

# The Roundtable Discussion Law Pertaining To Juveniles Presenting A Threat To The Community

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parts excerpted from the 2003 Massachusetts Domestic Violence Textbook

To help identify juveniles who pose a threat to the community the Massachusetts Legislature enacted C. 12 § 32 which mandates each District Attorney to set up and operate community based juvenile justice programs in order to coordinate efforts of the criminal justice system in addressing juvenile justice. These programs will be conducted through cooperation with the following agencies within the Commonwealth:

- a) the schools and local law enforcement representatives
- b) probation and court representatives and, where appropriate
- c) the department of social services, department of youth services and department of mental health

“The purpose of the statute is for the representatives of the programs to be able to identify cases in which juvenile offenders are among those most likely to pose a threat to their community. The program shall treat the identified cases as priority prosecution cases and impose individualized sanctions designed to deter the offender from further criminal or delinquent conduct. The office of the district attorney shall work with the schools and community representatives on development of violence prevention and intervention programs, identification, protocol and curricula.

“The offices of the district attorneys shall conduct weekly working sessions focusing on specific events and particular individuals whose conduct poses a threat to schools, neighborhoods and communities. The district attorneys shall be responsible for creating, managing and updating a priority prosecution list of individuals identified as the community’s most serious violent youths and repeat offenders and shall update the list as events may happen and the individual is moved through the criminal justice system.

“The district attorneys shall assign prosecutors to the community based juvenile justice program who shall treat the identified cases as their priority cases and shall work with the school, courts and other agencies to deter violent, criminal or delinquent conduct. The offices of the district attorneys shall be responsible for managing the lists, compiling and publishing statistics, coordinating meetings with the assistant district attorneys assigned to the program and local law enforcement agencies, schools, probation and court representatives and, where appropriate, the department of social services, department of youth services and department of mental health.

“The district attorneys operating such programs shall participate in a community based juvenile justice program task force for the purpose of sharing information on the practices and developments of violence prevention and prosecution in their particular programs and such task force shall submit an annual report on each program, including statistics and findings, to the house and senate committees on ways and means on or before February 1 each year.”

One of the problems not addressed in the statute is how a school official can legally obtain CORI or juvenile record information on a troubled youth. We will discuss 803 CMRs 2.04(5) and some statutes that might be used whenever the disclosure of CORI is an issue. 803 CMR 2.04(5) is a CMR which permits the public disclosure of CORI in some cases. It permits any criminal justice agency with official responsibility for a pending criminal investigation or prosecution to disseminate CORI that is specifically related to and contemporaneous with an investigation or prosecution. It also permits any criminal justice agency to disseminate CORI that is specifically related to and contemporaneous with the search for or apprehension of any person, or with a disturbance at a penal institution. This would clearly permit police officers and District Attorneys to disseminate CORI in those circumstances.

803 CMR 2.04(5)(c)(2) also permits any criminal justice agency, with the primary responsibility for the creation and/or maintenance of that information, to make available to any person upon request information indicating custody status and placement within the criminal justice system. Custody status and placement shall include, for the purposes of 803 CMR 2.04(5)(c)2., any information indicating that a criminal offender currently:

- a)** is on probation; or
- b)** is subject to particular special conditions of probation; or
- c)** is in compliance or non-compliance with particular special conditions of probation, including whether an offender is a participant in a court ordered rehabilitation or educational program; or
- d)** is confined in a particular institution, or
- e)** is confined at a particular level of security; or
- f)** is eligible for parole on an estimated date; or
- g)** has begun parole supervision on a specified date, and has ended, or is expected to end parole supervision on a specified date; or
- h)** is subject to certain conditions of parole

Additionally, no provision of 803 CMR 2.00 shall be construed to prohibit dissemination of criminal offender record information in the course of criminal proceedings, or other proceedings expressly required by a statute to be made public, including published opinions, where such disclosure is limited to that necessary to carry on such proceedings effectively.

C. 41 § 98F states that each police department shall make, keep and maintain a daily log, written in a form that can be easily understood, recording, in chronological order, all responses to valid complaints received, crimes reported, the names, addresses of persons arrested and the charges against such persons arrested. All entries in said daily logs shall, unless otherwise provided by law, be public records available without charge to the public during regular business hours and at all other reasonable times. This will permit any person to access certain personal information concerning the arrestee. The phrase, “unless otherwise provided by law,” will preclude anyone from accessing juvenile record information under this statute.

C. 119 § 60A permits the public inspection of certain juvenile records. It states that, “[t]he records of a youthful offender proceeding conducted pursuant to an indictment shall be open to public inspection in the same manner and to the same extent as adult criminal court records.” Pursuant to C. 119 § 52, a youthful offender is defined as a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and seventeen, 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 (for any crime)
- or
- (b)** has committed an offense which involves the infliction or threat of serious bodily harm in violation of law
- or
- (c)** has committed any one of the following violations:
  - i)** C. 269 § 10(a)—unlawful carrying of either firearm, rifle or shotgun
  - ii)** C. 269 § 10(c)—unlawful possession of a machine gun or a sawed-off shotgun
  - iii)** C. 269 § 10(d)—second or subsequent offense of c. 269 § 10 (a), (b) or (c)
  - vi)** C. 269 § 10E—trafficking in firearms

All other records of the court in cases of delinquency shall be withheld from public inspection except with the consent of a justice of such court. Therefore, if the information to be disclosed concerns a juvenile who has youthful offender status under the statute, then that information can be readily obtained from court records. They are considered public records. The drawback to the statute is the phrase that “[t]he records of a youthful offender proceeding conducted pursuant to an indictment shall be open to public inspection in the same manner and to the same extent as adult criminal court records.” Does this mean that information concerning a juvenile simply charged and not under an indictment cannot be disseminated? See below.

Notwithstanding the provisions of this section (119 § 60A), the name of a child shall be made available to the public by the probation officer without such consent if the child is:

- alleged to have committed an offense while between his fourteenth and seventeenth birthdays

**and**

□ has previously been adjudicated delinquent on at least two occasions for acts which would have been punishable by imprisonment in the state prison if such child had been age seventeen or older

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**and**

□ is charged with delinquency by reason of an act which would be punishable by imprisonment in the state prison if such child were age seventeen or older

which would be punishable by imprisonment in the

In order for a juvenile record, not involving an indictment of a youthful offender, to be publicly disclosed, the suspect must be at least fourteen and there must be three felonies in the picture. He or she must have been adjudicated for at least two felonies in the past and presently charged with another felony. If that is the case, then the probation officer can public disclose that information.

**end.**