturally relevant tactics to prevent escalation of Law Enforcement Officer-minor child interactions. Training should include, but is not limited to:
    a. Implicit and explicit bias training to address racial, age-based, gender, cultural, linguistic, and economic bias and the disproportionate impact of such biases on minor children of color;

b. Trauma training that includes strategies for effective, trauma-informed responses to minor child behavior. Training should provide a basic understanding of emotional and/or traumatic stress presentation in minor children;
c. Scenario based training involving interactions with minor children;
d. Training should include special considerations that officers should take when encountering special populations including minor children suffering from cognitive/and or mental health issues, minor children under the influence of substances, minor children with disabilities, and minor children for whom English is not a first language; and
e. Training in communication, stabilization, and crisis intervention strategies and techniques. Strategies/techniques should encompass:
    - active, reflective, and empathic listening;
    - rapport building;
    - affect management; and
    - crisis negotiation and response.

11. Law Enforcement Agencies should develop a specific academy training on how to interact and engage with minor children. Academy training should include the following as it relates to minor children:
    a. Conflict resolution and problem solving;
    b. Alternatives to arrest; and
    c. Impact of child development and trauma on minor children's ability to process, take directives, and respond to Law Enforcement Officers.

TRAUMA

12. Law Enforcement Officers should be encouraged to access support and debriefing following critical incidents involving minor children.
13. Partnerships between Law Enforcement Officers and behavioral health professionals should be encouraged and Law Enforcement Officers should have access to accurate information about community resources for minor children and their families.

COMMUNITY

14. Law Enforcement Agencies should encourage and provide resources for Law Enforcement Officers of all ranks to establish community relationships through non-enforcement interactions among Law Enforcement Officers, minor children, and other community members.
15. Law Enforcement Agencies should make identified community resources for minor children available and accessible to Law Enforcement Officers.
16. Law Enforcement Agencies should periodically review and update procedures for effective Law Enforcement Officer-minor child interactions that include effective communication strategies for children.

17. Law Enforcement Agencies should support initiatives that increase positive Law Enforcement Officer-minor child interactions and engagement in communities that increase community trust in Law Enforcement Officers.