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BY THE AUTHORITY OF THE CHIEF OF POLICE: 			

30.1 AUTHORITY TO EXERCISE ALTERNATIVES TO ARREST (CALEA 1.2.7)

From time to time, by the nature of their employment, police officers may face situations where the interests of all concerned are best served by utilizing methods other than conventional arrests. Discretion is inherent to the police profession and may result in the officer applying a wide spectrum of incident reaction ranging from warnings to custodial arrest. The purpose of this directive is to provide some guidance as to when discretion is appropriate and when it is not.

30.2 PARTICIPATION IN CRIMINAL JUSTICE COORDINATING COUNCIL (CJCC) RISK ASSESSMENTS

The Charleston Police Department is a voluntary participant in the utilization of an online Risk Assessment Instrument offered by the Criminal Justice Coordinating Council (CJCC). This instrument allows officers who have probable cause to arrest individuals for specific crimes to evaluate the risks involved and enables them to have a uniform approach during decisions to arrest, cite and release or refer to stabilization providers. The specific crimes that are currently compatible with the CJCC risk assessment instrument are listed below:

1. Public Intoxication;
2. Disorderly Conduct;
3. Simple Possession of Marijuana;
4. Open Container;
5. Shoplifting.

30.3 CRIMINAL CITATION ALTERNATIVE TO ARREST (CALEA 1.2.6)

Subject to the comments below, an officer will be guided by the following criteria. The officer has no discretion and must arrest in the following instances:

1. Any felony committed in the officer's presence or for which the officer has probable cause sufficient to make the arrest, whenever possible;
2. Any offense of Driving Under the Influence;
3. Any instance of Domestic Violence when there are physical manifestations of injuries, the offender has been identified and there is probable cause; and

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4. Any instance where a valid citizen's arrest has been made and the party is turned over to the officer for custodial purposes only.

The officer has discretion to arrest or exercise alternatives to arrest in the following instances or under the following procedures:

1. Misdemeanor offenses falling under the City Code which do not involve violence;
2. As directed by the Chief of Police, the following charges may be written on a citation by all officers of the Charleston Police Department if the violation has been observed by the officer:
 - a. Any alcohol related possession or sales charge;
 - b. Open container charges;
 - c. Possession of Drug Paraphernalia;
 - d. Tobacco related charges;
 - e. Trespassing if the subject is cooperative and if the victim is public housing or a business;
 - f. Loitering;
 - g. Minor disorderly conduct charges if the subject cooperates;
 - h. Shoplifting;
 - i. Simple Possession of Marijuana.
3. Officers will be required to consider the factors listed below in determining whether or not to issue a citation. If one or more of these factors are present, the officer may make a custodial arrest:
 - a. There are reasonable grounds to believe the person will not appear for court, or the person has a history of not appearing;
 - b. There are reasonable grounds to believe a person poses a danger to others, himself or herself, to property, the community, or that the person will not cease committing the alleged crime;
 - c. The individual's criminal record or if the individual is out on bond;
 - d. Detention of the individual is deemed necessary to carry out a legitimate investigation;
 - e. If the individual requires physical or mental health care, if the person is not able to care for himself or herself, or if the person is intoxicated or under the influence of drugs or alcohol;
 - f. The individual does not have or will not provide a valid identification, or their identification is unable to be verified;
 - g. The individual is included in the Career Criminal Offender Monitoring Program.

If an officer makes a custodial arrest for a criminal offense that is eligible for cite and release, they will clearly articulate the factors and circumstances supporting the arrest as opposed to a cite and release in the narrative of the incident report.

4. When a party requires medical or psychiatric treatment, the party may be turned over to such medical or psychiatric authorities in lieu of arrest. Charges may be waived if the offense is a minor offense under the City Code;
5. When, in the interest of justice, the officer may feel that referral to a public agency is preferable to arrest for minor offenses. An example might be referring a homeless individual to an approved shelter rather than charging the person with Trespass in an Abandoned Building. While those requiring in-house medical or psychiatric care may be released to proper authorities with no pending charges in the case of minor violations, individuals who are suspect in major

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crimes (felonies or general sessions court misdemeanors) will not be released without charges and will be subject to guard until such time as they are released or committed by judicial or medical authority to a secure custodial facility for treatment. Charges in these cases will be put on a "hold" status until released from the facility concerned or until disposition action is taken by the solicitor's office.

Any citation that is issued and delivered to the Clerk of Court prior to 2400 hours on the day preceding a court day will be placed for trial the following court date. Any citation turned in after 2400 hours on the day preceding a court date will be scheduled for court on the court date next following the following days court.

Individuals who are issued a courtesy summons and fail to appear are subject to trial in their absence and, in the event of such trial, a bench warrant will be issued for their arrest. Officers must insure that this fact is explained to persons given a courtesy summons.

After trial, the Uniform Traffic Ticket, with its disposition will be routed for transmittal, to the South Carolina Highway Department via the normal procedure except as follows:

1. Citations for the Criminal Violations must be submitted in a separate transmittal from citation for traffic violations;
2. Local file copies are to be separated from the ticket package and segregated according to traffic and criminal status. Criminal copies will be delivered directly to the Identification Division for further action. Traffic copies will be handled as it currently is done.

Officers who make errors on tickets issued for criminal violations must process and void them in the same manner as dictated by departmental governing traffic citations.

30.4 ENVIROMENTAL CONTROL ORDINANCE AND CITATIONS

The purpose of this policy is to publish the Police Department's policy and guidelines regarding enforcement of the Charleston Environmental Control (Littering) Ordinance. In the desire to make the City of Charleston a cleaner, healthier, and more pleasant place to both live and visit, we in the police department will actively enforce littering laws at all times and under all circumstances.

Once the decision has been made to cite an offending party in lieu of an arrest, the following procedure will be used:

1. An Official Summons will be completed as applicable. Information concerning the subject's drivers license number will be included if available. Additional information regarding vehicle type, license, etc., will be included if relevant;
2. Individuals who are issued a courtesy summons and fail to appear are subject to trial in their absence and, in the event of such trial, a bench warrant will be issued for their arrest. Officers must insure that this fact is explained to persons given a courtesy summons, especially in situations where extenuating circumstances indicate to the officer there is a strong possibility the party will fail to appear;
3. Court will be set for trial within ten (10) days. In the event that the suspect is from outside a reasonable commuting area and the offenders return to court would create a substantial burden on them, court is to be set for the next available court date;
4. Officers need not complete an Incident Report on these cases unless a party is unable or unwilling to cooperate with officers. In these cases, the party will be custodial arrested. Officers are advised to make notations on the rear of the

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pink copy for their own use in court. Date, time, location, and essential elements of the violation should suffice in this regard;

5. Officers will deliver the blue copy of the summons to the suspect and turn all other copies over to the Clerk of Court as appropriate. Officers will be required to appear in court to testify in these cases.

Officers are required to be familiar with the applicable sections of Chapter 14 that regulate the most common offences of the Environmental Control Ordinances. In particular, Sections 14.2 (a) relates to Pedestrians and Motorists and Section 14.3 covers Vehicles Transporting Loose Materials.

30.5 POLICE DISCRETION

The nature of police work is governed by departmental guidelines, policies/procedures, using discretion and taking a common sense approach. Police discretion is the judgment officer's use in the field and is essential because:

1. The majority of police work is conducted by officers working alone;
2. The officers must often make decisions outside the purview of a supervisor;
3. The officers must make decisions based on only what is known at the time and/or personal experiences.

Depending on the circumstances and the type of violation, officers can release someone after giving a stern lecture; issue a written warning, issue an actual citation or making a physical arrest. It is a given fact, that no law or policy can cover every possible scenario law enforcement officers face on a daily basis so therefore officer's discretion is encouraged and when used properly, both the arrestee and law enforcement benefit greatly.

Guidance:

Once probable cause for an arrest has been established and an arrest will be affected, there are certain offenses (Group A) when an officer has no discretion, a custodial arrest is required and the following must occur:

1. Case number is generated;
2. Incident report is completed;
3. Arrest report is completed (by arresting officer).

The only exception here would be for **Shoplifting, Possession of Marijuana 1st & Possession of Drug Paraphernalia**. In these cases, the offenders can be cited and released after:

1. Case number is generated;
2. Incident report is completed;
3. Arrest report is completed by I.D. (report completed by arresting officer if custodial arrest).

In Group B offenses (including Traffic violations) a custodial arrest is required for DUI and related offenses and the following must occur:

1. Case number is generated;
2. Incident report is completed;
3. Arrest report is completed by Arresting Officer.

All other Group B offenses can be handled as a cite and release with the arrest report being completed by I. D.

When dealing with Traffic issues, the following is necessary:

1. Cite and Release – No arrest report is generated;
2. Custodial Arrest:
 - a. Case number is generated;

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- b. Incident report is completed;
- c. Arrest report required by Arresting Officer.

Since officers are allowed so much discretion in these Group B arrests, it is extremely important that we attempt to establish protocols which allow us to be consistent and eliminate the opportunity for complaints to be lodged because we handled several different situations which had similar circumstances in different manners. Additionally by being consistent we are better able to manage our time and efforts on more pressing things. The incidents that come to mind most are:

1. Drunkenness;
2. Disorderly Conduct;
3. Open Containers;
4. Traffic Violations.

Some things to consider when handling these types of calls for service would be:

1. Are there any extenuating circumstances (violence or aggression)? If so a custodial arrest would be in order;
2. Have the circumstances diminished to the degree that we need to rethink our decision? If so, a written warning or a citation could be in order. If the circumstances have greatly diminished, and new information has come to light, the **right thing to do** would be to “un-arresting” the person as it is never too late to do the right thing;
3. Does the situation involve alcohol and if so is a second party involved who can and is willing to take care and control of the offender. In this case we could issue a warning or a citation and allow the friend to take over. If the person is intoxicated to a degree where he cannot take care of himself and a second person is not involved, a issuing a citation and releasing is not an option. An arrest or placement into a stabilization center must be made. The same consideration should be given with motor vehicles. Has the offender requested that his vehicle be turned over to a second party who is on scene rather than having it towed? If so and that person has a valid driver’s license, the proper thing would be to release the vehicle as requested;
4. Is the offender known to the officer(s) thus creating a repetitive behavior? In this case, a custodial arrest would be best for all involved;
5. When dealing with individuals involved in minor disputes or incidents in which the officer(s) cannot determine fault, an incident report will be written and the case assigned to an investigator for follow-up. If the investigator is still not able to determine fault, he will prepare a packet which is turned in to Warrant Services. Both individuals will be assigned a date and time to appear where a courtesy summons is prepared and both parties will appear in municipal court where a judge will hear testimony and render a decision. Officers should not be issuing arrest warrants for incidents as described above.

Court Dispositions:

For those instances where the individuals were cited and released, if they are found guilty in court, the arresting officer must ensure the defendant is:

1. Fingerprinted and photographed for the current charges by escorting them to Administrative Services (CPD ID Section) for processing;
2. Transported to CCDC if jail time is given.

30.6 CRIMINAL JUSTICE AND SOCIAL SERVICE DIVERSION PROGRAMS

There are instances in which the interest of both the Police Department and the public are best served by a close cooperation

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and working relationship between the police and diversion programs. In many instances these are offered to a defendant in lieu of prosecution or punishment. They include, but are not limited to: Pre-Trial Intervention, Substance Abuse Counseling, Rehab Programs, Vocational Responsibilities, Restitution, and Public Service Work Programs.

Conviction and punishment may not always be the best alternative depending on the nature of the offense, the party involved, and the general target audience. This department will fully support the use of these diversion programs when candidates are eligible, willing to participate, and recommended by the court or solicitor. Officers who feel that a party may be a candidate for one of these programs will express that fact to the solicitor so that it may be considered as an option.

30.7 UTILIZATION OF PUBLIC AND SOCIAL SERVICES AGENCIES (CALEA 1.2.8)

In many cases a police officer is faced with an individual who may need assistance not traditionally rendered by law enforcement agencies. Additionally, there may be instances where, when dealing with a party, an officer may feel that arrest is not the proper action and may desire to refer the party to an appropriate public or social agency. It is in the interest of both the Department and the public that the police be aware of and utilize these agencies.

Many times in such cases, determining who may best be served by these agencies is based on a request by the individual or on the common sense of the officer concerned. The officers must also remember that people falling into these categories will tend to be involved in some type of personal crisis and may require more than the normal time and patience for assistance. Officers must use tact and diplomacy in these instances. While it would be impossible to list all the resources available in the Charleston community for those needing assistance, a listing of the most frequently used programs and services is available through the State Solicitor's Office. A copy of this listing is also kept in the Charleston County Consolidated Dispatch Center and available through the Desk Officers.