

PALM BEACH GARDENS POLICE DEPARTMENT

ARREST PROCEDURES

POLICY AND PROCEDURE 4.2.1.11

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Purpose: To establish guidelines for making physical arrest, issuing notices to appear and detaining persons.

Scope: This policy applies to all officers.

Review Responsibility: All Bureau Majors

Policy: Sworn members of the Palm Beach Gardens Police Department have the responsibility and duty to make arrests based on probable cause. Arrests made by members of this Department shall comply with all applicable federal, state and local laws.

PROCEDURE:

1. ARREST JURISDICTION

- a. Palm Beach Gardens Police officers have law enforcement jurisdiction at any time within the city limits of Palm Beach Gardens.
- b. Palm Beach Gardens Police officers have statutory authority, pursuant to FSS 901.25, to arrest outside the city limits of Palm Beach Gardens when the following circumstances exist:
 - i. When in fresh pursuit of a person who has committed a felony or misdemeanor or is reasonably suspected of having committed a felony or misdemeanor and there is probable cause for believing a felony or misdemeanor has been committed, within the City of Palm Beach Gardens.
 - ii. When in fresh pursuit and the arrest is made outside the City of Palm Beach Gardens, the officer shall have the same authority to arrest and hold a person in custody as he has to arrest and hold in custody a person not arrested in fresh pursuit.

1. When a person is arrested in fresh pursuit by a Palm Beach Gardens police officer outside of the Palm Beach Gardens city limits, but within Palm Beach County, the arrest will be handled in the same manner as an arrest within the Palm Beach Gardens city limits. As a matter of procedure, the officer in charge of the jurisdiction where the arrest is made may be notified of the arrest if circumstances so dictate.
2. When a person is arrested in fresh pursuit by a Palm Beach Gardens police officer outside Palm Beach County, the arresting officer shall notify the officer in charge of the jurisdiction in which the arrest is made. The officer in charge of the jurisdiction (or his designee) in which the arrest is made shall, along with the arresting officer, take the person arrested before a county court judge in which the arrest was made without delay.
3. Other than the statutory authority in cases where there is fresh pursuit, or pursuant to the Palm Beach County Law Enforcement Agencies Mutual Aid agreement (see following section), Palm Beach Gardens Police officers have no state law enforcement jurisdiction outside the city limits. In situations of arrests, search and seizure, or performance of other law enforcement functions, a Palm Beach Gardens police officer shall contact the agency that has jurisdiction in the location to assist in performing the function.

2. ARREST UNDER THE PALM BEACH COUNTY LAW ENFORCEMENT MUTUAL AID AGREEMENT

- a. The following procedures apply in Palm Beach County in unincorporated areas and in municipalities where the Palm Beach County Sheriff's Office (PBSO) is the contracted law enforcement provider. When a Palm Beach Gardens Police Officer has established probable cause to arrest an individual(s) as a result of an investigation regarding any Forcible Felony, as defined in Section 776.08, Florida Statutes, or any act of Domestic Violence as defined in Section 741.28, Florida Statutes, that occurred within the jurisdiction of the arresting officer, he/she is authorized to make this arrest in any jurisdiction where the Palm Beach County Sheriff's Office has primary law enforcement responsibilities under the following conditions:
 - i. Exigent circumstances exist, and said offense occurred within the previous twenty-four (24) hours;
 - ii. Prior to any officer making an arrest which falls under this policy and procedure, the officer shall notify the Palm Beach County Sheriff's Office Commanding Officer in charge of the district in which the action will be taken.
 - iii. Officers do not have the authority under this policy and procedure to make non-consensual or forcible entries into private dwellings, residences, living spaces or business spaces which are not open to the public, i.e., actions taken pursuant to this policy and procedure may be exercised only when in places open to the public or private places into which the arresting officer has entered with the consent of an occupant entitled to give consent.
- b. The following procedures apply in Palm Beach County in all municipalities where PBSO is not the contracted law enforcement provider. When a Palm Beach Gardens Police Officer has established probable cause to arrest an individual(s) as a result of an investigation regarding any felony, as defined in Florida Statutes, or any act of Domestic Violence as defined in Section 741.28, Florida Statutes, that occurred within the jurisdiction of the arresting officer, he/she is authorized to make this arrest in any municipality where PBSO does not have primary law enforcement responsibilities under the following conditions:
 - i. Prior to any officer taking enforcement action which falls under this policy and procedure, the officer shall notify the Commanding Officer in charge of the jurisdiction in which the action will be taken, unless exigent circumstances prevent such prior notification, in which case notification shall be made as soon after the action as possible.
 - ii. Officers do not have the authority under this policy and procedure to make non-consensual or forcible entries into private dwellings, residences, living spaces or business spaces which are not open to the public, i.e., actions taken pursuant to this policy and procedure may be exercised only when in places

open to the public or private places into which the arresting officer has entered with the consent of an occupant entitled to give consent.

- c. The following procedures apply anywhere in Palm Beach County.
 - i. Should a sworn law enforcement officer be in another jurisdiction within Palm Beach County and a crime of violence, as defined in Florida Statutes, occurs in that officer's presence, the officer may exercise authority as a law enforcement officer as if that officer was in his/her own jurisdiction. Should enforcement action be taken, the officer shall notify the agency having normal jurisdiction and upon that agency's arrival, turn the situation over to them and offer any assistance requested, including, but not limited to, a follow-up written report documenting the incident and the actions taken.
 - ii. This provision is not intended to grant general authority to conduct investigations, serve warrants and/or subpoenas or to respond without request to emergencies already being addressed by the agency of normal jurisdiction, but is intended to address critical, life-threatening or public safety situations, prevent bodily injury to citizens, and/or secure apprehension of violent criminals whom the law enforcement officer may encounter.

3. ARREST PROCEDURE IN GENERAL

- a. Arrests can be made based on one, more than one, or all of the following:
 - i. An offense committed in the presence of an officer.
 - ii. A felony has been or is being committed, or the officer has probable cause to believe a felony has been or is being committed and the officer has probable cause to believe that the person to be arrested has committed or is committing it.
 - iii. A person has committed a misdemeanor violation, which is an exception to the misdemeanor arrest rule of occurring in an officer's presence.
 - iv. An arrest warrant or arrest capias has been issued.
- b. When making an arrest, an officer must inform the person to be arrested that he/she is under arrest, of the officer's authority and the reason for the arrest.
 - i. An officer need not touch a person to complete the arrest.
 - ii. Display of the uniform and badge in most cases is sufficient notice of authority. Officers not in uniform should display their badge and announce that they are police officers.
 - iii. Notice of the reason or cause for the arrest, in most cases, need not be given until after the person to be arrested is in custody.
 - 1. If an officer questions the person in custody during an interview/interrogation session, the officer must inform the person of their Miranda Rights.
 - 2. The officer shall inform the person arrested of the reason for the arrest as soon as practical after that person is in custody.
 - 3. Prompt notice of the reason for arrest can be delayed when the officer reasonably believes that giving the notice would imperil the arrest.
- c. When making an arrest, an officer shall use only the force necessary to accomplish the lawful objective (arrest) or to overcome any resistance to the arrest.
- d. An officer shall attempt to properly and correctly identify a person who is to be arrested.
- e. When an officer informs a person that he/she is under arrest, the officer should advise the person of the reason for arrest and under the following circumstances:
 - i. An officer is required to advise a person suspected of committing a crime of his/her constitutional rights under the "Miranda Decision" before that person is questioned when:
 - 1. The suspect is arrested or in custody.
 - 2. When a suspect is led to believe (using the reasonable prudent person test) that he/she is deprived of his/her freedom.

3. When "custodial interrogation" exists.
4. When loitering and prowling before affording the person the opportunity to dispel any alarm.
- ii. Constitutional rights warning are not required:
 1. During a traffic stop including DUI, unless questioned as a suspect.
 2. During a "Stop and Frisk" encounter.
 3. During an "on-scene" or field investigation for questions such as "What happened here?" or "Did anyone see the gun?"
 4. During street encounters or in public buildings or structures when the person has reason to believe that he/she is free to leave and not formally being questioned as a suspect.
 5. During an interview in a person's home or office, when the person has reason to believe that he/she is free to terminate the interview and dismiss the officer
 6. During interviews over the telephone.
 7. When an arrested person is asked questions not designed to elicit incriminating evidence, e.g., name, address, etc.
- f. Searches incidental to arrest.
 - i. In all cases where a physical arrest is made, the arrested person will be thoroughly searched.
 - ii. The arresting officer may search the area where the person was when arrested (wingspan) for evidence, contraband, and/or tools or weapons used in the commission of a crime or which may be used to escape.
 - iii. Strip and body cavity searches may be conducted and shall be in compliance with FSS 901.211. Policy and Procedure 4.2.1.13 outlines these procedures.
- g. Entry of a building for the purpose of an arrest.
 - i. Pursuant to FSS 901.19(1), if an officer fails to gain entry after the officer has announced their purpose and authority in order to make an arrest by warrant. The officer may use all necessary reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be.
 - ii. A "no-knock" approach may be applicable if the officer reasonably believes that announcement of identity may cause danger to life or limb or the person to be arrested is attempting to destroy evidence or flee.
 - iii. An officer may enter a suspect's residence for the purpose of effecting a lawful arrest when the officer reasonably believes the person to be arrested is within the residence under the following circumstances:
 1. The arrest is based on probable cause developed or obtained as the result of a recent felony and the circumstances of the crime and detainment is necessary to protect life or avoid escape and action is eminent.
 2. The arrest is based on an arrest warrant or capias.
 3. The officer is in fresh pursuit of a person suspected of committing a felony offense.
 4. Entry is necessary to prevent or terminate the commission of serious crime.
 - iv. A search warrant or consent to search is required to enter a residence of someone other than the person to be arrested, for the purpose of arresting such person, unless emergency or exigent circumstances exist.
- h. Pursuant to FSS 901.151, whenever an officer encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state, or the criminal ordinances of any municipality or county, the officer may temporarily detain such person for the purpose of ascertaining the person's identity and the circumstances surrounding his/her presence, which lead the officer to believe that he/she committed, was committing, or was about to commit a criminal offense.
 - i. No person shall be detained for a time longer than is reasonably necessary to effect the purpose of the statute.
 - ii. The detention shall not extend beyond the place it was first made or the immediate vicinity. If during the temporary detention, an officer has articulable facts leading the officer to believe that the person

detained is armed with a weapon, and therefore offers a threat to the safety of the officer or another person, the officer may search the person detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If the search discloses a weapon or any evidence of a criminal offense, it shall be seized.

- iii. If, during the detention, probable cause for the person develops, the person may be arrested.
- iv. If, after inquiry into the circumstances which prompted the temporary detention, no probable cause develops, the person shall be released without delay.
- i. The Palm Beach Gardens Police Department and its officers have a duty to document and disclose any exculpatory evidence and are required by law to notify the prosecutor of any potential exculpatory information.
- j. If during the investigation of a crime newly acquired evidence shows the probable cause no longer exists for the arrest of a person who has been arrested, such person shall be released.
 - i. A Sergeant shall be notified prior to releasing the arrested person.
 - ii. The person shall be freed immediately.
 - iii. The situation shall be explained to the person.
 - iv. The person shall be transported to the original point of detention or other location reasonably indicated by the arrested person.
 - v. The person shall be helped in anyway necessary to 'make them whole", i.e., retrieving an automobile that had been towed, returning property that had been taken from them, etc.
 - vi. If an officer fails to comply with the above, the officer may become liable for false arrest.
 - vii. A report shall be written documenting the incident.
- k. Whenever a person is arrested and requires detainment, the arresting officer shall remain with such person until all necessary paperwork is complete and transport of such person(s) to the PBSO Detention Center is arranged.
 - i. When a person is arrested and is to be transported to the PBSO Detention Center, the transport officer shall handcuff (**double lock and check the cuffs for tightness**), search for safety and place such person in the rear seat of a patrol vehicle or other vehicle used for prisoner transport in accordance with Prisoner Transport Policy, 4.2.1.5.
 - ii. When an arrested person is taken into custody and transported to the Palm Beach Gardens Police Department for any reason, the arresting officer, or any other designated officer, while at the police department, shall maintain visual contact at all times with the arrested person.

4. WARRANTLESS ARRESTS

- a. A person may be arrested without a warrant when:
 - i. That person has committed a felony, misdemeanor or violation of a municipal or county ordinance in the presence of an officer.
 - ii. A felony has been or is being committed, or the officer has probable cause to believe that a felony has been or is being committed and the officer has probable cause to believe that the person to be arrested is committing, or has committed it.
 - iii. The officer has knowledge that an arrest warrant has been issued, but another officer is holding the warrant for execution.
 - iv. Officers may not make a warrantless arrest for a misdemeanor that did not occur in their presence, unless the misdemeanor is one for which Florida Statutes allow a warrantless arrest and the officer has the appropriate probable cause. Refer to the Florida Statutes Legal Guidelines for warrantless misdemeanor arrest.
 - v. A Palm Beach Gardens police officer may make a probable cause arrest based on a probable cause affidavit which is completed by another Palm Beach Gardens police officer and on file at the police department pending filing for a warrant.

1. When such an arrest is made, it is the responsibility of the arresting officer to notify the officer who completed the probable cause affidavit that the arrest was made, so that the case can be filed in a timely manner. The notification will be completed within three (3) days of the arrest.
2. Documents that must be submitted to the state attorney when filing for a warrant are as follows:
 - a. All copies of the probable cause affidavit with the original signature;
 - b. Witness/evidence list and any statements, written or taped, and other evidence referred to on the list;
 - c. All reports, including any report written by other officers, all supplements and if applicable, any accident reports;
 - d. Request for Capias/arrest warrant; and
 - e. State attorney's office filing information form.
- vi. A Palm Beach Gardens police officer may detain a person on a request from another law enforcement agency only if sufficient probable cause exists and the information is confirmed by teletype.
 1. If sufficient probable cause does not exist, it will be treated as an attempt to locate.
 2. The originating agency will be notified of the location where the person is being detained or has been located and a request will be made for that agency to respond to that location. If it is not possible for that agency to respond, the officer shall gather as much information as possible and forward such information to the originating agency.
 3. Pursuant to FSS 901.151, (Stop and Frisk Law), a police officer may temporarily detain a person under circumstances which indicate that such person has committed, is committing, or is about to commit a violation of a criminal law of this state or the criminal ordinances of any municipality or any county. Such suspicion exists when a person fits the detailed description of a suspect of a recent law violation or a vehicle fits the detailed description of a vehicle used in a recent law violation.

5. ARREST WITH A WARRANT

- a. Pursuant to FSS 901.16:
 - i. An officer making an arrest by warrant shall inform the person to be arrested of the cause of arrest and that a warrant has been issued, except when the person flees or forcibly resists before the officer has an opportunity to inform him/her, or when giving the information would imperil the arrest.
 - ii. The officer need not have the warrant in his/her possession at the time of the arrest, but on request of the arrested person(s), shall make arrangements to have it shown to him/her as soon as practical.
- b. Officers shall check PALMS, NCIC and FCIC for warrants on all arrested persons.
- c. If a warrant check by computer shows a "hit", the officer should make every effort to verify the warrant and confirm that the person in custody is the person on the warrant.
 - i. Warrant information from the PBSO may be verified through PALMS.
 - ii. Warrant information from agencies outside Palm Beach County shall be verified by teletype.
- d. After verifying the warrant and the person's identity, the officer shall transport the arrested person to the PBSO Detention Center, where the arrested person shall be booked.
- e. Whenever a person is arrested on a warrant(s) an officer shall complete the following:
 - i. Check the computer print out to identify which department originated the warrant.
 1. If the warrant was originated by this department, the original case number shall be used and the officer shall complete a supplement report. Warrants for FTA (failure to appear), contempt of court, and VOP (violation of parole) are not Palm Beach Gardens Police Department originated warrants even though this department is listed as the originating agency on the PALMS report.
 2. If the warrant was originated by another department, a new case number shall be obtained for the PUFOD (pick up for other department), one case number per arrested person even if arrested for multiple warrants, and the officer shall complete an Arrest/Notice to Appear (Rough Arrest) form.
 - ii. All Arrest/Notice to Appear (Rough Arrest) forms completed for warrants shall contain the following information:

1. Name, DOB, race and sex of the person arrested.
 2. Date, time and location of arrest.
 3. Name of the arresting officer.
 4. The warrant number, date of issue, originating department if known and charges for which the warrant was issued.
- iii. An Arrest/Notice to Appear (Rough Arrest) form.
 - iv. A copy of the computer print out shall be submitted with the report.
- f. If it is found that a person arrested by an officer has an active warrant, the officer shall include the warrant arrest information in the report for the original arrest.
- i. The officer shall use the case number of the current arrest for the warrant(s) arrest.
 - ii. If the warrant was originated by the Palm Beach Gardens Police Department, a supplement report to the case originating the warrant shall be written.
- g. The arresting person shall be transported to the PBSO Detention Center where he/she will be served with the warrant if it is a Palm Beach County warrant.
- i. All warrants are, pursuant to FSS 901.04, directed to and executed by a Sheriff's Deputy.
 - ii. If the warrant is from another county within the state or from another state the officer must verify extradition.
 - iii. If the other county or state will extradite, the same process will be followed by the Palm Beach Gardens police officer as in serving for a Palm Beach County warrant.
 - iv. The arresting person shall be transported to the PBSO Detention Center to await transport to the other county or state or await an extradition hearing.
 - v. If the other county or state will not extradite, the person shall be released unless there are local charges.
- h. Documents and paperwork to accompany the arrested person to the PBSO Detention Center are as follows:
- i. A copy of the Arrest/Notice to Appear (Rough Arrest) form.
 - ii. A copy of the PALMS, NCIC or FCIC printout which shows the warrant hit and if an out of county warrant, a copy of the teletype confirming extradition.

6. FELONY ARREST

- a. An officer, in all felony arrest cases, shall complete the following:
- i. An offense incident report along with any other necessary report forms, i.e., person's report, vehicle report, narrative continuation report, etc.
 - ii. An Arrest/Notice to Appear (Rough Arrest) form.
 - iii. A probable cause affidavit.
 - iv. A copy of the Arrest/Notice to Appear (Rough Arrest) form and probable cause affidavit will be submitted with the offense incident report and other attached reports.
 - v. If a Detective is not on duty, the arresting officer and a Sergeant will make a decision whether to have a Detective called out to interview the arrested person or transport the subject to the PBSO Detention Center.
- b. Documents and paperwork to accompany the arrested person to the PBSO Detention Center are as follows:
- i. Arrest/Notice to Appear (Rough Arrest) form
 - ii. PC affidavit
- c. Documents and paperwork necessary for filing the charges with the state attorney's office:
- i. Copies of the Arrest/Notice to Appear (Rough Arrest) form and PC affidavit with original signatures;
 - ii. Witness/evidence list;
 - iii. All reports, including reports written by other officers, all supplements, and if applicable, any accident reports; and
 - iv. State Attorney's filing information form.

7. NON-TRAFFIC MISDEANOR & VIOLATION OF COUNTY & MUNICIPAL CRIMINAL ORDINANCE ARRESTS:

- a. An effort will be made by officers to issue a notice to appear (NTA) to persons and release them on their own recognizance, without making a physical arrest, for a misdemeanor law violation or violation of a county or municipal ordinance. A physical arrest may be made if one or more of the following circumstances exist:
 - i. The person fails or refuses to identify himself/herself or to supply required information to complete the NTA.
 - ii. The person refuses to sign the NTA.
 - iii. The officer has reason to believe that the continued liberty of the person constitutes an unreasonable risk of bodily injury to himself/herself or others.
 - iv. The person has no ties with the jurisdiction reasonably sufficient to assure his/her appearance or there is substantial risk that he/she will refuse to respond to the notice.
 - v. The officer is suspicious that the person may be wanted in another jurisdiction.
 - vi. It appears that the person has previously failed to respond to a notice or summons or has violated the conditions of any pre-trial release program.
 - vii. The person is a known habitual offender.
 - viii. The offense committed is of a violent nature or the person is displaying a violent or disorderly behavior.
 - ix. The officer has reason to believe that the person will repeat the offense if the person is not physically arrested.
 - x. A person has committed the offense of prowling.
 - xi. The person has committed a misdemeanor sexual offense.
 - xii. Other circumstances exist which in the opinion of the officer would deem a release on recognizance inappropriate. The physical arrest under these circumstances must be approved by a Sergeant.
- b. An officer shall complete the following on all non-traffic misdemeanor and county and municipal ordinance violation arrests:
 - i. An Arrest/Notice to Appear (Rough Arrest) form
 - ii. A probable cause affidavit.
- c. The appropriate offense incident report and any other report forms that are required.
- d. When the person arrested is issued an NTA and released on his own recognizance, without being physically arrested, the officer shall:
 - i. Give a copy of the NTA to the arrested person.
 - ii. The remaining copies of the NTA and all copies of the PC affidavit shall be turned in with the offense report, where appropriate.
- e. When the person is physically arrested and transported to the PBSO Detention Center, the officer shall:
 - i. Attach copies of the NTA and PC to the offense report, which will be forwarded to Records for data entry.
 - ii. The remaining copies of the NTA and the PC affidavit shall accompany the arrested person to the PBSO Detention Center.

8. TRAFFIC OFFENSES

- a. Non-criminal infractions
 - i. Persons charged with a non-criminal infraction may be issued a traffic citation and released on their own recognizance.
- b. Misdemeanor traffic law violations
 - i. A person charged with a misdemeanor traffic law violation will be issued a traffic citation.
 - ii. An effort shall be made to release the person charged with a misdemeanor traffic law violation at the scene, except under the following circumstances:

1. The person is charged with driving under the influence of an alcoholic beverage or controlled substance, FSS 316.193. If the person is hospitalized he/she shall not be physically arrested.
 2. The person is charged with willful and wanton reckless driving, FSS 316.192.
 3. The person is charged with fleeing or attempting to elude a police officer, FSS 316.1935.
 4. The same circumstances that apply for physical arrest in non-traffic misdemeanor violations apply for traffic misdemeanor violation arrests.
- c. When an officer makes a misdemeanor traffic law violation arrest by issuing a citation at the scene, the officer may write a report, depending upon the circumstances of the incident.
- d. When a physical arrest is made as a result of a misdemeanor traffic law violation the officer shall:
- i. Write all citations for the traffic charges;
 - ii. Complete an arrest/NTA report;
- e. If the arrested person is to be transported to the PBSO Detention Center, the officer shall complete a PC affidavit.
- f. When the arrested person is transported to the PBSO Detention Center, the documents and paperwork are distributed as follows:
- i. 3 copies of the citation(s) are sent to the PBSO Detention Center along with the arrested person.
 - ii. 3 copies of the NTA and PC are sent to the PBSO Detention Center along with the arrested person.
 - iii. Copies of the NTA and PC affidavit are forwarded to Records via chain of command.
 - iv. The officer shall make two (2) copies of the NTA and PC affidavit, which will be submitted along with an incident report. These copies shall be used as a narrative.
- g. When a DUI arrest is made, the officer will:
- i. Offer the arrested person a breath, urine, or blood alcohol test.
 1. If the arrested person is hospitalized with serious injuries, the officer will have blood drawn from the arrested person for purposes of testing for blood alcohol level;
 2. An approved kit will be used to draw the blood and the blood will be drawn only by a physician, a certified paramedic, a registered nurse, a licensed practical nurse, or a duly licensed clinical laboratory technologist or clinical laboratory technician.
 - ii. Request that the arrested person submit to a physical test.
 - iii. Video recording of the breathalyzer test in the DUI room at the PBSO testing facility.
 - iv. The paperwork and distribution of paperwork is the same as in a physical arrest for a misdemeanor traffic law violation.
- h. Felony traffic law violation.
- i. An officer shall complete the following:
 1. An Arrest/Notice to Appear (Rough Arrest) form;
 2. A probable cause affidavit;
 3. A report on the appropriate form(s); and
 4. A citation charging the arrested person with the same offense as is on the probable cause affidavit.
 - a. This citation is a means of notifying DHSMV of the violation.
 - b. The officer will not complete the court information section.
 - c. In the court information section, the officer should reference citation for Tallahassee/charges for felony case.
 - d. The arrested person will not be given a copy of the citation.
 - e. The arrested person will not sign the citation.
 - f. The citation will be attached to the state attorney's copy of the probable cause affidavit and sent to the PBSO Detention Center with the arrested person.
 - ii. The paperwork will be distributed the same as in any felony arrest.
 - iii. The same paperwork and documents for filing a non-traffic felony will be required for a traffic felony.

9. MILITARY DESERTERS AND AWOL ARREST

- a. Whenever military personnel are arrested, they are entitled to the same type of release as any other person.
- b. Whenever military personnel are arrested, and it is necessary for them to contact their base, the arresting officer will assist the person in accomplishing the contact.
- c. Whenever a NCIC check is made on a person and a hit comes back for a military deserter or AWOL, the person will be arrested and it will be handled in the same manner as a warrant hit.
- d. The hit will be verified by contacting the Deserter Information Point of the appropriate branch of the U.S. Military Service by phone. The 24/7 phone numbers are as follows:
 - i. U.S. Army United States Army Deserter Information (502) 626-3711,12,13
 - ii. U.S. Navy Commander, Naval Military Personnel (847) 688-2106
 - iii. U.S. Marine Corps Commandant, U.S. Marine Corps (703) 614-3248
 - iv. U.S. Air Force USAF Manpower Personnel Center (210) 566-3752
 - v. U.S. Coast Guard – contact number is listed on NCIC reports
- e. Each branch of the military enters only deserters (AWOL over thirty days) into the NCIC computer and wants deserters held in custody.
- f. The person will be transported to the PBSO Detention Center.
- g. The PBSO Detention Center will notify the appropriate branch of the military service of the location where the AWOL or deserter is being held and make arrangements for that person to be picked up.
- h. In this type of an arrest, an officer must complete the following:
 - i. An Arrest/Notice to Appear (Rough Arrest) form, documenting in the charge section either Deserter or AWOL, and the branch of service.
 - ii. A copy of the verification information shall be attached to the report.
- i. The paperwork shall be distributed in the same manner as in a warrant arrest.

10. PERSONS EXEMPT FROM ARREST

- a. Diplomatic Immunity
 - i. Diplomatic agents, the term used for ambassadors and other diplomatic officers who deal directly with U.S. Government Officials on behalf of their home government, enjoy the highest degree of immunity.
 - 1. These officials are immune from arrests.
 - 2. They may be detained only for the time necessary to confirm their diplomatic status.
 - 3. An officer may apply reasonable constraints in emergency circumstances involving self- defense, public safety, or the prevention of serious criminal acts.
 - 4. Traffic citations for non-criminal law violations may be issued to any diplomatic agent because it is not an arrest.
 - 5. Immunity extends to the administrative and technical staff of diplomatic agents.
 - 6. Immunity extends to the family members of diplomatic agents and to the family members of the administrative and technical staff of diplomatic agents.
 - 7. Service staff employees of diplomatic personnel and the family members of the service staff generally do not have immunity.
 - ii. Consular Personnel
 - 1. A career consular official does not have diplomatic immunity from arrests, if the arrest is for a felony and pursuant to a warrant.
 - 2. Honorary consular officers, consular employees and all family members of all consular personnel do not have diplomatic immunity.
 - 3. All consular personnel may be issued non-criminal traffic citations.

iii. Personnel of International Organizations

1. Diplomatic level staffs serving in missions to international organizations, have diplomatic immunity.
2. The staffs of international organizations and the support staff of the missions to the international organizations generally are not immune to arrests.
3. All personnel of international organizations may be issued non-criminal traffic citations.
4. Diplomatic immunity extends to the family members of diplomatic level staff of missions of international organizations but not to family members of international organization staff, nor family members of support staff of missions to international organizations.

iv. Diplomatic immunity does not provide a blanket shield against effective law enforcement efforts.

v. When a clear law violation occurs, via a diplomat, police are not entirely powerless although immunity may insulate the offender.

1. Where public safety is an issue, or a serious crime is imminent, police may intervene to halt a crime and may defend themselves and others.
2. Proper investigation and documentation of incidents is required even when arrest and prosecution are not possible due to immunity because:
 - a. Immunity is sometimes waived.
 - b. The status of the diplomat may change.
 - c. The information may be useful to the U.S. Department of State.
 - d. Potential non-judicial diplomatic channel remedies may be available with a properly investigated and documented incident.

vi. The above are guidelines and reflect the general rule and employees of certain foreign countries may have higher levels of privileges and immunity because of a special bilateral agreement between their country and the U.S. When in doubt, call the State Attorney's Office, or after hours, the on-duty State Attorney, or U.S. Attorney or access via internet:

1. [Contact Information for Foreign Consular Offices in the U.S.](#)
2. [Suggested Fax Sheet for Notifying Consular Officers of Arrests or Detentions](#)
3. United Nations personnel (information available from the host country section of the U.S. Mission to the United Nations, (212) 415-4131. After normal business hours, (212) 415-4444.
4. In the event a foreign national is arrested, by law, they must be given the opportunity to have their consulate notified. In some cases, where the U.S. has a bilateral agreement with a foreign government, the notification is required regardless of the foreign national's wishes. The complete list of those countries can be found either on PD net or on the U.S. State Department's website.

b. Privilege from arrests

- i. Privilege from arrests extends to U.S. Senators and U.S. Representatives through the U.S. Constitution.
- ii. The privilege is applicable only while the official is traveling to or from a legislative session or during attendance at a session.
- iii. This privilege does not prevent an officer from making an arrest, but simply means the person can have the arrest set aside. The arrest remains valid until disposed of by order.
- iv. The privilege does not apply when the offense is treason, a felony, or breach of the peace.

11. BAKER ACT (FLORIDA MENTAL HEALTH ACT)

- a. Pursuant to FSS 394.463, a law enforcement officer may take into custody, and transport to a receiving facility, for an involuntary examination, a person, the officer has reason to believe is mentally ill and because of his/her mental illness:
 - i. Has refused voluntary examination after the purpose of the examination has been thoroughly explained or is unable to determine for himself/herself, if the examination is necessary; and
 - ii. Without care and treatment, he/she is likely to suffer from neglect or refuse to care for himself/herself, which will pose a real and present threat to his/her well being and there is no indication that the harm will

be avoided by help from others or he/she will cause serious bodily harm to himself/herself or others in the near future, as evidence by recent behavior.

- b. An involuntary examination and custody, and transportation to a mental health facility, by an officer, for such examination may be initiated by one of the following means:
 - i. A court may enter an Ex Parte Order, which states that the person appears to meet the specified criteria and is unwilling to seek voluntary examination.
 - 1. This order is enforceable throughout the state.
 - 2. A law enforcement officer or other designated agent of the court shall take the person into custody and deliver his/her to the nearest receiving facility for examination.
 - 3. The officer shall execute a CAD report detailing the circumstances under which the person was taken into custody.
 - 4. The officer shall provide the receiving facility a copy of the order to be made a part of the patient's clinical record; he/she will also complete all necessary intake forms for the receiving facility, retaining copies for police records.
 - ii. A Palm Beach Gardens police officer shall take a person into custody who appears to meet the criteria for involuntary examination, and transport him/her to the nearest receiving facility for such examination.
 - 1. Factors to be considered by an officer in determining if the criteria for involuntary examination exist are as follows:
 - a. The person has attempted, or is in the process of committing suicide.
 - b. A person is in the process of doing harm to himself/herself or others, by starvation, torture, living in conditions which create a great imminent danger to the health, safety, or welfare of the person.
 - c. The person is under extreme stress (as demonstrated by a level of anxiety out of proportion to the situation).
 - d. The person suffers from hallucinations.
 - e. The person is hysterical.
 - iii. A physician, a psychologist (licensed pursuant to Chapter 490 FSS), a psychiatric nurse, or a clinical social worker (as defined in FSS 394.455) may execute a Certificate of Professional Initiating Involuntary Examination.
 - 1. The certificate states the person was examined within the preceding forty-eight (48) hours, appears to meet the specified criteria and is unwilling to seek voluntary examination.
 - 2. The certificate shall be effective for seventy-two (72) hours and is enforceable throughout the state.
 - 3. An officer shall take the person named in the certificate into custody and deliver his/her to a receiving facility for an involuntary examination.
 - 4. The officer shall complete Part I and the delivered section of the report of law enforcement officer's form.
 - 5. The officer shall make a copy of the certificate and the report and these shall be attached to the administrative copy of the miscellaneous incident report, Baker Act that the officer must complete.
- c. For purposes of this procedure, the receiving facility for the Palm Beach Gardens Police Department shall be Columbia Hospital, located in West Palm Beach. If a space is not available for the person at this facility, the facility staff shall assist the officer in locating available space at another facility. The officer shall notify a Sergeant and a decision will be made at that time on how to transport the person to the other facility.
- d. Any person taken into custody by a Palm Beach Gardens police officer shall, pursuant to FSS 394.459, be treated with dignity at all times.
 - i. Including when the person is taken into custody, detained or transported.
 - ii. Procedures, facilities, vehicles, and restraining devices utilized for criminals, or those accused of crime, shall not be used in connection with noncriminal mentally ill except for the protection of the patients or others.
 - iii. A non-criminal mentally ill person shall not be detained or incarcerated in a jail.

- e. Clinical records are confidential and are to be maintained as non-public records.
 - i. The copies of the Ex Parte Order, the report of law enforcement officer, and the certificate of professional initiating involuntary examination are all part of the clinical record and therefore, are confidential and non-public records and shall be maintained as such.
 - ii. When the copies are given to the officers by personnel at the receiving facility, they should be stamped "CONFIDENTIAL".
 - iii. The incident report or any other report the officer completes for the department pertaining to the actions, the detention, the transportation and involuntary examination of the person is not considered confidential. Any part of the clinical report that is attached to the report completed by the officer is confidential and shall not be released except under the provisions of FSS 394.459 (9).
- f. Whenever a person commits a crime and the crime is a result of conduct that meets the criteria for involuntary examination, the officer shall transport the person to a receiving facility for an involuntary examination.
 - i. An exception is if the crime is a felony and involves violence against another person, the person shall not be transported to a receiving facility, but shall be processed as any other arrest.
 - 1. The officer shall immediately notify the designated receiving facility, if the person meets the statutory criteria for involuntary examination.
 - 2. The receiving facility is responsible for arranging the evaluation.
 - 3. The officer shall complete a report of law enforcement officer form, which shall be sent to the PBSO Detention Center along with the other required documents and the arrested person.
 - ii. If the crime is a misdemeanor and not a result of conduct that meets the criteria for involuntary examination, but that type of behavior is apparent, an NTA may be issued and the person transported to the receiving facility.
 - iii. If the crime is one which requires a physical arrest, and the crime is not a result of conduct that meets the criteria for involuntary examination, but such conduct is apparent, the officer shall follow the same procedure as in a felony arrest involving violence against another person.
- g. Firearms are prohibited on the grounds and premises of a mental health facility.
 - i. An officer at any time before entering the building of a facility shall secure his/her firearm by locking it in the trunk of the vehicle he/she is riding in or driving.
 - ii. An officer shall carry a firearm into a patient ward only when required to achieve order in an emergency involving the use of a deadly weapon.
- h. Immunity from and liability for violations.
 - i. Any person who violates or abuses any rights or privileges of patients provided by the Baker Act is liable for damages as determined by law. Any person who acts in good faith in compliance with the provisions of the Baker Act is immune from civil or criminal liability for his/her actions in connection with the admission of a patient to a facility. However, this provision does not relieve any person from liability if such person is guilty of negligence.

12. MARCHMAN ACT(COMPREHENSIVE ALCOHOLISM PREVENTION CONTROL)

- a. A police officer may assist any person to his/her home or to a treatment resource, who is intoxicated or under the influence of intoxicants in a public place and appears to be in need of help, if that person consents.
- b. A police officer shall take into custody and transport to a hospital or appropriate treatment resource, any person who is intoxicated in a public place and appears to be incapacitated.
 - i. A person shall be deemed incapacitated if he/she appears to be in immediate need of emergency medical attention or when he/she appears to be unable to make a rational decision about his/her need for care.
 - ii. In detaining an intoxicated person and taking him/her to a treatment resource, the officer shall attempt to obtain the consent of the intoxicated person.

- iii. If the person appears incapacitated, and refuses consent, he/she may be transported to a hospital or appropriate treatment resource against his/her will, but unreasonable force shall not be used.
- iv. Palm Beach Gardens police officers when transporting an intoxicated person to a treatment resource shall transport the person to the comprehensive alcoholic rehabilitation program center (CARP).
- c. If a person is intoxicated and endangering the safety of another person, or property or intoxicated in a public place, or upon a public conveyance and causes a public disturbance, they have committed a misdemeanor crime.
 - i. The person may be physically arrested.
 - ii. In lieu of the physical arrest, the officer may take or send the person to his/her home or a health facility or treatment resource. Any officer who chooses this alternative shall be considered as carrying out their official duty.
- d. If a person is operating a motor vehicle and is determined to be under the influence of alcoholic beverages, he/she is committing a misdemeanor violation and may be arrested.
- e. Whenever an intoxicated person is taken home or to a treatment resource by an officer, the officer shall complete a CAD report, documenting the incident.
- f. When an officer detains or takes to a treatment resource an intoxicated person, the officer shall be deemed as taking the person into protective custody and it is not considered an arrest for any purpose. No record shall be made to indicate that the person has been arrested or charged with a crime.
- g. Any officer who detains or takes to a treatment resource, an intoxicated person under the provisions of the Marchman Act, shall be considered as acting in the conduct of their official duty and shall not be held criminally or civilly liable for false arrest or false imprisonment.

13. GLOSSARY

Arrest Warrant - An order of arrest signed by a judge.

Booking Procedure - the process, by which an officer completes an Arrest/Notice to Appear (Rough Arrest) form, fingerprints and photographs an arrested person.

Capias - An order of arrest issued by the Clerk of the Court when the state attorney's office has filed information.

Computer Hit - Where there is a positive response to a computer check for warrants or wants on a person.

Custodial Interrogation - When a person being interrogated is in custody or a police dominated atmosphere in which a reasonable person would believe he/she does not have the freedom to leave.

Fresh Pursuit - Immediate pursuit, following without any material interval, under common law gives an officer the right to cross jurisdictional lines to make an arrest.

Mentally Ill - impairment of the emotional processes, of the ability to exercise conscious control of one's actions, or of the ability to perceive reality or to understand. This impairment substantially interferes with the person's ability to meet the ordinary demands of living, regardless of the cause, except that, for the purposes of the Baker Act, the term does not include retardation, or developmental disability, simple intoxication, or conditions manifested only by antisocial behavior or drug addiction.

Physical Arrest - When a person is taken into custody.

Probable Cause - When facts and circumstances within an officer's knowledge, and of which he/she has reasonably trustworthy information, are sufficient in themselves to justify a reasonable prudent man/woman to believe a crime has been or is being committed and the person to be arrested has committed or is committing it.

Receiving Facility - A facility designated by HRS to receive patients under emergency conditions or for psychiatric evaluation and to provide short term treatment (does not include a jail).

Strip Search - The act of having an arrested person remove or arrange some or all of his/her clothing so as to permit a visual or manual inspection of the genitals, buttocks, anus, breasts in the case of a female, or undergarments of such person by an officer of the same sex.

Treatment Resource - Any public or private facility, service, or program providing treatment or rehabilitation for alcoholics, and/or drug abuse, including, but not limited to, detoxification centers, licensed hospitals, community mental health centers, clinics or programs, half-way houses, and rehabilitation centers.

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APPROVED:



Stephen J. Stepp
Chief of Police

12/09/2010

Date