

<i>P.O. 203 Arrests and Searches</i>			
Effective From:	06-07-2019	Effective To:	Current

C. *P.O. 203 - Arrests and Searches*

1. ARREST AND PROBABLE CAUSE DEFINITIONS

- i) Arrest - Louisiana Code of Criminal Procedure Article 201 states: Arrest is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him.
- ii) Probable Cause - Facts and circumstances which would lead a reasonable person to conclude that a crime has been committed and the defendant was responsible.

2. PHYSICAL ARRESTS

- i) When a physical arrest is made, the officer should present the violator for booking in the jail or lock-up within the jurisdiction where the violation occurred.
  - a) The arrested person shall be booked by the arresting officer and turned over to local authorities.
  - b) In the event a violator is arrested in a parish other than where the violation occurred, the officer shall book the prisoner in the parish where the arrest was made, then transfer the prisoner to the parish where the violation was committed for booking.
  - c) A written summons shall be issued for the offense and remarks should reflect the location of incarceration.
- ii) Prisoners should not be released from the custody of the State Police until they are properly booked. At times, officers may be required to release prisoners upon issuance of the traffic summons indicating the appropriate charges and a future court date.
- iii) Officers shall not involve themselves in the bonding of an arrested person.
- iv) Officers will comply with federal immigration laws and requirements relating to the detention and / or arrest of persons without a lawful presence in the United States of America.

3. PHYSICAL ARREST DEFINITIONS

- i) Adverse Criminal Proceeding - Any judicial proceeding after booking that would be detrimental to the defendant.
- ii) Interrogation - Any question or other conduct specifically designed to elicit an incriminating remark. Silence is not interrogation.
- iii) Custodial Miranda - A person is in custody for purposes of Miranda when he would reasonably feel that within a relatively short period of time he would not be free to leave.

4. PHYSICAL ARREST PROCEDURES

- i) Advice of Rights
  - a) Before a suspect who is in custody may be questioned, he must be advised of the Miranda warnings. Additionally, the Louisiana Constitution requires that any person arrested must be advised of his

Miranda warnings.

- b) After the advice of rights, the suspect must acknowledge he understands the rights and must knowingly, voluntarily, and intelligently waive them.
    - 1) The burden of proof is on the State to show that the suspect has, in fact, done so.
    - 2) The suspect's educational level and anything that would affect the suspect's state of mind (i.e., recent alcohol or drug use) should be entered in the remarks section.
    - 3) If the suspect requests to contact his lawyer, a reasonable time should be allowed for the suspect to make contact, and no questioning shall occur without counsel present.
  - c) If a significant amount of time elapses between the advice of rights and additional questioning, the suspect will again be advised.
    - 1) A significant amount of time is defined as more than a rest break or time to confer with other officers.
    - 2) If another officer questions the suspect about crimes not related to the crimes under investigation, he will re-advise the suspect and secure an additional waiver.
- ii) Right to Counsel
- a) Before the defendant is involved in any adverse judicial criminal proceeding:
    - 1) If at any time the suspect requests an attorney, the questioning will cease. The invocation of right to counsel by the suspect must be clear and unambiguous.
    - 2) Once the suspect has invoked the right to counsel, there will be no questioning until his attorney is present unless, with no prompting from the officer, the suspect changes his mind.
    - 3) After the defendant's involvement in any other adverse judicial criminal proceeding:
      - (i) If the defendant did not expressly waive his right to counsel before a judge, he may not be questioned outside of the presence of his attorney. He may not waive his right to counsel at an interrogation.
      - (ii) If the defendant did waive his right to appointment of a lawyer at the first adverse judicial criminal proceeding (usually the arraignment), the defendant is free to either waive or invoke his right to a lawyer at a custodial interrogation.
- iii) Right to Silence
- a) If a suspect in any way indicates that he does not want to talk, further interrogation is improper and shall not be conducted unless the suspect re-initiates contact with the officer after his original assertion of his rights.
  - b) Documentation
    - 1) If possible the interrogation should be audio or video recorded.

If not, then it should be reproduced as accurately as possible in writing as a part of the report.

- 2) If the suspect is able to do so and has no objections, he should make a written statement.
  - iv) Arrested persons shall be under constant supervision and control of the arresting officer who can immediately intervene on behalf of the Department or the detainee.
5. PHYSICAL ARREST/CUSTODY OF JUVENILES
- i) Officers may stop a juvenile for a traffic offense and release with no action taken.
  - ii) If the officer determines that a juvenile has engaged in non-criminal behavior the officer shall take the necessary action including, but not limited to:
    - a) Counsel and release the juvenile to a parent or legal guardian
    - b) Take the juvenile to the appropriate school – Contact and relinquish juvenile to appropriate family services.
  - iii) An officer that cites a juvenile for a traffic violation shall complete the Uniform Traffic Summons/Complaint Affidavit and direct the offender to the appropriate court with juvenile jurisdiction.
  - iv) An officer who physically arrests a juvenile for a violation of the law may:
    - a) Charge the juvenile and then release him to a parent or legal guardian
    - b) Charge the juvenile and then release him to a juvenile law enforcement officer with appropriate jurisdiction for disposition
    - c) Charge the juvenile and then transport him to the appropriate juvenile detention center.
  - v) An officer who physically arrests a juvenile shall take the same precautions as if dealing with an adult.
  - vi) Juvenile passengers shall be handled in accordance with the provisions of [P.O. 1106, Enforcement](#).
  - vii) A juvenile may be photographed or fingerprinted only in connection with being taken into custody for the commission of either:
    - a) A felony-grade delinquent act
    - b) A misdemeanor-grade delinquent act involving the use of a dangerous weapon.
  - viii) Officers may take a juvenile into custodial care when:
    - a) There is evidence that the juvenile is a runaway from a legal guardian, parent or custodian
    - b) The juvenile is seriously endangered in his surroundings and immediate removal appears to be necessary for the juvenile's protection.
  - ix) The officer shall immediately take measures to notify the juvenile's guardian, parent or the appropriate social service agency.
6. INTERROGATION OF JUVENILES
- i) All DPS and LSP officers shall utilize the applicable portions of the Juvenile Rights Form ([DPSSP 6664](#)) when encountering juveniles. This includes physical arrests, questioning or interviews, remanding to a juvenile

officer or facility, or release to a parent or legal guardian. This does not include written traffic summons. Officers shall attach the forms to their final report.

- ii) Juveniles are entitled to all rights and privileges under the law. In addition, the Department has adopted the following rules when interrogating juveniles:
- iii) Officers will explain the agency procedures and juvenile justice system to the juveniles being interrogated.
  - a) Juveniles must be given the opportunity to confer with a parent, guardian, or interested adult prior to answering questions for a minimum of five minutes. This should be documented on the written rights waiver and in the body of the report.
  - b) Juveniles may not be interrogated for more than two (2) hours without a break. This, too, should be documented in the body of the report by indicating the beginning and ending times.
  - c) Juveniles may not be questioned by more than two (2) officers at a time.
  - d) Officers will observe the "rights of arrestee" mandated by Miranda and applied by the Dino decision making it applicable to juveniles with the above exceptions.
  - e) In an effort to establish the capacity of the juvenile to understand his rights, the investigating officer should have the juvenile explain the rights back to the officer.
- iv) Waiver of Rights Both the juvenile and the interested adult should sign the DPSSP 6664 waiver form. The following is excerpted from State in Interest of Dino [359 So.2d 586]: "In order for state to meet the heavy burden of demonstrating that waiver is made knowingly and intelligently, it must affirmatively show that the juvenile engaged in meaningful consultation with attorney or informed parent, guardian or other adult interested in his welfare before he waived his right to counsel and privilege against self-incrimination."

## 7. USE OF HANDCUFFS

- i) In order to establish a standard procedure regarding the use of handcuffs, officers shall adhere to the following:
  - a) Each person who is physically arrested shall be restrained by the use of handcuffs while he is in the custody of the arresting officer until released to the booking officer at the place of incarceration.
  - b) Handcuffs shall be applied as instructed in the Department's current defensive tactics system taught by certified instructors.
  - c) No arrested person shall be handcuffed with his hands in front of his body.
  - d) Particular care should be taken when searching a prisoner to ensure no weapon or device for unlocking handcuffs is concealed on his person. Searching of prisoners should be performed after handcuffs are applied.
  - e) The double locking device shall be used when handcuffing prisoners.

It shall be activated as soon as practicable.

- f) Persons shall not be handcuffed to the arresting officer.
- g) An officer should not deviate from the above unless he has substantial and articulable justification which adequately addresses concerns for his safety, that of the prisoner or anyone else that may come in contact with the prisoner while in his custody.

8. **SEARCH DEFINITIONS**

- i) Frisk - A pat down of the outer garments specifically for weapons.
- ii) Full Search - A thorough systematic inspection of all garments including the removal and examination of contents from pockets, purses or bags to locate weapons, contraband or evidence.
- iii) Strip Search - A visual inspection of an individual who has disrobed including the hair, mouth, ears, nostrils, groin area and buttocks to locate weapons, contraband or evidence.
- iv) Body Cavity Search - A search involving not only the visual inspection of skin surfaces but the internal physical examination of body cavities and, in some instances the stomach cavity, for weapons, contraband or evidence.
- v) Search Incident to Arrest - A limited search is permissible without a warrant at the time of arrest in order to remove weapons that the arrestee might seek to use to resist arrest or to escape, and to seize any evidence in order to prevent its concealment or destruction. The search is limited to the arrestee's person and the area within his/her immediate control. The search may be conducted even though the arrestee may be in handcuffs.
- vi) Plain View - The most important factor in examining the legality of the plain view search is whether the officer had a legal right to be where he was in order to seize the item in plain view (whether or not the officer used vision aids such as flashlight, binoculars, etc.), and had a lawful right of access to the object. The evidentiary nature of the item must be immediately apparent. The test of "immediately apparent" would include whether or not the item required further inspection as opposed to being easily identified as contraband on first view.
- vii) Abandoned Property - Premises that have been obviously abandoned by the owners have been held not to afford a reasonable expectation of privacy.

9. **SEARCH PROCEDURES**

- i) Consent to Search – Searches based on consent are to be conducted only when:
  - a) The person whose consent is sought has apparent authority over the area sought to be searched.
  - b) Consent is voluntarily given.
- ii) The scope of a consent search depends on the terms of the consent itself and the person giving the consent.
  - a) A person can only consent to a search of places over which he has control.
  - b) Consent of a vehicle includes closed containers, unless the consentor specifically excludes them from the scope of the search.
  - c) A search may not exceed the terms of the consent.

- d) If, during the course of a search based upon consent, the consent is withdrawn, the search must end.
- iii) Frisk or "Pat Down" Search
  - a) When an individual has been legitimately stopped for the purposes of a field interview or investigation and the officer has a reasonable fear for his or another's safety, a frisk may be conducted.
  - b) Factors an officer will consider when making the decision to frisk a suspect are:
    - 1) Type of crime suspected.
    - 2) Number of suspects which must be handled by one officer.
    - 3) Hour of day and location of the stop.
    - 4) Prior knowledge of the suspect.
    - 5) Appearance and demeanor of the suspect.
    - 6) Visual indications the suspect is carrying a weapon.
  - c) A frisk will not be used as a pretext to search for evidence. If possible two officers will conduct the frisk: one to cover and one to search.
  - d) If the situation demands a suspect be frisked, officers must use discretion when performing a frisk on a suspect of the opposite sex. A frisk will not be delayed until an officer of the same sex as the arrestee/suspect can be located.
  - e) If possible, an officer should not frisk multiple suspects.
  - f) A suspect may be frisked standing, kneeling or prone. The level of threat will determine the procedure.
  - g) Officers will pat only the outer clothing unless an object which may be a weapon or contraband is felt.
    - 1) If an officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity as a weapon or as contraband immediately apparent, it and only it may be retrieved. No manipulation of suspected contraband to determine its identity is allowed without probable cause.
    - 2) Officers will use extreme caution when placing their hands into a suspect's pocket, due to the possibility of coming into contact with needles or other sharp objects.
  - h) If a suspect is carrying a bag or other item, the item is to be left unopened and removed from his control.
- iv) Full Search
  - a) A search of a person may be conducted based on probable cause or incident to arrest. The search may be for weapons, contraband or evidence.
  - b) The search should be systematic and thorough. It should include all items in the suspect's possession, pockets, purse or any object that is within his reach.
  - c) A search will, if at all possible, be conducted by two officers: one to search and one to cover.
  - d) Searches will be conducted by officers of the same gender as the suspect/arrestee whenever possible.

- 1) If a search must be conducted by an officer of the opposite sex, it is recommended that two officers be present.
  - e) The names of all officers involved in the search shall be listed on the arrest report
  - f) Arrestees will be handcuffed and then searched prior to transport and every time a change of custody occurs thereafter.
- v) Strip Search
- a) Arrestees will not be subjected to strip searches unless the officer has articulated reasonable suspicion that this particular arrestee may have weapons or contraband on his person. Reasonable suspicion will be based on the following factors:
    - 1) Nature of the offense charged
    - 2) Arrestee's appearance and conduct
    - 3) Circumstances of the arrest
    - 4) Arrestee's prior record
    - 5) Whether the arrestee will be intermingled with the general jail population
    - 6) Whether there are reasonable alternatives to a strip search.
  - b) Strip searches must be authorized by a supervisor. The supervisor need not visually observe the search, but must be present at the facility while the search is being conducted. Strip searches will be conducted under the following conditions:
    - 1) Strip searches of arrestees will only be conducted in a fully enclosed and secure portion of a Departmental facility or other custodial facility.
    - 2) Only the minimum number of individuals necessary to conduct the search will be present.
    - 3) Only officers of the same sex as the arrestee will conduct the search. The arrestee will not be touched by any officer unless it is necessary to counter resistance.
    - 4) Before the search is conducted the investigating officer will obtain a search warrant or consent to search waiver.
    - 5) The search must be conducted in a fully enclosed room that is not accessible to the public.
    - 6) If such a location is not immediately available, the suspect may be brought to the closest departmental facility that meets the criteria set forth above.
  - c) The suspect will be detained no longer than is absolutely necessary to conduct the search. After the strip search, the officer performing the search will include in the appropriate offense or supplemental report the following details:
    - 1) Date, time and place of the search.
    - 2) Identity of the officer conducting the search.
    - 3) Identity of the individual searched.
    - 4) Name of those present during the search.
    - 5) Detailed description of the search and all facts pertaining to the

justification for conducting the search.

- 6) Description of any weapons, contraband or evidence found.
- d) If appropriate, additional charges will be made and all returns executed consistent with current procedure.
- vi) Body Cavity Search
  - a) In misdemeanor or felony arrests, an officer who has probable cause to believe that the individual arrested may have swallowed, placed or concealed a weapon, drugs, or other contraband, shall follow these stated procedures to justify a body cavity search:
    - 1) The officer will consult with his supervisor to determine whether or not probable cause exists to seek a search warrant for a body cavity search.
    - 2) If probable cause does exist, the officer will obtain a search warrant or consent to search waiver consistent with Departmental policy.
    - 3) Only a medical professional will conduct the search. Officers will contact the coroner's office and request that a body cavity search be conducted. The coroner's office, or appropriate authority, will determine the location and time of the search.
    - 4) The officer will attach a copy of the Deputy Coroner's report to a supplemental report and make all warrant returns consistent with current procedure. An officer shall make arrangements to offer medical attention to the affected person. Any contraband that may be retrieved as a result of a medical procedure or the natural course of bodily functions may be seized subject to chain-of-evidence procedures. In no event will an officer compel the affected individual to submit to a specific medical procedure for the sole purpose of obtaining contraband.
- vii) Vehicle Search
  - a) Because a person has a lesser expectation of privacy in a vehicle than in a residence, courts have adopted a vehicle exception as an exception to the general rule requiring search warrants.
    - 1) In order to search a vehicle, an officer must have probable cause to believe that it contains seizable items.
    - 2) Probable cause exists if, given the totality of the circumstances, there is a fair probability that the car contains contraband or evidence.
  - b) The vehicle exception is not limited to a search at the time probable cause is established. If probable cause and exigent circumstances (i.e., mobility or ability of others to retrieve evidence or contraband from the car before a warrant can be executed) existed originally, the officer may move and/or search the vehicle at a later time without a warrant.
  - c) Where officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, which may conceal the object of the search.



- 1) The scope of the search is not defined by the nature of the container in which the contraband is found. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. (United States V. Ross 102 S. Ct 2157, 1982).
  - 2) Officers do not have to separately request permission to search each container found in a vehicle since a reasonable person may be expected to know that narcotics are generally carried in some form of container. (Florida V. Jimeno, 111 S. Ct. 1801, 1991).
  - d) Consent to run a narcotic detector dog around the exterior of the vehicle is not necessary, as this is not considered a search.
    - 1) If consent is given to search the vehicle, then the dog does not necessarily need to be utilized, unless to specifically pinpoint the location or area of alert. Consent freely given allows for a complete search of the vehicle.
    - 2) A dog alert from a reliable dog constitutes probable cause to search. Therefore, a search warrant is not needed.
- viii) Crime Scene Searches
- a) There is no crime scene exception to the search warrant requirement for any location, except for exigent circumstances. However:
    - 1) Officer's presence after a crime is almost always upon the invitation or consent of the victim. Gathering of evidence is done based on this invitation when the victim can lawfully extend the invitation. Consent forms are not generally required.
    - 2) In some cases involving the injury or death of someone and no one is available to give consent, the public safety exception to the warrant requirements gives the officer the right to search.
- ix) Exigent Circumstances
- a) Public Safety Exception
    - 1) Whenever an officer has probable cause to believe a person inside a house (or other structure) or car may be in danger, the public safety exception justifies entry without a warrant, consent, or any other exception to the warrant requirement.
    - 2) If the circumstances for the public safety exception no longer exist, officers must obtain a search warrant to conduct any further searches.
    - 3) Whenever an officer uses the public safety exception, he should clearly articulate the reasons for doing so in his report.
  - b) Situations where speed is essential in gathering evidence – Officers who possess probable cause to believe that seizable items are at a certain location may search without a warrant if:
    - 1) They have reason to believe the delay will result in a destruction of evidence.
    - 2) They are in pursuit of a fleeing suspect.
  - c) If appropriate, additional charges will be made and all returns executed consistent with current procedure.

10. DATA CHECK ON ARRESTED PERSONS

- i) A computer check shall be conducted on:
  - a) Persons arrested for DWI to ensure that the correct charge is filed and to have a complete record of convictions for court.
  - b) Persons arrested for serious offenses, such as negligent injury or homicide.
  - c) Persons arrested in connection with fatal or serious injury traffic crashes.
  - d) Routine arrests, only when the officer has reason to believe that the violator may be a frequent violator.
- ii) The officer shall include all printouts with his arrest report.