

USE OF FORCE

(RESPONSE TO RESISTANCE)

BY SWORN PERSONNEL

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TABLE OF CONTENTS

POLICY.....	2
DEFINITIONS.....	2
PROCEDURES.....	6
I. FORCE OPTIONS.....	6
II. ENCOUNTERS WITH MINORS, EMOTIONALLY DISTURBED, MENTALLY ILL AND PHYSICALLY DISABLED PERSONS.....	8
III. LESS-LETHAL FORCE.....	9
IV. DEADLY FORCE / LETHAL FORCE	18
V. SPECIAL WEAPONS.....	20
VI. DUTY TO INTERVENE	21
VII. USE OF FORCE CONSIDERATIONS INVOLVING PLANNED MASS DEMONSTRATIONS	22
VIII. ADMINISTRATIVE RELIEF FROM DUTY AFTER FORCE RESULTING IN DEATH OR SERIOUS BODILY INJURY ...	23
IX. POST USE OF FORCE INCIDENT PROCEDURES	24
X. USE OF FORCE REPORTING	31
XI. TRAINING.....	33

POLICY

It is the policy of the Department that officers use only the force that is permissible under applicable federal and state laws and regulations. [1.3.1]

This Policy requires strict adherence by all sworn personnel.

When exigent and unforeseen circumstances cause officers to deviate from the provisions of this Policy, officers are still expected to act with intelligence, sound judgment and in full conformity with both state and federal laws and constitutional provisions. Any such deviations from the provisions of this Policy shall be examined on a case-by-case basis.

In order to comply with this Policy, the attached Response to Resistance Report shall be utilized.

DEFINITIONS

- A. **Actively Resistant Individual:** An individual who uses physical strength and/or body movement to resist a Department member. Examples of active resistance include pulling, turning, or walking away from an officer.
- B. **Aggravated Assaultive Individual (Serious Bodily Harm/Death):** An individual who engages in conduct that is likely to produce death or serious bodily harm to a member of the Department or another person.
- C. **Assaultive Individual (Bodily Harm):** An individual who attempts to injure a Department member or another person or engages in conduct that has the potential to injure a Department member or another person.
- D. **Chokehold:** The use of a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow with the intent of or with the result of causing bodily injury, unconsciousness or death.
- E. **Commission:** The Massachusetts Peace Officer Standards and Training Commission as established in M.G.L. c. 6E, s.2.
- F. **Committee:** The Municipal Police Training Committee as established in M.G.L. c. 6, s.116.

- G. **Compliant Individual:** An individual who is fully cooperative with a Department member.
- H. **Deadly Force / Lethal Force:** Physical force that can reasonably be expected to cause death or serious bodily injury. Sworn personnel are authorized to use lethal force in accordance with the law and this Policy. [1.3.2]
- I. **De-escalation Tactics:** Proactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force including, but not limited to, verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, creating distance between the officer and a threat and requesting additional resources to resolve the incident, including, but not limited to, calling in medical or licensed mental health professionals, as defined in subsection (a) of section 51½ of chapter 111, to address a potential medical or mental health crisis. De-escalation shall include, but is not limited to, issuing a summons instead of executing an arrest where feasible.
- J. **Dog:** For purposes herein, shall also refer to a K-9, canine or police dog.
- K. **Drive Stun Deployment:** In Drive Stun mode, the ECW is a pain-compliance facilitator rather than an electro-muscular disruptor. Drive stun occurs when the ECW is held against the subject, whether or not probes are deployed. Drive stun may be utilized in response to active resistance or assaultive behavior.
- L. **Electronic Control Weapon (ECW):** A weapon that uses electricity to override voluntary motor responses or applies pain in order to gain compliance or overcome resistance. ECWs are designed to incapacitate without causing serious bodily injury or death. [1.3.9 (a)]
- M. **ECW Activation:** Any time an ECW is turned on, exclusive of training and routine maintenance/readiness checks.
- N. **ECW Cycle:** Occurs when probe deployment delivers energy to an individual.
- O. **Force:** The amount of effort required by police to compel compliance by an unwilling subject.
- P. **Kettling:** Confinement or corralling by law enforcement of a group of demonstrators or protesters in a small area without any means of egress as a method of crowd control, management, or restraint.

- Q. **Kinetic Energy Impact Projectiles:** Flexible or non-flexible projectiles, which are intended to incapacitate a subject with a minimal potential for causing death or serious bodily injury, when compared to conventional projectiles.
- R. **Laser Activation:** The ECW is turned on, activating the light and/or laser beam. Laser activation may be utilized as a warning technique if drive stun deployment and/or probe deployment is objectively reasonable.
- S. **Non-deadly Force:** Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another
- T. **Objectively Reasonable:** This term means that, in determining the necessity for and appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the officer, subject, and/or community. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight. Determining reasonableness of force must allow for the fact that police officers are forced to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. The force used must be reasonable under the circumstances known to the officer at the time force is used.
- U. **Officer-Involved Injury or Death:** Any event during which an officer:
- 1) discharges a firearm, as defined in section 121 of chapter 140, actually or proximately causing injury or death to another;
 - 2) discharges any stun gun as defined in said section 121 of said chapter 140, actually or proximately causing injury or death to another;
 - 3) uses a chokehold, actually or proximately causing injury or death of another;
 - 4) discharges tear gas or other chemical weapon, actually or proximately causing injury or death of another;
 - 5) discharges rubber pellets from a propulsion device, actually or proximately causing injury or death of another;
 - 6) deploys a dog, actually or proximately causing injury or death of another;
 - 7) uses deadly force, actually or proximately causing injury or death of another;

- 8) fails to intervene, as required by section 15, to prevent the use of excessive or prohibited force by another officer who actually or proximately causes injury or death of another; or
 - 9) engages in a physical altercation with a person who sustains serious bodily injury or requests or receives medical care as a result.
- V. **Passively Resistant Individual:** An individual who is uncooperative but does not use physical strength or body movement to resist a Department member.
- W. **Probe Deployment:** In Probe Deployment mode, the ECW uses electricity to override voluntary motor responses. Probe Deployment occurs when probes deploy from an ECW, whether or not the probes strike their intended target. This includes follow-up drive stuns when a single probe is attached to an individual. Probe deployment may be utilized in response to assaultive behavior.
- X. **Public Safety Statement:** A statement to ascertain the threat level at the scene of the incident, to identify witnesses or other injured officers or civilians, and to facilitate the collection of evidence and preservation of the scene. This public safety statement is a brief explanation of what has transpired and what is presently happening. The Public Safety statement may be given by the Chief of Police/Lieutenant/ Town Administrator or his/her designee who has gathered this information. The Public Safety Statement should include the following in substance and where applicable:
- 1) The identity of officers and other involved parties to the incident who discharged firearms and their approximate position at the time of the discharge.
 - 2) The direction and number of shots fired
 - 3) A description of any suspects and direction of flight
 - 4) The identity and location of any injured officers or civilians
 - 5) The identity of potential witnesses
 - 6) The location of any unsecured weapons or contraband at the scene.
- Y. **Reasonable Force:** Reasonable force is determined under the legal standard set forth in Graham v. Connor, 490 U.S. 386, 395 (1989). Reasonable force is defined as force which is objectively reasonable because it is necessary to overcome resistance offered in a lawful police action to compel an unwilling subject's compliance with an officer's lawful exercise of police authority.
- Z. **Safety Priorities:** The Police Department safety priorities are established as follows:
- 1) Hostages and Involved non-subject civilians
 - 2) Police officers
 - 3) Subject (the person who is the focus of the police operation)

- AA. **Serious Bodily Injury:** Bodily injury that results in: (i) permanent disfigurement; (ii) protracted loss of impairment of a bodily function, limb or organ; or (iii) a substantial risk of death. This may also be referred to as “serious physical injury”.
- BB. **Spark Display:** The ECW is activated and the arc switch is depressed, activating the electrical arc. Spark display may be utilized as a warning technique if drive stun deployment and/or probe deployment is objectively reasonable.
- CC. **Stress Disorder:** An anxiety disorder that can result from exposure to short-term severe stress, or the long-term buildup of repetitive and prolonged milder stress. The person must have experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of one’s self or others. The person’s response to the event(s) will have involved intense fear, helplessness, or horror.
- 1) **Acute Stress Disorder:** A category of stress disorder lasting for a minimum of two days and a maximum of four weeks occurring within four weeks of the event(s).
- 2) **Post-Traumatic Stress Disorder:** A category of stress disorder in which the symptoms last more than one month.
- DD. **Susceptible Population Groups:** Susceptible population groups include those who reasonably appear to be, or are known to be, children, elderly, medically infirm, pregnant, or users of a cardiac pacemaker.
- EE. **Sworn Personnel:** An employee of a law enforcement agency who has sworn to carry out law enforcement duties and has full arrest powers. For the purposes of this Policy, the term “sworn personnel” and “officer” are used interchangeably.
- FF. **Tear Gas or Other Chemical Weapons (CW):** Any weapon that contains chemical compounds that temporarily make people unable to function by causing irritation to the eyes, mouth, throat, lungs, and skin, or that otherwise restrain a person by causing pain. This shall not include oleoresin capsicum (OC) spray.

PROCEDURES

I. FORCE OPTIONS

- A. The amount and degree of force, which may be employed, will be determined by the totality of circumstances including, but not limited to:

1. The nature and seriousness of the offense;
 2. The behavior of the subject against whom force is to be used;
 3. Actions by third parties who may be present;
 4. Physical odds against the officer;
 5. The feasibility or availability of alternative actions; and
 6. The opportunity to use de-escalation tactics at any time during the encounter.
- B. An officer should only use that amount of force that the officer feels would be reasonable in a particular situation to accomplish his/her lawful objective or to protect the officer or another from serious bodily injury or death. Officers should continuously evaluate the circumstances of the encounter with the goal of exploiting both verbal and tactical opportunities with the intent of de-escalating to a lower force level.

C. Equipment, Weapons and Ammunition Generally

1. Only issued or authorized equipment will be carried on-duty and used when applying any level of less-lethal force. [1.3.4]
2. Only weapons and ammunition authorized by the Police Department will be used by agency personnel in the performance of their responsibilities (listed in “Appendix A” of this Policy) while on duty unless exigent circumstances compel the officer to utilize other options. [1.3.9 (a); 1.3.9 (b)]
3. An officer shall not alter or modify his/her firearm or ammunition in any way without the express permission of the Chief of Police.
4. Sworn personnel of the Department shall take all reasonable precautions to ensure that weapons issued to them by the Department are properly secured, protected from loss, misuse, or theft. Attention is drawn to G.L. c. 140, §§ 131C and 131L. [1.3.9 (f)]
5. Officers are responsible for keeping their issued weapons clean and in good working order. A weapon that malfunctions shall be returned to the Department Armorer forthwith for the necessary repairs, and a replacement weapon shall be issued by the Armorer. The officer shall qualify with the replacement weapon prior to carrying it on duty. [1.3.9 (d)]

6. Prior to the issuance of any weapons to the officer, the Department Armorer shall review, inspect and approve each individual weapon. If any malfunctions or defects are found, or if the weapon is found to be unsafe in any manner, the deficiency shall either be rectified, or the weapon shall be returned to the manufacturer for a replacement weapon. [1.3.9 (c); 1.3.9 (d)]
7. The Department Armorer shall maintain a log for each weapon that is owned or authorized by the Department. This log should list the make, model, and serial number and shall indicate the condition of the weapon. A file shall also be maintained by the Training Coordinator documenting the make, model and serial numbers of the issued and authorized duty weapons to each member of the Department and a log of each officer's qualifications and re-qualifications. [1.3.9 (e)]

II. ENCOUNTERS WITH MINORS, EMOTIONALLY DISTURBED, MENTALLY ILL AND PHYSICALLY DISABLED PERSONS

- A. Encounters may arise between law enforcement and those individuals who are known or suspected of being minors, emotionally disturbed, mentally ill or physically disabled. Such encounters may require special police skills and abilities to effectively and legally respond to the given situation. Officers should never, however, compromise or jeopardize their safety or the safety of others when dealing with individuals displaying symptoms of emotional, mental and/or physical illness.
- B. Should the officer determine that an individual may be a minor, emotionally disturbed, mentally ill and/or physically disabled and a potential threat to himself/herself, the officer, or others; or may otherwise require law enforcement intervention for humanitarian reasons, the following responses should be taken, bearing in mind officer safety is most important:
 1. Request a backup officer.
 2. Take steps to utilize de-escalation tactics. Where possible, eliminate emergency lights and sirens, disperse crowds, and assume a quiet non-threatening manner when approaching or conversing with the individual. Where violence or destructive acts are not occurring, avoid physical contact, and take time to assess the situation.
 3. Move slowly and do not excite the person. Provide reassurance that the police are there to help and that he/she will be provided with appropriate care.

4. Communicate with the individual in an attempt to determine the root of the person's actions. Relate your concern for his/her feelings and allow the person to express their feelings. Where possible, gather information on the subject from acquaintances or family sworn personnel and/or request professional assistance, if available and appropriate to assist in communicating with the person and/or de-escalating the situation.
 5. Do not threaten the individual with arrest or in any other manner as this will create additional fright, stress, and potential aggression.
 6. Avoid topics that may agitate the person and guide the conversation toward topics that may help ease the individual.
 7. Always attempt to be truthful. If the subject becomes aware of a deception, he/she may withdraw from the contact in distrust and may become hypersensitive or retaliate in anger.
 8. Consider containing the situation, establishing distance, waiting for additional help, and/or the arrival of trained medical staff.
- C. While the policies and guidelines regarding the use of force do not change due to a subject's mental or physical status, officers should take this status into account (where the status is known) in their approach of the subject in an effort to de-escalate the situation.
- D. Once a person is under control, officers should consider whether common restraint tactics may be more dangerous to the individual due to the subject's age, mental, emotional or physical status, and consider available and appropriate reasonable accommodations.
- E. As with any use of force, officers should always provide an immediate medical response to individuals who are exhibiting signs or complaining of injury or illness following a use of force.

III. LESS-LETHAL FORCE

A. PROCEDURES FOR THE USE OF ALL LESS-LETHAL FORCE

1. A law enforcement officer shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary and proportionate to:

- a. to effect the lawful arrest or detention of a person;
 - b. to prevent the escape from custody of a person;
 - c. to prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm while protecting the safety of the officer or others; or
 - d. defend against an individual who initiates force against an officer.
2. It is preferred that less-lethal force not be used if resistance is minor and not hazardous, or if a lesser degree of force would reasonably achieve the same result. Officers should issue a verbal warning and allow a reasonable amount of time for response unless a warning could endanger the officer or others.
 3. Each less-lethal force option is not intended to be a substitute for other options in situations in which the use of other force options are more appropriate.
 4. Absent exceptional circumstances, officers shall not use less-lethal force on susceptible population groups, or for the sole purpose of protecting property.
 5. The use of less-lethal force is not authorized for indiscriminate use, non-violent behavior or when an individual is handcuffed unless a threat to the officer or others exists.
 6. A subject who is exposed to less-lethal force shall be actively monitored while in police custody after they have received medical care. If the subject requests further medical attention, they shall be transported immediately by EMS to a medical facility. [\[1.3.5\]](#)
 7. Except to temporarily gain, regain, or maintain control of an individual and apply restraints, a law enforcement officer shall not intentionally sit, kneel, or stand on an individual's chest, neck, or spine, and shall not force an individual to lie on their stomach
 8. A law enforcement officer shall not obstruct the airway or limit the breathing of any individual, nor shall a law enforcement officer restrict oxygen or blood flow to an individual's head or neck. An individual placed on their stomach during restraint should be moved into a recovery position or seated position as soon as practicable.

B. LESS-LETHAL FORCE OPTIONS

1. All officers shall be properly trained and certified, when appropriate, in the use of any less-lethal weapons before being authorized to carry such weapons. [1.3.4; 1.3.10]

2. CHEMICAL SUBSTANCES

- a. Chemical substances or sprays (e.g. oleoresin capsicum, commonly known as "OC") may be used when physical force is necessary to:
 - i. Protect an officer or other person from an assault;
 - ii. Subdue a person who actively resists arrest; or
 - iii. Control persons engaged in riotous or violent conduct.
- b. When a chemical substance is used, it should be aimed at the subject's face and upper torso. Officers are required to utilize only two (2), one second bursts from at least 3 feet away from the subject unless exceptional circumstances require otherwise. Each deployment of OC spray constitutes a separate use of force and must be justifiable.
- c. First aid shall be administered as soon as practicable under the circumstances. Upon arrival at the police station, the subject shall be given the opportunity to wash his/her face with warm water. Officers shall transport sprayed subjects to the hospital for treatment when they complain of continued effects after decontamination or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by the application of chemical spray. [1.3.5]
- d. Once handcuffed, a contaminated subject should not be placed faced down. Officers shall monitor handcuffed subjects.

3. BATONS: EXPANDABLE BATON (ASP), PR-24, STRAIGHT BATON

- a. The Expandable Baton, PR-24 or the straight baton may be used:
 - i. As a restraining or come-along tool in instances where verbalization and physical strength have failed or would obviously be futile;
 - ii. As a defensive weapon to ward off blows;

- iii. As a defensive weapon to deliver disabling blows to non-vital areas of the body as a means to halt or deter a subject. An officer is justified in using this type of force under the following circumstances:
 - a) To overcome the violent resistance of an arrestee;
 - b) To overcome an assault on an officer or a third party;
 - c) To deter persons engaged in riotous or violent conduct.
- b. For guidance on the use of the baton, please refer to the MPTC/Monadnock chart for appropriate striking areas and descriptions of “Green,” “Yellow,” and “Red” target areas, a copy of which appears in the Appendix of this Policy.

4. **ELECTRONIC CONTROL WEAPONS (ECWS)**

- a. Only those officers who have successfully completed the requisite ECW training are authorized to carry and use an ECW.
- b. Officers issued and authorized to use an ECW shall:
 - i. Ensure the ECW is carried in an approved holster on the side of the body opposite the service handgun;

Note: members not assigned to uniformed duty may use other Department-approved holsters and carry the weapon consistent with Department training.
 - ii. Ensure the ECW is fully armed with the safety on in preparation for immediate use;
 - iii. Ensure one spare cartridge is available as backup in case of cartridge failure or the need for reactivation;
 - iv. Ensure the spare cartridge is stored, carried, and used in a manner consistent with training;
 - v. Ensure cartridges are replaced following the manufacturer’s expiration requirements;
 - vi. Ensure only manufacturer-approved battery power sources are used for the ECW;

- vii. Prior to each regular tour of duty shift, confirm that the ECW is functioning properly by performing all tests as defined in training; and
 - viii. Not make any modifications or repairs on the ECW unless authorized in writing by the Armorer.
- c. In accordance with the law, and this Policy, and when it is objectively reasonable to do so, Department members are authorized to utilize an ECW to arrest and/or detain an individual that has and/or continues to exhibit behavior that leads the officer to believe the individual is actively resisting or assaultive and will resist being arrested or detained.
- d. ECW Use of Force Response Table

If the subject is:	Then the response may include:
Actively Resistant	Laser Activation Spark Display Drive Stun
Assaultive – Bodily Harm	Laser Activation Spark Display Drive Stun Probe Deployment
Aggravated Assaultive – Serious Bodily Harm/Death	Laser Activation Spark Display Drive Stun Probe Deployment
NOTE: Department members are not required to use a weapon of less-lethal force if use of lethal force is objectively reasonable.	

- e. Situations in which the ECW may be activated in accordance with the above table include but are not limited to:
- i. When an individual uses force or violence against the member or another person(s);
 - ii. When an individual exhibits violent, threatening, or potentially violent behavior;
 - iii. When an individual actively resists an arrest or detention;

- iv. When an individual flees in order to avoid arrest or detention in circumstances where the member would pursue on foot and physically effect the arrest or detention;
 - v. When an individual expresses intent and has the means to commit suicide or inflict serious bodily harm to themselves or others and ECW activation does not create additional risk;
 - vi. To protect officers or others against an aggressive animal; and
 - vii. In the course of Department-authorized training exercises or demonstrations.
- f. Officers shall:
- i. Give the individual a warning prior to activating the ECW, unless doing so would place any member or person(s) at risk;
 - ii. Adhere to the Department's training regarding warnings, which may include verbal warnings, display of the ECW, laser painting, arcing, spark display, or a combination thereof;
 - iii. When feasible, make an announcement to other officers or personnel on the scene that an ECW is going to be activated;
 - iv. Not intentionally activate more than one ECW at a time against an individual;
- Note:** Be aware that an individual subjected to an ECW Cycle may not be able to respond to commands during or immediately following an ECW Cycle exposure;
- v. Limit the number of ECW cycles to the least number of exposures and should last no longer than necessary to bring an individual under control. Each 5-second cycle is considered an independent use of force and must be objectively reasonable and be documented in writing.
 - vi. Avoid continued ECW use as an attempt to facilitate compliance if circumstances indicate that drive stun deployment is ineffective as a pain-compliance technique.

Note: Officers should be aware that pain compliance may not be effective against an individual in a mental health crisis state, under the influence of a mind-altering substance, or when extremely focused.

- vii. Consider potential risk(s) to third parties or bystanders when activating ECWs.
- viii. Be aware that a subject's heavy clothing may impede the effectiveness of ECWs.
- ix. Aim, to the degree possible, for the following target areas: (a) lower center mass below the chest; (b) back; or (c) legs.

Note: To the extent possible, Department members should avoid sensitive areas such as the eyes, face, head, throat, neck, breasts, groin and genitals.

g. Officers shall not use the ECW:

- i. On a passively resistant individual;
- ii. On a handcuffed or secured prisoner; except where the individual exhibits overtly assaultive, self-destructive, or violently resistive behavior that cannot reasonably be controlled by other readily available means.
- iii. In any environment where the member reasonably believes that a flammable, volatile, or explosive material is present, including but not limited to OC spray with volatile propellant, gasoline, natural gas, propane;
- iv. When the individual is located in water;
- v. In any situation where the member has a reasonable belief that the subject might fall resulting in death or serious bodily injury, and the circumstances presented do not justify that risk; or
- vi. On individuals in physical control of a vehicle in motion (e.g., automobiles, trucks, motorcycles, ATVs, bicycles, scooters) unless exigent circumstances exist.

h. ECW Post-Activation

- i. After a probe deployment, officers shall seek medical attention for the individual and ensure that ECW probes are removed by qualified medical personnel or by a Department Member trained to do so.
- ii. In any case of Drive Stun deployment or Probe deployment from an ECW on an individual, officers shall:
 - Transport the individual to an emergency care facility for evaluation and/or treatment if any of the following apply:
 - The individual requests medical attention or there is an obvious need for medical attention;
 - The ECW was deployed in a sensitive area (e.g., eye, face, head, throat, neck, breasts, groin, genitals);
 - The individual is part of a susceptible population group;
 - More than three ECW cycles were deployed on the individual or the ECW was deployed for continuous cycles amounting to 15 seconds or more; or
 - More than one ECW device has been deployed on an individual.
 - Use restraint techniques that minimize risk of impairing a subject's respiration.

5. KINETIC ENERGY IMPACT PROJECTILES

a. Evaluation of Projectiles

Kinetic energy impact projectiles will be evaluated on the following criteria:

- i. **Accuracy:** This is the primary consideration, since proper shot placement greatly assists in controlling the other two evaluation criteria. This will be evaluated based on the anticipated ranges of deployment. A minimal standard of accuracy for such rounds is a 12-inch group at 15 yards in a secure rest.

- ii. ***Effectiveness:*** This is the potential of the round to cause incapacitation and reduce the subject's ability to continue their inappropriate behavior. The level of energy to cause incapacitation creates the potential for injury, but when properly deployed, with low probability for causing serious bodily injury or death.
- iii. ***Potential for Causing Death or Serious Bodily Injury:*** The potential for causing death or serious bodily injury with such projectiles is a reality. This potential is greatly reduced when impacts to the head and neck are avoided, and when appropriate medical examination is provided in cases where the subject is struck in an area that might conceal a closed injury, including such areas as the chest, back and abdominal cavities and the groin.
- iv. ***Deployment Areas:*** The less-lethal projectiles will be delivered to suspect target areas based on the circumstances, the established safety priorities, and the level of force authorized.

b. Deployment

- i. Kinetic energy impact projectiles may be used by an officer to defend himself/herself or others from the threat of serious bodily injury.
- ii. The issued kinetic energy impact weapon to be determined will be dedicated to kinetic energy impact projectiles, and marked with ORANGE tape on the butt and barrel of the weapon. At NO TIME will lethal ammunition be stored with these weapons. Officers assigned will visually/physically inspect the chamber and magazine, each time the weapon comes under their control (i.e., beginning of the shift, and/or any time the weapon was out of their direct control), to ensure the total absence of lethal ammunition.
- iii. The use of the kinetic energy impact projectile weapon SHALL only be used when authorized by an individual of the rank of Patrol Officer or above.
- iv. The kinetic energy impact projectile weapon shall be secured in hard rifle or gun cases which are then secured in the assigned officer's cruiser.
- v. When engaging a target, the officer should evaluate the effectiveness of each round during the volley. Compliance and/or incapacitation are the desired goal, and alternative target areas/response should be considered when rounds are not effective. Alternative target and/or

response considerations will be based on the circumstances the officer is encountering and the established department safety priorities.

IV. DEADLY FORCE / LETHAL FORCE

A. PARAMETERS FOR THE USE OF LETHAL FORCE

1. **A sworn member of this Department is authorized to use lethal force only after de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances, and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm. This may include situations in which there are no viable alternatives available and lethal force is necessary for the officer to:**
 - a. Defend himself/herself or another from unlawful attack which he/she reasonably perceives as an imminent threat of death or serious bodily injury;
 - OR
 - b. Effect an arrest, **only** when:
 - i. The arrest is for a felony; and
 - ii. The officer reasonably believes that:
 - a) The force employed creates no substantial risk of injury to innocent persons; and
 - b) The crime for which the arrest is made involved the use or attempted use, or threatened use of lethal force; and
 - c) There is substantial risk that the person to be arrested will cause death or serious bodily injury if his/her apprehension is delayed.
2. Where practical, and if time and circumstances permit, officers shall verbally identify themselves as police officers and give some warning before using deadly force.
3. A law enforcement officer shall not use a chokehold or other tactics that restrict or obstruct an individual's breathing or oxygen or blood flow to an individual's head or neck. A law enforcement officer shall not be trained to use a lateral vascular neck restraint, carotid restraint or other action that involves the

placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow. [1.3.4]

4. An officer may not use deadly force against a person who poses only a danger to themselves.
5. A law enforcement officer shall not use deadly force at any point in time when there is no longer an objectively reasonable belief that an individual currently and actively poses an immediate threat of serious bodily harm or death, even if deadly force would have been justified at an earlier point in time.
6. Officers shall always provide appropriate medical response to an individual following a use of deadly force when safe and tactically feasible.

B. FIREARMS

1. In addition to those circumstances provided for in the PARAMETERS FOR THE USE OF LETHAL FORCE, a police officer may discharge a Department-issued and/or authorized firearm in the following instances:
 - a. At a firearms range for authorized training, target practice or competition; or
 - b. To destroy a dangerous animal or an animal so badly injured that it should be destroyed to prevent further suffering. All other options shall be exhausted, however, before shooting the animal, and the officer shall adhere to the following guidelines:
 - i. Officers shall exercise due care for the safety of persons and property in the area and shall fire only when reasonably certain that there is no substantial risk to bystanders.
 - ii. Where feasible, ensure children are not present.
2. **Warning shots and signaling shots are strictly prohibited.** [1.3.3]

3. MOVING VEHICLES

- a. Officers shall not discharge a firearm **from inside any moving vehicle**.
- b. Officers shall not discharge a firearm **at a moving vehicle** unless, based upon the totality of the circumstances, such discharge is necessary to prevent imminent harm to a person and the discharge is proportionate to the threat

of imminent harm to a person and all of the following conditions have been met:

- i. The occupants of the vehicle are employing deadly force, which the officer reasonably perceives as an immediate threat of death or serious bodily injury to themselves or another;
- ii. There is no substantial risk to the safety of other persons, including risks associated with motor vehicle accidents;
- iii. Officers have not positioned themselves in such a way as to create a likelihood of being struck by an occupied vehicle (e.g., surrounding a vehicle at close proximity while dismounted);
- iv. The officer is not firing strictly to disable the vehicle; and
- v. The circumstances provide a high probability of stopping or striking the intended target.

4. DRAWING & POINTING OF FIREARMS: An officer shall not draw a firearm except when there is justification for its use to accomplish a proper police purpose. However, in responding to any potentially dangerous situation (e.g., searching a building pursuant to a burglar alarm or approaching a business establishment on a report of a robbery in progress etc.) the officer should carry their firearm in a position that will facilitate its speedy, effective, and safe use. Officers shall not point firearms at persons in circumstances, which are clearly unjustifiable. **In the event it is necessary to point a firearm at a subject, officers shall note justification for the use of force within a Use of Force report.**

5. OFF-DUTY FIREARMS

- a. Any weapon that an officer carries while off-duty for protection or to enable them to take official action as a police officer, excluding the officer's issued service weapon, will be considered an off-duty weapon.
- b. Any officer who desires to carry an off-duty weapon and be indemnified with that weapon must first obtain written permission from the Chief of Police by submitting a written request providing a complete description of the firearm, and must qualify with the weapon at the range, at least semiannually. [1.3.9 (e); 1.3.10]
- c. All ammunition carried in an approved off-duty weapon must be of a type approved by the Chief of Police. [1.3.9 (b)]

V. SPECIAL WEAPONS

- A. When not carried in the locked rack in the patrol vehicle, special weapons will only be issued, with the knowledge and permission of the Officer-in-Charge to officers who have qualified with them.
- B. Special weapons may be selectively issued by the Officer-in-Charge if, in his/her opinion, they are necessary to ensure the safety and effectiveness of police operations. Officers armed with special weapons shall use those weapons in accordance with the provisions of this Policy as well as any applicable policies and guidelines issued at the time.
- C. Prior to issuing any special weapon, the Officer-in-Charge of the police station shall inquire of any officer to whom he/she intends to issue the weapon whether or not that officer is currently qualified in its use. It is the responsibility of a police officer not to accept a special weapon unless he/she is qualified in its use.

VI. DUTY TO INTERVENE

- A. An officer present and observing another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual.
- B. An officer who observes another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances shall report the incident to an appropriate supervisor as soon as reasonably possible but not later than the end of the officer's shift. The officer shall prepare a detailed written statement describing the incident consistent with this Department's policy. The officer's written statement shall be included in the supervisor's report.
- C. Any harassment, intimidation, or retaliation against any officer who either intervened to prevent or stop an excessive force incident, or made a report regarding the witnessed excessive force incident, shall be a violation of this Department policy and shall, upon a sustained internal administrative investigation, be subjected to the imposition of departmental discipline up to and including termination.
- D. This section shall apply to all Officers/Employees/Civilians/Volunteers or any official associated with the police department

- E. The failure of a law enforcement officer to intervene as set forth in 550 CMR 6.05 may subject the officer to de-certification by the Commission.

VII. USE OF FORCE CONSIDERATIONS INVOLVING PLANNED MASS DEMONSTRATIONS

- A. When a police department has advance knowledge of a planned mass demonstration, it shall attempt in good faith to communicate with organizers of the event to discuss logistical plans, strategies to avoid conflict and potential communication needs between police and event participants.
- B. The department shall make plans to avoid and de-escalate potential conflicts and designate an officer in charge of de-escalation planning and communication about the plans within the department.
- C. A law enforcement officer shall not discharge or order the discharge of tear gas or any other chemical weapon, discharge or order the discharge of a kinetic impact device or rubber pellets from a propulsion device or release or order the release of a dog to control or influence a person's behavior unless:
1. de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and
 2. the measures used are necessary to prevent imminent harm and the foreseeable harm inflicted by the tear gas or other chemical weapon, kinetic impact device, rubber pellets or dog is proportionate to the threat of imminent harm.
- D. If a law enforcement officer utilizes or orders the use of kinetic impact devices, rubber pellets, CEDs, CWs, ECWs, or a dog against a crowd, the law enforcement officer's appointing agency shall file a report with the Massachusetts Peace Officer Standards and Training Commission (POST) detailing all measures that were taken in advance of the event to reduce the probability of disorder and all de-escalation tactics and other measures that were taken at the time of the event to de-escalate tensions and avoid the necessity of using the tear gas or other chemical weapon, rubber pellets or dog.
- E. The Commission shall review the report and may make any additional investigation. After such review and investigation, the commission shall, if applicable, make a finding as to whether the pre-event and contemporaneous de-escalation tactics were adequate and whether the use of or order to use such tear gas or other chemical weapon, rubber pellets or dog was justified.

- F. Canines should not be utilized for crowd control, restraint, or management of peaceful demonstrations, but may be deployed for crowd control, restraint or management of peaceful demonstrations in isolated circumstances related to bomb detection, pursuit of suspects in buildings, and related situations. Utilization does not include circumstances in which a canine remains on a short lead in close proximity to the handler and is well behind the line of contact between law enforcement and civilian personnel.
- G. The use of Kettling as a means of crowd control, crowd management, or crowd restraint is prohibited.

VIII. ADMINISTRATIVE RELIEF FROM DUTY AFTER FORCE RESULTING IN DEATH OR SERIOUS BODILY INJURY

- A. In every instance in which any officer acting in an official capacity uses force which results in death or serious bodily injury to another person, the following steps shall be taken: [\[1.3.8\]](#)
 - 1. Any employee whose action(s) or use of force in an official capacity results in death or serious bodily injury will be removed from line-duty assignment, pending an administrative review of the incident by a supervisor not directly involved in the incident or such other period of time as the Chief of Police deems necessary. [\[1.3.8\]](#)
 - 2. The officer will be given the opportunity to call his/her family as soon as possible.
 - 3. The officer shall not be allowed to talk to the press. All information regarding the incident will be disseminated through the Office of the Chief of Police or the Public Information Officer.
- B. Assignment to Administrative Leave status shall be with no loss of pay or benefits.
- C. Relief from operational assignment with full pay and benefits is intended to: (i) address the personal and emotional needs of an officer and his/her involved in the use of force which results in serious bodily injury or death; and (ii) assure the community that verification of all the facts surrounding such incidents are fully and professionally explored.

- D. Officers on administrative leave shall remain available to the Department and/or State Police Investigators to assist in the investigation of the incident.
- E. Whenever an officer is involved in a use of force incident that results in death or serious injury the Chief of Police or his/her designee will make arrangements for stress counseling. (Massachusetts State Police Employee Assistance Unit @ 781-821-5496 or MSP Headquarters @ 508-820-2121 or Boston Police Peer Support Unit 617-343-5175 Monday Friday 8:00AM – 5:00PM (all other times 617-594-9091 ask to speak to the “on call peer counselor) or any appropriate psychological assistance provider for the officer and members of his or her immediate family, authorized by the Chief of Police.

IX. POST USE OF FORCE INCIDENT PROCEDURES

A. INVOLVED OFFICER RESPONSIBILITY

In all incidents involving: (1) weaponless physical force where either the officer or the suspect is noticeably injured or claims to be injured at the time force is used; (2) the deployment of less-lethal force; or (3) the deployment of lethal force, the involved officer(s) shall: [1.3.6 (c); 1.3.6 (d)]

1. Notify the Patrol Supervisor;
2. Request that sufficient officers be dispatched to the scene;
3. Activate EMS, render medical assistance to the subject and arrange for transportation to a medical facility for evaluation and/or treatment;
4. Identify involved officers and witnesses;
5. Preserve any evidence;
6. Secure the scene until the Patrol Supervisor has arrived;
7. File the appropriate incident or arrest report and Use of Force Report Form pursuant to this Policy.
8. An officer who knowingly makes an untruthful statement concerning a material fact or knowingly omits a material fact from a use of force report may be subject to decertification.

B. PATROL SUPERVISOR / OFFICER-IN-CHARGE RESPONSIBILITY

1. LESS-LETHAL FORCE

In any incident involving an officer's use of less lethal force including: weaponless physical force where either the officer or the suspect(s) are injured or claim to be injured; or a chemical substance; or less-lethal impact weapons, or an electronic control weapon (ECW), the Patrol Supervisor / Officer-in-Charge shall: [1.3.5; 1.3.6 (b); 1.3.6 (c); 1.3.6 (d); 1.3.7; 1.3.13]

- i. Immediately respond to the scene.
- ii. Ensure that the officer(s) receives any necessary assistance, including medical treatment, and that any injuries to the officer(s) are properly documented. [1.3.5]
- iii. Ensure that the subject(s) receives the necessary medical treatment and that any injuries to the subject(s) are properly documented. [1.3.5]
- iv. Conduct an initial review of the circumstances for the use of force.
- v. Identify and interview officers and witnesses.
- vi. Photograph the scene. Officers should make reasonable efforts to protect the subject's privacy.
- vii. Gather and collect evidence. For ECW deployments, take custody of the ECW and discarded cartridge that was deployed and submit the device to the Department Armorer for data downloading. The Department Armorer or his designee will print the data and attach it to the Supervisor's After Action Report, as soon as practical thereafter.
- viii. Determine if a detective should respond to the scene and the level of investigative services to be utilized (including photographs, measurements and diagrams). If an injury or complaint of pain exists, supervisors are encouraged to obtain photographs.

NOTE: A photograph showing no injury may be as important as one, which shows injury.

- ix. File a report prior to the conclusion of their tour of duty.

- x. If the subject is admitted to a medical facility for treatment, respond to the facility and document the condition or injuries. [1.3.5]
- xi. Ensure Incident or Arrest and Use of Force Reports are completed by the deploying officer prior to the conclusion of his/her tour of duty or immediately after their detail assignment.
- xii. Complete the Supervisor After Action Report and submit the report with any evidence to the Chief or Police or Lieutenant.

2. **LETHAL FORCE AND FIREARMS**

In any incident involving the use of lethal force; or discharge of firearms, including a kinetic energy impact projectile, the Patrol Supervisor / Officer-in-Charge shall: [1.3.5; 1.3.6 (b); 1.3.6 (c); 1.3.6 (d); 1.3.7; 1.3.13]

- i. Immediately respond to the scene.
- ii. Ensure that the officer(s) receives any necessary assistance, including medical treatment, and that any injuries to the officer(s) are properly documented. [1.3.5]
- iii. Ensure that the subject(s) receives the necessary medical treatment and that any injuries to the subject(s) are properly documented. [1.3.5]
- iv. Conduct an initial review of the circumstances for the deployment of force.
- v. Identify involved officers and witnesses.
- vi. **FOR INCIDENTS RESULTING IN DEATH OR EXPECTED DEATH:** In any incident involving the death or expected death of an officer or subject, the Patrol Supervisor shall also notify the Massachusetts State Police CPAC Unit and the District Attorney as soon as possible, and secure the scene until such time that the CPAC Units arrives. In any incident involving the death or expected death of an officer or subject, the Chief of Police or Lieutenant shall respond, assume control of the scene and conduct an investigation.
- vii. **FOR INCIDENTS NOT RESULTING IN DEATH OR EXPECTED DEATH:** In any incident not involving the death or expected death of an officer or subject, the Chief of Police or Lieutenant shall respond, assume control of the scene and conduct an investigation.

- viii. **FOR OFFICER-INVOLVED SHOOTING INCIDENTS:** In any officer-involved shooting incident, obtain a Public Safety Statement from any officer who has discharged a firearm or witnessed an officer-involved shooting incident, unless that officer is medically incapacitated, invokes his/her constitutionally-protected right to remain silent, or requests to consult with legal counsel.

C. SHIFT COMMANDER OR SENIOR OFFICER RESPONSIBILITIES

1. The Shift Commander may respond to the scene of any incident involving weaponless physical force or instances of less-lethal force.
2. The Shift Commander shall respond to all incidents involving the use of lethal force, whether such force results in death or serious bodily injury.
3. The Shift Commander shall make all resources, facilities, and personnel of the Department available to assigned investigators;
4. The Shift Commander shall ensure that the involved officer(s) is provided with appropriate Federal/State civil rights protection.
5. The Shift Commander shall politely refer all media requests for information to the Public Information Officer (PIO).
6. If the circumstances are such that the continued presence of the officer at the scene might cause a more hazardous situation to develop, (unruly/violent bystanders/crowd), that officer should be transported to another, more appropriate location.
7. The Shift Commander or authorized investigator shall determine whether the circumstances of the incident require that the officer's duty weapon be taken for laboratory analysis. Where the duty weapon is taken, the OIC shall:
 - a. Take custody of the weapon(s) in a discrete manner; and
 - b. Replace it with another weapon, or advise the officer that it will be returned or replaced at a later time, as appropriate.
8. The Shift Commander shall immediately institute an investigation into any incident involving the use of lethal force whether such force results in death, serious bodily injury or no injury at all, and shall notify the Chief of Police and the Lieutenant of the situation.

D. DEPARTMENT RESPONSE TO INCIDENTS RESULTING IN DEATH OR SERIOUS BODILY INJURY

In any event resulting in the death or serious bodily injury of an officer or subject, the following protocols shall be adhered to:

1. Involved officers shall refrain from speaking or discussing the incident with anyone except with those directly involved, medical or mental health professionals, legal counsel, or union representatives.
2. Involved officers shall remain available, at reasonable times, for interviews and statements regarding the incident.
3. During any period where the involved officers are required to remain on the scene, but have no immediate duties to fulfill, the officer(s) should be taken to a quiet area away from the scene of the incident. A peer counselor or other supportive officer should remain with the involved officer, but should be advised not to discuss details of the incident.
4. If involved officers are not required at the scene, a supervisor should arrange for the officers directly involved in the incident to leave the scene as soon as possible, and be taken to a quiet, secure setting, such as police headquarters. The supervisor shall:
 - a. Require that involved officers abstain from ingesting caffeine or other stimulants or depressants unless administered by medical personnel.
 - b. Conduct a brief interview of the involved officer consisting of only minimal, preliminary questions. The officer should be advised that a more detailed debriefing will be conducted later (but as soon as possible).
 - c. Advise all officers not to discuss the incident with anyone except a personal attorney, an attorney appointed by the Department, a union representative, a departmental or authorized investigator until the conclusion of the preliminary investigation.
 - d. Instruct involved officers to notify their families about the incident as soon as possible and assist them with the notification. Where an officer or officers is unable to do so, an agency official shall personally notify the officer(s) family, and arrange for their transportation to the hospital.
 - e. At all times, when at the scene of the incident, handle the officer and all involved personnel in a manner that acknowledges the stress caused by the incident.

5. Debriefings shall be held as soon as possible after the incident. The Department shall ensure that there are officers on-call or on-duty at all times so that someone is available shortly after an incident.
6. Any Department or authorized outside agency investigation of the incident shall be conducted as soon and as quickly as practical.
7. The Department should privately brief other department Sworn personnel concerning the incident so that rumors are kept to a minimum. Department Sworn personnel are encouraged to show the involved officers their concern.
8. All personnel involved in a shooting incident should be advised that they are not permitted to speak with the media about the incident.
9. In order to protect against harassing or abusive calls, personnel should be advised to have phone calls answered by another person for several days if their names are released to the public.
10. Personnel directly involved in a shooting incident shall be required to re-qualify with firearms as soon as practical.
11. The Stow Police Department shall report to the National Use of Force Data Collection Database when actions by a law enforcement officer resulted in the death or serious bodily injury of an individual, or when a law enforcement officer, in the absence of death or serious bodily injury, discharged a firearm at or in the direction of a person.
12. All use of force reports shall be retained and maintained by the Stow Police Department and are subject to discovery and access through the Massachusetts Public Records Law M.G.L. c. 66.

E. OFFICER WELLNESS CONSIDERATIONS

1. Law enforcement duties can often expose officers and support personnel to mentally painful and highly stressful situations that cannot be resolved through normal stress coping mechanisms. Unless adequately treated, these situations can cause disabling emotional and physical problems. It has been found that any action in an official capacity resulting in death or serious bodily injury to a citizen or a fellow officer may precipitate such stress disorders. However, such disorders can also be created by accumulated stressors from seemingly minor incidents as well. Consequently, it is the responsibility of this Department to

provide all personnel with information on stress disorders and to guide and assist in their deterrence.

2. This section is meant to provide guidelines that shall be uniformly applied following any officer-involved incident that has resulted in death or serious bodily injury, in order to minimize the chances that involved personnel will develop or suffer from post-traumatic stress disorder. Moreover, officers are expected to monitor their peers with the goal of interdicting potentially debilitating and harmful stress disorders that can severely impact the fellow officer's career, family, and health.
3. Since some post-traumatic stress disorders may not arise immediately, or the officer/officer may attempt to hide the problem, each supervisor is responsible for monitoring the behavior of unit personnel for symptoms of the disorder.
4. Some symptoms of post-traumatic stress disorder include:
 - a. A feeling of being numb;
 - b. Feeling out of touch with what is going on around them;
 - c. A feeling that this is happening to someone else;
 - d. Withdrawing and avoiding anything to do with the traumatic situation or police work;
 - e. Avoiding other people, including one's family;
 - f. Intrusive and recurring thoughts of the event and feeling that it may be happening again;
 - g. Irritability;
 - h. Sleep problems;
 - i. Difficulty in concentrating; and
 - j. Hyper-vigilance.
5. The Chief of Police may order an officer to seek assistance or counseling from a mental health specialist upon a reasonable belief that stress may be disrupting the officer or officer's job performance. [22.2.3; 22.2.6]
6. Any officer whose action(s) or use of force in an official capacity results in death or serious bodily injury will be removed from line-duty assignment, pending an administrative review of the incident, or such other period of time as the Chief of Police deems necessary, after the officer or officer has completed his/her report of the incident. [1.3.8]
7. All officers directly involved in a shooting incident should contact a department designated specialist for counseling and evaluation as soon as practical after the incident, even if they believe the incident did not impact them negatively. Involved support personnel should also be encouraged to contact such

specialists after a shooting incident. [22.2.3; 22.2.6]

8. The Department strongly encourages the families of sworn personnel and civilians to take advantage of available counseling services, as well. [22.2.4]

X. USE OF FORCE REPORTING

A. FORM OF USE OF FORCE REPORT

All Use of Force Reports filed in compliance with this Policy shall be on the Form attached to this Policy and accompany any incident or arrest reports filed by the officers involved.

B. USE OF WEAPONLESS PHYSICAL FORCE

The handcuffing of a compliant detainee will not be construed to be a use of physical force. All officers shall complete a Use of Force Report if they are involved in any instance where physical force greater than handcuffing of a compliant detainee, such as “soft hand physical compliance techniques” or “come-alongs” are utilized, or where the application of weaponless physical force results in an injury (either noticeable or complained of) to the officer or detainee. [1.3.4]

C. USE OF LESS-LETHAL FORCE

1. In all incidents involving the use of less-lethal force, all involved officers shall prepare and submit a Use of Force Report. This includes spark displays of an ECW, except when a spark display check is conducted to test the device at the beginning of an officer’s shift. [1.3.4; 1.3.6 (a); 1.3.6 (b); 1.3.6 (c); 1.3.6 (d)]
2. Always remember that each application of the ECW is a separate application of a use of force and a separate Use of Force Report must be filed for each application.
3. **If an ECW is deployed, including a spark display of an ECW**, the supervisor(s) of the officers involved must file an After Action Report (AAR). [1.3.6 (a); 1.3.6 (b); 1.3.6 (c); 1.3.6 (d)]
4. All Officers-in-Charge, subordinate supervisors and the Internal Affairs Supervisor will conduct a written review of all reports concerning each incident where less-lethal force has been utilized. [1.3.7]

5. The Department shall ensure that the Executive Officer of Public Safety and Security (EOPSS) *ECW Use Reporting Form* is completed and submitted as required by EOPSS in accordance with G.L. c. 140, section 131J and St. 2004, c. 170, section 2.

D. USE OF LETHAL FORCE

1. All officers involved in the use of lethal force shall file a separate Use of Force Report. [[1.3.6 \(a\)](#); [1.3.6 \(b\)](#); [1.3.6 \(c\)](#); [1.3.6 \(d\)](#)]
2. All supervisors shall file a report on the incident and his/her observations with the Officer-in-Charge (OIC) at Police Headquarters. [[1.3.6 \(a\)](#)]
3. It is not necessary to complete a Use of Force Report when a badly injured animal is destroyed. However, the officer shall submit an Incident Report according to current departmental procedures. [[1.3.6 \(b\)](#)]
4. All officers involved in any instance where a firearm was pointed at a subject shall file a separate Use of Force Report. [[1.3.6 \(a\)](#); [1.3.6 \(b\)](#); [1.3.6 \(c\)](#); [1.3.6 \(d\)](#)]

F. USE OF FORCE INCIDENT REVIEW

1. All reports concerning any use of force incidents shall be forwarded to the Internal Affairs function, who, after reviewing these reports, along with any accompanying comments or recommendations, shall take appropriate action. [[1.3.6](#)]
2. With respect to all instances of use of force, the Chief of Police or Lieutenant shall be responsible for the following: [[1.3.7](#)]
 - a. Ensuring that a thorough investigation was conducted and that all reports were prepared and submitted; and
 - b. Reviewing all reports submitted to determine whether the use of force was in compliance with department policy and procedures.
3. The Department will adhere to at least the minimum standards for internal agency review of complaints of officer-involved injuries or deaths as established by the Commission.

4. The Department shall adhere to all reporting requirements established pursuant to G.L. c. 6E, and such further requirements as may be promulgated by the Commission.

G. ANNUAL ANALYSIS

The Chief of Police or Lieutenant will conduct an annual analysis of all Use of Force Reports, activities, policies and practices. A review of incidents of force may reveal patterns or trends that could indicate training needs, equipment upgrades, and/or policy modifications. The review should identify: [1.3.7; 1.3.11 (a); 1.3.11 (b); 1.3.11 (c); 1.3.13; 11.4.1 (b); 11.4.1 (c); 11.4.1 (d)]

- Date and time of incidents;
- Types of encounters resulting in use of force;
- Trends or patterns related to race, age and gender of subjects involved;
- Trends or patterns resulting in injury to any person including employees; and
- Impact of findings on policies, practices, equipment, and training.

Such analysis and conclusions shall be documented annually to the Chief of Police and appropriate action taken. [1.3.13; 11.4.1 (e)]

XI. TRAINING

A. GENERALLY

1. No officer of this Department will be authorized to carry any lethal or less-lethal weapon until he/she has: [1.3.12; 16.3.6]
 - a. Been issued a copy of this Use of Force Policy, received instruction and successfully passed a written examination on same; and
 - b. Completed the necessary training and qualifications promulgated by the Municipal Police Training Committee (MPTC); and
 - c. Signed a receipt indicating that he/she has received a copy of this Use of Force Policy and has been afforded the opportunity to discuss it and ask questions regarding the policy, which shall be maintained by the instructor and Training Coordinator. [1.3.12]

2. All weapons qualification records and officer scores shall be documented and maintained by the Training Coordinator. [1.3.11 (b)]
3. All training in use of force shall be conducted by MPTC-approved instructors and shall comply with MPTC standards. [1.3.11]
4. At least annually, all officers authorized to carry weapons are required to receive in-service training on the Department's Use of Force Policy and demonstrate proficiency with all approved lethal weapons and ECWs that the officer is authorized to use. In-service training for other less lethal weapons and weaponless control techniques shall occur at least biennially. [1.3.11]
5. A law enforcement officer shall not be trained to use a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow.

B. DEFENSIVE TACTICS AND DE-ESCALATION

1. All recruit officers shall receive training on defensive tactics and de-escalation mandated by the Municipal Police Training Committee during the recruit officer training academy.
2. Annually, all officers shall continue to receive the in-service training on defensive tactics and de-escalation mandated by the Municipal Police Training Committee.

C. ECW TRAINING

1. **Basic User Training:** Six (6) hour certification course is mandatory training for all officers. [16.3.5; 33.1.2]
2. **In-Service Training:** All officers who are certified to carry and deploy the ECW shall complete annually a minimum of one (1) hour in-service documented proficiency and legal update training, conducted by certified weapons instructor with remedial training available, if needed. [1.3.11 (a); 1.3.11 (b); 1.3.11 (c); 33.1.2; 33.5.1; 33.6.1 (a); 33.6.1 (b)]
3. **Instructor Training:** All department instructors are required to complete a sixteen (16) hour ECW manufacturer certification course, and an additional instructor training course from the Municipal Police Training Committee (MPTC). Instructors are required to be trained and re-certified biannually. [33.1.2; 33.6.1 (a); 33.6.1 (b)]

4. **Supervisor Training:** Annually, superior officers of all ranks shall receive specialized ECW awareness and After Action Report (AAR) in-service training by qualified instructors so they can intelligently investigate, properly document and report ECW deployment incidents. This training shall be in addition to the annual ECW in-service training requirement and **shall be not less than two (2) hours in length.** [33.1.2; 33.6.1 (a); 33.6.1 (b)]

D. FIREARMS TRAINING

1. All recruit officers shall receive training on firearms mandated by the Municipal Police Training Committee during the recruit officer training academy.
2. All personnel authorized to carry a Department-issued weapon shall qualify with their issued weapon and any other weapon they are authorized to carry while on duty at least semi-annually, every 6 months. Exemptions may be made at the approval of the Chief of Police for those officers who are pregnant. Officers returning from pregnancy leave will qualify upon returning to full duty status. [1.3.10; 1.3.11 (a); 16.3.6]
3. All approved lethal weapons shall be under the direction of the department's Training Coordinator and approved Municipal Police Training Committee (MPTC) weapons and tactics instructors. [1.3.11 (a); 16.3.6]
4. Following a period of training and practice, all officers will be expected to qualify in accordance with the standards established by the MPTC.
5. Only officers demonstrating proficiency in the use of Department-issued or authorized weapons will be authorized to carry or use those weapons. [1.3.10; 1.3.11 (a)]
6. Qualification and proficiency shall include an inspection of any firearm used by the officer to ensure that it is in good working condition.
7. If the Chief of Police approves an off-duty weapon, the officer must qualify with the weapon at the range, at least semiannually. [1.3.10]
8. All officers authorized to use any of the Department's special weapons, such as shotguns, will qualify with the weapon(s) they are authorized to use, in accordance with the standards established by the Municipal Police Training Committee (MPTC), the manufacturer, or the Department's Weapons and Tactics Instructor, at least annually. [1.3.9 (a)]
9. A listing of all officers who have qualified with each special weapon will be maintained with the weapons and with the Training Coordinator.

10. Training in the use of extended range kinetic energy impact projectiles will consist of an annual recertification by department firearms instructors.

E. POST TRAUMATIC STRESS DISORDER TRAINING

The Police Department shall provide officers with training pertaining to post-traumatic stress disorders and the uniform practices contained in this Policy on a regular basis.

F. ADDITIONAL TRAINING

Any officer who requires additional training instruction will be given an additional amount of time to demonstrate proficiency and if necessary, remedial training, while removed from line duty assignment. If it becomes necessary, the officer will be sent to additional remedial firearms training until such time as he/she successfully passes the MPTC qualification course. [1.3.11 (c)]

G. SPECIAL WEAPONS

Any officer authorized to carry or use any special weapon shall be complete training on such special weapon at least annually. [1.3.11]

APPENDIX A

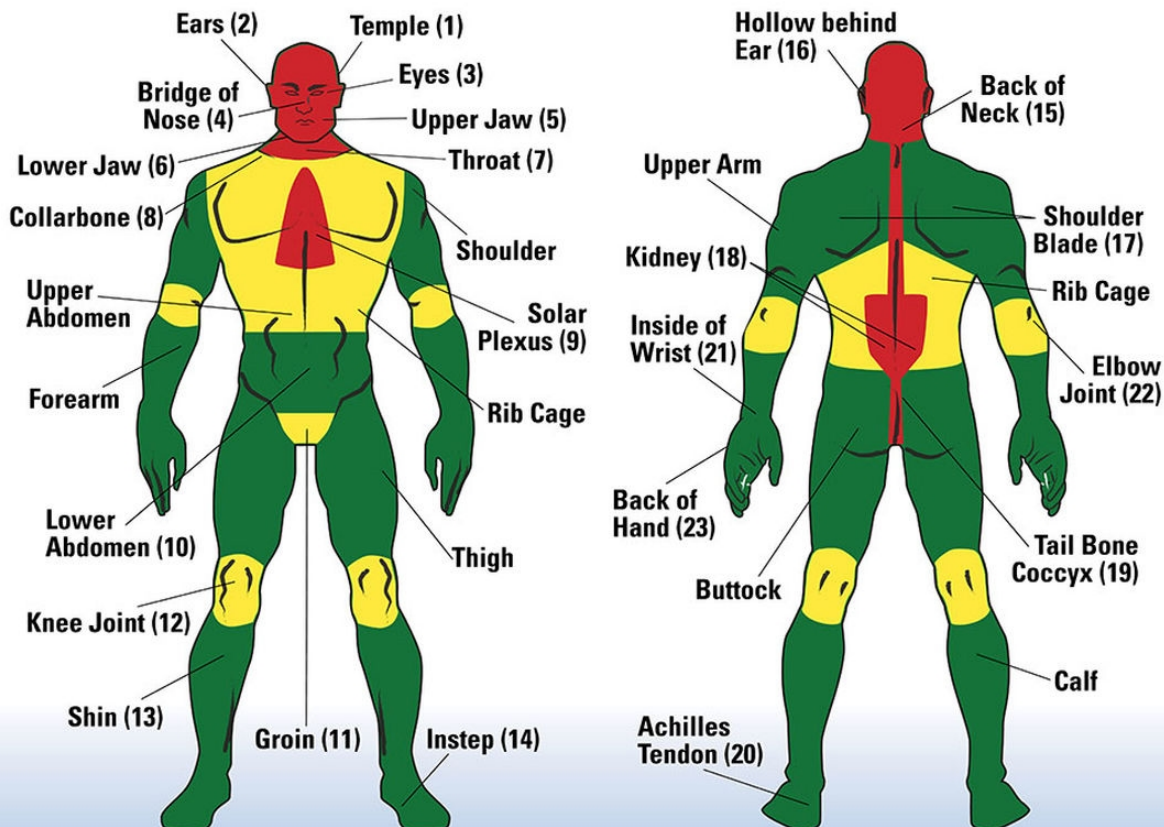
Authorized Weapons and Ammunition

<u>Sidearm</u>				
MANUFACTURER	MODEL	CALIBER	CAPACITY	
Glock	22	40 S&W	15+1	
Glock	23	40 S&W	13+1	
Glock	27	40 S&W	9+1	
<u>Sidearm Ammunition</u>				
MAKE	CALIBER	TYPE	DUTY/TRAINING	
Winchester Ranger	40 S&W	JHP	Duty/Training	
Winchester	40 S&W	FMJ	Training	
<u>Patrol Shotgun</u>				
MAKE	MODEL	CALIBER	CAPACITY	
Mossberg	590A1	12 GUAGE	5	
<u>Shotgun Ammunition</u>				
MAKE	CALIBER	TYPE	DUTY/TRAINING	
Winchester	12 gauge	Slug	Duty/Training	
Federal	12 gauge	Buckshot	Duty/Training	
<u>Patrol Rifle</u>				
MAKE	MODEL	CALIBER	CAPACITY	
Colt	M4 Commando	5.56 mm	20/30	
<u>Patrol Rifle Ammunition</u>				
MAKE	CALIBER	TYPE	DUTY/TRAINING	
Winchester	5.56 mm	FMJ	Duty/Training	
<u>Taser and Cartridge – Less Lethal</u>				
MANUFACTURER	MODEL	CARTRIDGE	LENGTH	DUTY
Taser	X26P	XP 21 Foot	21 Feet	Duty
<u>BATONS - LESS-LETHAL</u>				
MAKE	MODEL	STYLE	LENGTH	DUTY
ASP	Friction-lock	Collapsible	16	Duty
ASP	Friction-lock	Collapsible	21	Duty
Monadnock	Auto-lock	Collapsible	21	Duty
Monadnock	Auto-lock	Collapsible	24	Duty
<u>AUTHORIZED CHEMICAL SPRAY - LESS-LETHAL</u>				
MAKE	MODEL	SIZE	STYLE	DUTY
Sabre	Crossfire	MK3	Stream	Duty

APPENDIX B

BATON CHART

Escalation of Trauma By Vital
And Vulnerable Striking Areas



STRIKING AREAS

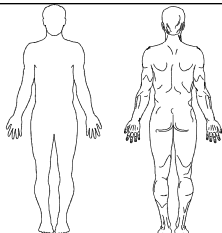
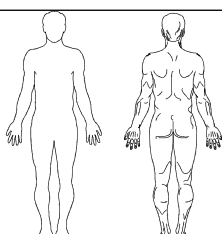
GREEN	YELLOW	RED
<p>REASONING</p> <p>Minimal level of resultant trauma. Injury tends to be temporary rather than long-lasting, however exceptions can occur.</p> <p>Except for the HEAD, NECK, SPINE, the whole body is a Green Target Area for the application of baton blocking and restraint skills.</p>	<p>REASONING</p> <p>Moderate to serious level of resultant trauma. Injury tends to be more long-lasting, but may also be temporary.</p>	<p>REASONING</p> <p>Highest level of resultant trauma. Injury tends to range from serious to long-lasting rather than temporary and may include unconsciousness, serious bodily injury, shock or death.</p>

When performing Static /Dynamic training techniques utilizing this baton chart as a reference, it is suggested to use training batons while performing any technique. If utilizing a training suit it is also recommended to utilize training batons while performing striking, jabbing techniques.

APPENDIX C

SUPERVISOR AFTER ACTION REPORT

DATE	TIME	LOCATION	CASE #
SUBJECT'S NAME		DATE OF BIRTH	PHONE NUMBER
		HEIGHT	WEIGHT
REASON THE USE OF FORCE WAS NECESSARY (check all that apply):			
<input type="checkbox"/> TO EFFECT AN ARREST <input type="checkbox"/> TO DEFEND SELF <input type="checkbox"/> PREVENT ESCAPE <input type="checkbox"/> TO DEFEND ANOTHER OFFICER / PERSON <input type="checkbox"/> PROTECTIVE CUSTODY / SUBJECT SAFETY <input type="checkbox"/> TO DISPATCH ANIMAL <input type="checkbox"/> OTHER: _____			
CHARGES:			BOOKED? <input type="checkbox"/> YES <input type="checkbox"/> NO
DEPLOYING OFFICERS:		SUPERVISOR NOTIFIED / TIME / BY WHOM:	
TYPE OF INCIDENT (check all that apply):			
<input type="checkbox"/> CIVIL DISTURBANCE <input type="checkbox"/> SUICIDAL <input type="checkbox"/> SUICIDE BY COP <input type="checkbox"/> VIOLENT SUSPECT <input type="checkbox"/> BARRICADED SUSPECT <input type="checkbox"/> WARRANT SERVICE <input type="checkbox"/> EDP <input type="checkbox"/> OTHER - EXPLAIN: _____			
AT THE TIME OF ARREST, THE SUBJECT WAS:			
<input type="checkbox"/> SUSPECTED TO BE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS <input type="checkbox"/> MENTALLY IMPAIRED / EMOTIONALLY DISTURBED <input type="checkbox"/> UNDER THE INFLUENCE OF ALCOHOL OR DRUGS <input type="checkbox"/> OTHER: _____			
LIGHTING: <input type="checkbox"/> NATURAL <input type="checkbox"/> ARTIFICIAL EXPLAIN:			
LOCATION (check all that apply): <input type="checkbox"/> INDOOR <input type="checkbox"/> OUTDOOR <input type="checkbox"/> STATION <input type="checkbox"/> RESIDENCE <input type="checkbox"/> BUSINESS <input type="checkbox"/> HOSPITAL			
FORCE USED PRIOR TO ECW DEPLOYMENT:			
<input type="checkbox"/> VERBAL COMMANDS: <input type="checkbox"/> COMPLIANCE TECHNIQUES: (Force used to gain control – restraint, come-alongs, takedowns – use of hands, arms, feet, legs) <input type="checkbox"/> CHEMICAL SPRAY / CHEMICAL AGENT: Number of Bursts: Duration of Bursts: Distance from Subject: Impact Location: Time between application / decontamination: <input type="checkbox"/> IMPACT WEAPON / TEMP. INCAPACITATION: <input type="checkbox"/> FIREARM DISPLAY: <input type="checkbox"/> OTHER: _____			
ECW DEPLOYMENT:			
ECW MODEL:	ECW SERIAL #:	ECW AIR CARTRIDGE TYPE:	ECW AIR CARTRIDGE XP#:
ECW USE: <input type="checkbox"/> SUCCESS <input type="checkbox"/> FAILURE SUSPECT WEARING HEAVY OR LOOSE CLOTHING? <input type="checkbox"/> YES <input type="checkbox"/> NO NUMBER OF CARTRIDGES FIRED: NUMBER OF CYCLES APPLIED: USAGE (check all that apply): <input type="checkbox"/> ARC DISPLAY <input type="checkbox"/> LASER/LIGHT DISPLAY <input type="checkbox"/> DRIVE STUN <input type="checkbox"/> DART PROBE IF DART PROBE APPLICATION, APPROXIMATE DISTANCE TO TARGET (FEET): NEED FOR ADDITIONAL APPLICATION? <input type="checkbox"/> YES <input type="checkbox"/> NO DID DART PROBES PENETRATE SUBJECT'S SKIN? <input type="checkbox"/> YES <input type="checkbox"/> NO PROBES REMOVED ON-SCENE? <input type="checkbox"/> YES <input type="checkbox"/> NO PROBES REMOVED BY: DID THE ECW RESPOND SATISFACTORILY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF DART PROBE DEPLOYMENT WAS UNSUCCESSFUL, WAS A DRIVE STUN APPLICATION USED? <input type="checkbox"/> YES <input type="checkbox"/> NO			
OFFICERS PRESENT AT SCENE DURING FORCE APPLICATION:		SHIFT SUPERVISOR(S):	
OTHER WITNESS(ES) / PERSON(S) PRESENT AT SCENE:		SHIFT OFFICER(S):	
AUDIO-VISUAL EVIDENCE: <input type="checkbox"/> YES <input type="checkbox"/> NO If NO, explain: _____		SUPERVISOR(S) WHO RESPONDED TO SCENE:	

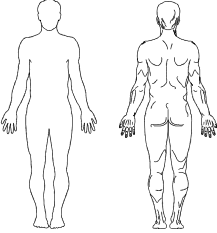
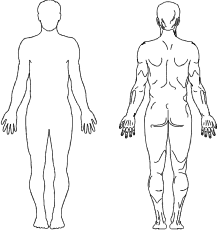
COMPLETING SUPERVISOR(S): IF ADDITIONAL SPACE IS REQUIRED IN ANY BOX USE THE SUPPLEMENTAL REPORT; ATTACH ALL RELATED NARRATIVE REPORTS, SUPPLEMENTS AND STATEMENTS AND FORWARD TO SHIFT SUPERVISOR PRIOR TO END OF TOUR OF DUTY		
CASE #		
WAS SUBJECT(S) INJURED? * <input type="checkbox"/> YES <input type="checkbox"/> NO <small>*(Complete Diagram Below)</small>	OFFICER(S) TAKING PHOTOS	TOTAL # OF PHOTOS
<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;">  </div> <div style="flex: 2; padding-left: 10px;"> DESCRIBE THE EXTENT OF THE SUBJECT'S INJURIES AND PLACE ON THE DIAGRAM: <hr/><hr/><hr/><hr/><hr/><hr/> </div> </div>		
IF SUBJECT WAS INJURED, WAS THE SUBJECT PROVIDED MEDICAL TREATMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, DESCRIBE THE MEDICAL TREATMENT PROVIDED:		
WAS OFFICER(S) INJURED? * <input type="checkbox"/> YES <input type="checkbox"/> NO <small>*(Complete Diagram Below)</small>		
<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;">  </div> <div style="flex: 2; padding-left: 10px;"> DESCRIBE THE EXTENT OF THE SUBJECT'S INJURIES AND PLACE ON THE DIAGRAM: <hr/><hr/><hr/><hr/><hr/><hr/> </div> </div>		
WITNESS(ES) OR PERSON(S) WITH KNOWLEDGE:	ADDRESS:	PHONE #:
SYNOPSIS: <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		
POST ECW DEPLOYMENT:		
DESCRIBE SUSPECT'S DEemeanor AFTER ECW DEPLOYMENT: <hr/> <hr/> <hr/> <hr/>		
FORCE USED AFTER ECW DEPLOYMENT: <input type="checkbox"/> COMPLIANCE TECHNIQUES: <small>(Force used to gain control – restraint, come-alongs, takedowns – use of hands, arms, feet, legs)</small> <input type="checkbox"/> CHEMICAL SPRAY / CHEMICAL AGENT: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Number of Bursts: Duration of Bursts: Distance from Subject: </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Impact Location: Time between application / decontamination: </div> <input type="checkbox"/> IMPACT WEAPON / TEMP. INCAPACITATION: <input type="checkbox"/> FIREARM: <input type="checkbox"/> OTHER:		
PHOTOGRAPHS TAKEN: <input type="checkbox"/> YES <input type="checkbox"/> NO DESCRIBE:	EVIDENCE SEIZED: <input type="checkbox"/> YES <input type="checkbox"/> NO DESCRIBE:	
SUPERVISOR REVIEW (Print / Sign / Date):	OFFICER-IN-CHARGE REVIEW (Print / Sign / Date):	

SUPERVISORS: REVIEW & CRITIQUE USE OF FORCE WITH INVOLVED OFFICER(S).

APPENDIX D

USE OF FORCE REPORT FORM

Page 41 of 42

CASE #		
WAS SUBJECT(S) INJURED? * <input type="checkbox"/> YES <input type="checkbox"/> NO * (Complete Diagram Below)	OFFICER(S) TAKING PHOTOS	TOTAL # OF PHOTOS
<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;">  </div> <div style="flex: 2; padding-left: 10px;"> DESCRIBE THE EXTENT OF THE SUBJECT'S INJURIES AND PLACE ON THE DIAGRAM: <hr/><hr/><hr/><hr/><hr/><hr/><hr/> </div> </div>		
<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;">  </div> <div style="flex: 2; padding-left: 10px;"> DESCRIBE THE EXTENT OF THE SUBJECT'S INJURIES AND PLACE ON THE DIAGRAM: <hr/><hr/><hr/><hr/><hr/><hr/><hr/> </div> </div>		
WITNESS(ES) OR PERSON(S) WITH KNOWLEDGE:	ADDRESS:	PHONE #:
OFFICER'S NARRATIVE: Did Officer prepare a detailed incident report describing facts and circumstances leading to the use of force? <input type="checkbox"/> YES <input type="checkbox"/> NO If no, explain: <hr/> <hr/> <hr/>		
SUPERVISORY / COMMAND REVIEW		
REPORTING SUPERVISOR (Name and Badge #)	DATE AND TIME OF SUPERVISOR RESPONSE	LOCATION
OFFICER WHO USED FORCE (Name and Badge #)	WAS SUBJECT(S) INJURED? <input type="checkbox"/> YES <input type="checkbox"/> NO	WAS OFFICER(S) INJURED? <input type="checkbox"/> YES <input type="checkbox"/> NO
SUPERVISOR'S NARRATIVE: (Document steps taken to review and evaluate Officer's use of force.) <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		
A/V EVIDENCE AVAILABLE / REVIEWED BY SUPERVISOR: <input type="checkbox"/> YES <input type="checkbox"/> NO Date:	A/V EVIDENCE AVAILABLE / REVIEWED BY OFFICER: <input type="checkbox"/> YES <input type="checkbox"/> NO Date:	A/V EVIDENCE AVAILABLE / REVIEWED BY LIEUTENANT: <input type="checkbox"/> YES <input type="checkbox"/> NO Date:
LIEUTENANT REVIEW NARRATIVE: (Confirm proper and complete investigation was conducted.) <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		
OFFICER REVIEW (Print / Sign / Date):	SUPERVISORY REVIEW (Print / Sign / Date):	LIEUTENANT'S REVIEW (Print / Sign / Date):

**SUPERVISORY / COMMAND: REVIEW & CRITIQUE USE OF FORCE WITH INVOLVED OFFICER(S).
NOTE FINDINGS ABOVE AND FORWARD COMPLETED PACKET TO CHIEF OF POLICE**

Use of force requires an ON-SCENE review, including a narrative report from the responding supervisor. This is REQUIRED for incidents involving- Chemical Spray, ECW/ECD deployment or Drive Stun; any incident resulting in injury or complaint of injury; or any other time deemed appropriate by a supervisor.

USE OF FORCE REPORTING

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.02	ISSUE DATE: __9/11/14__
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED:	EFFECTIVE DATE: __1/1/15__
	REVISION DATE: __8/11/20__

I. GENERAL CONSIDERATIONS AND GUIDELINES

The manner in which Stow Police Department members use force is an extremely critical issue that generates intense public scrutiny. When these incidents occur they demand a thorough and complete inquiry into all aspects of the incident. Only through an exhaustive inquiry can the facts of the incident evolve and public confidence be maintained.

II. POLICY

Reportable Use of Force: It is the policy of this department to require a written report any time an employee:

1. Discharges a department issued or authorized firearm, for other than training or recreational purposes. The intention discharge of firearms for ballistic testing, or firearms maintenance shall be excluded from the reporting requirement. [1.3.6(a)]
2. Takes action that results in, or is alleged to have resulted in, the injury or death of another person
3. Applies force through the use of a lethal or less-lethal weapon ; or
4. Applies weaponless physical force which results in an injury to either the department member or another person.

III. DEFINITIONS

A. **Weaponless Physical Force:** The application of force and hand control techniques that have little or no chance of producing injuries when gaining control over, or subduing non-compliant or resisting persons. These techniques include, but are not limited to: physical touching, gripping or holding, frisking, pain compliance measures, pressure point application, come-along hold, handcuffing or other custodial procedures.

- 1) **Employee:** For the purposes of the application of this policy, any person affiliated with the department whether full or part time, sworn, special or auxiliary police, crossing guard, animal control officer, other, officially civilian, volunteer, or

- 2) Reportable Use of Force: A level of force used by a member of this department which would trigger a report as directed under this policy.

Note: The discharge of a weapon to euthanize an animal, the use of verbal commands are not considered a use of force for this policy.

IV. PROCEDURES

A. Employee Responsibilities

- a. Each employee who used reportable force as defined in this policy shall:
 - a. Immediately following a reportable use of force incident, employees shall notify a shift supervisor.
 - b. Complete a Use of Force Report unless the requirement of such report would violate the officer's Fifth Amendment protections and/or if transactional immunity for said officer(s) would be triggered. The report shall be submitted in writing. At a minimum, the report shall include:
 - 1) Actions of the suspect that necessitated the use of force;
 - 2) Why the employee used force;
 - 3) What force was used by the employee;
 - 4) The effect of the force on the suspect;
 - 5) Injuries to the suspect, employees, or others;
 - 6) Complaints of injury by the suspect or others; and
 - 7) Medical treatment received or refused by the suspect or others.
 - c. The Use of Force Report shall be used for internal statistical and analytical purposes only, and shall not be part of the incident or arrest file for the particular incident.
 - d. A more detailed narrative report must be completed if ordered by a supervisor.
 - e. An injured employee shall submit the required reports as soon as practical.
 - f. Any employee, whose action(s) or use of force results in death or serious physical injury, shall be removed from line-duty assignment, and **placed on paid administrative leave** pending an administrative review.

3) Supervisors/Investigators Responsibilities

b. RESPONSE AND INVESTIGATION

- a. A supervisor shall respond to and investigate any incident where force results in death or serious bodily injury.
- b. A supervisor directly involved in an incident shall not investigate the use of force in that same incident, a higher ranking Officer or Designee assigned by the Chief of Police will be made to investigate.
- c. In cases involving death or serious bodily injury the Chief shall be notified and shall s
- d. In those instances where death has or is likely to occur, the District Attorney's office shall immediately be notified.
- e. In conducting the investigation, the supervisor shall:

- 1) document the suspect's statements;
- 2) document injuries sustained by the employee, suspect, or others;
- 3) arrange medical treatment needed or requested;
- 4) identify and interview witnesses;
- 5) document, as necessary, the scene of the incident, injuries, property damage, etc.; and
- 6) Interview any medical care provider concerning the injury and its consistency with the reported use of force.

c. **EMPLOYEE STATEMENT/REPORTS**

- a. The investigating supervisor may:
 - 1) Order the involved employee(s) to submit a full and complete report of the incident in writing; or
 - 2) Schedule a time by which an employee involved in the incident must meet with department investigators and submit a written report of the incident.
- b. The investigating supervisor conducting the investigation shall file a preliminary report prior to the conclusion of the tour of duty.
- c. The investigating supervisor will complete a detailed investigative report and submit it to the Chief as soon as practical after the completion of the investigation.
- d. For further information, see the department policies on **Officer Involved Deadly Force Incident Investigations** , and **Post-Traumatic Stress Procedures** .

4) **Administrative Review:**

- a. CHIEF OF POLICE :shall be responsible for the following:
 - a. Ensuring that a thorough investigation was conducted and that all reports were prepared and submitted;
 - b. Conducting an administrative review of all reports submitted to determine whether the use of force was in compliance with department policy and procedures. Such review may not be conducted by any person who was involved in the incident, and
 - g. [IF REVIEW CONDUCTED BY OTHER THAN CHIEF]** Shall prepare a report to the Chief regarding the incident, including any comments and recommendations for appropriate action.
- c. The Chief of Police will conduct an administrative review of each report and shall take appropriate action.

5) **Use of Force Reports**

- a. The use of Force Reports shall be filed at the Stow Police Station.
- b. ANNUAL ANALYSIS THE CHIEF OF POLICE shall conduct an annual analysis of all use of force reports and submit a written report to the Chief. Such analysis and conclusions may indicate the need for training, equipment upgrades, or policy modification. The review should consider:
 1. A comparison of the total number of use of force incidents compared to previous years;
 2. Type of force used;
 3. Type of weapons used;

4. Effectiveness of the use of force techniques;
5. Nature of the incident that required force;
6. Intensity of attack or resistance;
7. Suspect demographics;
8. Day of the week, time of day, shift, squad involved;
9. Years of experience of employee(s) involved;
10. Uniform or plain clothed employee;
11. Severity of injuries to employee or suspect, if any; and
12. Summary breakdown of the disposition of the administrative reviews (justified/not justified, compliance with policy, etc.).

ELECTRICAL WEAPONS

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.03	ISSUE DATE: 1/1/15
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED:	EFFECTIVE DATE: 1/1/15
	REVISION DATE: 8/11/20

I. GENERAL CONSIDERATIONS AND GUIDELINES

Electrical weapons, often referred to by a common brand name – TASER – are electro-muscular disruptors that override the central nervous system. Such weapons provide officers with another control option.

This department has decided to make electrical weapons available to certain authorized officers who obtain the training specified by the Commonwealth of Massachusetts, consistent with the policies and recommendations of respected law enforcement agencies, such as the International Association of Chiefs of Police.

II. POLICY

It is the policy of this department that:

- A. Electrical weapons shall be made available as a less lethal use of force option to police officers of this agency who are authorized to carry this weapon; and
- B. Electrical Weapons may be used by authorized and trained personnel in accordance with 501 CMR 8.00, and consistent with additional guidelines established herein.

III. DEFINITIONS

- A. *Electrical Weapon or Device*: Also referred to as an electronic weapon: a portable device or weapon from which an electrical current, impulse, wave or beam may be directed where such current, impulse, wave or beam is designed to incapacitate temporarily.
- B. *AFIDs* (Anti-felon Identification Tags): Confetti-like pieces of paper that are expelled from the cartridge when fired. Each AFID tag contains an alpha-numeric identifier unique to the cartridge used.
- C. *Drive Stun Mode*: The electrical weapon is used without the cartridge. The device is pressed against the suspect, and an electrical shock is delivered.

IV. PROCEDURES

A. Authorization

1. The department policies regarding **Authorized Weapons**, **Use of Force**, and **Use of Force Reporting** apply to electrical weapons. For further information, refer to these policies.

2. Only officers who have been trained and authorized may carry this device.
3. Except for training purposes, an officer shall not possess or carry an electrical weapon until successfully completing an approved training program in the use of electrical weapons.

B. Special Regulation Regarding Electrical Weapons

1. 501 CMR 8.04 establishes a training requirement for the use of electrical weapons.
2. In order to qualify for admission into an approved training program for the use of electrical weapons, an authorized officer must:
 - a. Be currently employed as a state or municipal law enforcement officer;
 - b. Have successfully completed a firearms training course conducted by the Municipal Police Training Committee or approved by the Colonel of the Massachusetts State Police; and
 - c. Be authorized by the officer's department to carry a firearm in the performance of the officer's duty.

C. Weapon Readiness

1. CARRYING

- a. The device will be carried in an approved holster in a cross draw configuration on the side of the body opposite the service hand-gun. Officers not assigned to uniformed patrol may utilize other department-approved holsters and carry the weapon consistent with department training.
- b. The device will be carried fully armed with the safety on in preparation for immediate use when authorized.

2. ACCESSORIES

- a. Officers authorized to use the device shall be issued a minimum of one spare cartridge as a back-up in case of cartridge failure, the need for redeployment, or in case the first cartridge's leads break during engagement.
- b. The spare cartridges shall be stored and carried in a manner consistent with training and the cartridges replaced consistent with the manufacturer's expiration requirements.
- c. Only agency-approved battery power sources shall be used in the electrical weapon.

D. Deployment

1. USE OF FORCE CONTINUUM

- a. Drive Stun Mode:
 - 1) In drive stun mode the device is a pain compliance tool rather than an electro-muscular disruptor.
 - 2) It may be deployed as a pain compliance technique in response to an active resistant person.
 - 3) It is minimally effective compared to conventional cartridge-type deployments. The effect of drive stun is not as long-lasting as fired probes.

Note: Pain compliance may not be effective against someone in a state of "mind-body disconnect," as in a mental health crisis state, under the influence of a mind altering substance, or extremely focused.
- b. Firing the device:
 - 1) Firing the device cartridge to deploy electrodes is a defensive tactic.
 - 2) It may be used in response to an assaultive person.
- c. Lethal Force

- 1) Intentionally firing the device at the head or neck is a deadly force countermeasure in response to a lethal threat.
 - 2) ELECTRONIC WEAPONS ARE NOT A SUBSTITUTE FOR LETHAL FORCE. Officers are not expected to respond to a lethal force threat with a less lethal force option such as an electrical weapon.
 - 3) An electrical weapon may be used in response to a lethal force threat under exigent circumstance as a weapon of available means.
- d. Electronic weapons are best considered an option in situations where:
- 1) An officer has other appropriate force options available to deal with the threat;
 - 2) The officer has moved to a position of advantage such as cover, concealment or barrier, based upon the subject's behavior or weapons; and
 - 3) An additional officer can safely approach the subject to within effective range to deploy the electronic weapon.

2. DEPLOYMENT OF DEVICE

- a. A full five second cycle deployment should be applied without interruption unless circumstances dictate otherwise.
 - 1) The five second cycle is a potential "window of opportunity" for an officer to immobilize, control, or handcuff a suspect.
 - 2) Secure the suspect as quickly as possible during or immediately following the period of incapacitation.
- b. A second or subsequent five second cycle may be necessary if, after the first five second cycle, the officer still perceives the subject as a threat.
- c. Officers should be aware that an energized subject may not be able to respond to commands during or immediately following exposure.
- d. The officer shall energize the subject the least number of times and no longer than necessary to accomplish the legitimate operational objective.

3. TARGET AREAS

- a. Much of the body is a target area, including:
 - 1) The center of available mass (back and chest); and
 - 2) The legs.
- b. Avoid aiming at the head or neck unless the encounter justifies a deadly force response.

4. FORBIDDEN

- a. Deployment of the device in a punitive or coercive manner.
- b. Use on a handcuffed or secured prisoner, absent overtly assaultive behavior that cannot be reasonably dealt with in any other less intrusive fashion.
- c. Use in any environment where an officer knows that a potentially flammable, volatile, or explosive material is present (including but not limited to OC spray with volatile propellant, gasoline, natural gas, or propane).
- d. In any environment where the subject's fall could reasonably result in death (such as in water or on an elevated structure).

5. SUSCEPTIBLE POPULATION

- a. Officers should be aware of the greater potential for injury when using an electronic weapon against certain individuals. Electronic weapons should not be used against:

- 1) Children under the age of seventeen (17);
 - 2) Adults over the age of seventy (70);
 - 3) Women believed to be pregnant; or
 - 4) Those known to be suffering from severe mental illness.
 - 5) Persons of small stature irrespective of age;
 - 6) Persons known to be equipped with a pacemaker; or
 - 7) Persons in obvious ill health.
- b. Electronic weapons should only be deployed on these vulnerable groups if the officer's assessment at the time is that the individuals have or will cause immediate serious bodily harm to themselves and/or others but could be subdued by an electronic weapon.

E. Aftercare

1. PROBES

- a. Probes may be removed from the subject after the subject is restrained.
- b. Probes may be removed by trained officers.

2. MEDICAL CARE

Seek medical attention for:

1. A person who requests medical attention. Officers shall ask persons if they desire medical attention.
2. A person who does not appear to recover properly after being engaged with the electronic device.
3. A person who is in a potentially susceptible population category. See **SUSCEPTIBLE POPULATION** in this policy.
4. A person who has been energized more than three times.
5. A person who has had more than one EW effectively used against him or her in any given incident.
6. A person who has been subjected to a continuous energy cycle of fifteen (15) seconds or more.
7. A person who has exhibited signs of extreme uncontrolled agitation or hyperactivity prior to electrical weapon exposure. For further information, see the department policy regarding ***Use of Force***.

Transport the following to a medical facility:

8. A person who is struck by a probe in the neck, throat, face, female breasts, groin;
9. A person from whom personnel have difficulty removing the probes; and
10. A case in which the barb separates from the probe upon removal.

F. Reporting

3. OFFICER RESPONSIBILITY

- A. The deploying officer shall notify his or her supervisor as soon as practical after deploying the device and complete the appropriate use-of-force report.

B. Officers shall specifically articulate the rationale in their use-of-force report for any instance of the following:

1. An electrical weapon is energized more than three times on a single subject.
2. An energy cycle longer than fifteen (15) seconds in duration is used against a subject.
3. More than one electrical weapon is used against a subject in any given incident.
4. An electrical weapon is used against an individual designated to be in a “susceptible population.”

4. SUPERVISOR RESPONSIBILITY

C. Ensure that photographs of the area impacted by the probes are taken after the probes are removed, if possible.

D. Ensure that the subject has received the proper medical attention as appropriate.

E. If the device has been fired, the officer shall collect the cartridge, wire leads, darts, and AFIDs as evidence. Darts are to be treated as a biohazard material and appropriately handled.

5. ADMINISTRATIVE RESPONSIBILITIES

F. Report all electronic weapons deployment to the Executive Office of Public Safety. The report must include:

1. The number of officers in the department;
2. The number of electrical weapons purchased by the department;
3. The number of incidents involving electrical weapons; and
4. Gender and race of targets.

G. Data from electrical weapons must be supplied to the Department of Public Safety.

H. There will be an administrative review of each report of the discharge of an electronic weapon. This will be conducted by the Chief or other command staff officer as directed by the Chief.

I. The department will conduct an annual analysis of reported uses of electronic weapons. Where indicated, training needs, equipment upgrades, and/or policy modifications will be considered.

VEHICULAR PURSUIT

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.04	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 41.2.2; 41.2.3	EFFECTIVE DATE: _____
	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

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

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

This policy also recognizes that vehicular pursuits do not automatically initiate when officers activate their emergency warning equipment in an attempt to effectuate a lawful motor vehicle stop or when following and observing a motor vehicle.

Motorists occasionally may not immediately see or hear an officer's emergency warning equipment or may not realize that they are the target of an officer's efforts.

Officers may be required to follow a motorist with emergency warning equipment activated for a significant distance before that motorist stops the vehicle.

Consequently, an officer's lawful attempt to stop a motorist is not considered a vehicular pursuit subject to the requirements and restrictions of this policy unless and until such time as the officer reasonably believes (i.e., has "reasonable suspicion") that the motorist is intentionally ignoring the officer or actively attempting to elude the officer. (Keep in mind that, under the Massachusetts Constitution, a pursuit constitutes a "seizure" and must be justified by reasonable suspicion. This state's courts have ruled that as soon as an officer activates a cruiser's blue lights or siren, the seizure has occurred.) Events subsequent to police pursuit, including efforts to elude or flee from the police, cannot be used to supply the requisite reasonable suspicion to justify a prior investigatory stop.

Pursuing officers and supervisory personnel must weigh the risk of a pursuit against the necessity to apprehend a vehicle's occupant.

In determining whether to pursue, officers and supervisors must consider many factors.

A practice of prohibiting all pursuits would encourage operators so inclined to simply not stop when signaled to do so. Allowing pursuits under all circumstances would unnecessarily put people at risk.

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

II. POLICY

It is the policy of this department that a vehicular pursuit is authorized when the need to apprehend a suspect fleeing in a motor vehicle outweighs the risk created by the pursuit.

III. DEFINITIONS

- A. **Authorized Police Vehicle:** A police department motor vehicle equipped with operable audible and visual emergency warning equipment.
- B. **Primary Unit:** An authorized police vehicle that is the first vehicle behind the pursued vehicle.
- C. **Secondary Unit:** An authorized police vehicle that is actively involved in the pursuit behind the primary unit as backup.
- D. **Supervisor:** The ranking officer-in-charge or senior officer-in-charge.
- E. **Vehicular Pursuit:** An active attempt by an officer in an authorized police vehicle to apprehend a fleeing suspect who is actively attempting to elude the officer. For the purposes of this policy, an officer's following or attempting to catch up to a vehicle, the driver of which does not appear to be attempting to elude the officer, is not a pursuit.
- F. **Densely Populated Area:** An established area of a city or town that is thickly settled and/or composed of a business district marked by compactness, with pedestrian and vehicular traffic.

IV. PROCEDURE

A. Prohibited

- 1. No officer shall continue a pursuit after having been directed to discontinue the pursuit by a supervisor or senior officer in charge of the shift
- 2. No officer shall continue a pursuit after having lost radio communications with the dispatcher.
- 3. No officer shall initiate or continue a pursuit on a divided highway in the opposite direction of the flow of vehicular traffic.
- 4. Unless authorized by a supervisor, or senior officer in charge no officer (other than the officers in the primary and secondary units) shall engage in the main pursuit or pursue on parallel streets.
- 5. No officer shall participate in a pursuit with a civilian present in the authorized police vehicle.
- 6. No officer shall participate in a pursuit of a motorcycle for minor traffic violations if the officer knows the motorcycle's registration number or the identity of the operator.
- 7. Vehicles other than authorized police vehicles may NOT participate in any pursuit.
- 8. **[OPTIONAL]** No officer operating a motorcycle will participate in a vehicular pursuit.

B. Pursuit Decisions [41.2.2(a)]

- 1. **TARGET VEHICLE FACTORS**

Officers shall consider the following in deciding whether to initiate or continue a vehicle pursuit:

- a. Does the continued operation of the vehicle the officer intends to stop pose a risk of physical harm to the officer, the public, or others?
 - b. Do the occupant(s) of the vehicle the officer intends to stop pose a risk of physical harm to the public or others?
 - c. Are the occupant(s) of the vehicle wanted for the commission of felonious acts that threaten, have threatened, or will threaten the health, life, or safety of a person or persons?
 - d. Is the operator or wanted passenger known to the police, and is later apprehension possible?
 - e. Are there other persons or children in the pursued vehicle?
 - f. What are the driving skills of the operator of the vehicle being pursued?
2. ENVIRONMENTAL FACTORS: Officers shall consider the following in deciding whether to initiate or continue a vehicle pursuit:
- a. Population density (including volume of pedestrian traffic and motoring traffic);
 - b. Nature of the area (residential, commercial, school zone, and the volume type, speed and direction of vehicular traffic);
 - c. Officer's familiarity with the area;
 - d. Road and weather conditions;
 - e. Time of day;
 - f. Speeds involved;
 - g. Driving skills of the officer and the performance capabilities of the pursuit vehicle and the vehicle being pursued;
 - h. Operational status of emergency warning equipment; and
 - i. Quality of radio communications.

C. Pursuit Operations

- a. GENERALLY
 - a. When engaged in a pursuit, officers shall exercise due care for the safety of the public and shall comply with all of **the provisions of M.G.L. c. 89, §7B (Operation of Emergency Vehicles)**, as follows:
 - 1) The driver of any police department vehicle shall be subject to the provisions of any statute, rule, regulation, ordinance or bylaw relating to the operation or parking of vehicles, including stopping for a school bus with red lights flashing which has stopped to allow passengers to alight or board, except:
 - a) The driver may exceed the speed limit if [s]he exercises caution and due regard under the circumstances for the safety of persons and property; and
 - b) The driver may drive through an intersection contrary to traffic signs or signals if [s]he first brings the vehicle to a full stop and then proceeds with caution and due regard for the safety of persons and property.

- 2) Upon engaging in a pursuit, the primary unit and, if involved, secondary unit shall activate all emergency warning equipment including the siren. These warning devices shall remain activated for the duration of the pursuit.
 - 3) No caravan of the pursuit. No more than three police units shall be involved with the pursuit without authorization from the commanding officer or senior officer in charge.
 - a. No officer will drive with reckless disregard for the safety of other road users.
- b. POLICE VEHICLES [41.2.2(D)]
- a. Any authorized police vehicle may initiate a pursuit.
 - b. Unmarked vehicles must relinquish the pursuit to marked vehicles when such marked vehicles join the pursuit.
 - c. Specialty vehicles will relinquish the pursuit to marked police sedans when they join in the pursuit.
 - d. No officer operating a motorcycle will participate in a vehicular pursuit.

OR

An officer operating an authorized motorcycle may initiate a vehicular pursuit, but may not exceed posted speed limits, and must relinquish the pursuit immediately upon becoming aware of the participation of an authorized marked police vehicle.

- c. PRIMARY UNIT [41.2.2(B)]
- a. The primary unit is usually the officer who initiates the pursuit and becomes the first police vehicle behind the vehicle being pursued.
 - b. The primary unit shall immediately notify the dispatcher of the pursuit. The dispatcher shall immediately notify the shift commander or senior Officer in Charge who shall then take command and control of the pursuit. information including:
 - 1) The location where the pursuit was initiated;
 - 2) The direction of the fleeing vehicle;
 - 3) The description of the pursued vehicle and registration number, if known;
 - 4) The reason for the pursuit; and
 - 5) The estimated speeds of the vehicles.
 - c. The primary officer shall keep the Supervisor or senior Officer in charge of the shift updated on the pursuit at regular intervals until relieved of this duty by the secondary officer.
 - d. Subject to the direction of a supervisor, the officer operating the primary unit is vested with the authority to decide and direct the pursuit actions.
 - e. The officer operating the primary unit shall continually re-evaluate and assess the pursuit. The officer shall terminate the pursuit, even in the absence of an order to terminate by a supervisor, when that officer reasonably believes that the foreseeable risks to the officer, the public or others arising from a continued pursuit are greater than the threat to public safety, should the pursued vehicle be allowed to escape. The Officer should communicate the location of where the pursuit was terminated.
 - f. The pursuing officer shall notify the dispatcher or communications center when it is likely that a pursuit will continue into a neighboring jurisdiction.
- d. SECONDARY UNIT [41.2.2(C)]

- a. The secondary unit shall maintain a safe distance behind the primary unit, but should remain close enough to provide assistance if required.
- b. The secondary unit shall assume radio communications, allowing the primary unit to concentrate on driving.

D. Responsibilities of Dispatcher [41.2.2(e)]

- e. Upon being informed of a pursuit in progress, the dispatcher shall:
 - a. Immediately notify the supervisor or officer-in-charge;
 - b. Receive and record all incoming information on the pursued vehicle;
 - c. Advise all other units that a pursuit is in progress, providing all relevant information;
 - d. Perform relevant record and motor vehicle checks as expeditiously as possible;
 - e. Coordinate assistance of other officers under the direction of the supervisor;
 - f. Notify affected law enforcement agencies over appropriate communications systems, and seek their assistance if the pursuit is proceeding into another jurisdiction;
 - g. Notify all affected agencies when a pursuit has been terminated or if apprehension has been made; and
 - g. **[OPTIONAL]** Monitor the locations of police vehicles on the department GPS screen, and provide vehicles with their locations in the event that they become uncertain.
- f. The dispatcher shall minimize radio traffic to allow the pursuing vehicles to communicate.

E. Responsibilities of the Supervisor [41.2.2(f)]

- g. Upon becoming aware of a pursuit, the supervisor shall evaluate the totality of the circumstances pursuant to this policy and determine whether the pursuit should continue.
- h. If the supervisor determines that a pursuit should continue, [s]he shall continuously re-evaluate the need for continuing the pursuit.
- i. The supervisor shall coordinate activities as needed to ensure that proper procedures are followed.
- j. A supervisor may authorize officers in addition to the primary and secondary units to engage in the pursuit and/or a parallel pursuit in exceptional circumstances, or if the supervisor reasonably believes that there is a substantial likelihood of serious physical injury or death should additional officers not participate.
- k. The supervisor may terminate the pursuit at any time and shall terminate the pursuit if [s]he believes that the foreseeable risks to the pursuing officers and to the public, arising from the continued pursuit, are greater than the foreseeable threat to public safety should the pursued vehicle be allowed to escape.
- l. The supervisor may authorize the resumption of a pursuit when [s]he believes that circumstances have changed, thereby warranting the resumption of the pursuit in accordance with the criteria of this policy.
- m. When it is feasible and when authorized, a supervisor should respond to the location where a vehicle has been stopped following a pursuit.

F. Inter-Jurisdictional Pursuits [41.2.2(h)]

- n. PURSUITS INITIATED BY THIS DEPARTMENT

- a. Pursuit initiated by members of this department may continue into another jurisdiction when done in conformance with applicable Massachusetts General Laws, department policies, and inter-jurisdictional agreements.
- 4) Outside the Commonwealth: On fresh and continued pursuit, a police officer may pursue a person who has committed a felony into any neighboring state and arrest that person.

- 5) Within the Commonwealth: A police officer may make an arrest outside his/her jurisdiction on fresh and continued pursuit provided:

- c) The offense is one for which the officer would have the right of arrest without a warrant within his/her jurisdiction;
- d) The offense was committed in the officer's presence; and
- e) The offense was committed within the officer's jurisdiction.

NOTE: If this department has a Mutual Aid Agreement with another municipality, such agreement may address situations under which officers from one department may pursue motorists into the other community; if so, the terms of the agreement may grant additional rights beyond those in the state's "fresh and continued pursuit" statute.

- h. Requests for Assistance: When this department has initiated a pursuit, timely notification of a pursuit in progress shall be provided to any other jurisdiction into which the pursuit enters.

- 6) Merely notifying another jurisdiction that a pursuit is in progress is not a request to join the pursuit. The department shall advise if assistance is necessary.
- 7) Whenever the pursuing officers are unfamiliar with the roadways and terrain of the jurisdiction into which the pursuit has entered, or whenever radio communication is lost, the pursuing officers shall, when possible, seek the assistance of, and be prepared to relinquish the pursuit to, the other agency.

- o. PURSUITS INITIATED BY OTHER DEPARTMENTS: INTRA-JURISDICTIONAL: Officers shall not become involved in another agency's pursuit without notifying and specifically receiving authorization from their supervisor.

G. Termination of a Pursuit [41.2.2(g)]

- p. TERMINATION:

- a. A pursuit shall be terminated by a commanding officer or senior officer in charge or the pursuing officer if the foreseeable risks to the pursuing officers and to the public arising from the continued pursuit are greater than the foreseeable threat to public safety should the pursued vehicle be allowed to escape.
- b. When a decision is made to terminate a pursuit, the primary and secondary units shall immediately reduce their speeds to within the posted speed limits and shall deactivate their emergency warning equipment.
- c. It is recognized that, upon terminating a pursuit, the pursuing units are not required to bring their vehicles to a stop and/or head in the opposite direction of the former target vehicle. The primary and secondary units may continue to operate their vehicles in the same direction as the previously pursued vehicle, so long as they maintain a safe distance, and their actions do not constitute an active attempt to continue the pursuit.

- q. RESUMPTION OF A TERMINATED PURSUIT: Once a pursuit has been terminated, the primary, secondary, and other units aware of the pursuit may not re-engage the pursuit without authorization from a supervisor.

H. After-Action Reporting

r. REPORTING [41.2.2(l)]

- a. Whenever an officer engages in a pursuit, [s]he shall file a written report detailing the circumstances.
- b. The supervisor shall file the appropriate report as well.

s. EVALUATION AND ANALYSIS

- a. After action reports shall be evaluated by a superior officer not involved in the pursuit to determine if there has been compliance with departmental policies and regulations. [41.2.2(i)]
- b. The department shall analyze each pursuit activities for the purpose of identifying any improvements in this pursuit procedure and shall implement modifications to this procedure if warranted. A review of incidents involving vehicle pursuits may reveal patterns or trends that indicate training needs and/or policy modifications. Such reviews may include: [41.2.3; 41.2.2(j)]

8) Number of pursuits;

9) Date and time (shift);

10) Original offense;

11) Reason for terminating the pursuit;

12) Whether spike strips were used;

13) Injuries;

14) Property damage;

15) Whether emergency lights and siren were used;

16) Whether a supervisor took control of the pursuit;

17) Supervisor: years on the job;

18) Primary Officer: years on the job;

19) Average length and distance of the pursuit;

20) Whether the pursuit left this agency's jurisdiction;

21) Suspect information;

22) Whether the pursuit appeared to comply with agency policy; and,

23) Training issues identified.

I. Forced Stopping [41.2.3]

t. TIRE DEFLATION DEVICES:

- a. A department authorized device (such as a "stop-stick") is intended to be placed in the roadway to cause a slow deflation of one or more tires of a motor vehicle passing over it.
- b.

- c. Tire deflation devices should be used, when practicable, where there is an agreement between the primary unit and the officer who will deploy the device.
- d.
- e. The officer deploying the tire deflation device shall only do so when that officer has been trained in its use and believes that the device can be deployed safely.

u. BOXING-IN

- a. Boxing-in is an active attempt to terminate a pursuit by surrounding the pursued vehicle with the primary, secondary, or other units which are then slowed to a stop.
- b.
- c. Boxing-in may be utilized only when there is a determination that the pursued vehicle must be immediately stopped because the driver and/or occupants of the vehicle pose a clear and immediate threat of death or serious physical injury to the public and/or other occupants of the pursued vehicle.
- d.
- e. This tactic may be utilized only when authorized by a supervisor, and it is reasonable to believe that allowing the vehicle to escape will not reduce the perceived risk of death or serious physical injury to the public and/or the occupants of the pursued vehicle.
- f. Boxing-in may not be utilized when tire deflation devices are a viable option.

1. HEADING OFF

- a. Heading off is an active attempt to terminate a pursuit by the primary unit pulling ahead of the pursued vehicle in a manner to force the pursued vehicle to come to a stop or risk collision with the primary unit.
- b.
- c. Heading off may be utilized only when there is a determination that the pursued vehicle must be immediately stopped because the driver and/or occupants of the vehicle pose a clear and immediate threat of death or serious physical injury to the public and/or other occupants of the pursued vehicle.
- d.
- e. This tactic may be utilized only when authorized by a supervisor, and it is reasonable to believe that allowing the vehicle to escape will not reduce the perceived risk of death or serious physical injury to the public and/or the occupants of the pursued vehicle.
- f. Heading off may not be utilized when the use of tire deflation devices is a viable option.

2. ROADBLOCKS

- g. Roadblocks are an active attempt to terminate a pursuit through the use of a restriction or obstruction in the roadway that is intended to prevent free passage of motor vehicles on a roadway.
- h.
- i. Roadblocks may be utilized only when there is a determination that the pursued vehicle must be immediately stopped because the driver and/or occupants of the vehicle pose a clear and immediate threat of death or serious physical injury to the public and/or other occupants of the pursued vehicle.
- j.

- k. This tactic may be utilized only when authorized by a supervisor, and it is reasonable to believe that allowing the vehicle to escape will not reduce the perceived risk of death or serious physical injury to the public and/or the occupants of the pursued vehicle.
- l. Roadblocks may not be utilized when the use of tire deflation devices is a viable option.
 - 1) A supervisor shall be present at the scene and direct type, location and setup of the roadblock.
 - 2) Police vehicles being utilized as barricades shall display full emergency lights, and no one shall remain in the vehicle(s).
 - 3) The roadblock must be established in such a location as to allow vehicles approaching at high speeds sufficient time to stop and not to cause a collision.
 - 4) Any roadblock should provide an "escape route" should the vehicle refuse to stop.
 - 5) Officers should position themselves a safe distance from the barricade, with appropriate site observation.

3. VEHICLE CONTACT ACTION

- m. Vehicle contact action is an active attempt by the primary unit and/or other pursuit vehicles to terminate a pursuit through the use of deliberate contact between the moving police vehicle and the moving pursued vehicle.
- n.
- o. Vehicle contact action may only be utilized when the use of deadly force is justified and such action is taken in conformance with the department policy on the Use of Deadly Force.
- p.
- q. This tactic may not be utilized when any of the tactics authorized in this section are viable options.

4. USE OF FIREARMS:

- r. Officers shall not discharge a firearm from within a moving vehicle.
- s. Discharging a firearm at a moving vehicle by an officer is prohibited, except to defend said officer or another when the occupant of the pursued vehicle is employing deadly force which the officer reasonably perceives as an imminent threat of death or physical injury, and the officer reasonably believes that [s]he will not endanger innocent persons.
- t.
- u. Shooting at a fleeing vehicle or a vehicle that is going away from the officer and is no longer an immediate threat is prohibited. Under such circumstances, officers should be aware of the potential inability of a bullet to penetrate metal or glass surfaces of an automobile and the likelihood of ricocheting bullets causing injury to innocent persons.

In Effect: 01/01/2015

Review Date: 01/28/2020 @ 2359

PRELIMINARY INVESTIGATIONS

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.05	ISSUE DATE: 9/11/14
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED:	EFFECTIVE DATE: 1/1/15
	REVISION DATE: 1/28/20

POLICY

It is the policy of the Department that:

- I. Preliminary investigations shall be conducted on all incidents which violate the criminal code of the Commonwealth, local ordinance or by-laws, or have the potential to result in a criminal or civil action; and
- II. All officers understand and comply with the following procedures when conducting initial investigations of crimes.

PROCEDURES

A. RESPONDING TO A CRIME SCENE

1. Officers should not proceed to a crime scene unless:
 - a. They are specifically directed to respond;
 - b. The crime occurs or is discovered within their assigned area of patrol; or
 - c. It is their particular assignment to be generally responsible for conducting investigations.
2. All other officers shall continue their assigned duties. However, they should be ready to assist in the apprehension of the perpetrator or to perform such other duties as directed.
3. Officers proceeding to a crime scene shall be vigilant and watchful in their approach for any signs of suspicious activity, especially for any evidence of a fleeing criminal, persons acting suspiciously or furtively in the vicinity, or objects being thrown from a vehicle leaving the scene.

A threshold inquiry may be justified when officers observe an individual fleeing from the scene of a crime.

4. Responding officers shall record the registration numbers of any suspicious vehicles coming from the scene and the general description and any obvious characteristics of the operator or occupants, if possible.
5. The officers proceeding to the crime scene shall be alert for any additional messages from the dispatcher or officers on scene. The dispatcher shall immediately furnish the responding officers with any supplementary information that would be of assistance to them. They shall provide any available information that would indicate the possibility of a dangerous situation or the possible presence of an armed or dangerous criminal.

B. UPON ARRIVAL AT CRIME SCENE

1) RESPONSIBILITY

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

2) MEDICAL ASSISTANCE

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

3) COMMUNICATION TO DISPATCH

1. As soon as it is practicable under the circumstances, the officer shall communicate to the dispatcher the following information:
 - a. The nature of the crime committed;
 - b. As complete a description of the suspect(s) as possible and the direction of flight;
 - c. Whether the offender is, or may be, armed and dangerous;
 - d. A description of any vehicle being used by the offender and of any occupants of that vehicle;
 - e. A description of any firearms or other weapons used in the commission of the crime;

- f. A description of any property stolen and whether it may be in the possession of the offender;
- g. Any additional information that may lead to the apprehension of the offender; and
- h. Whether additional assistance (e.g., fire department, ambulance, coroner) or the services of evidence technicians are needed at the scene.

4) ARRESTING THE PERPETRATOR

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

5) PRESERVING EVIDENCE

- 1. Every effort shall be made to protect the crime scene for the preservation of any physical evidence. (See departmental policy on **Collection and Preservation of Evidence** .)
- 2. The crime scene shall be maintained in the same manner as it was left by the perpetrator, as far as possible.
 - a. Spectators and bystanders should be kept out of the crime scene.
 - b. Witnesses and other persons connected with the crime and persons associated with the property or premises involved in the crime shall be told to remain present and available for questioning but shall be told not to alter or disturb any aspect of the crime scene.
 - c. Unauthorized persons shall not be permitted to enter or disturb the crime scene (this includes any police personnel not necessary for the investigation).

- d. If necessary, the premises or area comprising the crime scene may be roped or cordoned off, locked or otherwise secured.
- 3. Officers shall look for any item of evidentiary value which may reveal how the crime was committed or anything which may connect a particular person to the scene. This would include, but is not limited to, the following:
 - a. Weapons, shell casings, tools, clothing, shattered glass, stains, footprints, fingerprints, tool impressions, tire markings, etc.;
 - b. Ordinary objects or articles found in unexpected or unusual locations;
 - c. Ordinary objects or articles having individual peculiarities or markings;
 - d. Uncommon objects or articles not generally found at the location of the particular crime; and
 - e. Bits and pieces of evidence which may individually be of minor importance but when taken together can be of significant value to the investigation.
- 4. Physical evidence shall not be moved or touched pending the arrival of evidence technicians unless it is absolutely necessary to assure its preservation.
 - a. If it is necessary to move or take custody of any physical evidence, a careful notation shall be made of its exact location and position at the scene and a photograph should be taken documenting the location of the evidence.
 - b. If it is necessary to move any item of physical evidence, the item shall be handled in such a manner as to prevent any alteration of its condition or the accidental impression of fingerprints.

6) **INTERVIEWING WITNESSES**

- 1. The purpose of a preliminary interview is to obtain as much basic information as quickly as possible in order to identify and, if possible, apprehend the perpetrator and to establish the basis for the follow-up investigation. Every effort should be made to locate, identify and interview reliable witnesses. (See departmental policy on **Interviewing Victims and Witnesses**)
- 2. As soon as possible after arrival on the scene, the officer shall:
 - a. Obtain the name, address and telephone number of all witnesses.
 - b. Separate witnesses, if possible, to prevent them from discussing what has occurred among themselves before they are interviewed, which may taint individual recollections. The officer may give paper to each witness so that they may begin writing a description of what occurred.
 - c. Interview each witness separately and in a quiet area if possible.
- 3. Provide information about victim and witness assistance including what to do if the suspect or suspect's companions threaten or otherwise intimidate the victim or witness.

4. After all witnesses located at the scene have been interviewed, it may be advisable to canvas residences and businesses in the area in order to locate persons who witnessed some aspect of the crime but who are reluctant to come forward with that information.

G. REPORT WRITING

1. The officer conducting a preliminary investigation shall make an accurate and complete written report of the incident in accordance with departmental procedures.
2. An officer making a preliminary investigation should not rely on memory but should note all useful information obtained and, at a minimum, should make a written record of the following data.
 - a. Date and time of arrival at scene;
 - b. Weather conditions and visibility, including the location and distance from the nearest street light or artificial lighting and whether the lights were on;
 - c. Approximate time of commission of the crime and by whom it was discovered;
 - d. Identity of other police officers present;
 - e. All necessary information concerning any physical evidence discovered;
 - f. Name, address and telephone number of victims and witnesses;
 - g. The identity or the best available description of the criminal suspect or suspects, particularly noting any unusual characteristics;
 - h. The best available description of any vehicle used by the suspect or suspects;
 - i. Any important measurements made at the scene and a rough crime scene sketch; the name of any police photographer who took pictures, the name and affiliation of any media photographer who took pictures, the name and address of any private individual who took pictures;
 - j. The time and location of any interviews of the victim or witnesses and a brief statement as to what they heard or observed. If any such statement appears to be highly informative and the crime is of a serious nature, a verbatim record should be made; and
 - k. Any other information that the officer believes may be useful for the apprehension of the criminal suspect and his/her subsequent prosecution.

H. CHECKLIST]

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

1. Care for any person who requires medical or first aid attention.

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

Note: Officers should be continually aware that any preliminary investigation is just that, a preliminary investigation. No final conclusion should be reached if contrary possibilities or explanations are still unaccounted for. For example, it is not uncommon for perpetrators, caught shortly after the incident (and especially if the victim has fled) to claim that they are merely a witness and try to direct the police on a wild goose chase. A perpetrator may even pose as a victim (especially if he or she did receive some injury). Also, witnesses and victims may be carrying weapons or may flare up in unexpected anger or aggression toward others or even toward the police. Calling for sufficient backup and a healthy skepticism when questioning persons the officer does not know can be invaluable aids in any "preliminary" investigation.

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INTERVIEWING COMPLAINANTS, VICTIMS, AND WITNESSES

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.06	ISSUE DATE: 9/11/14
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POLICY

It is the policy of the Police Department that:

- I. Officers shall attempt to identify and interview all complainants, victims, and witnesses of crimes; and
- II. Officers shall obtain a complete and accurate a record of the complainant, victim, and witness statements as possible.

PROCEDURES

A. CONDUCTING INTERVIEWS

1. Immediately identify yourself or show your credentials (badge or identification) if not in uniform.
2. Locate, identify and interview complainants, witnesses, and victims (collectively "interviewees") as soon as possible regarding the incident under investigation.
3. Interview each interviewee **separately**, if possible, to ensure independent statements.
4. Record the date, time and location of each interview.
5. Obtain an interpreter, if needed.

6. Establish a cooperative relationship with the interviewee.
7. Consider the physical and emotional state of the interviewee.
8. Obtain and document a full description of the incident.
9. Take notes or tape record the interview.
 - a. If notes are taken, it should be accomplished in a manner that does not interrupt the interviewing process. Some interviewees are reluctant to talk if they notice that the officer is taking down every word they say. Brief notes can be made without deterring or distracting the interviewee. However, if a statement appears highly informative due to its nature and content, a verbatim account should be made.
 - b. Before any interview is tape recorded, the interviewee must be told that the conversation will be recorded. G.L. c. 272, section 99. If any legal or other questions arise pertaining to the tape recording of an interview, consult with the District Attorney's office.
10. Ask specific questions to clarify each statement or to fill in any omissions.
 - 1) Observe and note any emotional outbursts, inflections of the voice and nervous reactions which may indicate areas requiring further probing or clarification.
 - 2) Assess each interviewee's objectivity or possible bias.
 - 3) Note any relationship or connection the interviewee might have with the victim or perpetrator or the property or premises involved in the crime; the overall credibility of the interviewee; his/her opportunity to make observations; and his/her ability to recall details as opposed to general impressions, etc.
11. Obtain a written statement from the interviewee, if possible.

INTERVIEWS AT THE SCENE

- a) Interviewees shall be instructed to remain at the scene until interviewed. Interviewees may be reluctant to talk freely in public; consider the advantage of taking him/her to Headquarters.
- b) Obtain the names, addresses and telephone numbers of all persons present at the scene.
- c) Interviewees shall be separated, if possible, to prevent them from discussing what has occurred among them before they are interviewed, which may taint individual recollections.
- d) Paper may be given to each person so that they may begin writing their descriptions of the incident before their interview.

B. INTERVIEWS AT OTHER LOCATIONS

1. AT THE STATION: A separate area to conduct initial or additional interviews with interviewees should be arranged to ensure privacy and a minimum of interruptions.
2. VIA TELEPHONE: Officers are discouraged from conducting telephone interviews.

C. TERMINATING THE INTERVIEW

- a. Interviews shall be ended in a courteous manner. Do not terminate the interview abruptly or dismiss the interviewee in a curt manner. This helps to assure further cooperation, particularly if the interviewee may be needed to testify at a later date.
 - 1) Summarize what has been covered. Ask the interviewee if there is anything they wish to add or emphasize.
 - 2) Any written statements shall be signed and dated by the interviewee and the investigating officer for authentication purposes. The time and place of the statement shall be noted.
 - 3) Inform the interviewee that it is very important to contact the police if [s]he recalls or uncovers additional information about the crime or the criminal at a later time.
 - 4) Provide a contact phone number for information about victim and witness assistance supplied by the Police Department. (See department policy on **Victim/Witness Assistance**.)
 - 5) Where appropriate, inform the interviewee of the phone number and location of the District Attorney's Victim/Witness Assistance office, especially if the interviewee has questions of a legal nature.
 - 6) Inform the interviewee that it is a criminal offense for anyone to threaten or intimidate a witness into altering or changing their testimony or to not testify. G.L. c. 268, section 13B. If anyone attempts to do so, the interviewee should contact the police immediately.
- b. Thank the interviewee for his/her cooperation and impress upon him/her the value of his/her services.

D. REPORT WRITING

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

E. INTERVIEW TECHNIQUES

1. USE OF INTERPRETERS

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

2. CONSIDER PHYSICAL AND EMOTIONAL NEEDS OF INTERVIEWEES

- a. Calm the excited and emotionally upset interviewee. (If necessary, delay the interview until the person has regained composure).
- b. Create a favorable atmosphere for the interviewee to talk freely.
- c. Conduct the interview in a quiet area, if available.
- d. Maintain privacy to the greatest degree possible.
- e. Do not distract the interviewee or interrupt his/her story unnecessarily.
- f. Only one officer should conduct the interview. A second officer present should be taking notes, remain inconspicuous and not interfere with the interview.

3. ESTABLISH COOPERATIVE RELATIONSHIP

- a. Display a sincere interest.
- b. Be patient, tactful and respectful.
- c. Control personal feelings. Do not exhibit surprise or dismay at anything said by an interviewee.
- d. Provide reassurance.
- e. Encourage an un-talkative interviewee by asking appropriate questions.
- f. Encourage interviewees to give a full description of everything that occurred with a minimum of interruption. When the conversation lags or stops, be patient and wait for the interviewee to volunteer additional information.

4. CONDUCTING THE INTERVIEW

1. Do not take anything for granted and do not jump to conclusions.

2. Listen for and note any obvious omissions or gaps in the statements made by an interviewee, or for any conflicting or inconsistent statements.
3. Note any extreme nervousness or unusual behavior on the part of an interviewee or any unguarded or spontaneous remarks.
4. It is important to not only listen to what is said, but also to how it is said. Emotional outbursts and inflections of the voice may give a clue to sensitive areas of the interview. Sudden silence, uncertainty or confusion, or the shifting of conversation to an unrelated subject may indicate that information is being withheld. Nervous bodily reaction or facial characteristics may also signal that a sensitive area has been reached. By noting these things, an officer will know what portions of the statement may require further probing or clarification.

5. QUESTIONING INTERVIEWEES

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

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STOP AND FRISK AND THRESHOLD INQUIRIES

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POLICY

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

II. STOPS

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

B. GROUNDINGS FOR MAKING A STOP

- a. An officer may make a brief investigative stop and inquiry under any of the following circumstances:
 - 1) When [s]he knows that a crime has been committed.
 - 2) When [s]he reasonably believes that a crime has been or is being committed.
 - 3) When [s]he seeks to prevent a crime which [s]he reasonably believes is about to be committed.
- b. A police officer has the authority to stop a person for an investigative inquiry in any place where the officer has a right to be, including:
 - I. Any public place;
 - II. Any place or area open to the public; and
 - III. Any private premises entered with a valid warrant, by consent, or under emergency circumstances.
- c. There is no precise formula for determining the legality of an investigatory stop. However, it must be based upon a reasonable belief or suspicion on the part of the officer that some activity out of the ordinary is taking place, that such activity is crime-related and that the person under suspicion is connected with or involved in that criminal activity.
- d. An investigatory stop does not require probable cause; rather it requires the lesser standard of reasonable belief based on specific, articulable facts and reasonable inferences. It may be based upon the officer's own observations or information supplied by others. The information on which the officer acts should be well-founded and reasonable. Lastly, a hunch or pure guesswork, or an officer's unsupported intuition, is **not** a sufficient basis.
- e. No single factor alone is normally sufficient. The following are some of the factors which may be considered in determining the reasonableness of an investigative stop by a police officer in the field:
 1. Personal observations of the officer and his/her police training and experience;
 2. The officer's knowledge of criminal activity in the area;
 3. The time of the day or night and the place of observation;

4. The general appearance and demeanor of the person and any furtive behavior which indicates possible criminal conduct;
 5. The person's proximity to the scene of a recently reported crime;
 6. Unprovoked flight of an individual upon noticing the police;
 7. The knowledge of the person's prior criminal record or of his/her association with known criminals;
 8. Visible objects in the person's possession or obvious bulges in his/her clothing;
 9. Resemblance of the individual to a person wanted for a known crime;
 10. Information received from police sources or from other reasonably reliable sources of information.
3. The fact that the individual has aroused the police officer's suspicion should cause the officer to make his/her approach with vigilance and to be alert for any possibility of danger.
 - A. A routine police check of suspicious circumstances may uncover the commission of a serious crime or the presence of a dangerous criminal.
 - B. If the stopped person has just committed a major crime, [s]he may be an immediate threat to the officer's safety, or may suddenly attempt to flee from the scene.
 - 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.
 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.
 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.

III. PAT-DOWN FRISKS

- 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.

- 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.
- 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.

- 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

- 1) If the person fails or refuses to stop when so directed by a police officer, reasonable force and physical restraint (including handcuffs) may be necessary, depending upon the circumstances.
- 2) Actual force may be used to “stop” an individual, as long as the force is both necessary and proportionate to the situation. However, this does not include the discharge of firearms or application of other weapons.
- 3) If an officer is attacked, sufficient and reasonable force may be used to defend himself/herself and to ensure his/her personal safety.

V. QUESTIONING STOPPED PERSONS

- 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.
 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**.)

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

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.

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SEARCH AND SEIZURE

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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. 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

I. DEFINITIONS

- A. Affidavit:** A formal declaration or statement of facts, in writing, made voluntarily and confirmed by oath or affirmation before a person having the legal authority to administer such oath or affirmation.
- B. Exigent Circumstances:** Situations in which law enforcement officials will be unable or unlikely to effectuate a search or seizure for which probable cause exists unless they act swiftly and without prior judicial authorization.
- 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.

II. 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 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.

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

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

B. EXECUTING SEARCH WARRANTS

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;
- 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.;
- 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 search the premises and demand entrance, except in limited circumstances.
- 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.
- 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, only if the officers are in possession of a "No Knock Warrant" issued by the court. An exception is if the searching officers are in possession of probable cause that the person inside the dwelling to be entered has knowledge of the officers' purpose and presence or where to follow the knock and announce procedure:
 - 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 probable cause 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.

- 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;
- 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. See Section III(I) below for the legal requirements to seize items in plain view.

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); 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

- 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.

III. SEARCHES WITHOUT A WARRANT

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**.

C. SEARCH INCIDENT TO LAWFUL ARREST

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;
 - 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
 - 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.
- 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.

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

D. SEARCHES IN EMERGENCY OR EXIGENT CIRCUMSTANCES

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.
 - 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.
 - 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.
 - 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.
 - 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.

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

- a. There is fresh and continued pursuit of the suspect;
- b. A felony or jailable misdemeanor was involved;
- 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.

E. SEARCH BY LAWFUL CONSENT

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.

1. 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

1. Consent may be obtained from any person who has the right of
there is serious doubt a search warrant should be obtained.

- i. 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.
- ii. 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.
- iii. 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. 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.

- iv. Children: Generally, a child may not give consent to a police search of premises or property owned by the child's parents.
- v. 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.
- vi. Landlord: Generally, a landlord cannot give consent to the search of a tenant's apartment. However, a landlord may give consent to searches of common areas such as hallways and stairwells.
- vii. Hotels: A hotel or motel owner or manager cannot give consent to a search of a guest's lodgings.

B. Consent must be freely and voluntarily given; and

- 1. Officers shall notify the person from whom consent is sought of
- 2. A consent to search may be given orally but preferably, it should
- 3. Consent cannot be presumed from silence.
- 4. Consent must be free of any coercion, intimidation, or threat, so
- 5. Officers shall not gain consent through the use of
- 6. Consent shall be requested prior to search and after the police

C. The officers must be lawfully present at the time consent is requested.

- 1. A consent search shall be limited to the area specified.
- 2. Consent may be revoked at any time and the search shall cease upon revocation, unless additional factors or information have consensual 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

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2. MOTOR VEHICLE SEARCHES

A. Officers are prohibited from stopping motor vehicles without reasonable suspicion of criminal activity or motor vehicle violations.

B. If it is at all possible and practicable, a search warrant should always be obtained in the prescribed manner in advance of a motor vehicle search, as this procedure is generally preferred by the courts.

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

1. 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.

2. 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 per

3. Exigent Circumstances Search: A warrantless search of a vehicle may be made when the following elements are satisfied:

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

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.

D. Consent: A search may be conducted with the voluntary consent of the person

E. Roadblocks: Roadblocks stops (for example, to detect drivers under the influence) stopped is not arbitrary, if the safety of the public is assured by taking necessary enforcement supervisory personnel. 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 observed in plain view, including anything observed with the use of a flashlight item observed without a warrant.

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, for example, the annual motor vehicle inspection procedure is, in effect, a warrantless search.

I. All police officers shall be especially watchful and alert when stopping and seriously injured, some fatally, in taking this police action which should never be considered "routine."

- J. In stopping and searching motor vehicles, officers shall take all reasonable
alight from the vehicle and frisking them for weapons when the officer has a

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3. BOOKING INVENTORY SEARCHES

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.

4. ADMINISTRATIVE SEARCHES

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.

5. PLAIN VIEW DOCTRINE

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

1. There must be a prior lawful entry;
2. Such entry must bring the officer within "plain view" of the item seized; and
3. The item seized must be "immediately apparent" as contraband or evidence of crime.

B. Lawful entry includes:

1. Entry with a valid warrant;
2. Entry to make a lawful warrantless arrest;
3. Entry as a result of lawful consent; and
4. Entry in an emergency to render necessary aid or assistance.

C. Items are immediately apparent as contraband if the officer has probable

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1. Instrumentalities or means by which any crime was committed, (such as weapons, masks, tools, etc.);
2. Contraband (articles which may not be legally possessed, such as counterfeit money or controlled substances, etc.);
3. Fruits of any crime (such as stolen property);

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

5. 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).

6. ABANDONED PROPERTY

A. 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.

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

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.

4. Items thrown on the ground by a suspect.

7. OPEN FIELDS

A. An open field is that portion of privately owned land surrounding a dwelling to be considered part of the "house" such that it is protected by the Fourth Amendment. The "house" that is protected by the Fourth Amendment includes the grounds and buildings immediately surrounding the dwelling. person

B. Open fields may be searched without a warrant even though the terrain in question is not easily accessible to the public and even though the owner may have posted "No Trespassing" signs and may even have a locked gate.

8. SEARCHES BY PERSONS OTHER THAN LAW ENFORCEMENT OFFICERS

A. Private Individual : Evidence obtained by a private individual, as a result of searching someone else's property, who is not acting as an employee or agent of the government, is admissible.

B. Police Officer Acting as Security Guard : Evidence discovered as a result of the warrantless search conducted by a police officer acting as a private security guard is not admissible if [s]he acts beyond the scope of the private employer's business.

LEGAL PROCESS

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.10	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 74.1.1; 74.1.2; 74.2.1; 74.3.1; 74.3.2	EFFECTIVE DATE: _____
	REVISION DATE: _____

A. GENERAL CONSIDERATIONS AND GUIDELINES

Legal processes served by Massachusetts police departments are primarily criminal processes consisting of arrest warrants, search warrants, summonses, and subpoenas relating to a criminal case which are issued by any Court of Law within the Commonwealth. The only civil processes normally served by Massachusetts police departments are abuse orders, ordinarily issued by Massachusetts District Court as well as the Family and Probate Court.

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

B. POLICY

It is the policy of this department that:

Legal processes will be documented and every reasonable attempt shall be made to serve them promptly.

Prior to making an arrest on an outstanding arrest warrant, it must be confirmed that the warrant is valid and in effect.

C. PROCEDURES

Management of Legal Processes Documentation

The Police Chief or his designee is responsible for processing and recording all legal processes for the department.

THESE PROCESSES ARE DESCRIBED BELOW:

Legal processes in the possession of the department where service is to be executed within the jurisdiction of the department;

Legal processes forwarded from another agency;

Legal processes forwarded to another agency to be served outside the jurisdiction of the department; and

Service of Abuse Orders under General Laws c. 209A, 209C, 208, and 209.

Information Recording: When legal process is received by this department, the following information shall be recorded in the records management system (RMS):

Date and time received; [74.1.1(a)]

Type of legal process (criminal or civil); [74.1.1(b)]

Nature of document; [74.1.1(c)]

Source of document (issuing court, etc.); [74.1.1(d)]

Name of plaintiff/complainant and/or name of defendant/ respondent; [74.1.1(e)]

Officer assigned for service; [74.1.1(f)]

Date of assignment; [74.1.1(g)]

Court docket number; and [74.1.1(h)]

Date service is due. [74.1.1(i)]

Record of Execution and Attempts of Service [74.1.2]

A record of an attempted or successful service of legal process shall be maintained in the records management system. Legal process service records shall contain the following information:

Date and time service was executed or each attempt was made; [74.1.2 (a)]

Name of officer(s) executing/attempting service; [74.1.2(b)]

Name of person on whom legal process was served/executed; [74.1.2(c)]

Method of service/reason for nonservice: [74.1.2(d)]

- a. Last place of abode
- b. Left with a responsible person
- c. In hand
- d. By mail

Address of service attempt. [74.1.2(e)]

[INCLUDE ANY ADDITIONAL PROCESSES FOR RECORDING SERVICE AND ATTEMPTS.]

Arrest Warrants [74.3.1]

SOURCES OF WARRANTS

Warrants issued by Massachusetts courts are entered by the court under the Warrant Management System (WMS). Active entry in WMS constitutes a confirmation that the warrant is valid.

Warrants issued by other state and federal jurisdictions are available through NCIC. Prior to taking action on an NCIC warrant, it must be confirmed that the warrant is active. For further information on warrant confirmation, see the department policy on **Communications**.

WARRANT CHECKS OF SUSPECTS, OTHERS

All persons brought to the police station under arrest, in protective custody, or for questioning, or persons applying for licensing (L.T.C., F.I.D. cards, etc.), should be run for outstanding arrest warrants.

Such checks should be done not only to flag warrants, but also to enable the department to update master records information.

Prioritizing Arrest Warrants

WARRANT CATEGORIES

All warrants received by this department shall be reviewed and assigned to one of three priority categories by The Police Chief or his designee

HIGH PRIORITY

- e. Warrants for serious crimes (e.g., violent crimes, sex offenses, operating under the influence (OUI), violations of the Abuse Law, or crimes involving repeat serious offenders);
- f. Warrants for offenders with multiple serious offense warrants;
- g. Warrants for persons wanted by police for other important reasons.

MEDIUM PRIORITY

- h. Warrants for persons with multiple warrants for less serious offenses;
- i. Warrants for persons with more than a minimal amount in fines due.

LOW PRIORITY: All other warrants.

WARRANT ACTION

The Police Chief or his designee will print a list of WMS warrants for persons listed as living in the jurisdiction.

- j. The list will be made available to dispatchers and sworn officers to facilitate execution of outstanding arrest warrants.
- k. Warrants must be confirmed prior to service.

Supervisor will assign warrants for service when staffing levels and call volume allow.

WARNING LETTERS [OPTIONAL]

A Warning Letter may be mailed out to persons for whom warrants are outstanding (see Appendix A for a Sample Warning Letter).

The Police Chief or his designee will review warrants to determine which persons may be notified by mail. The following criteria should be considered:

- l. Nature of the charges for which the warrant was listed;
- m. Need for immediate arrest, if any;
- n. Criminal history;
- o. Likelihood of flight; and
- p. Whether such a notice would negatively impact the police mission.

The subject should be advised of the following:

- q. An active arrest warrant is in effect.
- r. The police department is aware of the warrant.
- s. The warrant may be cleared by the subject reporting to the court of issue and turning himself or herself in.
- t. The subject must clear the warrant by a specific date.
- u. Prior to clearing the warrant, the subject is in jeopardy of being arrested on the warrant.

Although the police do not plan to seek the subject of the warrant, an encounter with the police of this agency will probably result in the person's arrest for the warrant.

An encounter with another police agency will very likely result in their arrest for the warrant.

[Execution of Arrest Warrants within Jurisdiction \[74.3.1\]](#)

WARRANT ARRESTS GENERALLY

Arrest warrants shall be executed only by sworn officers. [74.3.2]

An officer should not make an arrest on a warrant unless [s]he confirms the status of the warrant immediately before making the arrest.

WARRANT SERVICE

Officers shall report all attempts to serve an arrest warrant to the dispatcher, who will create a log entry for such attempt.

Each attempt, whether or not successful, shall be entered into RMS.

All persons arrested pursuant to an arrest warrant shall be processed in accordance with the department policy on **Arrests**.

An officer serving an arrest warrant shall make the proper return by signing and dating the warrant for return to the court.

The officer-in-charge shall ensure that the warrant is cancelled (NCIC) or located (CJIS/WMS).

3. CONSIDERATIONS

- a. Warrants which are not served will remain in the WMS file until removed by the court.
- b. If the accused is encountered or apprehended at a later date, an arrest may be made for that warrant.

No time limit is imposed on the validity of an arrest warrant.

- v. However, a delay of service of a warrant on charges for which a defendant has not been arraigned could result in a speedy trial issue.

Note: An eight and one-half year delay was too long when the delay was due to government negligence.

- w. There cannot be unreasonable delay in service of the warrant. There are no Massachusetts cases which define "unreasonable delay."
- x. A warrant must be confirmed as valid prior to making the arrest.

[Warrants for Persons outside the Department's Jurisdiction \[74.3.1\]](#)

LEAPS/NCIC

Active arrest warrants are entered by the court and reside in WMS.

Warrants for which rendition is authorized are entered in NCIC by the department. For further information, see the department policy on **Communications**.

IMMEDIATE SERVICE OF WARRANTS

The case officer or officer-in-charge shall contact the police department having jurisdiction where the subject of the warrant is located and request service be attempted on the warrant.

If service is made, this department may pick up and transport any person arrested to this department unless the subject is otherwise bailed.

Warrants of Apprehension

Warrants of apprehension shall be promptly executed when the subject can be immediately brought before a judge of the district court.

For further information, see the department policy on ***Protective Custody***.

Summonses and Subpoenas [74.2.1]

SERVICE WITHIN DEPARTMENT'S JURISDICTION

The process may be mailed, served in hand, or left at the last and usual place of residence.

When the process is served, the return of service shall be filled out and signed by the serving officer and the process forwarded to **[Court Prosecutor]** who shall update the record in RMS. The return of service shall be forwarded to the court of issue.

If the process cannot be served for any reason (no longer at address, no such person, etc.):

- y. The officer attempting service shall notify the dispatcher who will annotate same in the incident log.
- z. The officer will complete the appropriate report and return it to **[Court Prosecutor]** for return to the court of issue.

A summons or other legal process for a juvenile shall be served to the parent(s) or guardian of the juvenile or both the juvenile and the parent(s) or guardian.

SERVICE OUTSIDE DEPARTMENT'S JURISDICTION

Process shall be mailed to the subject's last and usual place of residence and an entry made in the RMS system indicating that the process was mailed. The name of the employee processing the service shall be recorded as the officer making the return of service and "mailed" indicated as the method of service.

If circumstances require the process to be delivered in hand, the process shall be mailed or faxed to the police department where the subject is located, so that it may be served in hand. If the process has not been returned in a prescribed period of time, a follow-up shall be undertaken.

When the return of service is returned to this department from another police jurisdiction making service, the date of service and the department making the service shall be recorded in the RMS system. The return of service shall then be forwarded to the court of issue.

Abuse Orders [74.2.1]

GENERALLY

Abuse Orders refer to restraining orders, no contact orders and orders to vacate issued under GL:

- aa. Chapter 208;
- bb. Chapter 209;
- cc. Chapter 209A; or
- dd. Chapter 209C.

Careful attention should be paid to such court orders to determine:

- ee. Effective date;
- ff. Expiration date;
- gg. Due date for return to court;
- hh. Any specific instructions as to where or when the orders are to be served or enforced;
- ii. Information regarding the person(s) named as plaintiff(s);

jj. Protected parties; and

kk. Other details.

For further information, see the department policy on ***Domestic Violence***.

RECEIPT OF ORDER: When Abuse Orders are received, the following information shall be documented **[IN THE DEPARTMENT RMS SYSTEM]** :

Name and address of the defendant;

Department or court issuing the order;

Violation;

Date of court appearance; and

If mailed or faxed to another jurisdiction, name of department and date mailed or faxed.

SERVICE OF ORDER

Abuse orders shall be promptly served and the return of service returned to the issuing court.

The officer assigned to serve an abuse order shall make a concerted attempt to serve the order. Abuse orders must be served in hand unless otherwise authorized by the issuing court.

If the address is incorrect, the officer shall attempt to obtain a new address and make the service. If the subject is located in another jurisdiction, the order shall be faxed or delivered to that jurisdiction for service.

Officers who are unsuccessful in serving an abuse order shall, prior to the end of their shift, turn the abuse order into the officer-in-charge for further attempts at service.

Every attempt to serve an abuse order, whether successful or not, shall be documented in the department RMS system.

RETURN OF SERVICE

When an abuse order has been served, the officer making service shall make the return on the abuse order.

The Officer in charge or Dispatcher shall note in the RMS system the date of service and the officer making service. The order shall be returned to the court of issue.

APPENDIX A

WARNING OF YOUR ARREST

TO: _____

(Name)

DATE: _____

(Address)

(City/Town)

(Zip)

This is to notify you that we have a warrant for your arrest from the _____ Court. The warrant number is _____ . The offense is _____ .

Please notify the police department before you go to court to have this warrant removed or otherwise canceled. **If the warrant is removed or otherwise canceled, notify the police department in person immediately.** If this warrant is not removed or canceled, you will continue to be subject to arrest without further notice. Your failure to notify the police that this warrant has been removed or canceled may result in your being arrested unnecessarily.

Contact the _____ Police Department* in person or call this number _____ .

*Note: It may be advisable to omit these references to notifying and contacting the police department; instead, direct the person named in the warrant to go to the court as soon as possible.

APPENDIX B

LEGAL PROCESS SERVICE REPORT

Name of Person Subject to Legal Process: _____

Warning Letter Mailed on: _____

Results of Letter: _____

Attempts to Serve:

1st Attempt

Date: _____ Time: _____ Address: _____

Officer: _____

Results/Suggestions: _____

Warning Card left where/with whom: _____

2nd Attempt

Date: _____ Time: _____ Address: _____

Officer: _____

Results/Suggestions: _____

Warning Card left where/with whom: _____

3rd Attempt

Date: _____ Time: _____ Address: _____

Officer: _____

Results/Suggestions: _____

Warning Card left where/with whom: _____

Arrest Made: Date: _____ Officer: _____

Arrest Report Number: _____

APPENDIX C

WARNING OF YOUR ARREST

TO: _____ DATE: _____

(Name)

(Address)

(City/Town)

(Zip)

From the ____Stow_____ Police Department

An attempt was made to serve a warrant for your arrest at the date and time noted above. The warrant was issued by the _____ Court. The warrant number is _____.

Please notify the police department* before you go to court to have this warrant removed or otherwise canceled. **If the warrant is removed or otherwise canceled, notify the police in person immediately.** If the warrant is not removed or canceled, you will continue to be subject to arrest without further notice. Your failure to notify the police that the warrant has been removed or canceled may result in your being arrested unnecessarily.

Contact the ____Stow_____ Police Department* in person or call this number _____.

*Note: It may be advisable to omit these references to notifying and contacting the police department; instead, direct the person named in the warrant to go to the court as soon as possible.

In Effect: 01/01/2015

Review Date: 01/28/2020 @ 2359

ARRESTS

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.11	ISSUE DATE: 9/11/14
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.5; 1.2.6; 1.2.7; 1.3.1; 72.7.1 (d); 74.1.2; 74.1.3; 74.3.2; 82.3.6	EFFECTIVE DATE: 1/1/15
	REVISION DATE: 1/28/20

GENERAL CONSIDERATIONS

The decision to deprive individual citizens of their freedoms by placing them under physical arrest is one of the most critical decisions made by law enforcement officers. This policy and procedure is designed to provide the officer with the information necessary to make lawful arrests in the performance of his/her duties.

POLICY

It is the policy of the Police Department:

- To ensure that when persons are arrested and taken into police custody, all constitutional and statutory rights to which they are entitled will be provided at the time of their arrest and while in custody thereafter; [1.2.3]
- That a warrant should be obtained prior to making an arrest when the offender does not create a threat to the public, or is not likely to flee, and especially where less serious offenders are involved; and
- When appropriate circumstances exist, officers may exercise discretion and not make an arrest. In such limited cases, citations, summonses, informal resolutions, warnings and referrals to other agencies may be alternatives to arrest. [1.2.6; 1.2.7] Circumstances where alternatives to arrest may be appropriate including the following:
 - I. When an arrest could aggravate community conflict or possibly precipitate a serious disorder.
 - II. When there is a greater priority to respond to a more serious crime or to an urgent public emergency.
 - III. In neighborhood quarrels, noisy parties, landlord-tenant problems and minor disturbances of the peace where no serious crime has been committed and the officer can successfully act as a mediator.
 - IV. In minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance.

V. In other minor offenses where a summons can effectively accomplish the intended purpose.

VI. Minor motor vehicle offenses.

PROCEDURES

A. DEFINITIONS

A. **Arrest:** An arrest is defined as the exercise of custody over a person, which deprives that person of his/her liberty for more than a limited period of time, in order that s/he may be forthcoming to answer for the commission of a crime. An arrest is significant for numerous reasons:

1. It constitutes a critical stage of a criminal process.
2. It constitutes a substantial interference with rights of freedom.
3. It constitutes a very visible police activity within the community.

Whether or not an arrest has occurred will depend on the circumstances of each incident. However, a lack of formal activity does not preclude a finding of arrest. Merely because an officer fails to use the word “arrest” does not necessarily negate the existence of an arrest. Objective factors such as physical compulsion as well as subjective factors such as the reason for submission may be considered; when sufficient to establish arrest, important consequences may result (civil or criminal liability of the officer, admissibility of evidence, etc.). An arrest may be made with a warrant, or without a warrant in certain circumstances. However, arrest with a warrant is always preferred.

An arrest with or without a warrant may be made only by sworn law enforcement officers. [74.3.2]

B. **Felony:** Any crime punishable by death or imprisonment in the state prison.

C. **Misdemeanor:** Any crime less than a felony.

D. **Breach of the Peace:** A violation of public order or decorum which disturbs the public peace and tranquility; or any act of disorderly conduct which disrupts the public peace.

E. **Arrest Warrant:** An order in writing, issued by an authorized court official, directed to officers authorized to serve criminal process, commanding them to arrest the person named or described therein and to bring such person before the court to answer to a charge of a crime.

B. PROBABLE CAUSE

- a. An officer must have probable cause to make an arrest with or without a warrant. Probable cause means that based on all facts and circumstances within the officer’s knowledge, and of which s/he has reasonable trustworthy information, there is sufficient evidence to warrant a reasonable and prudent person to believe that the person to be arrested has committed, is committing or is attempting to commit a crime. The evidence required to make an arrest is more than what is required for mere suspicion, but less than what is needed to support a conviction.

Note It should be remembered that the ultimate goal of an arrest is the supporting conviction obtained in a court of law.

- b. Officers may often encounter difficulty when establishing probable cause. While the courts and defendants have the benefit of hindsight, an officer in the field does not. Whether or not his/her arrest is based on probable cause will depend on a variety of factors, and unless the offense is committed in his/her presence, then usually no single fact alone is controlling.
 - 1. Of great importance, therefore, is the totality of circumstances surrounding the arrest. Each officer should be aware of the type of circumstances which have been looked to in establishing probable cause:
 - a. Direct observation of the police officer;
 - b. Knowledge of the prior criminal record or bad reputation of the person arrested;
 - c. Evasive actions or flight from the scene by the suspect;
 - d. Evasive answers and/or conflicting stories;
 - e. Time of day or night;
 - f. Past experience of the officer in similar criminal situations; and/or
 - g. Reliable hearsay.
 - 2. Hearsay statements often present additional problems. Usually, they are derived from three principal sources:
 - a. Statements from the victims and/or witnesses;
 - b. Statements from other police officers; and/or
 - c. Statements from informants.
 - 3. It is this latter source, such hearsay is closely scrutinized when used to establish probable cause. The officer relying on the hearsay statement of an informer must show:

The veracity of the information; and
Knowledge and credibility of the informant.

c. ARREST WITH A WARRANT [1.2.5]

- i. An arrest warrant issued pursuant to a complaint must be founded upon probable cause supported by oath or affirmation. Officers shall recite the facts that constitute probable cause in the complaint.
- ii. A warrant must be obtained from the proper authority and must be signed by the authorized **court official issuing it. As defined by G.L. c. 276, § 21, Justices of the Supreme, Judicial, Superior or District Courts** may issue an arrest warrant.
- iii. A non-criminal immigration detainer (Form I-247 Request) is not an arrest warrant, nor does it provide probable cause for arrest.

D. PROCEDURES FOR OBTAINING AN ARREST WARRANT

- a. The officer shall, under oath and affirmation, file a written complaint with the authorized official.

- b. The warrant must be obtained from, and signed by the proper authority as set forth above.
- c. The full legal name and any other available identifiers, or a sufficient description of the person to be arrested must appear in the arrest warrant. Therefore, so-called “John Doe” warrants, without such description, are illegal and void.
- d. The substances of the charge must appear in the warrant.

E. ARREST WARRANT SERVICE

The following criteria must be met in order for an officer of this Department to affect the arrest of a person by virtue of a warrant:

- i. The arresting officer verifies or causes to be verified that there is actual knowledge to believe that there is a warrant in full force and effect and that the person s/he has detained is in fact the person on said warrant. [74.1.3]
- ii. The arresting officer verifies or causes to be verified that the warrant has been issued by a court of competent jurisdiction and authority. [74.1.3]
- iii. The arrest warrant or warrant management system (WMS) entry should clearly describe the offense for which the arrest is to be made.
- vi. Service of the arrest warrant should be made promptly to prevent possible dismissal of the complaint or indictment. An officer who willfully delays service of a warrant is subject to a statutory fine.
- vii. A person arrested on a warrant, or otherwise taken into custody by a police officer, has a right to know the grounds for such arrest.
 - a. If the officer does not know of the offense charged at the time of arrest, s/he shall inform the defendant of such within a reasonable time thereafter, but prior to the completion of the booking process.
 - b. Officers are not required to have the arrest warrant in their physical possession at the time of arrest, however, upon request s/he shall show the warrant or a copy of the WMS entry to the defendant as soon as possible.
 - c. If the officer does not have the warrant in his/her possession at the time of arrest, s/he shall inform the defendant that a warrant has been issued and of the offense charged.

H. WARRANTS ISSUED BY OTHER JURISDICTION

- a. **Other County:** When a person subject to a warrant issued by another county is arrested, [s]he shall be brought before a court of the county where the arrest was made in order to be admitted to bail.
- b. **Other State:** A person who is the subject of an out-of-state warrant may not be arrested in Massachusetts on that warrant. Rather, a warrantless arrest may be made on a Massachusetts Fugitive from Justice Charge or a Massachusetts Fugitive from Justice Warrant may be applied for at the District Court, or other appropriate Court, in accordance with G.L. c. 276, § 20A.

D. ARREST WITHOUT A WARRANT [1.2.5]

- i. Warrantless arrests merit more detailed analysis and study because of the subjective factors involved. If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful and any evidence seized may be declared inadmissible. Any confession or admission made by the person arrested may also be excluded, if made after an unlawful arrest.
- ii. Arrest without a warrant is constitutionally valid if and only if the arresting officer has **probable cause** (as described above) and the arrest is for one of the following:
 - a. A felony committed in the arresting officer's presence or on reasonable and justifiable belief that a felony has been or is being committed; or
 - b. A misdemeanor committed in the officer's presence and causing or threatening to cause a breach of the peace, which is continuing or only briefly interrupted.
 - c. A misdemeanor not amounting to a breach of the peace that is committed in the officer's presence and the arrest is authorized by statute.
 - d. Certain violations of G.L. c. 94C even though the misdemeanor is not committed in the officer's presence.
 - e. A violation of an active 209A order, though not committed in the officer's presence.
- C. Arrest without a warrant is constitutionally valid when probable cause exists for that arrest. In other words, when the facts within the officer's knowledge were sufficient to allow a reasonable and prudent person to believe that the individual arrested had committed or was committing a crime. Probable cause does not require evidence that would justify a conviction. However, arrest on mere suspicion is illegal.
- iv. There is one exception to the necessity that arresting officers have, either personally or by first-hand knowledge, all the facts necessary for probable cause. This is when the collective knowledge (sufficient to establish probable cause) of the police department as a whole is imputed to an individual officer when s/he is requested or authorized by his/her supervisors to make an arrest.
- v. Following an arrest without a warrant, the arresting officer shall clearly articulate, in his/her report, those facts and circumstances which established probable cause.

E. PROCEDURES REGARDING ARREST [1.2.5]

- A. Arrest shall never be made to show authority or to vent personal feelings.
 - 1. The attitude of the offender should not be the determining factor in making an arrest.
 - 2. Verbal abuse is never a sufficient justification for an arrest.
 - 3. Arrest shall never be a substitute for resolving a problem when less severe methods are available.

B. To effectively and lawfully execute an arrest there must be:

- a. An intention on the part of the police officer to make an arrest;
- b. The knowledge and understanding of that intent must be communicated to the person to be arrested; and
- c. Either a physical seizure or submission to the officer by the arrested person.

C. At the time of arrest, unnecessary conversation shall be avoided and any orders or statements to the person(s) arrested shall be clear and brief. However:

- a. The arresting officer shall identify him/herself as a police officer.
- b. Whenever possible, the person being placed under arrest shall be expressly informed that he/she is under arrest.
- c. An officer shall state the reason for the arrest and allow examination of the arrest warrant, if any, by the person arrested or other persons acting on his/her behalf. These procedures are not binding when the officer is met with resistance.

D. The arresting officer shall not act in a careless or routine manner but shall take all necessary steps to ensure the safety of him/herself and other persons. Such steps shall include, but are not limited to:

- 1. Obtaining assistance when necessary whether before or after the arrest. This is particularly advisable when:
 - a. There is more than one person to be arrested;
 - b. A dangerous crime is involved, usually a felony of a serious nature;
 - c. Prior experience has shown the need for assistance in similar situations; and/or
 - d. If the person to be arrested is believed to be armed and/or dangerous
- 2. Seizing any instruments capable of inflicting bodily injury or causing death.
- 3. Making a search of the area within the immediate reach and control of the person(s) arrested.
- 4. Keeping the person(s) arrested in front of the officer at all times. If more than one officer is present, the additional officer shall never pass or position him/herself between the arresting officer and the person arrested.

E. Force shall only be used when there is resistance or reasonable certainty of resistance. The amount of force shall be restricted to that which is reasonable, necessary, and proper for safely taking the detainee into custody, or for overcoming any resistance that may be offered. [1.3.1]

E. The person(s) arrested shall be given the Miranda warnings prior to interrogation regarding guilt. [1.2.3 (b)]

- i. Warnings should not be given from memory. They should be read from a card or other permanent record of them to ensure that none are omitted. This procedure is beneficial for other reasons:

- a. The card itself can later be introduced as evidence;
 - b. The officer has tangible proof that s/he has not relied solely on his/her memory; and
 - c. The suspect can then be allowed to read the card him/herself.
 - ii. Each officer giving the warning shall ask and verify that the person arrested has heard and understood the warnings to be given.
 - iii. No questioning of the person shall take place until the warnings have been given. However, officers must note that the Miranda Warnings are aimed at “custodial interrogation”. Therefore, if a suspect freely chooses to divulge information without questioning, there is no violation of his/her rights simply because s/he was not given his/her warnings. There is no requirement that an officer prevent the suspect from continuing to talk, and whenever statements are made voluntarily and with no compulsion, such statements shall be noted. However, if an officer wishes to gain further information through questioning, the warnings shall be given before pursuing the matter further.
 - iv. Any custodial interrogations conducted at the station or other place of detention shall be in compliance with this department’s policies and procedures pertaining to the taping of interrogations.
- G. The person(s) arrested shall be promptly and safely transported in compliance with the departmental policies and procedures for **Detainee Transportation** .
- H. Upon arrival at the Police Department, the person(s) arrested shall be informed of the right to use the telephone and shall be permitted to use the phone within 1 hour thereafter. [72.7.1 (d)]

F. EXTRA-TERRITORIAL ARREST

a. ARREST WITH A WARRANT

- 1. An arrest with a warrant may be made at any-time and in anyplace throughout the Commonwealth.
- 2. When the arrest is to take place outside the jurisdiction of the arresting officer, local authorities shall be notified and requested to make the warrant arrest.
- 3. In cases where the agency having jurisdiction is unable to assist in the arrest, Officers shall be authorized to make the warrant arrest after notifying the agency of the existence of the warrant and their intentions.

b. ARREST WITHOUT A WARRANT

- a. A proclamation of a state emergency declared by the governor allows an officer to make an arrest where s/he has been stationed.
- b. An officer may “on fresh and continued pursuit” pursue and arrest an offender in any other city or town in the Commonwealth if:
 - a. The offense is one for which a warrantless arrest is authorized;
 - b. The offense was committed in the officer’s presence; and

- c. The offense was committed in the officer's jurisdiction.
 - c. An officer may "on fresh and continued pursuit" pursue and arrest a person who has committed a felony in Massachusetts and may pursue and arrest such person in any other state if that other state has in force similar interstate fresh pursuit laws. (New York and all of New England have such laws). [41.2.2 (h)]
 - d. An officer may make arrests in another community when his/her services have been requested by the proper official in that community, or while on official business the officer observes a present danger to the public safety and the department of jurisdiction authorizes his/her intervention.
 - e. An officer may exercise his/her citizen's arrest powers. For example, any citizen may make an arrest for a felony if a felony has, in fact, been committed. When a police officer exercises citizen's arrest powers s/he need only have probable cause to believe that a felony has been committed. Such citizen's arrest powers may be exercised in another state.
- C. It is important to note that statutes regarding the jurisdictional boundaries of courts do not enlarge or otherwise affect an officer's arrest powers within his/her jurisdiction.

G. ARRESTS IN DWELLINGS

- a. Police Officers may enter the dwelling of a person named in an arrest warrant.
 - 1. An officer may enter a suspect's home to serve an arrest warrant without obtaining a search warrant, provided there is reason to believe the suspect is there and a valid arrest warrant exists for him/her.
 - 2. To serve an arrest warrant on private property, police officers should first knock and announce their authority and purpose (unless the warrant issued is a "No Knock and Announce Warrant") and wait a reasonable period to be admitted.
 - 3. Once a reasonable time has passed and the officers have not been voluntarily admitted, and there is reasonable cause to believe that the wanted person is on the premises, officers may use whatever force is reasonably necessary to gain entrance. However, officers must obtain authorization from the Officer-in-Charge prior to an entrance, unless exigent circumstances warrant quick action.

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

- 4. If the police officers reasonably believe that announcing their presence and purpose will endanger themselves or others, or will result in the escape of the wanted person or the destruction of evidence, they may dispense with the announcement of authority and purpose. In such cases, they may attempt to deceive the suspect into voluntarily opening the door, or gain entrance by a ruse or ploy, if this will result in a safe and successful apprehension with less destruction of property or risk of harm to persons.
- B. SERVICE OF WARRANT AT THE DWELLING OF A PARTY NOT NAMED IN THE ARREST WARRANT

1. If police seek to arrest a person in someone else's dwelling they must first obtain a search warrant, unless:
 - i. The owner/controller of said property gives the officer consent to enter the residence; or
 - ii. There is probable cause, not just suspicion, to believe that the person named in said arrest warrant is within the dwelling or building to be entered, and exigent circumstances are present which excuse the failure to obtain a search warrant. Any such entries or attempted entries of this nature shall only be made under the supervision of and in the presence of the Officer-in-Charge; except if exigent circumstances require immediate entry before the superior officer can arrive on the scene. In this case, express authorization for such entry must be given by the Officer-in-Charge.
2. Exigent or emergency circumstances necessary to excuse the failure to obtain a search warrant before entering a dwelling to make an arrest will be determined by a combination of the following factors:
 1. The crime was one of violence or a showing that the suspect is armed.
 2. There is a clear demonstration of probable cause to arrest.
 3. There is a strong reason to believe the suspect is in the dwelling.
 4. The likelihood that the suspect would escape if not apprehended immediately.
 5. Whether the entry can be made peaceably.
 6. Whether the entry would be in the nighttime (or could be made in the daytime when court officials are more readily available).

C. WARRANTLESS ARRESTS IN A DWELLING

1. With regard to making a warrantless arrest in a dwelling, police should first determine whether a warrantless entry and arrest is allowed by law. Generally, no arrest warrant (or search warrant) is required to arrest a person who is in the public. However, with regard to making an entry into and arrest in a dwelling the following standards apply:
 - a. If the arrest pursuit was set in motion in public, the officer may make a hot pursuit warrantless entry into a private dwelling if the suspect runs into the dwelling.
 - b. If police seek to arrest a person in that person's own dwelling they must obtain an arrest warrant, unless:
 - i. lawful consent to enter is granted; or
 - ii. exigent circumstances are present which excuse the failure to obtain the warrant.
 - c. If police seek to arrest a person, without an arrest warrant, in someone else's dwelling they must first obtain a search warrant, unless:
 - i. lawful consent to enter is granted; or
 - ii. exigent circumstances are present which excuses the failure to obtain the search warrant. [74.3.1]

H. ARREST REPORTING PROCEDURES

- A. Upon the arrest or filing of formal charges for a misdemeanor or felony, the arresting officer shall complete all required departmental reports. [1.2.5 (a)]

- B. An arrest number shall be assigned to every individual arrested by officers of this Department. Each time a person is arrested a new arrest number shall be generated. This is committed to establishing a well-organized criminal history file, in which, once a person has been arrested, a reference to all subsequent arrests and information concerning that person can be obtained under his/her social security number and/or name. [82.3.6]
- C. Upon the arrest or filing of criminal charges against any person known or identified as a full or part-time police officer in this or any other state, the arresting/charging officer shall inform the Officer-in-Charge, who will inform the Chief of Police of the situation. The Chief, or the Officer-in-Charge, shall then notify the arrested officer's department, by telephone or in writing, and inform his/her Chief of Police of the situation.

I. OFF-DUTY ARRESTS

- A. Off-duty officers are often faced with situations involving criminal conduct that they are neither equipped nor prepared to handle in the same manner as if they were on duty. This could lead to unnecessary injuries to off-duty officers and confusion for those on duty officers arriving at the scene trying to correctly assess the facts.
- B. Off-duty arrests will be permitted when a department member is off duty and within legal jurisdiction of this police department when all of the following three circumstances exist:
 - 1. There is an immediate need for the prevention of a crime or apprehension of a subject;
 - 2. The arresting officer is in possession of appropriate police identification; and
 - 3. There is a likelihood that the delay posed by the calling and arriving of on-duty personnel would:
 - a. Allow the subject to escape or remain unknown;
 - b. Allow further criminal activity; or
 - c. Escalate the situation to a more serious degree than would exist if the arrest were made immediately.
- A. Off-duty officers shall refrain from enforcing minor violations (such as parking or minor motor vehicle offenses) unless the officer has reason to believe that the violation may progress to a more serious crime or lead to personal injury.
- B. Off-duty officers shall refrain from making arrests in situations in which they are personally involved. "Personally involved" for the purposes of this policy and procedure shall mean that the officer was involved with the suspect in a noncriminal dispute or other matter which escalates to the point where a crime has been committed and an arrest can be made. In these incidents, on-duty officers will be used to assess the situation and make any decisions on further legal action. This does not apply, however, to those instances where the police officer him/herself is the victim. In these incidents, the on duty Officer-in-Charge shall be notified and will intervene. The Officer-in-Charge shall submit a report of the incident to the Chief of Police.

- C. While off-duty, it is the responsibility of each member of this department to be alert to any suspected or observed criminal activity and report that activity to on-duty officers, or take actions as authorized in this policy.
- D. When an off-duty arrest becomes necessary, the arresting officer shall abide by all department regulations concerning arrests. The officer shall use only that force necessary to detain the subject securely and then shall contact the department for assistance. The officer shall file an incident report immediately and shall notify the on-duty shift commander of the circumstances surrounding the arrest.

In Effect: 01/01/2015

Review Date: 01/28/2020 @ 2359

EYEWITNESS IDENTIFICATION

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.12	ISSUE DATE: 9/11/14
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 42.2.11; 42.2.12	EFFECTIVE DATE: 1/1/15
	REVISION DATE: 1/28/20

GENERAL CONSIDERATIONS

Eyewitness identification procedures must be conducted in a fair, objective, and non-suggestive manner. When identification procedures conducted by the police are unnecessarily suggestive, and conducive to irreparable mistaken identification, it is a violation of due process that may result in a wrongful conviction, or the exclusion of evidence. Therefore, the identification of criminal offenders must be approached with extreme caution to ensure the proper administration of justice, and to prevent the court from excluding or limiting eyewitness evidence if it determines that police methods were unnecessarily suggestive.

The identification of a suspect by an eyewitness can be compelling evidence. However, many people that have been convicted of serious crimes based on mistaken eyewitness identification have later been exonerated by scientific evidence. Eyewitness misidentification is the single greatest cause of wrongful convictions nationwide, playing a role in approximately 75% of all convictions overturned through DNA testing. The Police Department recognizes that it is as much the responsibility of the police to protect the innocent from misidentification, as it is to assist in the conviction of the guilty.

POLICY

It is the policy of the Police Department that:

- An officer may show a single photograph of a suspect to a witness for the purpose of confirming the suspect's identity in a case where the suspect and witness know each other.
- Eyewitnesses will be given specific instructions prior to being shown a suspect. [42.2.11 (d) ; 42.2.12 (d)]

- Photo arrays and line-ups will be conducted by displaying the suspect and fillers sequentially.
- Photos arrays, line-ups, and voice identifications will be conducted using blind administration.
- When an eyewitness identifies a suspect, the officer will immediately ask the witness how certain he or she is of the identification. [42.2.11 (e) ; 42.2.12 (e)]
- When an eyewitness identifies a suspect, the officer will not provide the witness with feedback as to the accuracy of the identification. [42.2.11 (f) ; 42.2.12 (f)]
- The Department will avoid multiple identification procedures featuring any one suspect with the same witness.
- The Department does not use composites, and the use of artist sketches is only permitted under strict guidelines.
- If an eyewitness identifies a suspect, officers will attempt to gather additional evidence to confirm or dispel the identification.
- The Department will provide training in eyewitness identification to all sworn personnel.

PROCEDURES

I. DEFINITIONS

- A. Suspect:** A person who officers believe may have committed a crime.
- B. Offender:** The perpetrator of the crime.
- C. Filler:** A person, or a photograph of a person, that is included in a line-up or photo array, but who is not a suspect.
- D. Show-up:** The live presentation of a suspect to an eyewitness shortly after the commission of a crime.
- E. Field View:** An eyewitness viewing of a group of people in a public place based on the theory that the offender may be among the group. A field view differs from a show-up in that it may be conducted well after the commission of the crime, and may be conducted with or without a suspect in the group.
- F. Photo Array:** A group of photographs shown to an eyewitness for the purpose of identifying an offender.
- G. Line-up:** The live presentation of a group of people to an eyewitness for the purpose of identifying an offender. A line-up differs from a field view in that it is conducted in a controlled setting, such as a police station, a known suspect is present, and the participants are aware that an identification procedure is being conducted.

- H. Voice Line-up:** A procedure whereby a witness is permitted to hear the voices of several people for the purpose of obtaining an identification of the offender's voice.
- I. Blind Administration:** A procedure whereby the officer showing a photo array or conducting a line-up cannot tell when the witness is viewing the suspect.

II. GENERAL EYEWITNESS IDENTIFICATION PROCEDURES

- A.** When questioning an eyewitness, officers should avoid the use of leading questions and should refrain from providing the witness with information that could affect the witness's memory.
- B.** Prior to conducting an identification procedure, officers should obtain and document a full description of the offender from the witness. Officers should not take an offender's description from one eyewitness in the presence of another witness. [42.2.11 (c)]
- C.** Whenever practicable, the officer should videotape or audiotape a photo array or line-up. If not, the officer should write down the witness' exact words and incorporate them into his report. The witness should be asked to initial and date the front of any photograph selected. [42.2.11 (b)]
- D.** A report of every identification procedure, whether an identification is made or not, shall be submitted. The report shall include a summary of the procedure, the persons who were present for it, instructions given to the witness by the officer (this should be accomplished by submitting the appropriate witness instruction form), any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure. When submitting reports about photo arrays, officers should include a copy of the array. [42.2.11 (g) ; 42.2.12 (g)]
- E.** A suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses. Witnesses who have viewed the suspect should not be permitted to communicate with those who have not until the identification procedure is completed. [42.2.11 (c)]

III. RIGHT TO COUNSEL DURING IDENTIFICATION PROCEDURE

1. Once a suspect has been arraigned or indicted, his right to have counsel present at an in-person identification procedure attaches. Suspects have no right to the presence of counsel simply because a complaint has been filed, even if an arrest warrant has been issued.
2. No right to counsel attaches for non-in-person identification procedures, such as those involving photographs, whether conducted before or after the initiation of adversarial criminal proceedings.

IV. WITNESS INSTRUCTIONS

Whenever practicable, an officer conducting an identification procedure shall read the witness a set of instructions from a departmental form (show-up card, or photo array or line-up instruction form) prior to the witness viewing the show-up, photo array or line-up. Those instructions shall include the following: [42.2.12 (d)]

- a. The person who committed the crime may or may not be the person, or in the set of photographs you are about to view.
- b. It is just as important to clear innocent persons from suspicion as to identify the guilty.
- c. The individuals you view may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change. (Not for use during show-ups or voice identifications.)
- d. Regardless of whether or not you select someone, the police department will continue to investigate the incident.
- e. The procedure requires the officer to ask you to state, in your own words and without using a numerical scale, how certain you are of any identification.
- f. If you do select someone, please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
- g. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case.

V. SHOW-UPS

- 1. Detaining a suspect who fits the description of an offender in order to arrange a show-up is lawful where the officer has reasonable suspicion that the suspect has committed a crime, even if probable cause to arrest has not yet developed. [42.2.12 (a)]
- 2. A show-up should not be conducted more than two hours after the witness' observation of the offender. Show-ups should be conducted live whenever possible and not photographically. Officers should not attempt to obtain identifications using RMV photos on the computers in their cruisers, unless a dire emergency exists. [42.2.12 (a)]
- 3. When a show-up is arranged in an emergency situation, where either a witness or a victim is in imminent danger of death or in critical condition in a hospital, for example, and the circumstances are such that an immediate confrontation is imperative, the emergency identification procedure shall be conducted in a non-suggestive manner. [42.2.12 (a)]
- 4. Every show-up must be as fair and non-suggestive as possible. Specifically, if the suspect is handcuffed, he should be positioned so that the handcuffs are not visible to the witness. Show-ups should not be conducted if the suspect is seated in the rear of a police cruiser, in a cell, or in any other enclosure associated with custody.
- 5. If the witness(es) fail(s) to make a positive identification, and sufficient other evidence has not developed to provide probable cause to make an arrest, the suspect must be permitted to leave. His identity shall be recorded and included in the officer's report.

6. A suspect stopped within a short time after the commission of the crime may be taken to a location where he can be viewed by a witness for possible identification, or be detained at the site of the stop and the witness taken there to view him. Transporting the witness to the site of the stop is preferred if circumstances permit. The manner in which the suspect and witness is transported shall comply with Department policies and procedures. [42.2.12 (b)]
7. Suspects should not be brought into a crime scene as contamination may result. For the same reason, clothing articles found at the crime scene should not be placed on or in contact with a suspect. A suspect should not be brought back to the home of a victim or witness unless that was the scene of the crime.
8. Police officers must not do or say anything that may convey to the witnesses that they have evidence of the suspect's guilt. Officers should turn down their radios to reduce the likelihood that the witness they are transporting may overhear information about the stop of the suspect.
9. The suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses. Witnesses who have viewed the suspect shall not be permitted to communicate with those who have not until the identification procedure is completed. [42.2.12 (c)]
10. Once a witness has positively identified the suspect at a show-up, officers should not conduct additional show-ups with the same suspect. Subsequent identifications may be attempted by means of a photo array or line-up.
11. Officers will not provide not provide the witness with feedback as to the accuracy of the identification. [42.2.12 (f)]
12. Officers may transport victims or witnesses in police vehicles to cruise the area where a crime has just occurred in order for them to attempt to point out the offender. While checking the area, officers must be careful not to make any statements or comments to the witnesses which could be considered suggestive. [42.2.12 (b)]
13. Officers shall make written notes of any identifications and any statements made by witnesses at the time of confrontation with the suspect. Once a witness has indicated his opinion that the suspect is the offender, the officer shall ask the witness how certain he is of the identification. Officers should ask the witness not to use a numerical scale, but rather to indicate certainty in his own words. All statements by the witnesses shall be incorporated into the officers' report. [42.2.12 (e); 42.2.12 (g)]

N. PREPARING A PHOTO ARRAY

- VI. When assembling a photo array, officers should use a current and accurate photograph of the suspect. They should select filler photographs based on their similarity to the witness' description of the offender, not to the appearance of the suspect. Nothing about the suspect or his photo should make him stand out. [42.2.11 (a)]
 - a. An array should contain seven fillers, but in no event fewer than five, and only one suspect photograph. All photographs should be of the same general size and basic composition. Officers must not repeat fillers with the same witness from one array to next and should

mark the back of each photo with numbers one through eight. None of the photos may bear markings indicating previous arrests.

- b. If the suspect has a unique or unusual feature, such as facial scars or severe injuries, the officer preparing the array should create a consistent appearance between the suspect and fillers by adding the feature to the fillers or by covering the area on every photograph.
- c. Once the array has been assembled, the officer should examine it to ensure that nothing about the suspect's photo makes him unduly stand out.

D. SHOWING A PHOTO ARRAY

- VII. The showing of a photo array must be conducted in a manner that promotes reliability, fairness and objectivity.
- a. Whenever practicable, officers should videotape or audiotape the showing of a photo array.
 - b. Each witness must view the photographs independently and out of the presence and hearing of the other witnesses. [42.2.11 (c)]
 - c. Officers must avoid suggestive statements that may influence the judgment or perception of the witness.
 - d. A second officer who is unaware of which photograph depicts the suspect, known as a blind administrator, should show the photographs to the witness. This technique, called double-blind administration, is intended to ensure that the witness does not interpret a gesture or facial expression by the officer as an indication as to the identity of the suspect. It also allows the prosecution to demonstrate to the judge or jury that it was impossible for the officer showing the photographs to indicate to the witness, intentionally or unintentionally, which photograph he should select.
 - e. If it is not practicable to use double-blind administration, a blinded technique such as the folder shuffle should be used. In all cases, officers shall employ techniques that ensure that no officer present for the showing of an array can tell when the witness is viewing a photograph of the suspect.
 - f. The investigating officer or the second officer (the administrator) shall carefully instruct the witness by reading from a departmental Photo Array Instruction Form, and the witness shall be asked to sign the form indicating that he understands the instructions. The investigating officer and the administrator shall also sign and date the form.
 - g. When the double-blind technique is used, the officers should explain to the witness that the officer showing the array does not know the identity of the people in the photographs.
 - h. The officer shall show the photographs to the witness one at a time and ask the witness whether or not he recognizes the person.
 - i. When the witness signals for the next photograph, the officer should move the first photograph so that it is out of sight and ask the witness whether he recognizes the next photograph. The procedure should be repeated until the witness has viewed each photograph.

- j. If the witness identifies a photograph, the officer should ask the witness how certain he is of the identification. Officers should ask the witness not to use a numerical scale, but rather his own words.
- k. If the witness identifies a photograph before all the photographs have been viewed, the officer should remind the witness that he is required to show the rest of the photographs.
- l. Witnesses who ask to see a photo or line-up participant a second time should be shown the entire array or lineup. Array or lineups should not be shown more than two times.
- m. The photo array should be preserved as evidence in the same order as when the identification was made.
- n. If more than one witness is to view an array and a witness has already marked one of the photos, a separate unmarked array shall be used for each subsequent witness.
- o. When an officer is showing a photographic array or lineup to a subsequent witness in the same investigation, officers should shuffle the order to demonstrate that there could be no collusion between the two witnesses.
- p. Officers will not provide the witness with feedback as to the accuracy of the identification.
[42.2.11 (f)]

Q. PHYSICAL LINE-UPS

- VIII. Line-ups shall be conducted under the direction of a detective supervisor, or in his absence the Chief of Police, and when feasible, after consultation with the District Attorney's Office.
- a. A suspect cannot be detained and compelled to participate in a line-up without probable cause to arrest. If a suspect refuses to participate in a line-up, the District Attorney's Office may be asked to apply for a court order to compel the suspect to cooperate.
 - b. Before any suspect who has been arraigned or indicted is shown to eyewitnesses in a line-up, or other live identification procedure, he must be informed of his right to have an attorney present at the line-up and of his right to be provided with an attorney without cost if he is unable to afford legal counsel. Unless a valid waiver is voluntarily and knowingly made, in writing if possible, no such identification may proceed without the presence of the suspect's attorney.
 - c. Officers must select a group of at least five fillers who fit the description of the offender as provided by the witness(es). Because the line-up will be administered by an officer who does not know the identity of the suspect, the fillers selected should not be known to the officer administering the line-up. In selecting line-up fillers, abide by the guidelines for photo array fillers as described above. [42.2.11 (a)]
 - d. The suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses. Witnesses who have viewed the suspect should not be permitted to communicate with those who have not until the identification procedure is completed.
[42.2.11 (c)]

- e. All persons in the line-up should carry cards that identify them only by number and should be referred to only by their number. As with photo arrays, each witness must view the line-up independently, out of the presence and hearing of the other witnesses.
- f. The investigating officer should explain to the witness that a second officer (the line-up administrator) will be conducting the line-up, and that the administrator does not know the identity of the people participating. [42.2.11 (d)]
- g. The investigating officer must carefully instruct the witness by reading from a departmental Line-up Instruction Form, and the witness should be asked to sign the form indicating that he understands the instructions. The officer should also sign and date the form. [42.2.11 (d)]
- h. The investigating officer must leave the room while the line-up administrator conducts the line-up.
- i. The line-up should be conducted so that the suspect and fillers do not actually line up, but rather so that they are displayed to the witness one at a time. This can be accomplished by having them enter the room individually and leave before the next one enters.
- j. The procedure for showing the participants to the witness and for obtaining a statement of certainty is the same as for photo arrays. Whenever practicable, the police should videotape or audiotape a line-up. [42.2.11 (b) ; 42.2.11 (e)]
- k. When an attorney for the suspect is present, the attorney should be permitted to make reasonable suggestions regarding the composition of the line-up and the manner in which it is to be conducted. Any suggestions made by the suspect's attorney, and any actions taken by the officer on those suggestions, should be included as part of the line-up report.
- l. Counsel representing the suspect should be afforded sufficient time to confer with his client prior to the line-up. Once the line-up has commenced, attorneys function primarily as observers, and should not be permitted to converse with the line-up participants, or with the witnesses, while the line-up is underway. The concept of blind administration requires that no one be present who knows the identity of the suspect. For this reason, any attorney who knows the suspect should leave the room before the line-up begins. An attorney who does not know the suspect may attend the line-up on behalf of defense counsel or the assistant district attorney.
- m. The suspect's attorney is not legally entitled to the names or addresses of the witnesses attending a line-up if the suspect has not yet been arraigned or indicted. If the suspect's attorney insists on having information about line-up witnesses, they should be advised to contact the District Attorney's Office.
- n. During a line-up, each participant may be directed to wear certain clothing, to put on or take off certain clothing, to take certain positions, or to walk or move in a certain way. If officers ask the participants to wear an article of clothing, they must guard against circumstances where the article only fits the suspect. All line-up participants shall be asked to perform the same actions.
- o. Line-up participants must not speak during the line-up. If identification of the suspect's voice is desired, a separate procedure must be conducted. (See section on Voice Identification below.)

- p. After a person has been arrested, he may be required to participate in a line-up regarding the crime for which he was arrested. After arrest, a suspect may lawfully refuse to participate in a line-up only if he has a right to have counsel present (post arraignment/indictment) and counsel is absent through no fault of the suspect or his attorney.
- q. Officers will not provide the witness with feedback as to the accuracy of the identification. [42.2.11 (f)]

R. VOICE IDENTIFICATION

- IX. Although considerably less common than visual identifications, voice identifications may be helpful to criminal investigations where the victim or witness was blind, the crime took place in the dark, the subject was masked, the witness' eyes were covered by the perpetrator, or they were never in the same room with the perpetrator but heard his voice. If officers wish to conduct a voice identification procedure with a witness who also saw the subject, they must first consult with a detective supervisor, or in his absence the Chief of Police and, when feasible, the District Attorney's Office.
 - i. As with any in-person identification or confrontation, if the suspect has been arraigned or indicted, he has a right to the presence of counsel at the voice identification procedure.
 - ii. Where a voice identification is attempted, the following procedures should be employed to the extent possible:
 - iii. As in a line-up, there should be at least six persons whose voices will be listened to by the witness; one-on-one confrontations should be avoided. Because line-ups will be administered by an officer who does not know the identity of the suspect, the fillers should not be known to the officer administering the procedure;
 - a. The suspect and other participants shall not be visible to the witness; this can be done by using a partition, or by similar means;
 - b. All participants, including the suspect, shall be instructed to speak the same words in the same order;
 - c. The words recited by the participants shall not be the ones spoken by the offender during the crime; the line-up participants should speak neutral words in a normal tone of voice;
 - d. When both a visual and voice line-up are conducted, the witness should be informed that the line-up participants will be called in a different order and by different numbers;
 - e. If there are two or more suspects of a particular crime, officers must present each suspect to witnesses in separate line-ups. Different fillers should be used to compose each line-up.
 - f. As with any identification procedure, police officers should avoid any words or actions that suggest to the voice witness that a positive identification is expected, or who they expect the witness to identify.

- iv. The investigating officer should carefully instruct the witness by reading from a departmental Voice Identification Line-up Instruction Form, and the witness should be asked to sign the form indicating that he understands the instructions. The officer should also sign and date the form. Whenever practicable, officers should videotape or audiotape the procedure.
- v. Officers must adhere to the principles of blind administration as described above. As is the case with photo arrays and line-ups, the investigating officer must leave the room while the administrator conducts the procedure.

F. COURTROOM IDENTIFICATION

- X. Prior to conducting any courtroom identification procedure, officers should consult the District Attorney's Office. The same right to an attorney, and the same due process considerations that apply to all other identification procedures also apply to courtroom identifications.
- i. If the suspect has been arraigned or indicted, he has a right to have counsel present at any in-person identification. Live confrontations, and informal viewings of the suspect by witnesses, must be conducted in such a manner as to minimize any undue suggestiveness.

B. SKETCHES AND COMPOSITES

- XI. An artist's sketch, computerized drawing, composite, or other depiction can sometimes aid an investigation, but are most effective when a witness has a good recollection of the offender's facial features. However, research suggests that building a composite can reduce a witness' accuracy for identifying the original face.
- a. For these reasons, the Department does not employ composites in criminal investigations and the use of sketches is severely restricted. No officer may arrange for an artist's sketch except under the following circumstances:
 - b. Any sketch must be prepared by a trained artist;
 - a. A sketch may only be authorized by the Detective Sergeant, the Investigations Commander or the Chief of Police;
 - b. A sketch may only be employed with a witness who provides a clear description of specific facial features;
 - c. A sketch should not be attempted immediately prior to the showing of a photo array or line-up;
 - d. Once the sketch has been completed, the witness should be asked to state in his own words how accurately it reflects how the suspect appeared during the crime;
 - e. The fact that a suspect resembles a sketch or composite is not, without more, probable cause to believe that the suspect is the offender; and

- f. A report must be submitted regarding any sketch procedure.

7. MUG SHOTS

Officers will not show large numbers of random photographs to eyewitnesses. If officers decide to show photographs of people from a particular group who are suspected of involvement in the offense, but where no specific suspect has emerged, the following guidelines shall be followed:

- XII. Officers will ensure there is only one photograph of each individual;
- i. Officers shall not refer to the photographs as “mug shots”;
 - ii. If photographs of various formats are used, officers will ensure that several of each format are used;
 - iii. The witness’s attention should not be drawn to any particular photograph;
 - iv. A report shall be filed following the procedure, regardless of whether identification is made. The report should describe the photographs viewed by the witness(s).
 - v. Officers should be extremely cautious before charging a suspect based on this type of identification alone.

F. INANIMATE OBJECTS

Officers who seek to have an eyewitness identify an inanimate object should adhere to the following procedures:

- XIII. An identification of an inanimate object must be conducted in a nonsuggestive manner, and officers must not make extraneous remarks or provide information to the witness about the circumstances surrounding the discovery of the object;
- a. It is permissible to show a witness a single object or a photo of the object, so an array of objects is not required, but an officer might elect to conduct an object lineup to avoid an allegation of a suggestive procedure, especially if identification of an object effectively identifies the defendant as the offender;
 - b. The officer should document the witness’ complete description of the object before the object or a photograph of it is shown to the witness;
 - c. The officer should tell the witness that objects will be shown, and that they may or may not be the object the witness described;
 - d. Where any identification is made, the officer should ask the witness to state, in his or her own words, how certain he or she is of the identification;
 - e. The officer should obtain clarification from the witness as to whether the object is the actual object he or she saw, whether it simply looks like the object he or she saw, or whether the witness is unsure;

- f. If a piece of clothing similar to that described by a witness is found in the area where a suspect has been stopped, the article should not be placed on the suspect prior to a show-up. Rather, a show-up should be conducted first, and identification of the clothing item afterwards; and
- G. Whenever practicable, the officer should videotape or audiotape the identification of an inanimate object. If not, the officer should write down the witness' exact words and incorporate them into his report.

In Effect: 01/01/2015

Review Date: 01/28/2020 @ 2359

INTERROGATING SUSPECTS AND ARRESTEES

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.13	ISSUE DATE: 9/11/14
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.3 (a); 1.2.3 (b); 1.2.3 (c); 42.2.2 (b); 42.2.2 (e); 42.2.2 (f); 42.2.10 (a); 42.2.10 (b); 42.2.10 (c); 42.2.10 (d); 42.2.10 (e); 42.2.10 (f)	EFFECTIVE DATE: 1/1/15
	REVISION DATE: 1/28/20

GENERAL CONSIDERATIONS & GUIDELINES

Interrogations of persons who are in police custody must conform to the standards set forth in the *Miranda* decision and to Due Process. Police interrogation techniques include any words or actions, which are designed to elicit incriminating statements. It is important to understand that Miranda procedures only apply when a person is in custody and subjected to interrogation.

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

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

- Learning the truth;
- Ascertaining the identity of criminal participants and accessories;
- Obtaining an admission or a confession of guilt;
- Acquiring all the facts, circumstances and method of operation of the crime under investigation;
- Gathering information which may corroborate or disprove information obtained from other sources;
- Eliminating suspects;
- Uncovering information of any other crimes in which the suspect being questioned is, or has been involved; [42.2.2 (f)]
- Recovering evidence or property; and
- Recording and reporting all information obtained for subsequent court action.

POLICY

It is the policy of the Police Department to:

- I. Provide officers and detainees with a safe and secure environment to conduct interviews and interrogations. [42.2.10]
- II. Provide persons in custody with their **Miranda** rights prior to any custodial interrogation; and
- III. Respect the Due Process rights of persons in custody. [1.2.3 (b)]

PROCEDURES

A. DEFINITIONS

- A. Custody:** Legal or physical control of a person in an area, or facility or while being transported to a facility, legal; supervisory, or physical responsibility for a person. When a person is under arrest, or deprived of his/her freedom in a significant manner. Factors that may be considered in determining custody include:
1. The place of interrogation: a police station or police vehicle is more indicative of custody than other locations.
 2. The persons present: large numbers of officers support a contention of custody.
 3. Indications of formal arrest:
 - a. Physical restraint
 - b. Use of weapons (unless suspect him/herself is armed)
 - c. Searches
 - d. Booking procedures
 4. The length and form of questions:
 1. Short, neutral (non-accusatory) inquiries do not suggest custody (for example: "Who are you? Where do you live? Why are you here?" etc.).
 2. Brief routine questions to clarify questionable situations do not suggest custody.
 3. Lengthy interrogations and the use of accusatory and leading questions are indicative of custody.
 5. Summoning of police and initiation of interview: if the suspect summons the police and/or initiates the interview, there is a strong indication of non-custody.
 6. Focus: if the officers communicate to the suspect, in any way, that he/she has become a focus of the criminal investigation, this is an indication of custody.
 7. Freedom to leave: if the suspect is free to end the interview by leaving the place of interrogation or by asking officers to leave, this is an indication of non-custody.

- B. Interrogation:** Express questioning of a suspect about a crime or suspected crime as well as any words or actions on the part of the police that the officers should know are reasonably likely to elicit an incriminating response.

B. INTERVIEW & INTERROGATION ROOM

- a. An interrogation is a controlled process, controlled by the officer conducting the interrogation. It should be conducted in a setting that provides a degree of privacy as well as safety and security for the officer and the suspect, as well.
- b. All rooms used for conducting interrogations shall be designated for such purposes by the Department, and shall be inspected for security issues prior to bringing the suspect into the room and conducting the interview. Writing materials, department forms, recording equipment and media will be maintained in the storage area in the immediate vicinity of the interrogation/interview room. [42.2.10 (b)]
- c. Prior to conducting an interrogation in the room(s) designated for such purposes, officers shall secure their weapons in gun lockers and conduct a pat-frisk of the individual being interrogated for firearms and other weapons, which shall be removed, prior to being admitted into the interview room. [42.2.10 (a)]
- d. Officers shall be responsible for the supervision of the person being interrogated. [42.2.10 (b)]
- e. Generally, not more than two officers should be in the interview/interrogation room at one time. Interrogations should not be conducted by a single officer without a back-up officer readily available in the event that the interrogating officer needs assistance. [42.2.10 (c)]
- f. Officers in the interview/interrogation room may use department radios, intercoms, telephones, alarms, or any available means of communication to obtain assistance. [42.2.10 (d)]
- g. Tables, chairs and suitable note taking utensils, a tape recorder or audio and video imaging equipment are items allowed in the interview/interrogation room. [42.2.10 (e)]
- h. Individuals being interrogated shall be allowed reasonable access to a restroom, drinking water, medication, and other needs, as appropriate, while continuing to provide for the safety and security of all parties involved. [42.2.10 (f)]

c. PROVIDING MIRANDA WARNINGS

- a. Officers shall give Miranda warnings as soon as practical whenever a person is placed in custody, or deprived of his/her freedom in a significant manner, and is subject to interrogation.

The Miranda warnings shall be read from a pre-printed card or Miranda Form in a clear and unhurried manner prior to questioning.

Persons who do not speak English must be given these warnings in a language that they understand.

Sample Miranda Warning Language:

You have the right to remain silent.

If you choose to speak, anything you say can be used against you in court.

You have the right to consult with an attorney before answering any questions, and you may have him or her with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided, at no cost to you, by the Commonwealth.

You may answer questions now and waive (that means, give up) your right to counsel and your right to remain silent.

If you decide to talk to me, you still have the right to stop at any time and for any reason.

Do you understand what I have told you? Will you talk to me now?

- b. All arrested persons to be interrogated shall have the Miranda warnings read to them when they are booked, whether the warnings were previously given or not. The suspect shall then be asked to sign a Miranda Form acknowledging that the warnings were given. The officer giving the warnings shall sign the form as a witness, giving the date and time the suspect was advised.
- c. If there is any substantial delay between the Miranda warnings and the police questioning, the suspect shall be advised of these rights again before the questioning begins.
- d. Whenever an officer has any doubt as to the applicability of the Miranda warnings in any particular case, it is advisable that these warnings be given to the suspect to avoid any subsequent legal barrier to the admissibility of any statements obtained.
- e. If, at any time, a suspect requests to read his/her rights or to be informed of his/her rights, these requests shall be granted.

F. Juveniles : See department policy on **Interactions with Juveniles** .

D. NON-MIRANDA SITUATIONS

i. SPONTANEOUS STATEMENTS

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

- ii. **INVESTIGATORY STOP AND FRISKS:** *Non-custodial preliminary or investigative questioning need not be preceded by Miranda warnings. See department policy on Threshold Inquiries. [1.2.3 (a)]*
- iii. **NON-LAW ENFORCEMENT QUESTIONING:** *Miranda does not apply to statements made in response to questioning by private citizens, unless the private citizen is acting on behalf of the police. For a citizen to constitute an agent of the police, the police must initiate the citizen 's help.*
- iv. **TRAFFIC STOPS, ACCIDENTS, AND SOBRIETY TESTS**
 - i. The roadside questioning of a motorist detained pursuant to a routine traffic stop does not require that a Miranda warning be given.
 - ii. An officer's request that a motorist perform field sobriety tests does not require that a Miranda warning be given.
- v. **TELEPHONE CONVERSATIONS:** *A telephone conversation between an officer and suspect is never custodial for the purposes of Miranda.*
- vi. **UNDERCOVER WORK:** *Undercover officers do not need to provide Miranda warnings since the target is not subjected to a police-dominated atmosphere.*
- vii. **PUBLIC SAFETY EXCEPTION:** *When public safety is at stake, officers may briefly interrogate a suspect in custody without administering Miranda warnings.*

E. WAIVER OF RIGHTS

a. VALID WAIVERS

- a. A valid Miranda waiver includes the following elements:
 - i. The police properly communicated the Miranda rights to the suspect;
 - ii. The suspect voluntarily, knowingly and intelligently decides to waive his/her Miranda rights; and
 - iii. The suspect indicates a willingness to speak with the police.
- b. The burden is on the prosecution to prove that the waiver was valid.
- c. In determining whether a valid waiver was made, the court examines whether in light of the totality of the circumstances surrounding the making of the waiver, the will of the suspect was overborne such that the statement was not a free and voluntary act. The court considers the circumstances of the interrogation and the individual characteristics and conduct of the suspect, such as the length of time which transpired between the giving of the Miranda warnings and the waiver, the suspect's age, mental capacity and experience.
- d. When the suspect waives his/her rights, the interrogating officers shall obtain a written waiver when possible. A waiver may be made orally or in writing, but a written and properly witnessed waiver is more likely to be upheld in court. In all cases, however, officers must document their waiver interaction with the suspect in their incident report.

- e. Silence on the part of the suspect does not constitute a valid waiver.
- f. The physical and emotional condition of the person being questioned is an important consideration in determining the validity of a waiver. The police should refrain from questioning if the suspect is clearly not capable of understanding his/her rights.

b. COMPETENCY

- a. A suspect must be competent to waive his/her rights prior to police questioning. The question of competency is a question of fact to be determined by the circumstances in each case.
- b. After the Miranda rights have been read and after the suspect has shown an initial willingness to waive those rights, the police may ask the suspect about the following in order to properly assess the suspect's ability to intelligently understand and waive his/her rights:
 - a. His/her age;
 - b. Whether [s]he is under the influence of any drugs or alcohol;
 - c. Whether [s]he is suffering from any mental or emotional problem;
 - d. His/her education and learning;
 - e. His/her employment;
 - f. Whether [s]he has ever been given Miranda warnings previously; and
 - g. Whether [s]he understands the words used by the officer in reciting the Miranda warnings or what they mean.

c. SIX HOUR RULE

- 1. Statements made by an arrestee more than six (6) hours after the arrest (safe harbor period) are inadmissible unless the arrestee has been arraigned or has made a valid written waiver of his/her right to be arraigned without unreasonable delay (Right to Prompt Presentment Form) [1.2.3]
- 2. If the arrestee is incapacitated due to a self-induced disability (such as the use of drugs or alcohol) the six (6) hour safe harbor period does not begin until the disability terminates.
- 3. The six hour period is also tolled when interrogation is not possible or must be suspended for reasons not attributable to the police, such as a natural disaster or emergency.

F. INVOCATION OF RIGHTS [1.2.3]

- A. Once a suspect invokes his/her right to silence and/or counsel, officers must immediately terminate any interrogation. A suspect may invoke their rights after initially waiving their rights.
- B. If a suspect has voluntarily waived his/her right to remain silent, [s]he may still invoke this right by refusing to answer any further questions or by requesting an attorney. At this point the police questioning must cease.

C. RIGHT TO SILENCE

An officer may resume an interrogation after a suspect has invoked his/her right to remain silent provided that the officer:

1. Scrupulously honors the suspect's right to remain silent when first invoked;
2. A significant period of time has elapsed; and
3. The suspect is provided another Miranda warning.

D. RIGHT TO COUNSEL [1.2.3 (c)]

1. An officer may resume an interrogation after a suspect has invoked his/her right to counsel provided that the suspect has the opportunity to consult with counsel.
 2. If a suspect states that [s]he wishes to consult an attorney, [s]he must **not** be questioned further by police until [s]he has had an opportunity to consult an attorney. However, if the suspect initiates statements or conversation, the police may respond to those statements or conversation.
 3. Officers must immediately tell a suspect that his/her attorney is trying to contact him/her and convey any message or recommendation from the attorney to the suspect. Once so informed, the suspect may waive or invoke his/her rights to remain silent or to have counsel present.
 - a. The attorney's call should be recorded, logged, and saved for disclosure in the discovery process.
 - b. Police officers should make a record of their communication of an attorney's message to a suspect.
- E. Once a suspect has been arraigned, [s]he has the right to counsel, whether or not [s]he is in custody, and [s]he shall not be questioned in the absence of counsel unless [s]he specifically waives his/her right.

G. **DOCUMENTING STATEMENTS & CONFESSIONS** [1.2.3 (b); 42.2.2 (b)]

- A. Officers shall electronically record all interrogations conducted in police headquarters or any "place of detention", whenever it is practical to do so.
- B. All interrogations involved an interpreter should be recorded, whenever practical.
- C. Before recording an interrogation, the suspect shall be notified that the conversation will be recorded. However, permission is not necessary. See department policy on **Electronic Recording Interrogations** .
- D. The circumstances surrounding the conduct of interrogations and recording of confessions shall be fully documented. This includes:
 1. Location, date, time of day and duration of interview;
 2. Identities of officers or others present;
 3. *Miranda* warnings given, suspect responses and waivers provided, if any; and
 4. The nature and duration of breaks in questioning.

- E. The suspect shall be asked to read, sign and date all written statements and confessions.
- F. The interrogating officer(s) shall sign and date all written statements and confessions.
- G. The interrogating officer shall prepare and submit a report in accordance with departmental procedures which shall include the above information and any written or recorded statements or confessions.

In Effect: 01/01/2015

Review Date: 01/28/2020 @ 2359

TESTIFYING IN COURT

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.14	ISSUE DATE: 9/11/14
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 42.2.2 (h)	EFFECTIVE DATE: 1/1/15
	REVISION DATE: 1/28/20

GENERAL CONSIDERATIONS & GUIDELINES

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

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

It is only human for an officer to take a personal interest in a criminal case in which s/he has been deeply involved and to firmly believe that the offender is guilty and should be convicted. However, the defendant is innocent until proven guilty and the conviction is based upon a finding of guilt beyond a reasonable doubt. Therefore, in his/her testimony, the officer must make every effort to present the facts fairly and impartially without understating or exaggerating any of the circumstances.

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

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

PROCEDURES

• RULES OF EVIDENCE

To become skilled and effective in the task of testifying in court, a police officer should be familiar with the basic rules of evidence. See **Appendix A** for an overview of the rules of evidence in Massachusetts.

• PRIOR TO TRIAL

- I. If there is a sequestration order applicable to the police and other witnesses, officers shall remain outside the courtroom until called to testify. Also, they shall not discuss their testimony or the testimony of any other witness until the completion of the trial or other proceeding. A sequestration order generally requires that each witness testify separately and without having discussed his or her testimony with other witnesses and without having overheard the testimony of any other witness. Violation of a sequestration order could result in the judge declaring a mistrial or even dismissing the case.
- II. The officer shall not discuss the case with the defendant in the absence of his/her attorney, if s/he has one, or make any agreement with the defendant's attorney for recommendations as to the disposition of the case without the knowledge of and in the presence of the prosecutor and/or the department prosecuting officer.
- III. In pretrial conferences with the prosecutor it is the responsibility of the police officer to provide all available information even though it may be beneficial to the defendant. No detail concerning the particular case should be considered too trivial to discuss. This will decrease the likelihood of any surprise developments during the trial.
- IV. It is understandable that occasionally mistakes in testimony may be made. An officer should voluntarily correct any error as soon as possible. In addition, an officer may realize after s/he has left the witness stand that s/he has overlooked some particular point. In such cases, s/he should inform the prosecutor as soon as possible in a manner that is not distracting to the court. Writing a note and passing it to the prosecutor is an acceptable method to accomplish this purpose.

• CONDUCT AS A WITNESS

To ensure that his/her testimony will be given the full weight and credit to which it is entitled, every police officer testifying in court or at an administrative hearing should:

- A. Be punctual in reporting at the time and place set for the hearing. Also, his/her physical appearance, personal conduct and professional manner should be aimed at making the best possible impression.
- B. Review and prepare in advance all aspects of the case, have all necessary witnesses present, and have all physical evidence arranged for presentation.
- C. Testify to what s/he knows from personal knowledge to be the truth and avoid any reference to evidence which is inadmissible hearsay.

- D. Speak naturally and calmly in a distinct and clearly audible tone of voice, describing in a straightforward manner the events of the case in the order in which they took place. Use plain, clearly understandable conversational language avoiding slang, police jargon, and unnecessary technical terms.
- E. Maintain a courteous attitude, self-control and personal composure at all times avoiding any impression of being contentious, biased or prejudiced, even if defense counsel attempts to berate, belittle or embarrass the officer or his/her efforts.
- F. Listen carefully to each question and respond accordingly without hesitation or evasion. Answer only the questions which are asked.
 - 1. If asked to state the facts, state the facts known or believed to be true;
 - 2. If asked to state an opinion or conclusion, do so if the officer has formed an opinion or conclusion which s/he can articulate and support; and
 - 3. If an answer is unknown, state that it is unknown.
- G. Make every effort to avoid errors or inconsistent statements which could undermine the confidence of the judge or jury in his/her credibility. If a mistake in testimony is made, the officer should voluntarily correct the error as soon as possible.
- H. Confine his/her testimony to the particular case and do not volunteer information or go beyond the scope of the question under discussion.
- I. Know his/her facts so thoroughly that s/he will not have to change his/her testimony even under rigorous cross-examination.

As soon as s/he is called, the testifying officer should go directly to the witness stand in a dignified and alert manner, as it is at this point that the jury gains its first impression of the officer.

- 1. During the reading of the oath, the officer should maintain an attitude that reflects the seriousness of the proceedings.
 - 2. On the witness stand the officer should take a comfortable position that gives him/her a full view of the jury and the attorneys and should always maintain good posture and an alert appearance.
 - 3. S/he should avoid any movements or sounds that could be distracting to the judge or jury and which may divert their attention from his/her testimony.
- a. When a question is asked, the testifying officer should look directly at the person asking the question. If you do not hear or do not understand the question, request that it be repeated. Do not respond to any question that you do not clearly understand.
 - b. An officer should pause briefly and consider every question before responding. This procedure has the following advantages:
 - a. It will assure the question is complete, preventing misinterpretation of the question;
 - b. It gives an officer a chance to analyze and frame a complete and accurate answer;

- c. It gives the prosecutor the opportunity to make an appropriate objection to the question, if necessary.

Note The pause should not be too long as hesitation may be interpreted as indecision or uncertainty.

When an objection has been made, an officer should immediately cease testifying, look at the judge and await his/her decision.

In responding to questions, an officer should be as specific as possible. However, figures for time and distance are usually given as approximations unless an officer has the exact information readily available.

At the request of the prosecutor or defense attorney, and with the permission of the judge, an officer may refer to his/her notes or a police report to refresh his/her memory on a given point. However, continual reliance on notes will detract from what is being said and may also raise doubts as to the officer's knowledge. Adequate preparation will help to minimize the necessity of this type of aid.

In responding to questions, an officer should not guess or give an ambiguous answer. If an officer does not remember or does not know a particular fact, s/he should say so as this will be less damaging to the case than an inaccurate reply or one that is confusing or misleading.

Unless s/he is asked to do so, an officer on the witness stand should not volunteer his/her personal opinion on any matter, and s/he should avoid any statements such as "I think," "I believe," "In my judgement," "probably," "perhaps," or any other words indicating an opinion or conclusion.

If an officer has discussed the case previously with the prosecutor, s/he will so state if asked. Such pretrial discussion is entirely proper and legitimate.

A testifying officer should rely on the prosecutor to ask the questions that s/he wants answered and at the time and in the sequence that s/he wants answered.

If during or at the conclusion of his/her direct testimony and before cross-examination, an officer realizes that an important point has not been brought out or fully developed by the prosecutor's questions, the officer, while still on the witness stand, may utilize a discreet signal to gain the prosecutor's attention. The prosecutor may then ask the judge for permission to confer with the officer. If that method is unavailable or unsuccessful, the officer may address the judge directly and request permission for a very brief conference with the prosecutor. A police witness should not wait until s/he has been excused from the witness stand to inform the prosecutor of important matters not brought out in his/her testimony. At that point, it may be difficult for the prosecutor to get the officer back on the stand, or even if s/he does so, to ask questions about matters not raised on direct examination. Naturally, these problems should be avoided by close cooperation in the preparation of a case between the police witness and the prosecutor.

• DEFENSE ATTORNEY TACTICS

A defense attorney may resort to a variety of tactics in an effort to confuse or upset the testifying police officer or to discredit his/her testimony. This is permissible within ethical limits

and should be expected. An officer's ability to cope with these tactics improves with experience. Since the judge and jury will be closely observing the officer, s/he should never become argumentative or display anger or animosity towards the defense counsel. S/he should remain calm and courteous at all times despite any badgering tactics by the defense and take sufficient time to permit the prosecutor to make appropriate objections.

The following are some of the most common tactics used by a defense attorney in cross-examination:

- i. Asking questions in a rapid-fire manner to confuse the witness.
- ii. Asking questions which suggest a particular answer in order to lead the witness into responding in a certain way.
- iii. Indicating conflicting answers with earlier testimony.
- iv. Demanding "yes" or "no" answers to questions that obviously require more explanation.
- v. Intentionally mispronouncing the officer's name or calling him/her by the wrong rank or title in order to affect his/her concentration.
- vi. Being overly friendly to give the witness a false sense of security before attempting to lead him/her into inconsistent or conflicting answers.
- vii. Being condescending to the point of ridicule to give the impression that the officer lacks experience or expertise.
- viii. Asking repetitive questions or rephrasing previous questions in order to obtain inconsistent answers or answers which conflict with previous testimony by the witness.
- ix. Continuing to stare directly at the witness after s/he has responded in order to provoke the witness into elaborating on his/her answer and providing more information than the question called for.
- x. Belligerent questioning to anger and disconcert the witness.

Note All officers must acquire the ability to remain calm, deliberate and objective under such provocation and to understand that it is the purpose of the defense attorney to diminish or discredit that effect of their testimony on the judge or jury.

• TESTIFYING IN CIVIL SUITS OR AS A DEFENSE WITNESS

A police officer shall not testify in any civil case which relates to his/her police duties without being legally summoned or unless permission has been granted by the Chief or designee.

A police officer shall not testify for the defendant in any criminal case without being legally summoned. Before testifying in such case s/he shall inform the Chief of the nature of his/her testimony and shall also notify the prosecutor.

APPENDIX A

OVERVIEW OF MASSACHUSETTS RULES OF EVIDENCE

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

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

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

CLASSIFICATIONS OF EVIDENCE

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

Direct evidence is often broken down into four forms:

- i. Oral Evidence. Testimony by a competent witness under oath and subject to cross examination.
- ii. Real Evidence. Objects and items that are physically present at court and admitted into evidence for examination and consideration by the judge and jury.
- iii. Documentary Evidence. Any instruments containing written or otherwise recorded entries; a book, ledger, receipt, report, letter, deed, contract, diary, etc.
- iv. Demonstrative Evidence. This includes any display or visual presentation such as a map, photograph or film, sketch or other depiction.

Circumstantial Evidence In contrast to direct evidence, circumstantial evidence includes testimony or physical objects or items from which the existence of a fact can be inferred or a certain conclusion drawn but the testimony or physical objects or items do not in and of themselves directly establish that fact or conclusion. For example, if the defendant is

found with very recently stolen property in his possession the circumstances could warrant a judge or jury in concluding that the defendant must have known the property was stolen.

Corroborative Evidence	Evidence which confirms or strengthens other evidence.
Cumulative Evidence	Evidence of the same kind, to the same point or effect which further establishes what has already been indicated or suggested by other evidence.
Prima Facie Evidence	Evidence which is sufficient on its own to establish a given point or conclusion and is legally binding unless it is effectively rebutted or discredited. For example, a properly executed certificate of a chemist of the Department of Public Safety is Prima facie evidence of (a) the composition, (b) the quality, and (c) the weight of the drug or other chemical analyzed. Once such a certificate is admitted into evidence the judge or jury must accept what the certificate states pertaining to composition, quality and net weight.
Expert Evidence	Evidence presented by a person who is accepted by the court as having special knowledge of a subject not usually possessed by the average person and derived from his training, education and experience in that field. The testimony of an expert, as to facts or opinions, is not binding on the judge or jury; they may give expert testimony whatever weight or credibility they decide that it deserves.
Opinion Evidence	<p>As a general rule, neither expert witnesses nor lay people (non-experts) may testify as to their opinion on any matter. They must restrict themselves to testifying to facts and observations. However, courts recognize that the opinions of certain experts within the scope of their specialty are admissible and may aid the judge or jury in its deliberations and decision. Lay witnesses (the average person) may testify to an opinion on such common place matters as:</p> <ul style="list-style-type: none">a. the apparent age of a person;b. the apparent physical condition of a person;c. the obvious emotional state of a person;d. whether a person appeared to be under the influence of alcohol or drugs;e. the direction from which a sound emanated;f. the estimated speed of a vehicle or other moving object;g. the value of an item (if the witness was the owner or has had sufficient dealings with such objects to be able to render a creditable opinion as to its value).
Hearsay Evidence	Hearsay evidence consists of:

- a. oral or written statements
- b. made by one other than the witness
- c. out of court
- d. not under oath
- e. not subject to cross-examination
- f. if offered to prove the truth of the matter asserted therein.

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

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

- i. Dying Declarations - In a prosecution for homicide statements made by a dying person regarding the cause and circumstances relating to his imminent death are admissible if the dying person believed death to be imminent and he did in fact die shortly after the statements were uttered.
- ii. Admission by Party-Opponent - Confessions, admissions, declarations against penal interest, and statements of a joint venturer (all defined below) are admissible if legally and voluntarily made.
- iii. Spontaneous Exclamations (also called excited utterances) - If a person makes a statement during or very shortly after the occurrence of a startling event and while under the excitement or stress of that startling event another person may testify to those statements.
- iv. Public records and reports maintained by legal requirement or duty, if properly authenticated.
- v. Business records - These include any entry, record or memorandum if it was made in good faith, in the regular course of business, before the beginning of the litigation in question and if it was a regular business practice to make such entries, records or memoranda. Although this is commonly referred to as the "business records" exception to the hearsay rule it also applies to records of non-profit organizations and to records maintained by government agencies, including police departments.
- vi. Unavailable witness - Testimony given previously by a witness who was then under oath and subject to cross examination, if the witness is

presently unavailable through no fault or collusion of the party seeking to admit the former testimony.

- vii. "Fresh Complaint" (in rape and sexual assault cases) if the victim of a rape or other sexual assault reports the incident to another person within a reasonable time after the incident, the person to whom the victim complained of the rape or assault may testify as to what the victim said had occurred.

PRIVILEGES

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

- a. lawyer-client;
- b. psychotherapist-patient;
- c. spouses;
- d. clergy-penitent;
- e. government privilege to withhold identity of informer;
- f. social worker-client;
- g. sexual assault counselor-rape victim;
- h. parent-child.

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

THE EXCLUSIONARY RULE

Generally, if it is shown that evidence was obtained by police in a manner which contravened the rights of the defendant, that evidence will, upon motion of the defendant, be excluded at court. The most common areas involving motions to suppress allegedly unlawfully obtained evidence are interrogation and searches and seizures. See departmental policies and procedures on **Searches and Seizures**, **Interrogating Suspects and Arrestees**, and **Arrests**. However, police should be aware of several exceptions to the exclusionary rule and should discuss utilizing any of these exceptions with the prosecutor in appropriate cases.

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

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

the issue of inevitability; and

the character of the police misconduct.

- d. **Procedural uses of otherwise excludable evidence** - If the defendant failed to file it in a timely manner, the prosecutor may be able to defeat a motion-to suppress. Also, otherwise excludable evidence can be used to impeach the defendant if he takes the witness stand and denies any knowledge of or connection to the evidence unlawfully seized.
- e. **"Good Faith" exception** - For example, where police reasonably rely on what appears to be a valid search warrant, the exclusionary rule may not be applied even though a court subsequently determines that the search warrant was defective.

Note Massachusetts has yet to decide whether it will follow the good faith exception.

THE BEST EVIDENCE RULE

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

PRESENT RECOLLECTION REFRESHED VS. PAST RECOLLECTION RECORDED

- A. **Present Recollection Refreshed** . If a witness has some memory or recall of an event or information but his present recollection is incomplete, vague or unsure, he may, with the permission of the court, "refresh" his recollection by consulting any report, record, document or other reference. However, the report or document used to refresh the witness' recollection may be examined by opposing counsel.
- B. **Past Recollection Recorded** . If a witness has no memory or recollection whatsoever of an event or information but he did make reliable notes or records of that event or information at some point in the past, those notes or records may be admitted into evidence (unless they contain hearsay or other objectionable material).

THE BRUTON RULE

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

the Commonwealth alleged that the co-defendant's statement was offered only to show consciousness of guilt and argued during trial that the statement should be disbelieved.

HANDLING JUVENILES

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.15	ISSUE DATE: 1/1/2015
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 44.1.1; 44.2.1; 44.2.2; 44.2.3; 44.2.4; 44.2.5; 82.1.1(a); 82.1.1(b)	EFFECTIVE DATE: 1/1/2015
	REVISION DATE: __7/26/2022_____ _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

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

Although the police are not expected to be social workers, they must have an understanding of the social and psychological factors which contribute to juvenile misbehavior and crime. By the nature of their duties, the police should be familiar with any undesirable conditions in the community which breed juvenile delinquency. The prevention of juvenile crime has a high priority and any success in this regard can pay large dividends to the community and to its young people.[44.1.1](#)

As a preventive measure, officers should frequently check those areas, places and buildings that have been particularly prone to juvenile delinquent behavior and question all juveniles found in suspicious situations. Energetic patrol, impressing the fact of a consistent police presence, can be a most effective deterrent. The department should also cooperate actively with all other agencies, public or private, that can be of assistance in deterring and controlling juvenile delinquency.

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

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

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

It is the policy of this department that:

1. Juveniles shall be afforded their constitutional and statutory rights when being questioned, searched, detained or arrested.[44.2.2c](#)
2. Juvenile offenders shall not be detained at the Stow Police Department for any longer than necessary.
3. Children Requiring Assistance shall be provided custodial protection and other required services where this can be done safely.
4. Officers shall, whenever reasonable and justified under this policy, take those measures necessary to effect positive change in juvenile offenders that are consistent with Massachusetts law and the safety and security interests of the community.
5. The department is committed to the development and perpetuation of programs to prevent and control juvenile delinquency. [44.1.1.a](#)
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 care 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. [44.2.2](#)

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:

1. Civil Infraction
2. a violation of any municipal ordinance or town by-law
3. or a first offense of a misdemeanor
4. 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. ¹

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 city 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.
4. Therefore, arrests of juveniles for certain types of misdemeanors which carry a penalty for less than six months such as the following:
 - a. Indecent Exposure,
 - b. Disorderly Conduct,
 - c. Disturbing the Peace,
 - d. Minor Transporting Alcohol,
 - e. Operating with a Suspended License,
 - f. Shoplifting,
 - g. Threats,
 - h. Driving without a license
 - i. Breaking and Entry to Commit a Misdemeanor, or
 - j. 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 an 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.

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.²

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 Stow Police Department and, during such time, the juvenile:[44.2.2a](#)

1. Status offenders are held in an unlocked, multi-purpose room that is in no way designed for residential use; the Squad Room. Monitored and under the supervision of the arresting officer, prisoner watch, 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.

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. 4

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.

IV. PROCEDURE

A. Administration

1. The responsibility for participating in and supporting the department's juvenile operations is shared by all department components and personnel. [44.1.1](#)

B. Enforcement Alternatives [1.2.6](#) [44.2.1](#), [1.2.6](#)

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.[44.2.1 a](#)
2. Whenever reasonable and possible, an officer will request a summons for a juvenile rather than taking him/her into custody.[44.2.1 b](#)
3. Alternatives available include the following:
 - a. Release with no further action or following informal counseling when no arrest has been made. Officers may turn the juvenile over to his/her parent or guardian when appropriate.[44.2.1b](#)
 - b. Informal referral to an appropriate community social service agency.
 - c. Limited custody and station house warning. The juvenile shall be held in non-secure custody until released to his/her parent(s) or guardian.
 - d. Issue a citation or applying for a summons or complaint; and [44.2.1b\(c\)](#)
 - e. Arrest
 - f. Communities for restorative Justice (C4RJ)
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 & Disengagement¹

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 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.

¹ 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.

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

D. Education and 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:
 1. active, reflective, and empathic listening
 2. rapport building
 3. affect management; and
 4. 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:
 - 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.

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. Engagement in communities that increase community trust in Law Enforcement Officers.

G. Referral to Juvenile Court 44.2.1 c

1. While an officer should recognize the unique and often sensitive nature of juvenile contact, [s]he should not be deterred from properly enforcing the law when required to do so. A decision to arrest should be based on the same legal considerations as the arrest of an adult.
2. Officers may arrest juveniles for acts of delinquency and status offenses. 44.2.2a
3. Arrested juveniles are subject to the same security and other transportation requirements as adults and may be handcuffed or otherwise restrained as necessary during transport and processing. See departmental policy on **Transporting Prisoners**. **Note:** Children Requiring Assistance may not be handcuffed, shackled or transported to the police station. 44.2.2 a
4. When an arrest is made, the juvenile shall be brought to the processing facility without delay.
5. 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]. 44.2.2e
6. 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. 44.2.2c
7. 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 city or town for the use of approved detention facilities to prevent children who are detained from

meeting 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.

8. 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.
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. 44.2.2 c, 82.1.2 b
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.
12. A child shall be released:
 - a. To a parent, guardian, or other reputable person upon acceptance, by the officer in charge, of the written promise of such person to be responsible for the appearance of the child in court at the required time and place; or
 - b. To a probation officer upon receipt of a request by such officer that the child be released to him/her.
13. A child between the ages of 14 and 18 shall not be released if:
 - a. The arresting officer requests in writing that [s]he be detained and the court issuing a warrant for the arrest of such child directs in the warrant that [s]he be held in safekeeping pending his/her appearance in court, or
 - b. A probation officer directs that such child be detained.

NOTE: Notice of detention shall be given to the parent(s) or guardian or person with whom the child resides and to the probation officer. Nothing contained in this section should be construed to deny the juvenile the right to bail.

14. Juveniles arrested for criminal type offenses are subject to the same booking procedures as adults. See department policy on ***Booking Procedure and the Holding Facility***.
15. The arresting officer, the juvenile officer and the prosecutor should cooperate in the preparation and presentation of the case if court action is necessary.
16. Any police proceeding involving juveniles shall be treated in a confidential manner.

H. Holding Juveniles

1. Delinquent Offenders

- a. Juveniles between ages fourteen and under 18 accused of delinquent offenses may be held in secure custody for no longer than six hours for the purpose of identifying and processing the juvenile and, if appropriate, transportation to a juvenile facility or court.
- b. Records shall be kept that specify:

1. The time the juvenile entered secure detention and the duration of each period of secure detention.
2. The name of the police officer or custodial officer responsible for visual supervision and the schedule of visual supervision; and
3. 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.

- c. No child between the ages of fourteen and under 18 shall be detained in a police station or town lockup unless the detention facilities for children have received the written approval of the Commissioner of Youth Services.
- d. Lockup and other detention facilities shall be such as prevent juveniles who are detained from coming in sight and sound contact with adult prisoners.
- e. 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.[44.2.2d](#)

2. **Protective Custody** (Where drugs are found)

- a. Status offenders and juveniles held for protective custody shall not be held in secure custody.
- b. Status offenders may only be held long enough to complete identification, investigation and processing and then must be released to parents, guardians or other responsible adults or transferred to an alternative juvenile facility or court.
- c. A child under the age of 18 may be taken into protective custody, for a period not exceeding four hours, if an officer:
 1. Finds the child at a place where the officer reasonably believes there is a controlled substance of Class A, B or C;
 2. Reasonably believes the child to be under age seventeen; and
 3. Reasonably believes the child knew of the presence of the controlled substance.

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.

4. For procedures to follow when a person under age eighteen is taken into protective custody due to consumption of alcohol, see the department policy on ***Protective Custody***.

3. **Children 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:
 - 1. 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
 - 2. 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
 - 3. 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 (a) and (b), was unable to exercise these options and the reasons for such inability.
 - 4. 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.
- m. When juveniles are detained by the Stow Police Department the juvenile, parent or guardian shall be informed by the Arresting Officer about the department’s juvenile procedures regarding custody and release to a parent or guardian. The officer will also inform the juvenile/parent/ about juvenile justice system procedures regarding transportation to another facility, or court procedures as applicable. [44.2.3 a](#)

4) **Protective Custody Warrant**

- a. A judge may order a Warrant of Protective Custody after the child fails to respond to a summons issued for the preliminary hearing. The warrant is similar to a Warrant of Apprehension and is to be served in the same manner. Therefore the child must be delivered to the court before 4:30pm.
- b. When an officer takes a child into custody upon the execution of a Warrant of Protective Custody, the officer **SHALL** immediately bring the child to the clerk's office and shall file the return of service. No booking is allowed.

5) **Child taken into "Custodial Protection" by the Police**

In accordance with Mass. General Laws c119 s39h, a child may be taken into custodial protection for engaging in the behavior described in the definition of "child requiring assistance" (CRA) **ONLY IF..**

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

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

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

1. To one of the child's parents, or to the child's guardian or other responsible person known to the child, or to the child's legal custodian including the department of children and families or the child's foster home **upon the written promise, without surety**, of the person to whose custody is released that such parent, guardian, person or custodian will bring the child to the court on the next court date; or
2. 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
3. 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 in 1 and 2 and was unable to exercise these options and the reasons for such inability.
 - a. Police Officer Affirmation Form will be filled out which is available online at:
 - i. <http://www.mass.gov/courts/docs/forms/juv/cra-police-officer-law-enforcement-affirmation-jv-094-re.pdf>
 - ii. A completed report in the Stow Police Records Management system.

4. When all three options are not available, the child may be taken to the Stow Police Department Lobby where attempts of completing steps 1-3 again will be taken.

6) **A Child in Stow Police Custody for Warrant of Protective Custody or Custodial Protection:**

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

1. May not be confined in shackles or similar restraints or in a court lockup facility in connection with any proceedings under section 39e or 39I, inclusive.
2. Shall not be placed in a locked facility designated or operated for juveniles who are alleged to be delinquent or who have been adjudicated delinquent.
3. May be placed in a facility, which operates as a group home to provide therapeutic care for juveniles, regardless of whether juveniles adjudicated delinquent are also provided care in such facility.
4. If necessary, be taken to a medical facility for treatment or observation.

V. CUSTODIAL INTERROGATION OF MINORS

- A. 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.
- B. In addition, the police must also follow the special rules that apply to the interrogation of juveniles. [44.2.2c](#)
 1. 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. [42.2.3a](#)
 2. UNDER AGE FOURTEEN: No waiver of rights by a juvenile who is 12 years of age or older and under the age of 14 will be valid if an interested adult is not present, understands the warnings and has a meaningful opportunity to consult with the juvenile. Actual presence of the juvenile's parent or interested adult is required in order to have a valid waiver of Miranda Rights (Comm v. Macneil, 399 Mass. 71 (1987)).
 3. FOURTEEN YEARS OR OLDER: For juveniles who are at least 14 but under age 18, there should ordinarily be a genuine 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".

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

C. 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.

1. 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).
 - d. A person under the age of eighteen will not satisfy the interested adult rule.
2. 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.

D. Interrogation [44.2.3](#)

1. Prior to conducting a custodial interrogation of a juvenile, the interrogating officer will start an audio recorder and then 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.
2. A Stow Police Juvenile *Miranda* Rights form will 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.
3. When an adult acting on behalf of the juvenile is present, the officer shall read the *Miranda* warnings to the adult.
4. 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.
5. UNDER FOURTEEN: If the juvenile being interrogated is 12 years of age or older and under the age of 14, he/she must be given an actual opportunity to have a meaningful consultation with an interested adult to discuss the *Miranda* warnings.
6. AGE 14 TO under 18: If the juvenile is over the age of fourteen and an interested adult is present, the adult shall be given a genuine opportunity to have a meaningful consultation with the juvenile.
7. Officers shall ensure that the interrogation is not unduly coercive, particularly when an interested adult is not present. [44.2.3 b](#)
8. The duration of each interrogation session should be limited and frequent breaks taken.
9. Absent extraordinary circumstances, only two officers shall be present at the interrogation.

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

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.

VI. ABUSED OR NEGLECTED CHILDREN 42.2.2.b

- A. 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 Child and Families by oral communication, followed by a written report within 48 hours of the oral communication. Said report shall contain the following information:
1. The names and addresses of the child and parents or other person responsible for the child's care, if known.
 2. The child's age;
 3. The child's sex;
 4. The nature and extent of the child's injuries, abuse, maltreatment or neglect;
 5. The circumstances under which the officer first became aware of the child's condition;
 6. The action taken, if any, to treat, shelter or otherwise assist the child;
 7. The name of the officer making the report;
 8. Any other information which the officer believes may be helpful in establishing the cause of the injuries; and
 9. The identity, if known, of the person or persons responsible for such injuries.
- B. 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 Child and Families (DCF) shall be immediately contacted and requested to respond to the scene to take custody of the juvenile. 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.
- C. 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 childcare agency or individual.

VII. SCHOOL LIAISON AND YOUTH PROGRAMS

- A. The chief of police may establish and/or maintain a school liaison program and appoint one or more officers to do the following: 42.2.4
1. Act as a resource with respect to delinquency prevention. 41.1.1
 2. Provide guidance on ethical issues in a classroom setting, as requested.
 3. Provide individual counseling and/or mentoring to students; and
 4. Explain to students the role of law enforcement in society

5. Officers should follow the Memorandum of Understanding Agreement between the Town of Stow Police Department and the Nashoba Regional School District and the Middlesex District Attorney's Office
6. Officer will follow the policies set by POST
7. Officers will be trained as SRO through POST and MPTC
8. 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. [42.2.5](#)

VIII. RECORD KEEPING

- A. Officers who select noncustodial alternatives or engage in informal enforcement contacts with juveniles shall complete appropriate incident reports. These reports shall clearly identify the juveniles involved, the nature of the incident and the rationale for the officer's disposition.
- B. Juveniles taken into custody for criminal-type offenses shall be subject to the same reporting requirements as adults. Such records, including photographs and fingerprints, shall be clearly marked "Juvenile" and will be separated from adult arrest records. 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. [82.1.2 a, b](#)

IX. 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

M.G.L. c. 119, s. 52

M.G.L. c. 119, s. 52

28 CFR Part 31.303 (i)

M.G.L. c. 119, s. 54

M.G.L. c. 119, s. 86

M.G.L. c. 119, s. 67(a)

M.G.L. c. 119, s. 67(b)

M.G.L. c. 119, s. 67(c)

M.G.L. c. 119, s. 67(d)

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

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

M.G.L. c. 119, s. 68

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

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

M.G.L. c. 94C, s. 36

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)

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

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)

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

Id.

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

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

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

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

HANDLING THE MENTALLY ILL

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.16	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 41.2.7	EFFECTIVE DATE: _____
	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

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

II. POLICY

It is the policy of this department that:

- A. Officers shall accord all persons, including those with mental illness, all the individual rights to which they are entitled.
- B. Officers shall attempt to protect mentally ill persons from harm and shall refer them to agencies or persons able to provide services where appropriate.

III. DEFINITIONS

- A. **Bipolar:** Also known as "manic-depressive illness," the disorder causes extreme swings in a person's moods, emotions and behaviors. In the "manic" state, these strong moods may include intense elation or irritability. In the "depression" state, a deep sadness or hopelessness is prevalent. Both are manifested in the "mixed state."
- B. **Schizophrenia:** A serious disorder which affects how a person thinks, feels and acts. The illness is characterized by dramatic changes in behavior and thinking. Someone with schizophrenia may have difficulty distinguishing between what is real and what is imaginary; may be unresponsive or withdrawn; and may have difficulty expressing normal emotions in social situations.

- C. Pink Slip or “Section 12”: Refers to an involuntary commitment to an emergency mental health facility pursuant to M.G.L c. 123 s. 12.
- D. Hallucinations: Perceptual experiences that are not actually occurring, such as hearing voices telling one to harm oneself.
- E. Delusions: Fixed false beliefs about the self, such as: “Everyone is out to get me.”

IV. PROCEDURES

A. Recognizing Mental Illness

1. An employee must be able to recognize a mentally ill individual if [s]he is to handle a situation properly.
2. Factors that may aid in determining if a person is disturbed are: [41.2.7]
 - a. Severe changes in behavioral patterns and attitudes;
 - b. Unusual or bizarre mannerisms and/or appearance;
 - c. Distorted memory or loss of memory;
 - d. Hallucinations or delusions;
 - e. Irrational explanation of events;
 - f. Hostility to and distrust of others;
 - g. Fear of others, such as paranoia;
 - h. Marked increase or decrease in efficiency;
 - i. Lack of cooperation and tendency to argue;
 - j. One-sided conversations; and
 - k. Lack of insight regarding his/her mental illness.
3. These factors are not necessarily, and should not be treated as, conclusive. They are intended only as a framework for proper police response. It should be noted that a person exhibiting signs of an excessive intake of alcohol or drugs may also be mentally ill.
4. Medications: Some medications commonly prescribed for mental illnesses are:

Trade Name	Generic	Trade Name	Generic
ATIVAN	LORAZEPAM	LITHOBID/ LITHIUM	LITHIUM CARBONATE
CALAN	VERAPAMIL	NEUROTIN	GABAPENTIN
CLOZARIL	CLOZAPINE	PROZAC	FLUOXETINE
DEPAKENE	VALPROIC ACID	RISPERDAL	RISPERIDONE
DEPAKOTE	DIVALPROEX	SEROQUEL	QUETIZPINE

GEODON	ZIPRASIDONE	TEGRETOL	CARBAMAZEPINE
HALDOL	HALOPERIDOL	TOPAMAX	TOPIRAMATE
KLONOPIN	CLONAZEPAM	WELLBUTRIN	BUPROPION
LAMICTAL	LAMOTRIGINE	ZYPREXA	OLANZAPINE

B. Common Mental Disorders

5. **Bipolar Disorder** : This is typically a lifelong illness that most often begins in the later teenage years or early adulthood. It commonly runs in families, but not always, and affects more than two million Americans. It is a treatable illness.

- l. Warning Signs: These signs, outlined in the chart below, are often painful, last a long time and are serious. They usually interfere with a person's ability to conduct a normal family, work and personal life.

Signs of Mania	Signs of Depression
Excitability or feeling "high"	Feeling sad, depressed or guilty
Increased talkativeness	Slowed or sluggish behavior
Fast speech	Hopelessness
Decreased need for sleep	Thoughts or plans of suicide
Excessive energy	Change in sleep, appetite, energy
Risky behaviors	Problems concentrating

m. Some people will self-medicate with alcohol or illegal drugs.

6. **Schizophrenia** : Persons in a psychotic state may have high anxiety, faulty reality testing, poor judgment, or diminished impulse control.

n. They may be at risk of harming themselves or others.

o. Warning Signs include:

- 1) Delusions (false or unreal beliefs);
- 2) Hallucinations (hearing, smelling, tasting or feeling something that is not really there);
- 3) Disorganized speech and/or speaking less;
- 4) Bizarre behavior;
- 5) Blunted or dulled emotions;
- 6) Withdrawing emotionally from people;
- 7) A loss of interest in school or work;
- 8) Difficulty paying attention;

- 9) Lack of energy and motivation;
- 10) Thoughts of death or suicide, or suicide attempts;
- 11) Outbursts of anger; and
- 12) Poor hygiene and grooming.

7. Depression : This is more than just feeling sad or a little under the weather.

- p. Depression is a mental illness that can seriously affect a person's feelings, thought patterns, behavior and quality of life.
- q. Warning Signs include:
 - 13) Ongoing sad, anxious or empty feelings;
 - 14) A loss of interest in activities that normally are pleasurable, including sex;
 - 15) Appetite and weight changes (either loss or gain);
 - 16) Sleep problems (insomnia, early morning waking or oversleeping);
 - 17) Irritability;
 - 18) A loss of energy and a sense of fatigue, or being "slowed down";
 - 19) Feelings of guilt, worthlessness and helplessness;
 - 20) Feelings of hopelessness and pessimism;
 - 21) Difficulty in concentrating, remembering and making decisions;
 - 22) Thoughts of death or suicide, or suicide attempts; and
 - 23) Ongoing body aches and pains or problems with digestion that are not caused by physical disease.

C. Accessing Community Mental Health Resources

- 8. The supervisor of Communications (Dispatch) shall maintain a current directory of mental health resources including:
- 9. Contacts for hospitalization for psychiatric emergencies;
- 10. Massachusetts Department of Mental Health: Phone: 617-626-8000, <http://www.mass.gov>; and
- 11. National Alliance on Mental Illness (NAMI): 1-800-950-NAMI (6264), <http://www.nami.org/>.

D. Dealing with the Mentally Ill in Administrative Settings

- 12. Non-sworn employees may interact with mentally ill persons in an administrative capacity, such as dispatching, records request, animal control issues, etc.
- 13. If an employee believes [s]he is interacting with a mentally ill person, [s]he should proceed patiently and act in a calm manner.
- 14. Although the person is mentally ill, his or her requests or inquiries should normally be treated as if the person making the request or inquiry were not mentally ill.
- 15. Understand that due to the person's illness, the person could make bizarre claims or requests.
- 16. At all times, employees should act with respect towards the mentally ill person. A person with mental illness may be both highly intelligent and acting irrationally.

17. If the person's behavior makes the employee feel unsafe, a police officer should be summoned. The police officer need not deal with the person directly, but be present during the interaction to react if the person becomes disruptive or violent.
18. If the person is disruptive, violent, or acts in such a manner as to cause the employee to believe that the person may be harmful to him/herself or others, a police officer should be summoned to address the situation in accordance with this policy.

E. Interactions with the Mentally Ill in the Field [41.2.7(c)]

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

F. Responding to Requests for Assistance

24. If an officer receives a complaint from a family member of an allegedly mentally ill person, the officer must assess the person's state. The officer must make a good faith determination as to whether or not there is reason to believe that failure to hospitalize the person would create a likelihood of serious harm by reason of mental illness, and as to whether the person is a threat to himself or others.
25. If a person is not an immediate threat or is not likely to cause harm to himself or others, officers should advise such family member of that determination. The family member may:
 - v. Consult a physician or mental health professional in an attempt to obtain a commitment from that person pursuant to M.G.L. c. 123 s. 12(a); or

- w. Make application to the district or juvenile court to obtain a warrant of apprehension pursuant to M.G.L. c. 123 s. 12(e).

G. Warrants of Apprehension

- 26. A warrant of apprehension issued pursuant to M.G.L. c. 123 s. 12(e) is a judicially authorized arrest warrant, and police may take actions normally accorded an arrest warrant. See the department policies on **Arrests**.
- 27. Upon receipt of a warrant of apprehension, police should make a good faith effort to locate and serve the warrant.
- 28. Upon arrest of the subject of the warrant, the individual should be processed according to the department policy on **Processing Detainees** unless, due to the dangerousness of the subject or other factors, doing so would pose an excessive risk of physical harm to the officers or the subject of the warrant. In such a case, the subject should be taken directly to court.

H. Involuntary Examinations

- 29. The authority for an application for Involuntary Examination is described in M.G.L. c. 123 s. 12.
 - x. Medical Personnel: Any physician, qualified psychiatric nurse, mental health clinical specialist, or qualified psychologist, after examining a person and having reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness, may restrain the person and apply for hospitalization for a three (3) day period.
 - y. Police Officers: In an emergency situation, if a physician or qualified psychologist is not available, a police officer who reasonably believes under the circumstances that failure to hospitalize a person would create a likelihood of serious harm by reason of mental illness may restrain such person and apply for the hospitalization of such person for a three (3) day period at a public facility or a private facility authorized for such purpose by the Massachusetts Department of Mental Health.
 - z. Any Person (including a police officer) may petition a district court to commit a mentally ill person to a facility for a three (3) day period if failure to confine that person would cause a likelihood of serious harm.
- 30. Police Application of M.G.L. c. 123 s. 12
 - aa. Absent an order of a physician or psychologist for involuntary hospitalization, a police officer may convince a person who [s]he believes needs such services to agree to a voluntary admission for a mental health evaluation.
 - bb. If feasible, a police officer should seek the involuntary commitment of an individual by an authorized mental health professional or the court.
 - cc. Commitment proceedings under section 12(a) of Chapter 123 should be initiated by a police officer only if all of the following procedures have been observed:
 - 24) Determination has been made that there are no outstanding commitment orders pertaining to the individual.
 - 25) Every reasonable effort has been made to enlist an appropriate physician, psychiatrist, psychologist, social worker or family member to initiate the commitment proceedings.
 - 26) The officer has received approval from **Chief**.

dd. Officers may effect a warrantless entry into the home of a subject for whom a section 12 application for temporary hospitalization (pink slip) has been issued, provided:

27) They have actual knowledge of the issuance of the pink slip.

28) The entry is of the residence of the subject of the pink slip.

29) The pink paper was issued by a qualified physician, psychologist, or psychiatric nurse in an emergency situation and where the subject refused to consent to an examination.

30) The warrantless entry is made within a reasonable amount of time after the pink slip has been issued.

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

ee. Whenever practical, prior to transporting, the emergency mental health facility that police plan to take the person to should be contacted. This may be done by the police, a dispatcher, emergency medical personnel, or staff from the facility from which the mentally ill person is being transported. The facility should be informed of the circumstances and any known clinical history, determine if it is the proper facility, and be given notice of any restraints to be used and whether such restraint is necessary.

31) If an officer makes application to a hospital or facility and is refused, or if [s]he transports a person with a commitment paper (pink slip) signed by a physician, and that person is refused admission, the officer should ask to see the administrative officer on duty to have him/her evaluate the patient.

32) If refusal to accept the mentally ill person continues, the officer shall not abandon the individual, but shall take measures in the best interests of that person and, if necessary, take the mentally ill person to the police station.

33) Notification of such action shall immediately be given to the officer-in-charge or the Chief, who can notify the Department of Mental Health.

I. Taking a Mentally Ill Person into Custody

31. A mentally ill person may be taken into custody if:

ff. [S]he has committed a crime (an arrest).

gg. The officer has a reasonable belief, under the circumstances, that [s]he poses a substantial danger of physical harm to himself/herself or other persons. Threats or attempts at suicide should never be treated lightly.

hh. [S]he has escaped or eluded the custody of those lawfully required to care for him/her.

32. At all times, an officer should attempt to gain voluntary cooperation from the individual.

33. Officers shall be bound by use of force requirements consistent with the department policy on **Use of Force**.

J. Transporting Mentally Ill Persons to Treatment

34. Normally, a person who is to be transported to a hospital for a mental health evaluation pursuant to M.G.L. c. 123 s. 12 will be transported by ambulance.

35. A police officer may transport such person in a police transportation vehicle equipped with a protective barrier if, in the opinion of a police officer, the person poses a threat due to violence, resisting, or other factors. Authorization from a supervisor should be sought prior to transport.

K. Escapes from Mental Health Facilities

- 36. If a patient or resident of a facility of the Massachusetts Department of Mental Health is absent without authorization, the superintendent of the facility is required to notify the state and local police, the local district attorney and the next of kin of such patient or resident.
- 37. Such persons who are absent for less than six months may be returned by the police.
- 38. Persons who have been found not guilty of a criminal charge by reason of insanity or persons who have been found incompetent to stand trial on a criminal charge may be returned regardless of the length of absence.
- 39. Taking a subject into custody for return to a mental health facility shall not be considered an arrest. The subject may be turned over directly to employees of the facility.

L. Indemnification

- 40. Police officers are immune from civil suits for damages for restraining, transporting, applying for the admission of or admitting any person to a facility.
- 41. Immunity applies to officers acting pursuant to the provisions of Chapter 123 (Mental Health).

M. Interrogating Mentally Ill Suspects [41.2.7(c)]

- 42. Whenever a mentally ill or mentally deficient person is a suspect and is taken into custody for questioning, police officers must be particularly careful in advising the subject of his/her Miranda rights and eliciting any decision as to whether [s]he will exercise or waive those rights. It may not be obvious that the person does not understand his/her rights. The department policy on **Interrogating Suspects and Arrestees** should be consulted.
- 43. In addition, it may be very useful to incorporate the procedures established for interrogating juveniles when an officer seeks to interrogate a suspect who is mentally ill or mentally deficient. Those procedures are set out in the department policy **Handling Juveniles**.
- 44. Before interrogating a suspect who has a known or apparent mental condition or disability, police should make every effort to determine the nature and severity of that condition or disability; the extent to which it impairs the subject's capacity to understand basic rights and legal concepts, such as those contained in the Miranda warnings; and whether there is an appropriate "interested adult," such as a legal guardian or legal custodian of the subject, who could act on behalf of the subject and assist the subject in understanding his/her Miranda rights and in deciding whether or not to waive any of those rights in a knowing, intelligent and voluntary manner.
- 45. CONFIDENTIALITY: Any officer having contact with a mentally ill person shall keep such matter confidential except to the extent that revelation is necessary for conformance with department procedures regarding reports or is necessary during the course of official proceedings.

N. Lost or Missing

- 46. If a mentally ill or deficient person is reported lost or missing, police should follow protocols described in the department policy on **Missing Persons**.
- 47. Officers may additionally refer the family of the missing person to the National Alliance for the Mentally Ill (NAMI)/Homeless or Missing Persons Service which operates an emergency hotline to assist all families and friends who have a missing relative or friend. The Information Helpline telephone number is **1-800-950-NAMI (6264)**, and the web site is <http://www.nami.org/>.

O. Training

48. Department personnel shall be trained in this policy upon initial employment. [41.2.7(d)]

49. Employees shall undergo refresher training at least every three years. [41.2.7(e)]

ELDER ABUSE

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

A. GENERAL CONSIDERATIONS AND GUIDELINES

According to the 2000 census, approximately one of every six Massachusetts residents is age 60 or older. Elders are often the victims of abuse, neglect and financial exploitation. In addition, certain elders have lost the ability for self-care and are unable to meet their essential needs. These self-neglecting elders, along with elder victims and elder perpetrators, present unique challenges for law enforcement.

B. POLICY

It is the policy of this department that:

Officers shall accord all persons, including elders, all the individual rights to which they are entitled;

Officers shall attempt to protect elders from harm and shall refer them to agencies or persons able to provide services where appropriate;

Officers shall coordinate their efforts with local protective services agencies to ensure the elders' safety;

Officers shall adhere to the mandated reporting requirements of G.L.c.19A, §15, the Elder Abuse Reporting Statute, and its implementing regulations found at 651 CMR 5.02; and

[OPTIONAL] The Department shall designate one or more officers to have primary responsibility for elder concerns.

C. DEFINITIONS

Elderly Person: An Elderly Person is an individual who is sixty years of age or over.

D. PROCEDURE

Generally

A. *COMPETENCY*

1. Competent elders have the same right to self-determination as do other adults.

2. Officers should not make assumptions about the elder's capabilities, but should be aware of the potential for diminished capacity and other complicating factors.

B. ELDER VICTIMS FILING REPORTS

3. An elder victim may not be competent to tell his/her story.
4. An elder victim may be reluctant to report an abusive family member or caretaker who acts as the victim's sole or primary support.
5. An elder victim may be too embarrassed to admit that a loved one is abusing him/her.

C. ELDER PERPETRATOR

6. An elder perpetrator may also have diminished capacity and poor impulse control caused by a disease process.
7. The department's Domestic Violence Policy and Procedures apply to elders.

D. CARETAKER STRESS

8. Adult children who have family, career and other obligations of their own may also be responsible for taking care of their parents.
9. The associated stress can occasionally lead to neglect and more dangerous behaviors.

The Mandated Reporting Law

5. GENERALLY

10. Officers shall familiarize themselves with the following terms, as defined in the reporting law and implementing regulations.
11. The failure to report suspected instances of abuse or neglect is punishable by a fine of up to \$1,000.
12. For a mandated reporter, the law grants immunity from civil and criminal liability based on the filing of a report, so long as the reporter did not inflict the abuse.

F. DEFINITIONS

13. **ABUSE:** An act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person or the failure of an elder to meet one or more of his/her essential needs. The statute provides an exception for treatment provided or refused in accordance with religious beliefs. "Abuse" includes physical, emotional and sexual abuse, caretaker neglect, self-neglect, and financial exploitation. G.L. c.19A, §14
14. **EMOTIONAL ABUSE:** The non-accidental infliction of serious emotional injury to an elder. There must be an established relationship between the emotional abuse and its effect on the elder. 651 CMR 5.02
15. **FINANCIAL EXPLOITATION:** An act or omission by another person, which causes a substantial monetary or property loss to the elder, or causes a substantial monetary or property gain to the other person which would otherwise benefit the elder. Exploitation may result even if the elderly person consented to the act or omission if the consent was obtained through misrepresentation, undue influence, coercion or the threat of force. G.L. c.19A, §14.
16. **NEGLECT:** The failure or refusal by a caretaker to provide one or more of the necessities essential for physical well-being which has resulted in or may immediately result in serious physical harm. 651 CMR 5.02
17. **PHYSICAL ABUSE:** The non-accidental infliction of, or threat of, serious physical injury to an elder. 651 CMR 5.02
18. **SELF-NEGLECT:** The failure or refusal of an elder to provide for himself or herself one or more of the necessities essential for physical and emotional well-being, including food, clothing, shelter, or personal care, which has resulted in, or where there is a substantial reason to believe that such failure or refusal

will immediately result in, serious harm and prevents the elder from remaining safely in the community.
651 CMR 5.02(6) (2004)

19. SEXUAL ABUSE: Sexual assault, rape, sexual misuse, sexual exploitation of an elder, or threats of sexual abuse. 651 CMR 5.02

G. REPORTING

20. Police are required, as mandatory reporters, to report suspected instances of elder abuse.
- a. This occurs if there is reasonable cause to believe that an elder, who is 60 years of age or older, is suffering from or has died from abuse or a reportable condition.
 - b. A police officer must immediately make a verbal report to the Department of Elder Affairs or the local protective services agency during normal business hours or to the elder abuse hotline (1-800-922-2275) after normal business hours and on weekends.
21. A written report must be filed within 48 hours of the verbal report.
22. Mandated reporters are informed in writing of the disposition of reports.

Special Circumstances

H. PHYSICAL LIMITATIONS

23. Many elders, whether self-neglecting, abuse victims or perpetrators, have physical limitations that make it difficult for them to communicate.
24. Some elders have speech impairments caused by stroke or other debilitating conditions.
25. Others suffer from a loss of hearing or vision or other frailties that may impair their ability to communicate.
26. Officers must be aware of and sensitive to the physical limitations of individual elders and make efforts to communicate with them in a sensitive and respectful manner.
27. When needed, assistance from the appropriate protective services agency should be sought.

I. DIMINISHED CAPACITY

28. Some elders have diminished cognitive capacity due to the effects of dementia or Alzheimer's disease.
29. Depending on the extent of the dementia or Alzheimer's, an elder may or may not be able to provide reliable information about his/ her situation.
30. Some elders suffer from mental illness, which could further impact their cognitive abilities.
31. Police officers need to be able to identify when an elder's diminished capacity prevents him/her from providing reliable information and obtain assistance from the appropriate protective services agency.

J. WORKING WITH RESISTANCE

32. Many elders are resistant to outside intervention.
33. This resistance may be due to any number of factors, including:
- c. A life-long sense of independence;
 - d. The effects of mental illness;
 - e. Fear or embarrassment to admit that they have been abused; and/or
 - f. Desire to protect the perpetrator.
34. When encountering resistance, it is important to build rapport by determining and responding to those issues that are important to the elder. Often, this approach will diminish the resistance and enable the officer to address more serious matters.
35. When needed, assistance should be sought from the protective services agency.

Taking an Elder into Custody

K. CRIMINAL: An elderly person may be taken into custody if the elder has committed a crime.

L. *NON-CRIMINAL*

36. An elderly person may be taken into custody for emergency mental health if:

- g. The officer has reason to believe that the failure to hospitalize the elder would create a likelihood of serious harm by reason of mental illness; or
- h. The elder has escaped or eluded the custody of those lawfully required to care for him/her.

M. If the situation warrants, an officer should consider whether the procedures outlined in the Civil Commitment Statute would be appropriate and refer to the department's policy on ***Handling the Mentally III.***

Interrogating Elderly Suspects

N. *CRIMINAL INTERROGATION*

37. Whenever an elderly person is suspected of committing a crime and is going to be questioned, police officers must be particularly careful in advising the subject of his/her Miranda rights and eliciting any decision as to whether he or she will exercise or waive those rights.

38. It may not be obvious that the person does not understand his/her rights.

39. The department's Interrogating Suspects and Arrestees policy and procedure should be consulted.

O. *MENTAL CONDITION OR DISABILITY*

40. Before interrogating a suspect who has a known or apparent mental condition or disability, police should attempt to determine:

- i. The nature and severity of that condition or disability;
- j. The extent to which it impairs the subject's capacity to understand basic rights and legal concepts, such as the Miranda warnings; and
- k. Whether there is an appropriate "interested adult," such as a spouse, adult child, guardian or legal custodian of the elder who could assist the elder in understanding his or her Miranda rights and in deciding whether or not to waive any of those rights in a knowing, intelligent and voluntary manner.

41. Where competency may be in question, officers should be aware that any waiver obtained will be carefully scrutinized by the court.

42. Consultation with the local district attorney's office may be appropriate in such circumstances.

Considerations When Arresting a Caretaker

P. In cases involving abuse of an elder by a caretaker, officers must address the issue of whether or not the victim can be left alone safely if the abuser is arrested.

Q. If the elder cannot be left alone, the appropriate protective services agency must be contacted in order to arrange for the temporary care of the elder.

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

R. Assault and Battery upon an Elderly or Disabled Person
(G.L. c.265, §13K);

S. Indecent Assault and Battery on a Person 14 or Older
(G.L. c.265, §13H);

- T.** Assault and Battery with Dangerous Weapon; Victim Sixty or Older (G.L. c.265, §15A);
- U.** Assault with Intent to Rob or Murder While Armed; Victim Sixty Years or Older; Minimum Sentence for Repeat Offenders (G.L. c.265, §18);
- V.** Robbery by Unarmed Person; Victim Sixty or Older (G.L. c.265, §19);
- W.** Entering Dwelling House by False Pretenses; Intent to Commit Felony; Larceny (G.L. c.266, §18A);
- X.** Larceny by Stealing; Victim Sixty-Five or Older (G.L. c.266, §25); and
- Y.** Larceny; General Provisions and Penalties (G.L. c.266, §30(5)).

EXECUTING SEARCH WARRANTS

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

I. GENERAL CONSIDERATIONS AND GUIDELINES

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

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

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

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

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

II. POLICY

It is the policy of this police department to:

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

III. DEFINITIONS

Search Site: The premises to be searched, as explicitly stated in the search warrant.

Search Personnel: Law enforcement officers and supporting personnel taking part in the execution of a search warrant.

Evidence Collector: Member of the search team responsible for the possession, packaging, sealing, and marking of all items seized.

Case Officer: The officer primarily responsible for the investigation, and preparing, planning, and implementing the search warrant.

Tactical Coordinator: The officer responsible for planning and supervising tactical operations to include dynamic entry and other tasks requiring special weapons and tactically trained officers.

Protective Sweep: Quick and limited search of premises incident to an arrest or service of a warrant performed in order to identify weapons or other dangers to officers or others. Officers must be able to articulate a reasonable basis for conducting a protective sweep.

IV. PROCEDURES

Warrant Service Planning

A. CASE OFFICER

1. The case officer shall when feasible advise and receive approval from his or her supervisor before serving the warrant.
2. Selection of officers to serve the warrant shall be based on the officers' prior training and experience in conducting warrant service, consistent with the demands of the warrant service in question.
3. Efforts shall be made to obtain adequate personnel to serve the warrant safely and efficiently.
4. The case officer shall ensure the complete preparation for serving the warrant, in accordance with its nature and complexity, and in consultation with the prosecutor, if necessary.
5. The case officer shall determine the best date and time for warrant execution. The warrant shall be executed as soon as practicable as defined by state law.
6. The case officer shall determine equipment, team personnel, and any specialized team requirements.
7. The case officer shall ensure that the entire search warrant execution process is documented until the search team leaves the premises. A written record may be supported by photographs and, if practical, videotaping of the entire search process.
8. Prior to the execution of the warrant, the case officer shall make a final assessment of the warrant's accuracy in relationship to the location to be searched.
9. The Case Officer will decide if outside mutual aid is needed.

B. INTELLIGENCE

10. Gather intelligence on the target site, to include the structure, immediate area surrounding the structure, and surrounding neighborhood.
11. Assess the capabilities and backgrounds of suspects, to include criminal records and history of weapons usage and potential for violence.
12. Prior to execution of the warrant, the case officer shall attempt to determine if any circumstances have changed that make executing the search warrant undesirable at that time.

13. Where possible, pre-search surveillance shall be conducted up to the point at which the warrant is executed.

C. *SEARCH WARRANT*

14. Secure a warrant and ensure that it is thoroughly reviewed for accuracy, legal integrity, and completeness. For further information, see the department policy on ***Search Warrant Affidavits***.
15. Search warrants must be served within seven (7) days of issue.
 - a. The need for a no-knock warrant or a no-knock entry should be considered prior to applying for the warrant and again prior to execution.
 - b. The need for a no-knock warrant shall be clearly specified in the application and affidavit for a warrant if probable cause exists at the time of application. A no-knock entry may be made if the officers have probable cause to believe:
 - 1) There is a risk to the safety of the officers or persons on the premises if an announcement is made.
 - 2) There is a risk of the escape of the person sought in the warrant.
 - 3) There is a risk of the destruction of evidence.
 - c. Officers must reassess the need for announcing entry immediately prior to executing the warrant. If the probable cause no longer exists, the officers must announce prior to entry.
 - d. If probable cause should develop after the warrant is issued and before it is executed, officers may enter unannounced.
16. Should nighttime service, between the hours of 10:00 p.m. and 6:00 a.m. be deemed necessary, justification shall be included in the affidavit and must be authorized in the search warrant.
17. The use of a tactical team, if available, should be considered whenever a warrant calls for no-knock entry, nighttime entry, or service involving either drugs or subjects deemed particularly dangerous.

Preparation for Executing the Warrant

D. *BRIEFING*

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

E. *TARGET*

21. Delineate information concerning the structure to be searched and surroundings, to include floor plans where available, mockups, photos, and diagrams of the location identifying entrances, exits, obstructions, fortifications, garages, outlying buildings, suspect vehicles, and all other points of concern.
22. Identify suspects and other occupants who may be present at the location—incorporating photos or sketches whenever possible—with emphasis on suspect threat potential, as well as the presence of children, the elderly or others who may not be involved with suspects.
23. Make a complete review of the tactical plan, to include the staging area and route of approach.
24. Develop procedures for exiting the location under emergency conditions.

F. *ENTRY AND SEARCH*

25. The entry team shall at all times include uniformed officers who shall be conspicuously present where the warrant is served. All non-uniformed officers shall be clearly identified as law enforcement officers by a distinctive jacket or some other conspicuous indicator of office.
26. All members of the search team shall wear body armor or ballistic vests as designated by the case officer.
27. Individual assignments shall be made for entry, search, management of evidence, custody and handling of seized vehicles, custody of prisoners, and post-execution duties, such as securing the location and conducting surveillance on the site for additional suspects.
28. The specific items subject to the search will be defined in the warrant, with any available information on their location.
29. Contingency plans shall be made for encountering hazardous materials, canines, booby traps, fortifications or related hazards, and shall include measures to take in case of injury or accident, to include the nearest location of trauma or emergency care facilities.
30. If needed the Case Officer can request Entry Teams from outside agencies, such as State Police or Law Enforcement Councils or Sheriff Departments

Entry Procedures

- G.** If an advance surveillance team is at the target site, contact shall be made to ensure that the warrant can be served according to plan.
- H.** The search personnel shall position themselves in accordance with the execution plan.
- I.** Notification: An easily identifiable police officer shall knock and notify persons inside the search site, in a voice loud enough to be heard inside the premises, that [s]he is a police officer and has a warrant to search the premises, and that [s]he demands entry to the premises at once.
- J.** Following the knock and announce, officers shall delay entry for an appropriate period of time based on the size and nature of the target site and time of day to provide a reasonable opportunity for an occupant to respond (normally between fifteen and twenty seconds).
- K.** If there is reasonable suspicion to believe that the delay would create unreasonable risks to the officers or others, inhibit the effectiveness of the investigation, or would permit the destruction of evidence, entry may be made as soon as practicable.

On-Premises Activities

L. *ENTRY*

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

M. *VIDEO DOCUMENTATION PRIOR TO SEARCH*

33. After the site has been secured, a photographic and/or videotape record of the premises shall be made prior to conducting the search.
34. If damage occurs during an entry to premises, photographs of the damage should be taken where possible.
35. Officers can contact outside agencies to help document.

N. *SEARCH PROCESS*

36. Search personnel shall then follow the plan that details the likely whereabouts of the items to be seized and the order of operation for conducting the search.

37. Items specified in the warrant may be searched for in places where they may reasonably be expected to be located and seized, as well as other items that are reasonably recognized as evidence.

O. EVIDENCE DOCUMENTATION

38. The search must be accomplished in an organized fashion.

39. Evidence may be photographed in place prior to recovery.

40. An officer, designated in the plan, shall be responsible for collecting, preserving, and documenting all items seized until possession is transferred to the evidence custodian, laboratory, or other authority.

41. Cash and currency taken as evidence shall be counted, documented, and placed in a sealed envelope or container by two officers.

42. All Evidence will be processed and logged into the Records Management system.

P. SEARCH CONCLUSION

43. Officers should exercise reasonable care in executing the warrant to minimize damage to property.

44. If damage occurs during an entry to premises that will be left vacant, and the damage may leave the premises vulnerable to security problems, arrangements shall be made to guard the premises until it can be secured.

45..

Q. AFTER ACTION BRIEFING: In a timely manner upon conclusion of the warrant service, the case officer and tactical coordinator may conduct a debriefing of all participating officers.

R. REPORTING

46. The case officer shall, thereafter, prepare and submit an after action report on the warrant service, results of the search, and recommendations for further investigative actions.

47. If damage occurs, justification for actions that caused the damage and a detailed description of the nature and extent of the damage shall be documented. Photographs of the damage should be taken where possible.

OFF-DUTY POLICE POWERS

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.19	ISSUE DATE:
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: none	EFFECTIVE DATE:
	REVISION DATE:

A. GENERAL CONSIDERATIONS AND GUIDELINES

Off-duty officers are often faced with situations involving criminal conduct that they are neither equipped nor prepared to handle in the same manner as if they were on duty. This may lead to unnecessary injuries to off-duty officers, and confusion for those on-duty officers arriving at the scene trying to correctly assess the facts. In some situations, the authority of off-duty officers may be questionable, especially where they are outside the limits of this municipality. The purpose of this policy is to provide guidelines to police officers regarding acceptable criteria for exercising their police powers while off-duty, including making an off-duty arrest.

B. POLICY

It is the policy of this police department to:

Determine and regulate those situations and locations in which a sworn member is authorized to make an arrest while off duty; and

Authorize officers to “self-activate” in limited circumstances, subject to the training and other restrictions set forth in this document.

III. DEFINITIONS

Off-Duty: When a member is not in on-duty status, such as working a department assigned shift, overtime or paid detail.

Personally Involved: An officer is deemed personally involved where the off-duty officer, a family member, or a friend becomes engaged in a dispute or incident involving a personal matter with the person to be arrested or any other person connected with the incident. This does not apply to situations where the police officer is a crime victim.

D. PROCEDURES

Liability Protection

A. MGL c. 258 specifies requirements and limitations for civil liability protection for police officers.

B. Officers of this agency have liability protection for the on- and off-duty performance of official duties.

- C. This protection does not extend to those actions that the police officer knew, or reasonably should have known, were in conflict with the law or the established policies of this department.

Off-Duty Enforcement

- D. *PERMITTED OFF-DUTY ARRESTS: When off duty and within the jurisdictional limits of this municipality, an officer may make an arrest only when all of the following occur:*
1. There is an immediate need to prevent a crime or apprehend a suspect;
 2. The crime would require a full custodial arrest; and
 3. The arresting officer possesses police identification.
- E. *PROHIBITED OFF-DUTY ARRESTS: Officers shall avoid making arrests when:*
4. The officer is personally involved in the incident underlying the arrest;
 5. The officer's ability or judgment to use a firearm or take a person into custody has been impaired by use of alcohol, prescription drugs, or other medication or by a physical ailment or injury; or
 6. A uniformed police officer is readily available to deal with the incident.
- F. *DISPUTES*
7. Officers shall not make an arrest or take other official actions in personal matters or those of their neighbors, friends, associates, or relatives, unless such action is warranted by the immediate threat of serious bodily harm or significant property damage.
 8. Officers obligated to take enforcement action in such cases shall notify a supervisor as soon as possible.
- G. *ENFORCEMENT ACTION: PERSONAL INVOLVEMENT*
9. Officers shall not take enforcement action in any off-duty situation where the officer is personally involved in the incident underlying the need for such action.
 10. The officer shall report such an incident to a supervisor, who will take or assign another officer to take the off-duty officer's complaint.
 11. Nothing in this policy is to be interpreted as preventing or prohibiting a member from defending himself/herself or others from assaults or threats of death or serious bodily harm regardless of the member's duty status.

Off-Duty Responsibilities

- H. While off duty, a police officer is responsible for immediately reporting any suspected or observed criminal activities to on-duty authorities.
- I. When an officer is prohibited from taking off-duty enforcement actions under provisions of this policy, the officer shall act as a trained observer and witness to the offense and shall summon on-duty personnel as soon as reasonably possible.
- J. Where an arrest or other enforcement action is necessary, the off-duty arresting officer shall abide by all departmental policies and procedures.
- K. Officers shall meet all reporting requirements including:
12. Incident reports; and
 13. Use of force report, if appropriate.
- L. Off-duty officers shall follow established protocols (including the use of signs and signals) for recognition of off-duty officers in plain clothes, so as to reduce the potential of misidentification of such personnel during enforcement encounters.

Identification

- M.** Off-duty officers in plain clothes shall follow all orders issued by uniformed officers without question or hesitation and regardless of rank or assignment during enforcement encounters and shall identify themselves as law enforcement officers.
- N.** Officers in under-cover assignments shall follow the policies regarding those assignments.

POLICE CANINE OPERATIONS

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.20	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 41.1.4	EFFECTIVE DATE: _____
	REVISION DATE: _____

A. GENERAL CONSIDERATIONS AND GUIDELINES

Because of their superior senses of smell and hearing, physical stamina and agility, trained law enforcement canines are a valuable supplement to police manpower. However, utilization of canines requires adherence to procedures that properly control their use-of-force potential and channel their specialized capabilities into legally-acceptable crime prevention and control activities.

Police dogs are not infallible. Their effectiveness depends largely upon the intelligent application of their capabilities. Police dogs react as trained to situations. Anyone making a sudden or threatening move toward the dog or handler risks the chance of the dog's engaging and causing injury.

The purpose of this policy is to establish a set of guidelines for the proper management and control of the department's canine team(s), as well as the use of police canine team(s) from other police agencies during daily and specialized operations.

This policy will familiarize department personnel with canine operating procedure and policy to ensure the best use of canine teams; the policy will also educate department supervisors on the appropriate uses of canine teams to ensure effective utilization and management in deployment situations.

II. POLICY

[FOR DEPARTMENTS USING CANINES ON MUTUAL AID]

It is the policy of the department to:

- Provide support for canine teams requested under mutual aid;
- Keep crime scenes and areas in which the canines are to deploy as free from contamination as possible;
- and
- Keep innocents, bystanders, and distractions away from canine teams while they work.

[FOR DEPARTMENTS WITH THEIR OWN CANINE TEAMS]

It is the policy of this department to staff, train, deploy, and maintain a canine unit within the department to serve as a support unit in the field to enhance basic patrol and investigative functions.

This department shall utilize regional police agencies' canine team(s) when it is felt that their use will aid in the apprehension of wanted or escaped persons, tracking, search and rescue operations, seizure of contraband, discovery of explosives, crowd control, locating articles, arson investigation, public relations demonstrations, and other needs of the department.

C. DEFINITIONS

Canine Team: A police officer/handler and a specially trained working dog working as a team.

Passive Alert Dog: A canine which, when alerting to the presence of controlled substances or other material for which it is trained to search, sits, stands or lies down passively.

Aggressive Alert: A canine which, when alerting to the presence of a controlled substance or other material for which it is trained to search, will dig at the source of odor.

D. PROCEDURES

[EDIT PROCEDURES TO REFLECT YOUR AGENCY'S OPERATION.]

Canine Team Utilization

A. CANINE HANDLING

Only officers trained to handle a police canine and authorized by the Chief of Police may handle a canine.

The handler shall maintain control of the canine to avoid injury to persons as well as to the dog.

B. AVAILABILITY

Canine teams should not be used to respond to minor complaints.

The teams may engage in assignments not listed here with the approval of the shift supervisor.

C. CANINE TEAM DEPLOYMENT

The decision to deploy a canine team is the decision of the on-scene supervisor.

The canine handler is responsible for determining whether a situation justifies canine use. The decision on how to deploy the canine team is a decision of the handler. The responsibility for the evaluation of risk and safety of the team lies with the team commander.

If an on-scene supervisor disagrees with the handler's tactical assessment to deploy a canine, he may instruct the handler not to deploy the canine. When the handler disagrees with an on-scene supervisor's tactical assessment to deploy a canine, the handler may choose not to deploy the canine.

Arrestees shall not be transported in a vehicle with a police canine unless alternative transportation is not available and immediate transport is essential for safety or security reasons.

4. MUTUAL AID REQUESTS: When another agency requests the use of the department's canine team:

The dispatcher shall notify the shift supervisor of the request and a brief description of the nature of the incident.

If the request is approved by the shift supervisor, an on-duty canine team will be assigned to respond to the requesting agency. If no team is on duty, or the team is involved in another incident, a second team may be called out.

Responsibilities of Requesting Officers

Generally

Minimize noise and confusion at the scene to avoid exciting or distracting the canine.

Do not follow or get close to a dog that is working, unless instructed to do so by the handler.

Shut off vehicles in the area if feasible to minimize scent contamination by engine exhaust.

In the event that a resident has a pet at the scene, request that the owner remove the pet completely away from the area.

Building Search

Attempt to determine if anyone may be lawfully in the building.

Secure the building to prevent entry by others and to prevent escape.

Tracking/Area Search

Determine the last known location of the suspect. Secure the area from any further scent contamination.

Set up a perimeter to prevent the escape of the suspect. Secure the area from any further scent contamination.

Article Searches

Secure the area where the articles are to be searched for to avoid any further scent contamination.

Leave items in plain view, undisturbed and in place, if possible, and point them out to the handler.

If articles must be recovered, advise the handler of what was recovered and where.

Approaching Canines

Personnel shall not provoke, tease or abuse the canine.

Employees shall not approach the canine without the consent of the handler.

Employees shall not feed the canine without consent of the handler.

Employees shall not provide any commands to the canine.

Employees shall not show the canine to any person(s) without the consent of the handler.

Employees shall refrain from making any threatening gestures, engaging in horse play, or making any motions toward the handler while in the presence of the canine. Such actions may trigger a protective response from the canine.

The handler shall share in the responsibility of keeping personnel aware of these rules and shall report any violations.

Canine Operations [41.1.4(a)]

E. *CROWD CONTROL*

Canine team(s) shall be deployed under department guidelines.

Canine teams shall not be used for crowd control at peaceful demonstrations.

The canine team shall allow open avenues of escape to the crowd.

Canines shall be restrained on a leash no longer than six-feet attached to a collar.

Canines shall not be unleashed and sent into a crowd.

F. *DRUG DETECTION CANINES*

The canine officer shall maintain records that document the use and the proficiency of individual canines in drug detection. This documentation shall be readily available to officers and others who may need it when seeking warrants.

Sniffing in Public Places

Random exploratory sniffing of luggage, packages or other inanimate objects may be conducted in public facilities such as airports or train stations, as authorized by the shift supervisor or other authorized command officer.

Exploratory sniffing in these facilities shall be confined solely to those areas open to the general public and, whenever possible, with the advance knowledge and consent of the appropriate facility manager.

Exploratory sniffing shall be conducted without interference or annoyance to the public or interruption of facility operations.

Sniffing in Areas Restricted to the Public: Canine sniffs conducted in areas restricted to the public, such as baggage staging areas, are considered searches and may be conducted only with reasonable suspicion or probable cause to believe that specific items contain illegal narcotics.

Sniffing at Shipping Facilities: Exploratory sniffing may be conducted on the premises of private shipping companies at the request of the facility manager and with the consent of the Chief of Police.

Sniffing of Persons: Sniffing of an individual's person is permitted only when there is reasonable suspicion to believe that the individual is in possession of illegal narcotics. Sniffing may be conducted using a passive alert dog only.

Use of Drug Detection Canines in Schools: The use of drug detection canines in public schools is permitted only when:

The school's principal or designated authority requests or approves use of the canines;

There is reasonable suspicion to believe that illegal narcotics are being possessed, distributed and/or consumed on the premises, such that the interests of the school are being unacceptably compromised; and

The search is limited to inanimate objects in public areas and the exterior of student lockers unless reasonable suspicion exists to gain admission to lockers and related areas where there is a reasonable expectation of privacy.

Sniffs of the exterior of residences, either individual dwellings or the common areas of multiple unit dwellings, are not permitted without a search warrant.

Drug-sniffing canines may be used to sniff motor vehicles when:

Reasonable suspicion exists to believe the operator or passengers are in possession of illegal narcotics.

During a valid vehicle stop, the use of a canine to sniff the vehicle's exterior in an exploratory manner is not a search. Unless the canine alerts to the vehicle, the operator may not be detained longer than necessary to conclude the business associated with the initial stop.

Canines may be used in consent searches.

Canines may assist in the execution of search warrants.

G. *BUILDING SEARCHES*

When the responding officer believes an unauthorized person is in a building, no preliminary building search should be conducted. The officer's responsibility is to secure the building, permitting no one to enter, and to call a canine team, which will enter and search the building.

Evacuate all tenants, workers and others from the facility.

Request that all air conditioning, heating, or other air-blowing systems be shut off so as not to interfere with the canine's scent.

Upon entrance to the building, all exits should be kept secured, and communications limited to those of a tactical nature.

It will be the responsibility of the handler to determine whether or not the canine should be unleashed during a building search. Consideration will be given to the imminent risk of injury to innocent persons within the facility.

Prior to the building search, the handler will verbally announce a warning to anyone inside the building that a K-9 will be released to conduct a search. The handler will urge anyone inside the building to surrender at that time. If there is no response, the Canine Team will then conduct the initial search. This warning shall be repeated on each level of all multilevel structures.

If, in the opinion of the handler, it is tactically unsafe to announce the presence of the canine team, and if the on-scene supervisor approves, the canine team may enter the building unannounced.

When apprehending suspects, canines shall be commanded to disengage as soon as it is safe to do so.

Note: When a building has been closed for the night, the odors in the building tend to dissipate. When a person enters the building or opens a door or window, this allows a draft or wind to enter, disturbing the suspect's odor trail and spoiling the scene.

H. TRACKING

Humid, early morning hours with no wind offer ideal tracking conditions.

Tracking on paved streets is difficult because of the odor of the pavement itself.

Wind of twenty miles per hour or more, or heavy rain, makes tracking difficult. Light rainfall frequently provides ideal tracking conditions.

If officers are pursuing or searching for a suspect and contact with the suspect is lost, prior to summoning a canine team the officers should try to pinpoint the location where the suspect was last seen, and avoid vehicle or foot movement in that area.

Back up officers should not respond to the scene, but position themselves around the perimeter of the incident to contain the suspect in the search area.

It is important that the responding officer make certain that no person enters the area used by the suspect to make his departure. Since the subject's odor will be predominant, the entire scene must be free of other contamination. Generally, dogs may be capable of detecting a scent several hours after the suspect has left the area if the scene has not been contaminated.

If material has been dropped by the fleeing suspect, such material and the surrounding area must not be contaminated, since a dog may detect the suspect's odor from the material.

Canines used for tracking persons should remain on a leash of sufficient length to provide a reasonable measure of safety to the subject of the search without compromising the canine's tracking abilities. The canine handler may decide to track "off-lead" where the threat level to police officers is high.

I. ROLE OF BACK-UP OFFICERS

The canine team handler may request a back-up officer.

A back-up officer's primary responsibilities include but are not limited to the following:

The back-up officer(s) should remain close to the handler in a position determined by the handler.

The back-up officer(s) shall be responsible for all communication between the canine team, on-scene supervisor, and the perimeter officers.

The back-up officer(s) should not go ahead of the canine team unless directed to do so by the handler.

The back-up officer(s) may not become physically involved with any suspect(s) unless requested to do so by the police officer/handler.

The back-up officer(s) shall respond to the police officer/handler's request and instructions while involved in the operation. The police officer/handler is in charge of the canine team(s) during the operation.

Once instructed to do so, it shall be the responsibility of the back-up officer(s) to search the suspect, and remove the suspect from the scene.

In case of injury to the police officer/handler, the back-up officer is responsible for obtaining help, and being aware of the canine.

J. CANINE WARNING

A "Canine Warning" should be given prior to releasing the dog unless, in the opinion of the handler, doing so would cause undue risk to the canine team, its presence or intention.

The canine warning should consist of the following or similar announcement, "This is the police canine team, speak to me now/stop now, or I will send the dog."

The police officer should deliver more than one warning to ensure that the suspect has received ample warning that the canine will be used to apprehend him/her.

A warning not only allows a suspect time to surrender; it also alerts any innocent persons of the canine team's presence and intention.

At NO time shall the canine team use the canine to effect the arrest of a person who cannot escape or resist the officer, nor to intimidate, coerce or frighten the suspect(s).

Canine Program Administration

K. CANINE BITES

Whenever a canine bites an individual, whether or not the canine was acting in the line of duty, the handler shall:

Examine the injury to determine the seriousness of the bite(s).

Obtain medical treatment for the injured person.

Notify the shift supervisor.

Ensure that color photographs are taken of the injured person showing the injury, affected body areas, and face (for identification purposes).

Reports shall be made for all canine bites regardless of the severity or circumstances surrounding the bite(s).

The handler is responsible for completing a supplementary report to the original incident report.

A Use of Force report shall be completed if the canine was used for a track or apprehension.

A supervisor shall conduct an investigation and submit the findings to the Chief of Police.

L. AFTER INCIDENT REPORT

Following the completion of each incident where a canine is deployed, the handler will complete a utilization report detailing the significant events of the deployment as they relate to the use of the canine.

Such records shall be maintained to document the canine's reliability as well as the handler's experience.

M. REQUIREMENTS FOR CANINE HANDLER INCLUDE: [41.1.4(B)]

A minimum of three years of full time law enforcement experience with satisfactory work performance, disciplinary and medical leave records.

Being physically capable of performing the rigorous duties of a dog handler.

Being able to work with a minimum of supervision and being willing to take on the responsibilities and risks that the position entails.

Having the ability to provide the proper motivation for the K-9, both verbally and physically.

Commitment to devote some personal time to maintenance, training, care and socialization of the K-9.

Ability to be on call when a canine team is needed, thereby being available to assist, support and cooperate with other departments and personnel.

Having family support to have a police working dog with a secure outdoor area for the canine that conforms to accepted K-9 requirements at the home.

Making a commitment to remain the handler of the canine for at least five years, preferably for the remainder of the dog's working life.

Possessing a strong desire to work with canines and willingness to care for and train the animal; and

Being able to put the working dog's well being and physical comfort above his/her own.

N. TRAINING FOR CANINE HANDLER [41.1.4(B)]

Officers assigned as canine handlers shall attend and successfully complete a prescribed training program for handling and caring for the police working dog, with specialized training in the dog's specific discipline (patrol, narcotics detection, tracking, etc.).

The canine team supervisor shall ensure that the teams receive at least the minimum training necessary to perform their duties and to maintain current certification.

Canine handlers shall have at least one day of training per month in each specialty and on legal updates.

Handlers shall earn annual certification in each specialty from an independent, nationally recognized organization.

They shall participate in other training programs as appropriate.

The supervisor should also be familiar with canine procedures, receive training on legal updates and attend canine-related training programs as appropriate.

O. TRAINING FOR CANINE

The canine must be properly trained and certified prior to being officially assigned to patrol duty and must maintain such certification to remain on duty. All training shall be documented on a department-approved form.

In order to maintain the canine's proficiency and certification in detector dogs, it shall be necessary that the handlers have access to appropriate training aids (controlled substances, explosives, etc.). Canine handlers shall be permitted to possess the types of substances the canines are trained to detect in the performance of their duties.

Training aids should be obtained from an appropriate source (DEA, etc.). They shall be stored in an approved container and in a manner that will prevent odor cross contamination and ensure the safety and security of the training aid.

The canine team supervisor shall maintain a logbook for the purposes of logging the controlled substances in and out.

The canine team supervisor shall conduct a monthly inspection and inventory of all training aids stored by the canine teams for training purposes.

The Chief or his/her designee may conduct unannounced inspections of the controlled substances stored by the canine teams for training purposes at any time.

In the event any controlled training aid used by the canine team is lost or destroyed during training or while in the possession of the handler, the handler shall notify the canine team supervisor or his/her designee as soon as possible.

A report shall be completed by the handler. A copy of the case report shall be forwarded to the Chief and the Office of Professional Standards for further review or investigation as determined by the Chief.

Controlled training aids shall not be destroyed or disposed of by the canine handlers. They shall be returned to the issuing agency, where they can be replaced.

P. *USE OF DECOYS*

No person shall act as a decoy for training patrol canines unless that person is approved by the Chief or his/her designee. This shall not apply to decoys provided by outside training vendors or agencies.

Decoys shall wear the appropriate safety equipment for the training task at hand, as determined by the handler.

Persons may be used to assist in training tracking dogs at the discretion of the handler.

Q. *REQUIREMENTS FOR CANINES*

The dog(s) assigned to the canine unit are the property of the police department.

No dog will be used for breeding purposes, participation in shows, field trials, exhibitions or other demonstrations unless authorized by the Chief.

Department canines shall not be used for off-duty employment or police details without approval of the Chief.

No dog that has been trained as a "guard dog" (one that will attack on detection of intrusion, or will attack a human being without command) will be acceptable for utilization by this agency.

Any dog utilized by this department that exhibits a tendency to not be controllable by the handler, or when unprovoked, attacks or bites another person, or poses a threat to an individual or public safety shall be removed from service.

Should the handler retire; be promoted, reassigned, or relieved from the program for any reason; or should the canine be retired, injured or relieved of duty for any reason, the canine may be reassigned to another handler, removed from duty, or ownership may be transferred to the handler or otherwise disposed of at the discretion of the Chief.

R. *CANINE CARE [41.1.4(C)]*

Police canines shall not be used for breeding, participation in shows, field trials, exhibitions or other demonstrations, or for off-duty employment unless authorized by the Chief or his/her designee.

Canine handlers are personally responsible for the daily care and feeding of their animal including:

Maintenance and cleaning of the kennel and yard area where the canine is housed;

Provision of food, water and general diet maintenance as prescribed by the department-authorized veterinarian;

Grooming on a daily basis, or more often as required by weather, working conditions or other factors;

Daily exercise (police canines are not permitted to run at large); and

General medical attention and maintenance of health care records.

Where the handler is unable to perform these and related duties due to illness, injury or leave, the following may occur:

Another canine handler may be assigned to temporarily care for the dog; or

The canine may be housed in a department-approved kennel when the handler is unavailable.

Teasing, agitating or roughhousing with a police canine is strictly prohibited unless performed as part of a training exercise.

Handlers shall not permit anyone to pet or hug their canine without their prior permission and immediate supervision. Should a civilian express a desire to do so, [s]he should be informed that police canines are serious working dogs and that they can be dangerous if improperly approached.

A canine handler may apply to take possession of his/her dog under such circumstances as:

The dog is retired from duty or relieved due to injury; or

The handler is transferred, promoted or retires, and a decision is made not to retrain the dog for another handler.

S. EQUIPMENT [41.1.4(D)]

Specialized canine equipment shall be furnished by the department.

The following list includes but is not limited to equipment needed by the canine team(s):

Canine team cruiser: The interior of the vehicle shall be modified to accommodate the needs of the canine team. The exterior of the vehicle shall be conspicuously marked, "Police K-9."

The following additional equipment shall be provided to each Canine Team:

Six foot leash;

Choke collar;

Flat, correction pinch and/or electronic collars as needed;

Fifteen foot tracking line;

Thirty foot tracking line (optional);

Tacking harness (optional);

Slicker brush and rake comb;

Nail Clippers;

Ear and teeth cleaning supplies;

Water/food bowl;

Food (supplied at the expense of the department); and

Medications and supplements as determined by the department veterinarian.

The handler shall be responsible for maintenance and inspection of this equipment.

T. INJURY TO CANINE

Should a canine be injured, the handler shall provide and arrange for the appropriate emergency medical care for the canine.

The handler shall notify the shift supervisor

The handler shall complete a report to the Chief or his/her designee providing the details of the event and injury.

U. *INJURY TO HANDLER: In the event that the handler is injured, incapacitated or killed, the following procedure will be followed:*

DO NOT, UNDER ANY CIRCUMSTANCES, approach the dog that is protecting the injured handler or attempt to assist the officer, unless it is apparent that the failure to respond to the officer would result in death or serious bodily injury.

Allow the handler to secure the dog if possible. Follow the instructions of the handler regarding ways to render aid.

The dog may be able to be lured into the K-9 vehicle or secured using snares and safety equipment.

If feasible, make contact with another handler to remove the dog or control its actions.

Perform other reasonable actions which allow aid to the injured handler while minimizing injury to the canine.

In the unlikely event that all other efforts to respond to the emergency needs of the officer fail, if time permits, contact the department's approved veterinarian, and attempt to tranquilize the dog. If those efforts are unsuccessful, and the officer is in imminent danger of losing his/her life or compounding an existing injury, the K-9 should be neutralized. If it becomes necessary to shoot the dog, place the shot carefully in order to reduce the animal's suffering. The dog is dutifully protecting its handler. Although this action may seem heartless, human life comes first.

BABY SAFE HAVEN

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1. 21	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: none	EFFECTIVE DATE: _____
	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

In 2004 the Massachusetts Legislature passed Chapter 227, An Act Relative to the Placement of Newborn Infants, a temporary law which provided a mechanism for parents to voluntarily abandon newborn infants, within seven days of birth, without the abandonment itself constituting criminal neglect. The law was made permanent with passage of Chapter 86 of the Acts of 2007.

The purpose of this policy is to provide guidance to officers faced with a voluntary abandonment. This policy does not in any way prohibit police from accepting an infant or child believed to be older than seven days.

II. POLICY

It is the policy of this department to ensure that infants voluntarily abandoned are received, cared for, and transferred to the appropriate social services agency.

III. DEFINITIONS

- A. *Newborn Infant*: a baby seven (7) days old or younger.
- B. *Voluntary Abandonment*: Voluntarily leaving the newborn infant with an appropriate person at a designated facility.
- C. *Designated Facility*: A hospital, police department or manned fire station (the locations stipulated by the Safe Haven Law).
- D. *Appropriate Person*: A person at a designated facility who is able to ensure that the newborn infant is safe (i.e., the triage person in a hospital emergency department or duty officer in a police station).
- E. *Notification*: An immediate notice to be filed with the Department of Social Services (DSS) on the voluntary surrender of the newborn infant.

IV. PROCEDURES

F. Caretaker Exemptions

infant is: The act of abandonment in and of itself shall not constitute abuse or neglect provided that the newborn

- A.** Seven (7) days of age or less;
- B.** Delivered to an appropriate person;
- C.** Delivered to a designated facility, defined as:
 - 1. A hospital;
 - 2. A police department; or
 - 3. A manned fire station.

Other acts of abuse or neglect are not exempted under this statute.

If an infant or child is obviously more than seven days old, this procedure shall be followed, and in addition:

- D.** The officer shall attempt to identify the abandoning parent;
- E.** A investigation shall be conducted and a report prepared; and
- F.** The District Attorney's Office should be consulted before any criminal charges are sought.

G. Responding to a Voluntary Abandonment

IMMEDIATE RESPONSE

- G.** Any department member may accept a child for voluntary abandonment. It is preferred that a police officer receive the infant from the caretaker.
- H.** Upon receiving a request for voluntary abandonment, the dispatcher shall immediately:
 - 4. Notify a supervisor.
 - 5. Dispatch an officer to meet the parent(s) and take custody of the infant (even if a non-sworn employee takes custody of the infant).
 - 6. Request EMS to respond to:
 - a. Check the medical condition of the infant; and
 - b. Transport the infant to an acute care hospital emergency department, if available.

ADDRESSING THE CARETAKER

- I.** If there are obvious signs of physical abuse or neglect, the officer shall initiate a preliminary investigation and submit a report of Neglect and Abuse to DSS.
- J.** If one or more of the parents is available:
 - 7. Thank them for bringing the infant to a safe place.
 - 8. Ask if they would be willing to provide any information that would assist in planning for the future care of the child. Inform them that situations often arise, or children have questions as they grow older, that only they as parents can address.
 - 9. Encourage the parent to provide the information, but the parent shall not be required to provide such information. Make every effort to solicit the following information:
 - c. The name of the newborn infant;
 - d. The name and address of the parent placing the newborn infant;
 - e. The location of the newborn infant's birthplace;
 - f. Information relative to the newborn infant's medical history;

- g. His or her biological family's medical history;
 - h. Any other information that might reasonably assist the department in determining the best interest of the child; and
 - i. Whether the parent plans on returning to seek future custody of the child.
- K.** Employees should collect the information on the department's Baby Safe Haven form to ensure that this information is requested.
- L.** Take custody of any food, clothing, blankets, or other items turned over by the parent.
- M.** Officer(s) should inquire as to the parent(s)' needs for intervention services, including domestic violence assistance, and provide the following number: Baby Safe Haven Hotline: 1-866-814-SAFE (7233).

CARING FOR THE INFANT

- N.** An employee with an infant or very young child may be very helpful in immediately caring for the infant until additional assistance arrives.
- O.** An employee or other appropriate person shall be assigned to care for the infant until such time as custody is transferred to another appropriate person.
- P.** The infant shall be kept in a safe and comfortable place with the temporary caretaker and never left unattended.
- Q.** The infant shall be turned over to EMS personnel upon their arrival, along with any food, clothing, or other items.
- R.** A copy of the information volunteered by the parent should accompany the infant.

DEPARTMENT OF SOCIAL SERVICES

- S.** DSS shall be notified and advised of the voluntary abandonment.
- T.** The caller shall also advise DSS of what information is available about the infant, including:
 - 10. The infant's name and any other information volunteered by the parent;
 - 11. Any items left with the infant (food, clothing, blankets, etc.); and
 - 12. The location where the social worker can take custody of the infant (police station, hospital, etc.).

REPORTS

- U.** Officers or employees taking custody of a voluntarily abandoned infant shall submit an incident report prior to the end of their tour of duty.
- V.** If neglect or abuse is suspected, the officer shall submit an Abuse or Neglect Report to DSS.
- W.** A copy of the Baby Safe Haven form and of the officer's incident report shall be provided to DSS as soon as they are available.

CONSULAR NOTIFICATIONS

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.22	ISSUE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.1.4	EFFECTIVE DATE: _____
	REVISION DATE: _____

A. GENERAL CONSIDERATIONS AND GUIDELINES

As a signatory to the Vienna Convention on Consular Relations, the United States government has agreed to ensure the rights of foreign nationals to have access to their own governments in the event that they are detained or arrested. These rights are also granted to American citizens in the foreign countries that are also signatories. This reciprocal relationship is particularly important for Americans in countries which do not provide many of the rights that Americans enjoy, to their own citizens or visiting foreigners.

The application of this treaty rests with the employees of each police agency when they arrest or detain foreign nationals. Police employees should treat foreign nationals as they would want an American citizen to be treated in a similar situation in a foreign country.

B. POLICY

It is the policy of the department that:

Foreign nationals arrested or detained by members of this agency shall be advised of their right to have their consular officials notified, or that their consular officials shall be notified if such notification is mandatory.

Consular officials will be notified if requested by the foreign national or regardless of the wishes of the foreign national if such notification is mandatory.

Consular officials may have access to detainees to provide consular assistance.

Consular offices shall be notified of the death of a foreign national.

C. DEFINITIONS

Foreign National: Any person who is not a U.S. citizen.

Consular Official (Consul): A citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country.

Optional Notification: A foreign national may refuse the offer to have their consular office notified of their detention.

Mandatory Notification: Bilateral agreements require that the consul be notified in the event of a detention of a national, regardless of the wishes of the detainee.

Detention: An arrest, protective custody, or other custodial situation. A traffic stop or threshold inquiry is not a detention for the purposes of this policy. <http://www.aclu.org/pizza/images/screen.swf>

D. PROCEDURES [1.1.4]

Arrest and Detention of Foreign Nationals

A. *GENERALLY*

1. Whenever a foreign national is arrested or detained, there are legal requirements to ensure that the foreign national's government can offer the detainee appropriate consular assistance.
2. During the booking process, the booking officer shall ask the detainee their country of origin. In absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
3. All foreign nationals are entitled to consular notification regardless of their immigration status.
4. The reporting officer shall include that the foreign national was advised of his/her option for consular notification, or advised of mandatory notification in the incident report, and if such notification was made.

B. *MANDATORY NOTIFICATIONS*

5. Determine if the detainee's country of origin is one requiring mandatory notification. A list of countries requiring notification is listed in Appendix C of this policy.
6. Foreign nationals for whom mandatory notification must be made shall be notified during the booking process using forms provided by the U.S. Department of State under Appendix A of this policy. The forms are available in thirteen (13) languages.
7. Mandatory consul notifications shall be made regardless of the detainee's wishes.

C. *OPTIONAL NOTIFICATIONS*

8. Nationals of countries not listed as mandatory notification shall be considered as optional notifications.
9. Nationals of optional notification countries shall be advised of their right of consular notification and access using forms provided by the U.S. Department of State under Appendix A of this policy.
10. All notification forms shall be filed with the booking documents by the booking officer.

Notification of Consul

D. *NOTIFICATION*

11. All actual notifications of foreign consuls shall be made "without delay" and such notification noted in the incident log. The entry must contain at a minimum:
 - a. Identity of the foreign national;
 - b. Date and time of notification;
 - c. Employee making notification; and
 - d. Identity of the country notified.
12. After refusing notification of consul, foreign nationals may request notification be made on their behalf at any time while being held.

13. For foreign nationals from optional notification countries who do not wish to have their consul notified, take no further action.
 14. For foreign nationals who request notification or are subject to mandatory notification of their consul, fax the notification using the Consul Notification Fax Sheet (MPI Form in Appendix B of this policy).
 15. Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his/her government may exist in some mandatory notification cases. The notification requirement still must be honored. Employees are not obligated to provide any further information regarding the foreign national's detention or circumstances.
- E.** Application for Asylum: Under no circumstances shall any information indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government.

Access of Consular Officials to Detainees

- F.** Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance, subject to provisions of this policy. For further information about access to detainees generally, see the department policy on Detaining Prisoners.
- G.** Consular officials may be granted access to detainees held in custody in person or by telephone, at the discretion of the shift supervisor. Prior to granting access, the supervisor should at a minimum consider:
16. The reason for being detained, nature of the charges;
 17. The detainee's demeanor (violent, intoxicated, etc.);
 18. Bail status and anticipated length of custody;
 19. Security considerations; and
 20. Availability of personnel or appropriate facilities to accommodate such a visit.
- H.** Consular officials and diplomats will be afforded the same access and visitation privileges as attorneys and are subject to visiting rules, conditions, and procedures as set forth in the Department policy on the Detaining Prisoners.
- I.** Consular officials may not act on behalf of the foreign national if the national opposes their involvement.
- J.** Consular officials may not act as an attorney for the national.

Deaths or Life Threatening Injuries of Foreign Nationals

- K.** Notification: In the event that a foreign national becomes deceased or suffers a life threatening injury (accident, crime victim, criminal action, unattended death, etc.), the consul of that national's country must be notified. The foreign government may then notify the deceased's next of kin, cancel the party's passport, etc.
- L.** Notification may be made by FAX or telephone and should include at the minimum:
21. The national's name, address and date of birth if known;
 22. A brief description of the circumstances surrounding the person's death (homicide, accident victim, found deceased, etc.); and
 23. Passport number, date of issuance and place of issuance if known.

References

- M.** The U.S. State Department publication "Consular Notification and Access" is located at:
http://travel.state.gov/law/consular/consular_2003.html.
- N.** Appendix A: Consular Notifications Rights Forms

O. Appendix B: Consular Notification Fax Sheet

P. Appendix C: Mandatory Notifications

Q. Assistance is available at the Office of Public Affairs and Policy Coordination for Consular Affairs, CA/P, Room 6831, U.S. Department of State, Washington, DC 20520; telephone number 202-647-4415; facsimile number 202-736-7559. Urgent telephone inquiries after regular business hours may be directed to the State Department Operations Center, 202-647-1512.

Administration of Nasal Naloxone

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.23	ISSUE DATE: 1/26/2017
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: N/A	EFFECTIVE DATE: 1/26/2017
	REVISION DATE:

I. BACKGROUND

Opiate overdose is the leading cause of accidental death in Massachusetts. Fatal and nonfatal overdose can result from the abuse of opiates such as morphine, heroin, fentanyl, oxycodone as found in OxyCotin, Percocet and Percodan, and hydrocodone as found in Vicodin.

Naloxone, commonly known by the brand-name Narcan, is an opioid antagonist which means it displaces the opioid from receptors in the brain and can therefore reverse an opiate overdose. It is a scheduled drug, but it has no euphoric properties and minimal side effects. If it is administered to a person who is not suffering an opiate overdose, it will do no harm. Naloxone has been available as an injectable since 1960s, but was recently developed as a nasal spray.

To reduce the number of fatalities which can result from opiate overdoses, the Stow Police Department will train its officers in the proper pre-hospital administration of nasal naloxone. In order to implement a safe and responsible nasal naloxone plan, the Department will establish and maintain a professional affiliation with a Medical Control Physician (MCP) who will provide medical oversight over its use and administration. The Medical Control Physician shall be licensed to practice medicine within the Commonwealth of Massachusetts. At his or her discretion, he or she may make recommendations regarding the policy, oversight, and administration of the nasal naloxone program developed and implemented by the Department.

In order to implement this policy the Stow Police Department relies upon the following statutes:

MGL Ch. 94c, s34A which states in part “A person acting in good faith may receive a naloxone prescription and administer naloxone to an individual appearing to experience an opiate related overdose.” The statute imposes no limitation on who may possess and administer Narcan [naloxone]. The statute further indicates that Narcan [naloxone] must be (1) obtained with a prescription and (2) administered in good faith [paraphrased].

MGL Ch. 94C, s.7 outlines parameters under which Narcan [naloxone] programs may be administered by public health officials and law enforcement officers. This statute states in part, “the following persons shall not require registration and may lawfully

possess and dispense controlled substances; (3) any public official or law enforcement officer acting in the regular performance of his official duties.”

MGL Ch. 258C, s. 13 states, “No person who, in good faith, provides or obtains, or attempts to provide or obtain, assistance for a victim of a crime as defined in section one, shall be liable in a civil suit for damages as a result of any acts or omissions in providing or obtaining, or attempting to provide or obtain, such assistance unless such acts or omissions constitute willful, wanton or reckless conduct.

II. DEFINITIONS

Opiate: An opiate is any controlled substance containing or compounded to be a derivative of morphine, morphine sulfate. The term opiate describes any of the narcotic opioid alkaloids found as natural products in the opium poppy plant, *Papaver somniferum*. Commonly encountered opiates in police service include heroin, morphine, oxycontin, percocet, percodan.

Opiates belong to the large biosynthetic group of benzyloisoquinoline alkaloids, and are so named because they are naturally occurring alkaloids found in the opium poppy. The major psychoactive opiates are morphine, codeine, and thebaine. Papaverine, noscapine, and approximately 24 other alkaloids are also present in opium but have little to no effect on the human central nervous system, and as such are not considered to be opiates. Semi-synthetic opioids such as hydrocodone, hydromorphone, oxycodone, and oxymorphone, while derived from opiates, are not opiates themselves.

While the full synthesis of opiates from naphthoquinone (Gates synthesis) or from other simple organic starting materials is possible, they are tedious and uneconomical processes. Therefore, most of the opiate-type analgesics in use today are either directly extracted from *Papaver somniferum* or synthesized from the natural opiates, mainly from thebaine.

Naloxone: Naloxone is an opioid antagonist drug developed by Sankyo in the 1960s. Naloxone is a drug used to counter the effects of opiate overdose, for example heroin or morphine overdose. Naloxone is specifically used to counteract life-threatening depression of the central nervous system and respiratory system. It is marketed under various trademarks including Narcan, Nalone, and Narcanti, and has sometimes been mistakenly called "naltrexate". It is not to be confused with naltrexone, an opioid receptor antagonist with qualitatively different effects, used for dependence treatment rather than emergency overdose treatment.

Medical Control Physician: The Medical Control Physician, herein after referred to as MCP, shall be a designated Medical Doctor who is licensed to practiced medicine in Massachusetts. The Stow Police Department has entered into a Memorandum of Agreement with Emerson Hospital. The Chief of Police or his designee shall periodically consult with the MCP to review overall training, equipment, procedures, changes to applicable laws and regulations and/or the review of specific medical cases. At his discretion, the MCP may partake in training members of the Stow Police Department.

Body Substance Isolation: Body substance isolation, herein after referred to as BSI shall mean, in the context of a First Responder responding to a medical emergency, equipment that is provided to members of the Stow Police Department which is including, but not limited to nitrile protective gloves, eye protection, N95 respirator masks and tyvek suits.

III. POLICY

It is the policy of this Department that:

- A. Naloxone will be deployed in all marked Department vehicles used on patrol for the treatment of drug overdose victims.
- B. A patrol unit shall be dispatched to any call that relates to a drug overdose.

- C. The goal of the responding officers shall be to provide immediate assistance via the use of naloxone where appropriate, to provide any treatment commensurate with their training as first responders, to assist other EMS personnel on scene, and to handle any criminal investigations that may arise.

IV. PROCEDURE

A. Administration of Naloxone during Opiate Overdose Emergencies

When an officer of the Stow Police Department has arrived at the scene of a medical emergency prior to the arrival of EMS, and has made a determination that the patient is suffering from an opiate overdose, the responding officer should administer naloxone according to the following dose: Naloxone 2mg-4mg via Nasal Atomizer.

The following steps should be taken:

- A.** Officers shall use universal precautions
- B.** Officer should conduct a medical assessment of the patient as prescribed by Department Policies and Procedures, to include taking into account statements from witnesses and/or family members regarding drug use.
- C.** If the officer makes a determination that there has been an opiate overdose, the naloxone kit should be utilized.
- D.** The officer shall use the nasal mist adapter (nasal atomizer) that is pre-attached to the naloxone to administer 2mg-4mg. Officers should be aware that a rapid reversal of an opiate overdose may cause projectile vomiting by the patient and/or violent behavior.
- E.** The patient should continue to be observed and treated as the situation dictates.
- F.** The treating officer shall inform incoming EMS about the treatment and condition of the patient, and shall not relinquish care of the patient until relieved by a person with a higher level of training.

B. Reporting

A complete offense report in the event shall be completed by the treating officer, or the primary responding officer.

A written inventory documenting the quantities and expirations of naloxone supplies shall be kept. The log book will also document the issuance of replacement units.

C. Equipment and Maintenance

It shall be the responsibility of officers to inspect naloxone kits stored in the AED case prior to the start of each shift to ensure that the kits are intact. Naloxone kits shall be returned to the AED storage area at the end of each shift.

Damaged equipment shall be reported to a shift supervisor immediately.

The Department's Medical Services Officer will maintain a written inventory documenting the quantities and expirations of naloxone replacement supplies, and a log documenting the issuance of replacement units.

D. Replacement

Shift supervisors shall immediately replace naloxone kits that have been used during the course of a shift.

E. Training

Officers shall receive the standard naloxone training course prior to being allowed to carry and use naloxone. Officers will attend refresher training each year as well as attend one practical training session per year with the Stow Fire Department outlining the use of naloxone and related respiratory concerns.

EPI-PEN AUTO INJECTOR

STOW POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.24	ISSUE DATE: 5/5/17
	EFFECTIVE DATE: 5/5/17
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: N/A	REVISION DATE: _____

I. BACKGROUND

The administration of the Epi-Pen Auto Injector by the First Responder is an approved skill that allows the First Responder to administer Epinephrine to the patient through an auto injector. The administration of Epinephrine reverses the effects of the allergic reaction.

To be in-line with current standards, and to assure continuity of patient care, the Stow Police Department will train its members in the Epi-pen Auto Injector as per the standards set forth by the Office of Emergency Medical Services as indicated in the Massachusetts Statewide Treatment Protocols version 2016.2.

In order to implement a safe and responsible Epi-Pen Auto Injector plan, the Department will establish and maintain a professional affiliation with a Medical Control Physician (MCP) who will provide medical oversight over its use and administration. The Medical Control Physician shall be licensed to practice medicine within the Commonwealth of Massachusetts. At his or her discretion, he or she may make recommendations regarding the policy, oversight, and administration of the Epi-Pen Auto Injector program developed and implemented by the Department.

In order to implement this policy the Stow Police Department relies upon the following statutes:

MGL Ch. 11c, s201 which establishes a guideline for first responder training. The Stow Police Department is also following the standard and guidelines set forth by the Office of Emergency Medical Services as indicated in the Massachusetts Statewide Treatment Protocols version 2016.1, section 2.2A and 2.2P Allergic Reaction/Anaphylaxis Adult/Pediatric.

MGL Ch 11C, s.21 which states; No EMS personnel certified, accredited or otherwise approved under this chapter, and no additional personnel certified or authorized under section 9, who in the performance of their duties and in good faith render emergency first aid, cardiopulmonary resuscitation, transportation, or other EMS, to an injured person or to a person incapacitated by illness shall be personally liable as a result of rendering such aid or services or, in the case of an emergency medical technician or additional personnel, as a result of transporting such person to a hospital or other health

care facility, nor shall they be liable to a hospital for its expenses if, under emergency conditions they cause the admission of such person to said hospital.

II. DEFINITIONS

Epi-Pen Auto Injector: An administration of Epinephrine through an auto injector that reverses the effects of an allergic reaction.

Medical Control Physician: The Medical Control Physician, herein after referred to as MCP, shall be a designated Medical Doctor who is licensed to practiced medicine in Massachusetts. The Stow Police Department has entered into a Memorandum Of Agreement with Emerson Hospital. The Chief of Police or his designee shall periodically consult with the MCP to review overall training, equipment, procedures, changes to applicable laws and regulations and/or the review of specific medical cases. At his discretion, the MCP may partake in training members of the Stow Police Department.

Body substance isolation: Body substance isolation, herein after referred to as BSI shall mean, in the context of a First Responder responding to a medical emergency, equipment that is provided to members of the Stow Police Department which is including, but not limited to nitrile protective gloves, eye protection, N95 respirator masks and tyvek suits.

III. POLICY

The purpose of this policy is to rapidly treat and improve the overall survival rate of patients experiencing an anaphylactic reaction.

It is the policy of this Department that:

- A. Epi-Pen Auto Injector kits will be deployed in all marked Department vehicles for the treatment of anaphylaxis.
- B. A patrol unit shall be dispatched to any call that relates to an allergic reaction.
- C. The goal of the responding officers shall be to provide immediate assistance via the use of the Epi-Pen Auto Injector when appropriate, to provide any treatment commensurate with their training as first responders, to assist other EMS personnel on scene, and to handle any criminal investigations that may arise.

IV. PROCEDURE

A. Administration of Epi-Pen Auto Injector during Out-of-hospital Anaphylactic Reaction

When an officer of the Stow Police Department has arrived at the scene of a medical emergency prior to the arrival of EMS and have made a determination that the patient is experiencing an allergic reaction the following steps should be taken:

- A. Scene safety shall be assured and body substance isolation should be employed.
- B. A medical assessment of the patient identifying the signs and symptoms of anaphylaxis, which are:
 - 1. Hives/Rash usually diffuse throughout the body
 - 2. Difficulty breathing

3. Swelling of lips, eyes and tongue
 4. Tightness and swelling of the throat
 5. Dilation of vessels causing a decrease in blood pressure and an increase in heart rate
 6. Severe abdominal pain
- C.** The officer shall administer the Epi-Pen Auto Injector if it is determined the patient is experiencing signs and symptoms of anaphylaxis (severe distress)
7. Adult dose under 65 years old and greater than 55lbs 25 kg- 0.3mg Epinephrine via auto injector
 8. Children over 6 months old and under 55 lbs (25 kg) - 0.15mg Epinephrine via auto injector
- D.** Remove the safety cap
- E.** Move aside bulky clothing if time allows
- F.** Grasp the Epi-Pen Auto Injector and plunge the end of the Epi-Pen directly into the thigh
- G.** Hold in place for 3 seconds
- H.** Place the used Epi-Pen in a safe location to be transported to the hospital with the patient
- I.** Signs of improvement of the patient's condition should be noted.
- J.** Update incoming EMS of the treatment as well as the condition of the patient

B. Reporting

A complete offense report in the event shall be completed by the treating officer, or the primary responding officer.

A written inventory documenting the quantities and expirations of Epi-Pen Auto Injector supplies shall be kept. The log book will also document the issuance of replacement units.

C. Equipment and Maintenance

It shall be the responsibility of officers to inspect the Epi-Pen Auto Injector kits stored in the AED case prior to the start of each shift to ensure that the kits are intact. Epi-Pen Auto Injector kits shall be returned to the AED storage area at the end of each shift.

Damaged equipment shall be reported to a shift supervisor immediately.

The Department's Medical Services Officer will maintain a written inventory documenting the quantities and expirations of Epi-Pen Auto Injector replacement supplies, and a log documenting the issuance of replacement units.

D. Replacement

Shift supervisors shall immediately replace Epi-Pen Auto Injector kits that have been used during the course of a shift.

E. Training

Officers shall maintain their First Responder certification and will attend one practical training session per year with the Stow Fire Department outlining the use of the Epi-Pen Auto Injector and related concerns.

