

HOLMDEL TOWNSHIP POLICE DEPARTMENT GENERAL ORDER			
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SUBJECT: ARREST PROCEDURES			
EFFECTIVE DATE: 4/27/17		ACCREDITATION STANDARD(S): 3.1.2	
BY THE ORDER OF: JOHN MIODUSZEWSKI CHIEF OF POLICE		REFERENCE(S): N.J.S.A. 2C, 39 and 2A; Prevention of Domestic Violence Act; Miranda v. Arizona; Treaty of Vienna of 1969; Consular Access and Notification Policy; Victim Notification Form (V.I.N.E);Prisoner Property Receipt Form; Potential Liability Warning Form	
ORDER NUMBER: GO-2017-014			
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***Foreword-** This policy is intended for internal Departmental use only; it has no application to any criminal or civil proceeding. As an internal operations document, the policy should not in any way be construed as creating substantive legal rights, setting higher legal standards of safety or care, or setting standards of police legal liability for the benefit of litigants who pursue police officers in courts. This policy has not been promulgated to be a litigation measuring stick for police conduct. By itself, an officer's violation of any provision contained herein serves only as the basis for Departmental administrative sanctions.*

1.0 PURPOSE

The purpose of this General Order is to provide guidelines for members of the Department when effecting arrests both with and without warrants, and to provide procedures for processing arrested persons.

2.0 POLICY

It shall be the policy of the Holmdel Township Police Department to make arrests in compliance with law for the purpose of protecting the community and to fulfill its role in the prosecutorial process. All arrests shall be in compliance with local, state, and federal statutes, applicable case law, and the Constitutions of the State of New Jersey and the United States of America.

3.0 DEFINITIONS

- A. Arrest.** An arrest is the exercise of control or custody over a person by restricting that person's liberty or freedom of movement for a significant period of time. An arrest may be effected *actually or constructively*. An actual arrest occurs when an officer intentionally employs physical force or delivers a formal communication of their intention to make an arrest. A constructive arrest occurs when the citizen believes that they are not free to leave. In order to determine if an arrest has occurred, the relative inquiry will be whether, in view of all the circumstances surrounding the police citizen encounter, a reasonable person would have believed they were not free to leave.
- B. Arrest Warrant.** A written order directing the arrest of a person, issued by the court or official having authority to issue such a warrant.
- C. Committing Judge.** A judge who has the authority to commit an individual to a holding facility.
- D. Crime.** An offense as defined by the Constitution of the State of New Jersey, for which a sentence of imprisonment in excess of six (6) months is authorized. Crimes are designated in the criminal code as First, Second, Third, and Fourth degree.
- E. Disorderly Persons/Petty Disorderly Persons Offense.** Are not considered *crimes* within the meaning of the Constitution of the State of New Jersey. There is no right to indictment by a grand jury, nor any right to trial on such offenses.
- F. Execution of an Arrest Warrant.** Execution of a warrant includes the arrest of the individual named in the warrant.
- G. Exigent Circumstances.** A set of facts or circumstances requiring immediate action on the part of Law Enforcement officer in the interest of public safety.
- H. Presence.** Any situation that the officer can determine is occurring by the use of his or her senses.
- I. Probable Cause.** Describes the amount of evidence, which would warrant an ordinary and prudent person to believe that a crime is occurring or has occurred and that the accused was involved. Probable cause implies a level of proof greater than reasonable suspicion.
- J. Protective Sweep.** A quick and limited search of the immediate area in which an arrest takes place.
- K. Search Warrant.** An order that a certain premises or property may be searched for particular items, which, if found, are to be seized and used as evidence in a criminal trial held by the State as a result of a Restraining Order (i.e., weapons), or destroyed as contraband.

4.0 PROCEDURE

- A. Prerequisites to Arrest.** An officer may make an arrest under any one of the following circumstances:
 - 1. The officer has a valid, judicially authorized warrant for the suspect's arrest.
 - 2. If the offense carries a punishment in excess of six (6) months imprisonment and the officer has probable cause to believe the suspect is one who committed the crime, or the crime occurred in the officer's presence. Such

an offense is classified as a *crime* under the New Jersey State Criminal Statutes and further classified as *Crimes of the First, Second, Third, and Fourth degree*.

3. If the offense is a *Disorderly Persons Offense*, the officer may still make an arrest without a warrant if the offense occurred in the officer's presence.
4. An officer may make an arrest without a warrant for a violation of N.J.S.A. 39:3-40.
5. The following non-indictable offenses may subject an offender to arrest even though the officer does not have an arrest warrant and the offense did not occur in the officer's presence.
 - Shoplifting, N.J.S.A. 2C:20-11e.
 - Theft of Library Materials, N.J.S.A. 2C:20-14b.
 - Any enumerated offense under the Domestic Violence Act, N.J.S.A. 2C:25-18 and 19, also 2C:25-21
 - Driving While Intoxicated, N.J.S.A. 39:4-50.
 - Camcorder Piracy of Motion Pictures, N.J.S.A. 2C:21-21g

B. Arrest with a Warrant. Warrants are always preferred when making an arrest since an arrest without a warrant is considered to be an *exception to the rule*. When an arrest warrant is issued, it demonstrates that a detached and neutral magistrate has determined that probable cause exists to believe the subject named on the warrant committed an offense. Accordingly, the warrant serves to protect individuals from unreasonable seizures. An officer has a right to execute a warrant any place in the State, including the subject's residence.

1. Arrest at Address Listed on the Warrant.

- When an officer possesses a valid arrest warrant, they may enter the residence listed on the warrant to make the arrest if they have probable cause to believe the subject named in the warrant is within the residence.
- Barring any exigent circumstances, the officer should knock on the door of the residence, identify themselves and demand entry.
- Forcible entry into the residence may be employed, provided that the officer has probable cause to believe that the subject named in the warrant is hiding within.
- Upon gaining entry to the residence, officers may search anywhere the subject named in the warrant could be hiding.
- After gaining access to the dwelling and arresting the subject named in the warrant, the officer should do the following:
 - Conduct a protective sweep of the immediate area for anything that might pose a danger to the officers or others present.
 - In order to conduct a protective sweep of areas *not* in the immediate vicinity of the arrest, officers must have reasonable suspicion that the area to be searched harbors a person or person(s) who pose a danger to those present at the time of the arrest.

2. **Arrests at a Premises Not Named in the Warrant.** In situations where the subject named in the warrant is in the home of a third party and no exigent circumstances prompt the need for immediate police action, a search warrant or valid consent to search the third party's residence must be secured if the officers wish to execute the arrest warrant.
 - Search warrants shall be issued by a detached and neutral magistrate based upon probable cause that the subject named in the warrant is hiding in the premises.
 - Consent to search for the subject named in the warrant should be obtained from a competent individual who exercises control over the premises to be searched. Officers shall have the person consenting to the search read and sign the Department's Consent to Search form.
 - Upon the arrest of the subject named in the warrant, a protective sweep shall be conducted as outline in the previous section (4.B.1).
3. **Execution of a Warrant.** A person arrested pursuant to a warrant shall be taken without unnecessary delay before the court named in the warrant.

C. Arrest without a Warrant. As a general rule, the Constitution permits an officer to arrest a suspect in any public place without a warrant if there is probable cause to believe that the suspect committed or is presently committing a criminal offense. The Fourth Amendment permits warrantless criminal arrests even if the officer had time to get a warrant. This rule applies to all indictable offenses, and any crime or offense listed in section 4.A.4 of this policy, and any crime or offense occurring in the officer's presence. Procedures for processing suspects arrested without a warrant are as follows:

1. A person arrested without a warrant for any offense shall be taken, without unnecessary delay, before the nearest available committing judge. If the accused does not make this demand, they shall be taken before a judge at the earliest possible time.
2. A person arrested without a warrant for one of the following criminal offenses, or any conspiracy or attempt to commit such offenses, such as; Murder, Aggravated Manslaughter, Manslaughter, Kidnapping, Robbery, Aggravated Assault, Burglary, Aggravated Arson, Arson, Aggravated Sexual Assault, Sexual Assault, Aggravated Criminal Sexual Contact, any crime involving the possession or use of a firearm, violations of Chapter 35 (Controlled Dangerous Substances), or of Title 2C that constitute a crime of the first or second degree shall be arrested and processed as follows:
 - A warrant (CDR-2) shall be prepared immediately.
 - The accused shall be taken without unnecessary delay to the nearest available committing judge.
3. A person arrested without a warrant for an offense not enumerated in section 4.C.2 (above) of this policy shall be processed as follows:
 - Prepare a summons (CDR-1).
 - Issue the complaint-summons to the accused.

- Release the accused on their own recognizance in lieu of continued detention subsequent to any post-arrest identification procedures.
4. The officer in charge has the discretion *not* to prepare a summons if any of the following conditions exists:
 - The accused has previously failed to respond to a summons.
 - There is reason to believe that the accused is dangerous to themselves, to others, or to property.
 - There are one or more outstanding arrest warrants for the person.
 - The prosecution of the offense or offenses for which the person is arrested would be jeopardized by immediate release of the person.
 - The person cannot provide satisfactory evidence of personal identification.
 - There is reason to believe the person will not appear in response to a summons.
 5. If the officer in charge determines that one of the conditions enumerated above (4.C.4) applies, the officer will do the following:
 - Immediately prepare a warrant (CDR-2).
 - Take the person arrested without unnecessary delay before the nearest available judge for the purpose of having bail set.
- D. Search Incident to Arrest.** Whenever a suspect is placed under arrest, that suspect may be searched incident to that arrest. A search warrant for this post arrest search is not required, and a search incident to arrest shall be conducted on every arrestee. The scope of the search incident to arrest extends to the person of the arrestee, any property such as a wallet, or pocketbook in the arrestee's possession, and to any area to which the arrestee might reasonably reach in order to conceal evidence or obtain a weapon.
1. Unlike the Stop and Frisk, a search incident to arrest is intended to uncover evidence. The search, however, must be based on a valid arrest. If the arrest itself is unlawful, the subsequent search incident to arrest is unlawful and any evidence uncovered will be suppressed by the court.
 2. To be valid, a search incident to arrest must be conducted contemporaneous to the arrest. Contemporaneous does not mean instantaneous to the arrest, and circumstances may often dictate removal of the arrestee to a safe and secure location before commencing the search. A search incident to arrest should be conducted on the arrestee at the first safe and practical moment.
 3. The New Jersey Supreme Court restricts the scope of searches when a motorist is being arrested for motor vehicle offenses. A search of the entire passenger compartment of a vehicle is not permitted under the search incident to arrest exception.
- E. Constitutional Rights of the Accused**
1. *Miranda v. Arizona*, 384 [U.S. 436](#) (1966), Miranda requires that, prior to any custodial interrogation the subject being questioned must be advised of their right against self-incrimination under the Fifth Amendment of the United States Constitution (see Interview and Interrogation Policy).

2. Defendant's Waiver of Rights. A defendant may waive their right against self-incrimination, provided the waiver is made voluntarily, knowingly, and intelligently. If the defendant indicates in any manner and at any stage of the process that they wish to consult with an attorney, all questioning shall immediately cease. Additionally, if the defendant indicates in any manner that they do not wish to be interrogated, likewise, all questioning shall immediately cease. The mere fact that the accused may have answered some questions does not deprive them of the right to refrain from answering any further questions until they have consulted with an attorney. Remember, once the suspect indicates that they want to talk to an attorney, all questioning must cease, unless the accused initiates further communication, exchanges, or conversations with the officer

F. Bail Criteria.

1. The purpose of bail is to ensure that the defendant appears in court when directed to do so, and to ensure the safety of the public. In determining whether bail should be requested, the following factors shall be considered:
 - Nature of the offense charged, violent as opposed to non-violent.
 - The apparent likelihood of conviction, and the extent of the punishment or probable sentence.
 - The length of time the defendant has resided in the community.
 - Employment status and history.
 - Reputation, character, physical and mental condition.
 - If applicable, defendant's criminal record or history on bail.
 - The identity of any responsible members of the community who would vouch for the defendant's reliability.
 - Any other factors indicating the defendant's ties to the community or factors associated with the risk of failure to appear.
2. Bail for the crimes of murder, aggravated manslaughter, manslaughter, kidnapping, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, and violations of a restraining order must be set by a Superior Court Judge. Bail for other offenses may be set by either a Superior Court Judge or Municipal Court Judge.
3. If the charge is a Disorderly Persons or Petty Disorderly Persons offense, or a municipal ordinance violation, and bail is dictated based upon the factors described above, bail may be fixed as follows:
 - By the judge or court administrator during normal business hours.
 - By the on-call court administrator during all other hours.
4. Full cash bail legislation requires that suspects arrested for crimes of the first or second degree pay full cash, surety, or bail bond for the full amount of the bail if any of the following four conditions exist:
 - The suspect has two additional indictable cases pending at the time of arrest.
 - The suspect has two prior convictions for a first or second degree crime or sale of CDS in or near school grounds.

- The suspect has one prior conviction for murder, aggravated manslaughter, aggravated sexual assault, kidnapping, or bail jumping.
- The suspect was on parole at the time of arrest.

G. Citizen Complaints. An officer may be called upon to assist when a citizen initiates a complaint against another individual. Officers shall consider the following should this occur:

1. If the offense alleged is an indictable offense or a violation of crimes or offenses listed under the Prevention of Domestic Violence Act, N.J.S.A. 2C: 25-19 et seq., and the *officer has probable cause* to believe that the incident did in fact occur, the officer shall effect the arrest. The probable cause may be established at the scene or through investigation. Under these circumstances, the officer should initiate a warrant (CDR-2).
 - Officers shall, whenever practical, take a formal written statement from the victim in addition to any applicable reports detailing the events of the incident.
2. If the alleged offense is an indictable offense or a violation of the crimes or offenses listed under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-19 et seq., and there *is insufficient probable cause to believe the incident occurred and for the officer to initiate the warrant*, the citizen may still sign the warrant. The warrant will be presented to the judge for a probable cause determination. If probable cause exists, the judge will issue the warrant.
 - Officers should contact the Municipal Court Administrator if needed for guidance as to which form the court would prefer be completed (i.e. CDR-1, CDR-2, Special (Short Form)).
3. If the alleged offense is a Disorderly Persons or Petty Disorderly Persons offense the citizen may, with the assistance of the officer, fill out a summons and have it scheduled for a probable cause hearing through the municipal court.
 - Officers should contact the Municipal Court Administrator if needed for guidance as to which form the court would prefer be completed (i.e. CDR-1, CDR-2, Special (Short Form)).
4. If the citizen wishes to sign a traffic summons, they may, and the officer should assist them and then forward any paperwork to the court for the probable cause hearing.
5. In almost all cases the citizen will most likely be required to appear and testify in a probable cause hearing as well as any subsequent hearings, or trials. The citizen should be advised of this fact.
6. Suspects charged and arrested as a result of complaints initiated by citizens shall be processed as if they had been charged by an officer.

H. Arrest of Foreign Nationals. The United States is a signatory to the Treaty of Vienna of 1969. As such, the treaty places the following obligations on an arresting officer:

1. In all cases the accused must be advised that they have the right of consular notification and access. The foreign national then has the option to decide whether he/she wants consular representatives notified of the arrest or detention, *unless* the foreign national is from a *mandatory notification* country. See Consular Access and Notification Policy for a list of *mandatory notification* countries.
2. Officers will make the appropriate notification using the *Consular Notification Fax Sheet*, see Consular Notification and Access Policy.
3. Privacy concerns or fear of persecution by the foreign national's own government may exist. The notification procedure should still be honored, but it is possible to take precautions regarding the disclosure of information. Under no circumstances should any information be disclosed indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government. The Department of State can provide more specific guidance in particular cases. See www.state.gov or http://travel.state.gov/law/consular/consular_753.html.

5.0 ARREST PROCEDURES

A. Custody and Transportation

1. Immediately upon arrest, all persons will be appropriately secured. At a minimum they are to be handcuffed, and the handcuffs shall be double locked unless this is not possible due to disability or injury. The arrested person is to be thoroughly searched for any weapons, contraband, or evidence, as is the area under their immediate control. The search must be thorough; this ensures the safety of the arrestee, the officer(s) involved, as well as other persons who may come in contact with the subject while in custody.
2. Prior to transporting a detainee, officers will search the rear compartment of their assigned patrol vehicle for contraband. The arrestee shall then be safely seat belted and secured in the rear of the patrol vehicle, and transported to headquarters or other agency or facility for processing as soon as practical. The only exception is when directed to do otherwise by the OIC, or in circumstances requiring the subject be transported to a medical facility for treatment.
3. Officers will notify dispatch personnel that they are enroute to headquarters with a subject under arrest, and will state their starting mileage.
4. Upon arrival at headquarters the officer will state their ending mileage, and secure the subject in the processing area. Officers will also secure their weapons in the weapons lockers provided for that purpose. No weapons are allowed in the processing area while an arrestee(s) is present.
5. It is the responsibility of the arresting officer(s) to ensure the subject is secured and that all of the doors leading into the processing area are secured.
6. Once the subject is secured in the processing area, officers shall check the rear passenger compartment of the transporting vehicle for any weapons,

contraband, or evidence that may have been deposited there by the subject under arrest.

7. All arresting Officers and the Officer in Charge (OIC) shall be mindful of the N.J. State Attorney Generals Guideline as it relates to Arrestee's Dependents.

B. Fingerprints (as 1.2.5.b)

1. Adults will be fingerprinted when one or more of the following applies:

- Arrested for an indictable offense.
- Arrested for a drug offense, indictable or otherwise.
- Arrested for shoplifting or prostitution.
- Arrested and believed to be wanted for an indictable offense or believed to be a habitual criminal.
- Has been convicted of a non-indictable offense and the identity of the person is in question.
- When a person applies for participation in a program of Conditional Dismissal.
- When a person is arrested for any domestic violence offense where *any* of the following four circumstances are met:
 - Victim exhibits sign of injury caused by an act of domestic violence.
 - A warrant is in effect.
 - There is probable cause to believe that the person has violated a judicial order in N.J.S.A. 2C:29-9 AND there is probable cause to believe that the person has been served with that order.
 - There is probable cause to believe that a weapon as defined in N.J.S.A. 2C:39-1 has been involved in the act of domestic violence.
- Any person CONVICTED of assault or harassment, (i.e. a private citizen complaint with no law enforcement involvement) which resulted from an act of domestic violence.

2. Juveniles will be fingerprinted in the following circumstances:

- Upon the arrest of juvenile/s age *14 and over* who are being charged with an offense that would constitute a crime if convicted by an adult. This does *not* permit fingerprinting of juveniles charged with a disorderly persons offense.
- Per N.J.S.A. 2A:4A-61, fingerprinting of a juvenile may occur when a juvenile is referred to superior court to be handled as an adult; or when a juvenile, age 13 or younger, is adjudicated delinquent in family court on the basis of an act which, if committed by an adult would constitute a crime. In most cases the above will not be a consideration for normal patrol operations and processing of juveniles.
- For latent fingerprint comparison purposes upon the consent of the court, or of the juvenile and his parent or guardian. Officers will obtain

approval from a supervisor prior to fingerprinting a juvenile for latent fingerprint comparison purposes.

- Officers will *not* fingerprint or photograph any juvenile age 13 years old or younger.

C. Photographs (as 1.2.5.c)

1. All adults arrested by this Department will be photographed (except as in 2. Below). The photograph will include one full face, and one left profile. Additional photographs may be taken as appropriate, some examples include:
 - Photographs showing specific identifiers such as eyewear, headwear, etc., especially if the eyewear or headwear is specifically described by the victim, witness etc. In this instance, photographs should be taken both with and without the eyewear, headwear, etc.
2. Adults arrested only for an offense of N.J.S.A. 39:4-50 will NOT be photographed.
3. All juveniles 14 years old or older will be photographed.
4. Again, officers will *not* photograph any juvenile age 13 years old or younger.

D. Identification

1. No person shall be released until all identification information has been obtained, the subject is positively identified, and the subject has been thoroughly checked for warrants and none found.

E. Reports (as 1.2.5.a)

1. Officers will complete an Arrest Report for each adult arrested.
2. Officers will complete an Arrest Report for each juvenile arrested. Officers will have the parent or guardian of the juvenile sign for said juvenile in the appropriate location on the arrest report.
3. Officers will complete a Victim Notification Form (V.I.N.E) where applicable.
4. In all cases completed Arrest Reports will be forwarded to the OIC for review prior to the end of their shift unless extenuating circumstances exist and it is authorized by the OIC.
5. Officers are also required to complete any companion reports related to the arrest (i.e. investigation, impound, property/evidence, etc.) prior to the end of their shift unless extenuating circumstances exist and it is authorized by the OIC.

F. Detainee Property (as 84.1.1.g)

1. The processing officer shall complete a *Prisoner Property Receipt* that shall reflect an accurate inventory of all personal property removed from the detainee during his arrest and/or processing. The detainee should sign the receipt in the space provided.

2. Any money the detainee may have in his possession will be counted out in the presence of two officers and placed in a separate sealed envelope within the larger envelope referenced below (#3). All money will be returned upon release provided it is not evidence or associated with the investigation at hand.
3. The remainder of the detainee's property will be sealed in a large envelope and labeled with the detainee's name and case number. All detainee property will be placed in one of the security lockers located in Headquarters. The processing officer will be responsible for the key. In cases where the processing officer goes off duty prior to the detainee being released, the key will be turned over to the oncoming shift Station House Commander (SHC) or Officer in Charge (OIC).
4. If the detainee is going to be transferred to another agency or facility, the processing officer shall determine what property will be accepted by the admitting facility and prepare that property for transportation with the detainee. The remaining property will be packaged and transferred to the possession of the Evidence/Property Officer for storage, or secured in an evidence property locker if the Evidence Property Officer is unavailable. An Evidence Property report shall also be prepared listing the property.
5. Prior to transfer, the processing officer will review the Prisoner Property Receipt with the detainee and have him sign where indicated. A copy of the Prisoner Property Receipt will be issued to the detainee as a receipt and accompany the detainee to his destination, the processing officer will note and initial on the form which items were held back. The processing officer will also explain to the detainee the process for retrieving those items.
6. A copy of the Prisoner Property Receipt will be attached to the items in question; the original will be kept with the case file.

G. Release

1. Subsequent to arrest processing, positive identification, and warrant checks a subject may be released.
2. The exception to this rule is in cases where the subject poses a threat to himself or others, such as the arrest of a subject for DWI/Refusal, in those instances the requirements of John's Law apply.
 - The *Potential Liability Warning* must be completed before the subject can be released.
 - If no one is willing or available to pick up the subject he may be held at headquarters for 12 hours and then released. This should be so noted in any reports completed by the officer.

6.0 CLOSING

- A. This General Order shall become effective immediately.

- B.** All orders, regulations, policies and procedures previously issued that conflict with this order are hereby rescinded.
- C.** Violations of this General Order shall subject members to disciplinary action.
- D.** Supervisory personnel shall be held accountable for review, discussion, application, and enforcement of this order.
- E.** Members shall acknowledge receipt and understanding of this order by digitally signing for the document in the Department's computerized document management and distribution system.