



# CONCORD POLICE DEPARTMENT

## STANDARD OPERATING PROCEDURE

### ARREST AUTHORITY AND PROCEDURES

<b>GENERAL ORDER:</b> 07.01	<b>CREATED:</b> December 1, 2000	<b>ISSUED:</b> January 22, 2024
<b>CALEA STANDARD:</b> 1.2.5, 70.1.2, 70.1.6, 70.1.7, 70.1.8, 70.2.1	<b>EFFECTIVE DATE:</b> January 22, 2024	
<b>ACTION:</b> Amends general order dated December 29, 2022.		

#### **07.01.0**     **PURPOSE**

The purpose of this general order is to define the authority to make arrests as defined in NCGS 15A-401 and provide guidelines for effecting arrests, both with and without a warrant, restraints, and treatment of persons in custody. These guidelines ensure that rights and privileges are afforded to citizens during arrest situations. Furthermore, this general order identifies the authority of officers to use alternatives to arrest.

#### **07.01.1**     **POLICY**

It shall be the policy of the Concord Police Department that all arrests made be conducted professionally and in accordance with established legal principles while handling prisoners humanely and safely.

#### **07.01.2**     **DEFINITIONS**

##### A. ARREST

Taking or detaining of a person by word or action into custody so as to subject their liberty to the actual control and will of the person making the arrest. There must exist the intent to take into custody and a corresponding understanding of the person arrested that he or she is in "custody," although no formal declaration of arrest is required.

##### B. ARREST WARRANT

A written order issued by a judge, magistrate, or other proper authority that commands a law enforcement officer to place a person under arrest.

##### C. CRIME

An action or omission that constitutes an offense that may be prosecuted by the state or federal government and is punishable by fine or imprisonment or both.

##### D. DISCRETION

The ability to apply reason, based on intelligent, non-biased decisions, guided by professional values, to include the Code of Conduct, department policy, and situational variables. This does not apply to offenses and violations in which the suspect, by law or department policy, shall be arrested. The use of discretion includes the use of alternatives to arrest.

E. LAW ENFORCEMENT OFFICER (or OFFICER)

A law enforcement officer is a sworn Concord Police Department employee, without regard to rank, who is responsible for the prevention, investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws, who is authorized to make arrests for violations of the laws or ordinances they are employed to enforce.

F. ON-DUTY

Those hours the law enforcement officer is regularly scheduled to work as part of his/her normal hours of work, including authorized overtime hours, and approved secondary employment.

G. PERSONALLY INVOLVED

A situation where the off-duty officer, a family member, or friend becomes engaged in a dispute or incident involving a personal matter with the person to be arrested or any other person connected with the incident. This does not apply to situations where the off-duty officer is a victim of a crime.

H. PRISONER

A person who has been deprived of liberty and movement and kept under involuntary restraint, confinement and/or custody; to include all persons under arrest but not yet incarcerated as well as those incarcerated.

I. PROBABLE CAUSE

A reasonable amount of suspicion, supported by circumstances sufficiently strong to justify a prudent and cautious person's belief that certain facts are probably true. Probable cause is a flexible, common-sense standard. A practical, nontechnical probability is all that is required. (State v. Zuniga 1984).

J. RESTRAINING DEVICES

Equipment used to restrain the movement of the prisoner, such as handcuffs, waist chains, leg irons, flex cuffs, leg restraints, etc.

**07.01.3 TERRITORIAL JURISDICTION TO ARREST**

- A. [NC GS 160A-285](#) authorizes municipal police officers to enforce all state laws, city ordinances or regulations, and to serve criminal and civil processes that may be directed by the General Court of Justice.
- B. City of Concord law enforcement officers have territorial jurisdiction only in the following:
1. Within the corporate city limits of Concord and one-mile perimeter, all satellite annexed areas with one-mile perimeter, all city-owned and city-maintained property outside the city limits of Concord;
  2. Arrest is legal elsewhere in the state besides our normal jurisdiction if made after immediate and continuous flight by defendant, [NC GS 15A-402\(d\)](#);

3. Outside those areas, the officer has no police authority and shall take no actions requiring police authority.
4. Within the scope of a valid mutual aid agreement.

#### **07.01.4 ON DUTY ARRESTS**

##### **A. PROCEDURES FOR ARRESTS**

1. In order for an arrest to occur, an officer shall have the intent to take a person into custody, and advise the person that he/she is arrested and is in custody. When making an arrest, an officer shall:
  - a. Identify him/herself as a police officer (If it is apparent by the wearing of a uniform or other means that the person making the arrest is a police officer, no further identification is necessary).
  - b. Restrict the arrested subject's movement using only the amount of reasonable force necessary to overcome their resistance.
  - c. When an arrested person is taken into physical custody, the arresting officer shall be responsible for completing the required reports.

##### **B. ARRESTS WITH A WARRANT**

1. An officer having a warrant for arrest in his/her possession may arrest the person named or described therein at any time and at any place within the officer's territorial jurisdiction.
2. An officer who has knowledge that a warrant for arrest has been issued and has not been executed, but does not have the warrant in his/her possession, may arrest the person named therein at any time upon verifying that a valid warrant exists. The officer shall inform the person arrested that the warrant has been issued and serve the warrant on the person as soon as practicable.

##### **C. ARRESTS WITHOUT WARRANT**

1. An officer may arrest without a warrant any person who the officer has probable cause to believe has committed or is in the process of committing a criminal offense in the officer's presence.
2. An officer may arrest without a warrant when probable cause exists to believe that the person has committed a misdemeanor out of the officer's presence and also has probable cause to believe that one of the following conditions exists:
  - a. The offender committed one of the following offenses:
    - 1) Concealment of merchandise ([NC GS 14-72.1](#))
    - 2) Impaired driving ([NC GS 20-138.1](#))
    - 3) Commercial impaired driving ([NC GS 20-138.2](#))
    - 4) Domestic criminal trespass ([NC GS 14-134.3](#))

- 5) Incidents of assault when the offense was committed by a person with whom the alleged victim has a personal relationship with to include:
  - i) Current or former spouses;
  - ii) People of the opposite sex who live together or have lived together;
  - iii) People who are related such as parents and children, including others acting in place of parents to a minor child including grandparents and grandchildren;
  - iv) People who have a child in common;
  - v) People who are current or former household members;
- b. May cause physical injury to himself or others, or damage to property unless immediately arrested, or;
- c. The person may damage property unless immediately arrested.

#### **07.01.5**    **OFF DUTY ARRESTS**

##### A. ARREST AUTHORITY

1. An off-duty officer may effect an arrest, or provide aid or assistance to an on-duty officer, anywhere within the territorial jurisdiction that would apply if the same officer were on-duty, if the officer has probable cause to believe that the person to be arrested has committed in the officer's presence:
  - a. A felony;
  - b. A breach of the peace;
  - c. A crime involving physical injury to another person; or,
  - d. A crime involving theft or destruction of property.
2. The actions of the off-duty officer shall be the same as the actions that would be authorized under similar circumstances while on-duty.

#### **07.01.6**    **DISCRETION AND LIMITATIONS**

Officers are authorized and expected to use discretion when deciding to effect an arrest.

- ##### A. Officers shall consider several factors when deciding to effect an arrest.
1. The seriousness and nature of the offense.
  2. The potential that the arrest will effectively resolve the conflict.
  3. The availability of legal alternatives to arrest that would adequately resolve the conflict.

4. The likelihood that the citizen will be deterred from future violations by warning and education.
  5. The officer's belief that the citizen made an honest mistake in violation of the law.
  6. The victim's interest in prosecution.
  7. The potential that an arrest would create a more serious breach of peace such as civil unrest.
  8. The officer's belief that the arrest will protect members of the community.
- B. Officers shall not base the decision to arrest or not arrest on certain factors.
1. The person's economic status, race, ethnicity, gender or another status that would legally be considered discriminatory.
  2. A personal or professional relationship that the person may have with another officer(s) or other influential people within the community.
  3. The personal advantage to the officer from avoiding the arrest (e.g. overtime, avoidance of paperwork, extended work past off-duty time, etc.).
- C. ALTERNATIVES TO ARREST
1. The use of citations in lieu of arrests for misdemeanor violations, when appropriate and when an arrest is not mandated by law.
  2. Oral/Written warnings for minor traffic and statute/ordinance violations.
  3. Informal resolutions where the interest of both parties involved is satisfied by a mediated settlement on the scene. The resolution shall be by agreement between the affected parties and shall not be employed as an excuse for not affecting an arrest.
- D. ARREST LIMITATIONS
1. An officer's actions shall always be objectively reasonable and follow local, state, and federal law.
  2. Unless an officer is responding to an emergency situation that poses a significant threat of life or serious bodily injury, officers shall avoid effecting an arrest if they are **personally involved**. Such law enforcement authority shall not be used when there is a clear conflict of interest or potential conflict of interest.
  3. If off-duty, all aspects of the situation including the officer's fitness for duty, abilities, training, experience, availability of equipment, communications, as well as a tactical risk assessment, shall be taken into consideration prior to deciding to act. The opportunity and/or means to have on-duty officers safety respond prior to acting shall be weighed and considered. When practicable, the off-duty officer should contact the appropriate communications center or an on-duty resource in lieu of, or prior to, intervening. In some instances, it may be advantageous to be a good witness rather than attempt to physically intervene while off-duty.

**NOTE: For purposes of subsection (5) and (6) above, there's a distinction between being off-duty contemporaneous to clocking-in or clocking-out (where the officer has ready access to their normal complement of duty gear and may actually be in uniform driving a department vehicle) versus off-duty where the officer is not prepared or equipped for duty, and has no imminent intention of clocking-in for regular duty. Further, an officer engaged in approved secondary employment is not considered to be off-duty.**

#### **07.01.7 TREATMENT OF PRISONERS**

- A. All officers assume responsibility for maintaining a respectful and professional manner when dealing with all prisoners.
- B. Officers are forbidden to argue with prisoners, to address them in obscene or profane language or to use more force than necessary to overcome their resistance.
- C. Any officer found to have unnecessarily struck or to have mistreated a prisoner in any manner shall be subject to disciplinary action up to and including dismissal.

#### **07.01.8 PHYSICAL RESTRAINT OF PRISONERS**

All prisoners shall be considered as posing a potential danger to the transporting officer and shall be restrained during transport. In all instances, the physical security of the prisoner and the safety of the transporting officer(s) shall remain the primary consideration. Restraints shall be used only to immobilize prisoners and not to cause discomfort or injury. All prisoners in restraints of any kind shall be monitored continuously.

##### **A. HANDCUFFS**

1. The arresting officer shall apply handcuffs with prisoner's hands behind the back, palms out, keyholes facing upward, and engage the double-lock feature. Care shall be exercised to avoid unnecessary injury to the prisoner from the use of restraints. The handcuffs shall be tightened only enough to effectively secure the prisoner's wrists. While in the prisoner booking area of the Concord Police Department, prisoners may be secured to the immovable devices provided within each holding pod.
2. These steps may be altered, as necessary, when cuffing a prisoner who is combative or when applying under adverse conditions. Physically handicapped prisoners may be transported in either the front or rear of the police vehicle, depending upon the individual's condition. An ambulance may be requested to assist in transporting handicapped persons whose condition would preclude transport in police vehicles. Officer discretion shall be used in determining whether restraints are required. The use of restraints on a handicapped prisoner may be used in circumstances where the individual is violent, combative, presents a security hazard, or poses a danger to himself or others.

##### **B. DISPOSABLE RESTRAINTS / FLEX CUFFS**

1. Disposable restraints or flex cuffs may be utilized when the number of prisoners exceeds the number of steel handcuffs available.

2. If applied improperly flex cuffs may restrict the blood flow and inflict injury to the prisoner. Officers shall maintain observation of prisoners that are restrained with flex cuffs.
3. Flex cuffs shall only be removed with approved flex cuff removal tools.

C. LEG IRON RESTRAINTS

Officers may use department approved leg irons to restrain and secure violent or high-risk prisoners, including those placed under emergency detention who display violent behavior.

**07.01.9 PRISONER TRANSPORT**

A. TRANSPORT IN ASSIGNED POLICE VEHICLES

1. Officers shall conduct a thorough search of the interior of their department issued vehicle prior to the beginning and at the conclusion of any work assignment in which the patrol vehicle is utilized. This includes the transport of any prisoner or non-police personnel.
2. All prisoners transported shall be physically restrained using approved restraining devices, such as handcuffs, flex cuffs, or leg shackles in accordance with the officer's training. When necessary, officers shall consult a supervisor when confronted with a prisoner who has an obvious or known physical condition that will prohibit the use of restraining devices.
3. The transportation of prisoners shall primarily be conducted using vehicles equipped with a protective shield and modified to minimize opportunities for the prisoner to exit from the rear compartment of the vehicle without the aid of the transporting officer.
4. Safety aspects of prisoner transport require that the prisoner's right to communicate with attorneys and others will not normally be exercised during the period that the prisoner is being transported.
5. The starting and ending location and the beginning and ending vehicle odometer mileage must be stated over the radio to the Communications Center at the start of every prisoner transport involving the opposite sex, juveniles or a disruptive or combative prisoner, and involuntary commitment patients. In each situation, the police dispatcher will verbally state the starting and ending times of the prisoner transport over the radio to accurately record the event.
6. Body worn camera and in car camera shall be operated in accordance with [General Order 06.06 Video Recording Equipment](#).
7. An officer who has custody of any prisoner shall be responsible for safeguarding the prisoner and the property in the prisoner's immediate possession.

B. PRISONER TRANSPORT VAN

1. The department's prisoner transport van is available for use citywide and shall remain at police headquarters when not in use.
2. The van shall be utilized in instances where:

- a. A prisoner is too large and cannot easily fit inside of a normal patrol vehicle;
  - b. When a prisoner is combative and can't be placed into a normal patrol vehicle safely;
  - c. Subject is disabled or suffers from a physical ailment that requires a larger transport vehicle;
  - d. Mass or multiple arrests are anticipated for a significant event.
3. The operator of the transport van assumes responsibility for the safety and security of all prisoners being transported within the vehicle.
  4. All prisoners shall be searched by the operating officer prior to being secured in the prisoner transport compartment.
  5. The operator of the transport van shall log into the van's MCT, which will also launch the vehicle's camera system.
  6. When transporting prisoners, officers shall ensure that the vehicle's camera systems are activated, in accordance with [General Order 06.06 Video Recording Equipment](#).
  7. Emergency equipment may be used to respond to a pick-up location for a subject that is combative or circumstances require an expedited response.
  8. The transport van shall not participate in any type of pursuit.
  9. Prior to beginning the prisoner transport, the transporting officer shall notify the Communications Center of their destination location and provide both beginning and ending mileage.
  10. Prior to and after each prisoner transport, the operating officer shall conduct a search of the prisoner compartment to check for any discarded weapons or contraband.

#### **07.01.10 MEDICAL TREATMENT OF PRISONERS**

##### **A. MEDICAL AID**

1. Medical distress includes but is not limited to:
  - a. Situations where a person is unconscious;
  - b. Has no pulse, has difficulty breathing or complains of difficulty breathing;
  - c. Complains of moderate to severe pain;
  - d. Has moderate to severe bleeding, or is incoherent.
2. Any officer having contact with a prisoner in medical distress shall immediately request Emergency Medical Services and render first aid until relieved by medical personnel.



3. An injured or seriously ill prisoner who requests medical attention shall be treated and released from a medical facility prior to transport to the Cabarrus County Jail.

B. TRANSPORT

1. If prisoners with medical conditions/injuries are transported to a medical facility by ambulance, an officer shall accompany the prisoner during transport.
2. Prisoners suffering minor injuries during the arrest, who require medical attention, can be transported by the arresting officer to the local hospital for examination and treatment.
3. The officer responsible for transporting a prisoner to a medical facility shall remain with the prisoner and exercise custodial control pending release or medical admission into the facility.
4. The officer shall ensure that the prisoner is isolated from other patients and remain in restraints unless removal is necessary for medical purposes.

**07.01.11 HOSPITAL GUARD OF PRISONERS**

A. PRISONER ADMITTANCE TO HOSPITAL

1. If the prisoner is in custody for a non-violent misdemeanor offense, unless the injury occurred as a result of contact with officers from the Concord Police Department, the arresting officer may issue a citation.

**NOTE: A prisoner that is in custody for charges related to domestic violence shall not be cited and released.**

2. If the prisoner is in custody for a felony offense, and cannot be released from custody, the arresting officer shall notify their sergeant or watch commander.

B. ESTABLISHMENT OF HOSPITAL GUARD

1. If the decision is made to provide a guard, the watch commander shall assign a sergeant to establish a hospital guard and a rotation of officers to provide guard duty.
2. Once the prisoner has been assigned to a room, the assigned sergeant shall inspect the room to address any safety concerns for both the officer and the prisoner. The inspecting sergeant shall consider the following:
  - a. Determine if the room is equipped with a telephone and that it is not within reach of the prisoner;
  - b. Check the room for alternate exit doors and where they lead;
  - c. If any doors for the room are equipped with locks, determine the location of keys that will unlock the mechanism.
3. The responsible sergeant shall determine if any special circumstances exist and consult with hospital personnel to determine if the circumstances can be accommodated.

4. Obtain a set of leg irons and ensure they are functioning properly.
5. Determine if due to length of time the prisoner will be admitted to the hospital and if the guarding officers will need a radio charger or extra batteries.
6. Determine if the prisoner's name appears in the hospital register or patients. The responsible sergeant shall contact hospital security or nursing administration to request the prisoner be opted out of the system for safety and security purposes.

#### C. OFFICERS PERFORMING HOSPITAL GUARD DUTIES

1. Maintaining the safety and security of a hospital prisoner is the officer's primary responsibility. Any questions the officer has relative to their duties shall be addressed with the sergeant responsible for the hospital guard or the watch commander.
2. Officers assigned to guard duty shall remain with their prisoner at all times and shall arrange relief should they have to leave.
3. The sergeant responsible for the guard shall ensure the Hospital Guard Duty Report form ([form HG-1](#)) is completed and guarding officers shall log times on the Hospital Guard Officers Log form ([form HG-2](#)).
4. Change of Shift
  - a. At the change of each shift, each officer shall obtain any additional information or instruction from the officer being relieved.
  - b. The relieving officer shall ensure that any equipment being utilized for the guard duty is functioning properly, and shall notify the sergeant responsible for the hospital guard or the watch commander.
5. Prisoners shall not be allowed to make or receive phone calls.
6. Prisoners shall not be allowed to have visitors unless approved by the sergeant responsible for the hospital guard or the watch commander.
7. All eating utensils used by the prisoner shall be returned to hospital personnel.
8. Officers shall contact the Communications Center by telephone or radio hourly to confirm their status, which should be noted in the CAD system.
9. Officers shall not release information regarding the prisoner to anyone other than hospital personnel for medical reasons.

#### D. TERMINATION OF HOSPITAL GUARD

1. A hospital guard shall be terminated when one of the following occurs:
  - a. When the prisoner has been medically cleared by an attending physician to be transported to the Cabarrus County Jail;
  - b. The custody of the prisoner is transferred to another jurisdiction;
  - c. Dismissal of charges.

2. Upon the termination of the hospital guard, the officer shall immediately notify the sergeant responsible for the hospital guard or the watch commander.
3. The officer shall return forms [HG-1](#) and [HG-2](#) to the sergeant responsible for the hospital guard or the watch commander.
  - a. Forms [HG-1](#) and [HG-2](#) shall be submitted to the police administration manager for a retention period of no less than one year from the date the hospital guard was terminated.

**NOTE: If the prisoner has been arrested for a felony offense, a copy of forms [HG-1](#) and [HG-2](#) shall be included in the felony case file in compliance with state discovery rules.**

4. All medical documentation, to include any written instructions and medication regimens shall accompany the prisoner.

### **07.01.12**

### **ESCAPES FROM CUSTODY**

- A. In the event that a prisoner escapes from lawful custody inside the city limits, the transporting officer shall do the following:
  1. Immediately notify the communications center and provide the pertinent details so that all necessary personnel and agencies may be informed;
  2. Notify the watch commander as soon as practicable;
  3. Take appropriate actions to recover the prisoner;
  4. Once the prisoner is located and apprehended, the prisoner shall be charged with the appropriate criminal violations related to the escape.
- B. If the escape occurs outside the city limits of Concord, the transporting officer shall:
  1. Immediately notify and request the assistance from the law enforcement agency having territorial jurisdiction;
  2. Notify the watch commander as soon as practicable;
  3. Prior to leaving the jurisdiction where the escape occurred, charge the prisoner with the appropriate criminal violations related to the escape.
- C. The on-duty watch commander, or point of contact if a watch commander is not on duty, who receives such reports from prisoner transporting officers shall investigate the circumstances of the escape and submit a full written report via the chain of command to the Chief of Police. The supervisor's report shall include a detailed written statement of the transporting officer(s), and shall be submitted prior to ending the tour of duty on which the escape occurred.

**07.01.13**      **ENTERING JAIL, DETENTION FACILITIES AND JUDICIAL HEARINGS**

- A. Prior to entering a secure detention area, the transporting officer shall secure their firearm in the provided lock box, secured in the trunk of the vehicle, or as otherwise required by the facility. Officers are strictly prohibited from taking any firearm into the secure area of a jail or detention facility.
- B. After securing all firearms, the transporting officer shall remain in the receiving area with the prisoner until the prisoner has been searched, examined for injuries, and accepted by the detention officer.
- C. Upon arrival at a county jail or other detention facility, the transporting officer shall leave any restraining devices on the prisoner until safely inside a secure area of the facility.
- D. The transporting officer shall deliver to the detention officer all necessary documentation pertaining to the prisoner, including any information about the prisoner's escape or suicide potential, or other traits of a security nature.
- E. The signature of the detention officer indicating receipt of the prisoner shall be obtained on any legal process requiring such documentation.
- F. The transporting officer shall notify the receiving detention officer of any security risks and any reported or known medical issues.

**07.01.14**      **PRISONER MONITORING**

The sudden death of a prisoner in custody can occur at any time for a variety of reasons. Consequently, officer awareness and recognition of risk indicators are necessary to ensure prisoner safety and minimize the risk of sudden custody death. Therefore, officers shall maintain constant and direct supervision over prisoners at all times, including prisoners who are restrained and, in any facility, belonging to the Concord Police Department. If it becomes necessary to leave the area where a prisoner is under observation, another officer shall be summoned to observe the prisoner. Under no circumstances shall a prisoner be restrained or confined without constant and direct observation.

- A. Diligent observation and monitoring of prisoners displaying any one or a combination of the following risk indicators is warranted:
  - 1. Bizarre and/or unusually violent behavior;
  - 2. Obesity;
  - 3. Drug and/or alcohol intoxication;
  - 4. Apparent ineffectiveness of chemical agent or insensitivity to pain;
  - 5. Epilepsy;
  - 6. Sickle Cell Anemia;
  - 7. Chronic heart and lung conditions;

8. Enlarged heart conditions may render an individual more susceptible to a cardiac arrhythmia under conditions of low blood oxygen and stress.

B. POSITIONAL ASPHYXIA

1. This can occur when the body position of the prisoner interferes with breathing, resulting in asphyxia (suffocation). This tends to occur when a combative prisoner is under maximum prone restraint (e.g., "hog-tied"), and placed in a face down position. This action shall be avoided by all officers.
2. As soon as the prisoner is handcuffed, get them off their stomach and roll them to their side into a seated or standing position for the safety of the person or officers. The prisoner shall be closely and continuously monitored including while being transported in the transport van or patrol vehicle.

C. RESTRAINT METHODS

1. Officers shall employ restraint methods that provide for an upright, seated position of the prisoner whenever feasible. In situations where, maximal prone restraint is necessary, the prisoner shall be closely monitored for signs of respiratory distress during transport.
  - a. Avoid placing a subject in a position that is likely to contribute to positional asphyxia.
  - b. Never restrain a prisoner's hands and feet together.
  - c. Restraining devices shall only be applied to hands and feet separately, if warranted.
  - d. Do not leave a subject in control restraints lying on their back or stomach.
  - e. Do not allow a seated prisoner or person in control restraints to lean forward, this can cause airway obstructions.
  - f. Do not put weight on the back of person in custody, such as with your knee, for a prolonged period of time. This can add stress to the respiratory muscles and inhibits movement of the rib cage and diaphragm.
2. While a person is restrained in police custody, the officers on scene shall monitor the prisoner's conditions for any physical or mental complications.
  - a. Closely monitor the person in custody for signs of difficulty breathing.
  - b. Mental subjects and substance abusers may be more at risk for positional asphyxia.



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