

**COUNTY OF MORRIS
OFFICE OF THE SHERIFF**

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32:1 PURPOSE

The purpose of this policy is to establish and provide guidelines and procedures in the areas of arrest and searches which Morris County Sheriff's Officers may conduct during their normal course of duty.

***NOTE:** Numbers in brackets [] are CALEA Accreditation Standards references.

32:2 POLICY

In order to preserve the Constitutional rights of all persons, it is the policy of the Morris County Sheriff's Office to conduct all arrests, searches and seizures in strict compliance with all local, New Jersey state and Federal statutes, Case Law, Morris County Prosecutor's Office Directives, the Constitution of the State of New Jersey, and the United States of America. Each Morris County Sheriff's Officer is charged with ensuring that the Constitutional guarantees are adhered to. To that end, the following guidelines are to be strictly followed.

32:3 PROCEDURE

32:3.1 General Principles of Arrest

[1.2.5]

- 1) It is the duty of the each Morris County Sheriff's Officer to intervene and notify appropriate supervisory authority if they observe another agency employee or public safety associate engage in any unreasonable use of force or if they become aware of any violation of departmental policy, state/provincial or federal law, or local ordinance. [1.2.10]
- 2) An arrest is the exercise of control or custody over a person by restricting that person's liberty of movement for a temporary period of time.
 - A. The term "arrest" generally means the taking of a person into custody in order that they may be held to answer for committing a crime or offense.
 - B. Arrest is a broad concept and may be found to exist without the individual actually being "brought in" or officially "placed under arrest." The mere act of temporarily restricting one's movements in some cases may be considered an arrest.
 - C. It is a violation of the law for any law enforcement Officer, without grounds for arrest, to deprive a person of their freedom of movement for any period of time longer than a limited detention.
- 3) Sworn personnel of the Morris County Sheriff's Office may ordinarily only arrest an individual within the geographical area of Morris County. A lawful arrest may be made with or without a warrant. However, a Morris County Sheriff's Officer may arrest a person anywhere in the State of New Jersey if:
 - A. They have "probable cause" to believe that the person to be arrested has committed a crime.
 - B. Any disorderly or petty disorderly offense is committed in the Morris County Sheriff's Officer's presence.

"Presence" is a concept that is easily understandable, and for the purpose of the New Jersey law of arrest, it includes situations where the law enforcement Officer sees, hears or smells the offense being committed.
 - C. The Morris County Sheriff's Officer has a valid warrant for an individual's arrest.
 1. A warrant is based upon an affidavit or evidence that present sufficient facts to convince a judge that "probable cause" exists.
 2. The warrant must identify the person believed to have committed the particular crime either by name or by a description which identifies them with reasonable certainty.

- 4) **“Probable cause”** describes the amount of evidence sufficient to lead an ordinary and prudent person to reasonably believe a crime is occurring or has occurred and that the person to be arrested committed or is committing said crime.
- A. All circumstances may be considered.
 - B. It does not matter whether the information that reached the Morris County Sheriff’s Officer was true or false but only whether the Officer was reasonable in accepting the information as true.
 - C. Probable cause is not a complex legal formula understandable only by those trained in the law. Probable cause is arrived at by collecting facts of such quality that logic and common sense point with reasonable certainty in the direction of guilt.
 - 1. Hunches or suspicions are not enough. The belief must be supported by the facts.
 - 2. Experience as a Morris County Sheriff’s Officer is a fact that can be relied on to support probable cause, providing it can be documented.
 - 3. The facts upon which the belief of guilt is based must have been known at the time of arrest.
 - 4. Post-arrest actions by the accused are irrelevant to the lawfulness of the initial arrest.
 - 5. It is not necessary to believe beyond a reasonable doubt that a person committed an offense in order to arrest.
 - D. A Morris County Sheriff’s Officer should arrest only when they believe that at the moment of arrest, they could point to a sufficient number of articulable facts to convince a neutral and detached judge it was reasonable to believe a crime was committed by the person arrested.
 - E. Various kinds of information can be used to support probable cause, providing the information is not vague and can be documented.
 - 1. The Morris County Sheriff’s Officer can rely upon observed facts surrounding the incident, such as:
 - a. Behavior;
 - b. Appearance;
 - c. Location of suspect; and/or
 - d. Suspect’s height and weight.

2. The Morris County Sheriff's Officer can rely upon familiarity with the suspect, including:
 - a. Suspect's prior record;
 - b. Prior observation of suspect; and/or
 - c. Earlier contacts with suspect.
3. The Morris County Sheriff's Officer can rely upon reports from others, including:
 - a. Accounts given by victims or witnesses; and/or
 - b. Reliable informants.
4. The Morris County Sheriff's Officer can rely upon their own experience, such as:
 - a. Knowledge of criminal behavior; and/or
 - b. What is normal or abnormal for the area where the incident occurred.
- 5) If the Morris County Sheriff's Officer has any doubt as to whether they have the needed probable cause to make an arrest and if the risk of a temporary delay is not great, the Morris County Sheriff's Officer should obtain a warrant. Repercussions of an illegal arrest may be:
 - A. The case may have to be dismissed and any evidence seized incidental to the arrest, would be suppressed;
 - B. Any confessions or admissions made after the unlawful arrest must be excluded; and/or
 - C. The possibility of a civil suit for false arrest can result.

32:3.2 Effecting an Arrest

- 1) A Morris County Sheriff's Officer making an arrest should identify themselves to the person being arrested.
- 2) The Morris County Sheriff's Officer should indicate the crime for which the suspect is being arrested.
- 3) If the arresting Morris County Sheriff's Officer has a warrant, then it should be exhibited. If the warrant is not in the arresting Officer's possession at the time of the arrest, the person arrested should be informed of the offenses charged and the fact that a warrant has been issued.

- 4) If a Morris County Sheriff's Officer has **an arrest warrant for an indictable offense** and has probable cause to believe that the subject of the warrant is inside **a location considered to be his primary residence** the Morris County Sheriff's Officer may enter the residence to make the arrest. (The probable cause must be documented in the Morris County Sheriff's Officer's final report.)
 - A. If possible, it would be more prudent to obtain a search warrant or wait for the individual to exit the premises.
 - B. If the Morris County Sheriff's Officer decides to enter the residence they must first announce their identity and demand the person inside allow them entry.
 - C. If the location is not the person's primary residence the Morris County Sheriff's Officer **must** obtain a search warrant or obtain consent to search.
 - D. Only in **rare circumstances involving extremely serious offenses and exigent circumstances** can a Morris County Sheriff's Officer enter a residence to make a warrantless arrest.
- 5) The arrest of the person named in the warrant is termed the "execution" of a warrant.
 - A. The executed warrant and the person arrested must be taken without necessary delay before the issuing court.
 - B. Even when an arrest is made without a warrant, the person arrested must be taken without necessary delay before the court of jurisdiction.
- 6) As a matter of law, certain procedures must be followed for the issuance of Complaint-Warrants, Complaint-Summonses and the Special Form of Complaint and Summons. Compliance with these requirements is essential to ensure the integrity of the arrest, the viability of the prosecution and the protection of the rights of the accused. All sworn personnel of the Morris County Sheriff's Office will comply fully with these procedures, which can be found in the most current version of the *Morris County Prosecutor's Directive Manual (Volume 2, Chapter 28) Bail Reform Law.*

32:3.3 Immigration and Customs Enforcement (ICE) Notifications

- 1) When a Morris County Sheriff's Officer makes an arrest for any indictable crime or driving under the influence (DUI), the arresting Morris County Sheriff's Officer shall inquire about the arrestee's citizenship, nationality, and immigration status. If there is reason to believe that the arrestee may not be lawfully present in the United States, the following steps shall be taken:
 - A. The Morris County Sheriff's Officer shall notify Immigration and Customs Enforcement (ICE) during the arrest booking process (with the exception that the Morris County Prosecutor, in writing, may request ICE not be notified).

- B. Notification to ICE shall be made through the Communications Center. In the event that is not a possibility, the ICE Newark Office can be reached via telephone at (973) 645-3666.
 - C. Notification to the Morris County Prosecutor's Office shall be made via email.
 - D. The inquiry and/or notifications will be documented in the arrest report.
- 2) All Morris County Sheriff's Officers shall familiarize themselves with the *Attorney General Law Enforcement Directive No. 2007-3* and *Morris County Prosecutor Directive (Volume 1, Chapter 22) Immigration*, which directly relates to ICE notifications.

32:3.4 Consular Notifications

[1.1.4]

- 1) For the purpose of this notification, any person who is not a United States citizen is considered a foreign national.
- 2) When a Morris County Sheriff's Officer makes an arrest or detains a foreign national, they must be advised of the right to have their consular officials notified.
- 3) The following procedures shall be followed in the event a foreign national is arrested or detained:
 - A. Determine the Country - this is the Country on whose passport or other travel document the foreign national travels.
 - B. If the Country is **NOT** on the mandatory notification list, offer without delay, to notify the appropriate consular officials of the arrest/detention.
 - C. If the request is that a consular official notification be given, notify the nearest consular official of the foreign national's Country without delay.
 - D. If the Country **IS** on the mandatory notification list, notify that Country's nearest consular officials of the arrest/detention, without delay and advise the foreign national that notification is being made.

Under no circumstances should 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.

- E. Document the declined notification, or the notification, on the arrest report with all the pertinent information such as the name of the official notified, how notified, time, etc.
- 4) All Morris County Sheriff's Officers shall familiarize themselves with the *Vienna Convention on Consular Relations, Apr. 24, 1963, articles 5, 36, 37, 21 U.S.T. 77, 101*. The *Consular Notifications and Access Booklet from the United States Department of State* and *countries requiring mandatory notification*. A Consular Notification Process Flowchart is Appendix A of this policy. <http://travel.state.gov/CNA>

32:3.5 Search Warrants

- 1) Under both the State and Federal Constitutions, search warrants can be issued only if there is probable cause to believe that contraband or evidence will be found in the area to be searched. To ensure the integrity of prosecutions and the admissibility of evidence, it is important that all search warrants be supported by probable cause and that search warrant applications be drafted in a way that fully reflects the probable cause that supports the application.
- 2) An application for a search warrant will utilize the Search Warrant Approval form, which will be reviewed and approved by a designated assistant prosecutor, before the application is submitted to a judge. This requirement includes search warrants issued by Superior and Municipal court judges, as well as search warrants in indictable and non-indictable cases.
- 3) A list of the designated Morris County Assistant Prosecutors who are authorized to review and make application for a search warrant is maintained by the Morris County Communications Center. Morris County Sheriff's Officers seeking search warrant approval will contact the Morris County Communications Center requesting to speak to the on-call Morris County Assistant Prosecutor.
- 4) When a search warrant is approved, the Crime Scene Investigation Section is to be notified for the collection and documentation of the scene and evidence.
- 5) Absent unusual circumstances, Morris County Sheriff's Officers executing a search warrant at a residence will knock and announce their presence before entering. The term "residence" will include single-family and multi-family dwellings.
- 6) In certain limited circumstances, the Morris County Sheriff's Officers may execute a search warrant without first knocking to announce their presence. To ensure the admissibility of the evidence seized pursuant to warrants, law enforcement must limit no-knock entries to appropriate circumstances. An improper unannounced entry may lead to suppression of all evidence obtained during the execution of a search warrant even if the warrant itself is valid and the only impropriety is the improper entry. Therefore, the following procedures and limitations on no-knock entries will be strictly adhered to:
 - A. If, at the time the Morris County Sheriff's Officers apply for a search warrant, they have information to suggest that their safety will be endangered or evidence will be destroyed if they knock and announce, they will seek judicial permission to make an unannounced entry to execute the warrant.
 1. The information upon which this request is based will be set forth in the affidavit submitted in support of the search warrant. The Morris County Sheriff's Officers will ask the issuing judge to indicate on the search warrant itself or on an attached addendum that they are permitting the police to make an unannounced entry.
 2. If the issuing judge refuses to authorize an unannounced entry, then the Morris County Sheriff's Officers will knock and announce their presence before entering, unless the circumstances set forth in the next section are present.

- B. If, after the Morris County Sheriff's Officers obtain the search warrant, they obtain information showing that an announced entry will jeopardize their safety or lead to the destruction of evidence, they will do one of the following:
 - 1. If time permits, the Morris County Sheriff's Officers will obtain judicial authorization for an unannounced entry; or
 - 2. If time does not permit obtaining judicial authorization, the ranking Morris County Sheriff's Officer present will decide whether to make an unannounced entry. The basis for any unannounced entry will be documented in an operations report and made a part of the case file.
- 7) Upon the execution of any search warrant issued to the Morris County Sheriff's Office, the Morris County Sheriff's Officer in charge will carry out or assure the following occurs:
 - A. An inventory of all evidence seized is completed and a copy provided to the owner or person in control of the property; and
 - B. All warrant return procedures are completed and the required documents and information are returned to the issuing judge.
- 8) Whenever advised that an agency from outside of Morris County intends to execute a search warrant within the municipality or within the jurisdiction of a Morris County law enforcement agency, the Morris County Prosecutor's Office shall immediately be notified of this information. The notification shall be made by contacting the on-call Detective in the Major Crimes Unit of the Morris County Prosecutor's Office. At times other than normal business hours, the on-call Major Crimes Detective may be reached through the Morris County Communications Center.

32:3.6 Warrantless Searches and Seizures

[1.2.4]

The Morris County Sheriff's Office recognizes the importance of the rights of citizens to be free in their person and property from unreasonable search and seizure or unreasonable detention. Morris County Sheriff's Officers will conduct all searches and seizures and temporary detentions with due regard for the Constitutional rights of the individual and within applicable state and federal Constitutional provisions and the Morris County Prosecutor's Office Directives. To that end, the following guidelines for conducting searches and seizures, which have not had prior authorization through judicial review, should be adhered to by all Sworn personnel, including:

- 1) Search by consent: **[1.2.4]**
 - A. A Morris County Sheriff's Officer may speak with a citizen provided the citizen wishes to talk to the Officer. If identification is provided by the citizen, the Morris County Sheriff's Officer should write down any appropriate information and promptly return the identification to the individual(s).

- B. Morris County Sheriff's Officers should accept the possibility that the citizen may refuse to talk and refuse to identify themselves. A non-confrontational approach and friendly demeanor can often obtain a citizen's voluntary cooperation without soliciting a negative response.
- C. In cases where a search is desirable and not incidental to an arrest, an individual may consent to a Morris County Sheriff's Officer's request to a search of their person or property by signing a Morris County Sheriff's Office "Consent to Search" form. However, an Officer **may not** ask a citizen for consent to search unless the Morris County Sheriff's Officer has a reasonable, articulable suspicion of wrongdoing. Also, the Morris County Sheriff's Officer must verbally convey to the suspect, prior to any search, their rights as indicated on the Consent to Search form. Consideration should be given to what type of evidence or contraband can be seized because of the search.

In cases where a Morris County Sheriff's Officer wishes to obtain consent to search a residence for a person for which there is an outstanding warrant, the Morris County Sheriff's Officer must complete a Consent to Search Form.

NOTE: The Morris County Sheriff's Office Consent to Search Form and the Continuation Page are two-part (white/yellow) carbonless forms and are the only versions authorized to be used by sworn personnel of the Morris County Sheriff's Office. Each Lieutenant will maintain an adequate supply of these forms. The white copy will be placed in the case file and a photocopy provided to the Section Sergeant who will maintain a file of all Consent and Search Forms.

- D. The Morris County Sheriff's Officer will provide the "Consenter" with the yellow copy of the Consent to Search Form. (See #6 and 7 below regarding inventory of property received).

2) "Stops" and "frisks" of individuals under circumstances where the Morris County Sheriff's Officer has articulable reasons to fear for their safety. Consideration should be given to what type of evidence or contraband can be seized because of the search. [1.2.4]

- A. Conditions may exist where a Morris County Sheriff's Officer will develop reasonable suspicion that an individual has engaged in criminal behavior. Under these circumstances, the Morris County Sheriff's Officer has the right to stop and detain the individual for the purpose of making reasonable inquiries relating to this behavior.
- B. The lawfulness of such an investigative stop will eventually be judged against what was considered reasonable under the circumstances that existed at the time of the stop.
- C. In order for a Morris County Sheriff's Officer to demonstrate that they had reasonable suspicion to stop and detain, the Morris County Sheriff's Officer must be able to articulate specific facts, which, taken together with rational inferences from those facts, reasonably warrant the stop and detention.
- D. Once a person is stopped, the Morris County Sheriff's Officer must determine the permissible scope of the intrusion as it relates to the detainee. A frisk must be

supported by reasonable suspicion that the detainee may be armed and/or dangerous. Justification for investigative detention is not necessarily justification for a frisk. The intensity of a frisk is limited because the sole object of a frisk is to locate weapons and protect the Morris County Sheriff's Officer or others. An unidentified object that could reasonably be used as a weapon against the Morris County Sheriff's Officer can and should be removed from the detainee. **[1.2.4]**

- E. The longer a person is detained by a Morris County Sheriff's Officer, the greater becomes the degree of intrusion and the more closely the seizure resembles an arrest. The use of appropriate force in connection with a stop is permissible when the Morris County Sheriff's Officer reasonably believes it is necessary for their protection.
- 3) Motor vehicle searches should be conducted in a manner that is both legal and thorough. Sworn personnel of the Morris County Sheriff's Office wishing to make a warrantless search of a vehicle due to the exigency of the circumstances must first take into consideration the totality of events including, but not limited to:
- A. The basis for probable cause to believe a crime has been committed.
 - B. The belief that evidence of a crime may be found in the vehicle.
 - C. Demonstrated mobility of the vehicle.
 - D. Impracticality of obtaining a warrant to search.
- 4) At the scene of a crime, a warrant will be obtained before a search is made, when possible. Warrantless searches are to be conducted only when lack of time or other exigencies make it impractical for Morris County Sheriff's Officers to obtain a warrant. Cases where warrantless searches may be conducted include:
- A. Consent from the person or individual in control of the building, area, property or object. **[1.2.4]**
 - B. Incident to the arrest of a person.
 - C. That which is in plain view with no reasonable expectation of privacy.
 - D. When dictated by the requirements for Morris County Sheriff's Officer safety.
 - E. When probable cause exists, and exigencies preclude the obtaining of a warrant.
 - F. Emergency circumstances not otherwise described above.
- 5) In circumstances where the public safety is endangered, Morris County Sheriff's Officers are authorized to perform certain community care-taking functions. Community care-taking functions are defined as any lawful acts inherent in the duty of the Morris County Sheriff's Officer to serve and protect the public. These include the right to enter or remain upon the property of another, without a warrant, if it reasonably appears to be necessary to prevent

serious harm to any person or property, render aid to injured or ill persons, or locate missing persons.

- 6) Any property (including seized vehicles) retained as evidence, delivered into the care of or received by the Morris County Sheriff's Office will be inventoried. The property will be recorded on the respective Incident Report and /or the master evidence log or, in the instance of a warrantless search with consent, on a "Consent to Search" form (and a "Continuation Page" if needed).
- 7) In all cases, the Morris County Sheriff's Officer will provide the owner or person in control of the property a receipt for all property retained/seized. When applicable, the yellow copy of the Consent to Search form (and Continuation Page(s)) will serve as a receipt. In all other cases, the Morris County Sheriff's Officer must provide some other type of signed, written receipt for the property taken (copy of evidence log, hand written inventory, etc).
- 8) Situations authorized by state and federal constitutional provisions. This includes any circumstance not otherwise described above.

32:3.7 Strip Searches

[1.2.4][1.2.8]

- 1) A strip search may be conducted following an arrest where there has not been custodial confinement when:
[1.2.8a]
 - A. Exigent circumstances are present, and
 - B. The Morris County Sheriff's Officer conducting the search has probable cause to believe the arrested individual is concealing a weapon, contraband, or evidence, of a crime when a search incidental to the arrest would not reveal the existence of such an item(s), and
 - C. The exigent circumstance prevents the Morris County Sheriff's Officer from obtaining a search warrant and the approval of their Supervisor.
- 2) A strip search may be conducted following an arrest with custodial confinement in a holding area when:
 - A. The arrested person has been remanded to the Morris County Correctional facility, and
 - B. The searching Morris County Sheriff's Officer's Supervisor authorizes the strip search, and
 - C. There is reasonable suspicion to believe the arrested person is concealing a weapon, contraband, or controlled dangerous substance, when a search incidental to the arrest would not reveal the existence of such an item(s), or
 - D. There is consent given to the Morris County Sheriff's Officer conducting the search after they have established reasonable and articulable suspicion of wrong doing, or

E. There is a search warrant in effect authorizing the strip search.

3) The strip search must be: **[1.2.8b]**

- A. Conducted by a person to the same ~~sex~~ gender or gender identity/expression as the subject.
- B. Conducted in private.
- C. Conducted under sanitary conditions.
- D. Conducted in a professional and dignified manner.
- E. Conducted in accordance with the New Jersey Department of Corrections regulations (NJAC 10:31- 8) when there is custodial confinement in a holding area.

***NOTE: Other factors to consider include age and mental capacity of subject to be searched, as well as the environment in which the search occurs.** **[1.2.8]**

4) The Morris County Sheriff's Officer who performs the strip search will document the search in an Incident/Operation Report along with all facts, statements, and accounts leading up the search. The report will also include: **[1.2.8d]**

- A. A statement of facts indicating reasonable suspicion, or probable cause for the search.
- B. A copy of the search warrant (if applicable).
- C. A copy of the consent-to-search form (if applicable).
- D. The name of the supervisor who authorized the strip search.
- E. The name(s) of the person(s) who conducted the strip search.
- F. An inventory of any items found during the search.

5) If exigent circumstances were the basis for the search, the Morris County Sheriff's Officer who conducted the strip search must complete a separate report stating the reasons for the immediate search. **[1.2.8d]**

6) Supervisors are responsible for:

- A. Ensuring the consent to search is in writing whenever possible.
- B. Ensuring the strip search is conducted in private and cannot be observed by any other person.

- 7) When exigent circumstances do not exist, unless authorized by a warrant or consent to search, a strip search should not be conducted if the arrested person will be released without custodial confinement, or will soon be released on bail, or on their own recognizance.
- 8) Reports pertaining to strip searches are not public records and will only be released upon request to the person being searched, the Morris County Prosecutor, the New Jersey Attorney General, or the Commissioner of the Department of Corrections.
- 9) This agency will not conduct body cavity searches. Nevertheless, if the arresting or transporting Morris County Sheriff's Officer has reasonable suspicion to believe an individual is concealing something in their anal or vaginal cavity, they will inform the detention facility staff when the exchange of custody occurs so the detention facility may make arrangements for the body cavity search. **[1.2.8a]**