



ENFORCEMENT PROCEDURE			504.00	
<div><div></div><div>ARREST PROCEDURES</div><div></div></div>				
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PURPOSE

The purpose of this standard operating procedure is to establish procedures for effecting arrests.

SCOPE

This procedure shall apply to all Punta Gorda Police Department personnel.

DISCUSSION

Arrests shall be made in conformance to law and this order to ensure officer safety and to protect the rights of arrestees.

DEFINITIONS

1. **CAPIAS:** A writ issued by a judge that commands an officer to take the body of a defendant into custody.
2. **CONSENT:** A voluntary agreement to a request.
3. **FRESH PURSUIT:** An ongoing attempt to effect the arrest of a person who has fled and is pursued by a law enforcement officer on foot or by vehicle. The term is also called hot pursuit.
4. **WARRANT:** A judicial writ authorizing an officer to execute a judgment, or make a search, seizure, or arrest.
5. **REASONABLE SUSPICION:** Specific and articulable facts which taken together with rational inferences from those facts, reasonably warrants [an] intrusion.” *United States v. Espinosa-Guerra*, 805 F.2d 1502, 1508 (11th Cir.1986) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1879 (1968)).
6. **PROBABLE CAUSE:** "A law enforcement officer has probable cause to arrest a suspect if the facts and circumstances within the officer’s knowledge, of which he or she has reasonably trustworthy information, [that] would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Von Stein v. Brescher*, 904 F.2d 572, 578 (11th Cir.1990)." *Williamson v. Mills*, 65 F.3d 155, 158 (11th Cir. 1995). AND renewed via citing to *Williamson* in 2004 in *Kingsland v. City of Miami*, 382 F.3d 1220, 1226 (11th Cir. 2004).

PROCEDURE

I. ARREST WITHOUT WARRANT:

- A. According to [Florida State Statute 901.15 - When arrest by officer without warrant is lawful, a law enforcement officer may arrest a person without a warrant when:](#)
 1. The person has committed a felony, misdemeanor, or violated a county or municipal ordinance in the presence of the officer. (An arrest for commission of a misdemeanor, or violation of a county or municipal ordinance, must be made immediately or in fresh pursuit.)
 2. A felony has been committed and the officer reasonably believes that the person committed it.

3. The officer reasonably believes a felony has been committed or is being committed and that the person to be arrested has committed or is committing it.
4. A warrant for arrest has been issued and is held by another peace officer for execution.
5. A violation of [FS 316 – Uniform Traffic Control](#) has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit. Any law enforcement officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air that a driver of a vehicle has violated FS 316, may arrest the driver for violation of those laws when reasonable and proper identification of the vehicle and the violation have been communicated to the arresting officer.
6. The officer has probable cause to believe the person to be arrested has committed a violation of Florida State Statutes for which there is a warrantless arrest misdemeanor exception. These exceptions are listed in the Florida Legal Guidelines section of the Florida Law Enforcement Handbook.
7. There is probable cause to believe that the person has committed an act of domestic violence, child abuse, or battery and the officer reasonably believes there is danger of violence if there is not an arrest without delay. (An officer, who acts in good faith and exercises due care in making an arrest under this section, is immune from civil liability that otherwise might result by reason of their action.)
8. There is probable cause to believe that the person has committed child abuse, as defined in s. [827.03](#), or has violated s. [787.025](#), relating to luring or enticing a child for unlawful purposes. The decision to arrest does not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to protect abused children by strongly encouraging the arrest and prosecution of persons who commit child abuse. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.
9. There is probable cause to believe that the person has committed:
 - a. Any battery upon another person, as defined in s. [784.03](#).
 - b. An act of criminal mischief or a graffiti-related offense as described in s. [806.13](#).
 - c. A violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in s. [327.461](#).
 - d. A racing violation as described in s. [316.191](#)(2).

- e. An exposure of sexual organs in violation of s. [800.03](#).
10. The officer has determined that he or she has probable cause to believe that a misdemeanor has been committed, based upon a signed affidavit provided to the officer by a law enforcement officer of the United States Government, recognized as such by United States statute, or a United States military law enforcement officer, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, when the misdemeanor was committed in the presence of the United States law enforcement officer or the United States military law enforcement officer on federal military property over which the state has maintained exclusive jurisdiction for such a misdemeanor.
 11. (a) A law enforcement officer of the Florida National Guard, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, has probable cause to believe a felony was committed on state military property or when a felony or misdemeanor was committed in his or her presence on such property.
 (b) All law enforcement officers of the Florida National Guard shall promptly surrender all persons arrested and charged with a felony to the sheriff of the county within which the state military property is located, and all persons arrested and charged with misdemeanors shall be surrendered to the applicable authority as may be provided by law, but otherwise to the sheriff of the county in which the state military property is located. The Florida National Guard shall promptly notify the applicable law enforcement agency of an arrest and the location of the prisoner.
 (c) The Adjutant General, in consultation with the Criminal Justice Standards and Training Commission, shall prescribe minimum training standards for such law enforcement officers of the Florida National Guard.
 12. They are employed by the State of Florida as a law enforcement officer as defined in s. [943.10](#)(1) or part-time law enforcement officer as defined in s. [943.10](#)(6), and:
 - a. They reasonably believe that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing the felony;
 - b. While engaged in the exercise of their state law enforcement duties, the officer reasonably believes that a felony has been or is being committed; or
 - c. A felony warrant for the arrest has been issued and is being held for execution by another peace officer.

Notwithstanding any other provision of law, the authority of an officer pursuant to this subsection is statewide. This subsection does not limit the arrest authority conferred on such officer by any other provision of law.

13. There is probable cause to believe that the person has committed an act that violates a condition of pretrial release provided in s. [903.047](#) when the original arrest was for an act of domestic violence as defined in s. [741.28](#), or when the original arrest was for an act of dating violence as defined in s. [784.046](#).
14. There is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. An arrest under this subsection may be made on or off airport premises. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of the law enforcement officer's action.
15. There is probable cause to believe that the person has committed assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, or other specified officers as set forth in s. [784.07](#) or has committed assault or battery upon any employee of a receiving facility as defined in s. [394.455](#) who is engaged in the lawful performance of his or her duties.
16. There is probable cause to believe that the person has committed a criminal act of sexual cyberharassment as described in s. [784.049](#).
17. When effecting a warrantless arrest, the officer shall inform the person to be arrested of:
 1. The basis of their authority;
 2. The cause of the arrest, except when:
 - a. The arrestee flees or forcibly resists before the officer informs him/her; or
 - b. Giving the information would imperil the arrest.
 3. If notification is not given before, it shall be given as soon after the arrest as is reasonable.
- B. In accordance with Marsy's Law, *The Florida Constitution, Article 1, Section 16*, when an arrest is made involving a victim, refer to [SOP 1308.00 Victim Advocacy](#).

II. ARREST WITH WARRANT OR CAPIAS:

- A. Origination: An arrest warrant is issued by a magistrate or Judge if, after review, they reasonably believes (i.e. finds *probable cause*) that the person complained against has committed an offense within their jurisdiction ([FS 901.02 - Issuance of arrest warrants](#)).
- B. Jurisdiction: Warrants will be directed to all sheriffs of the state. They should be executed by the sheriff of the county in which the arrest is made unless the arrest is made in fresh pursuit, in which event it may be executed by any sheriff who is advised of the existence of the warrant. An arrest may be made on any day and at any time of the day or night ([FS 901.04 - Direction and execution of warrant](#)).
- C. Authority: Punta Gorda Police Officers shall not serve a warrant or capias, but may make arrests based upon outstanding warrants or capias. Sworn Sheriff's Office personnel shall normally execute the warrant or capias upon presentation of the prisoner at the jail.
- D. Warrant Application: An application for an arrest warrant requires the following:
 - 1. Approval of a supervisor;
 - 2. Completion of a Punta Gorda Police Department misdemeanor or felony case package stating the probable cause for the arrest;
 - 3. Review by the State Attorney's Office for approval;
 - 4. A photograph of the individual for whom the warrant is being sought; and
 - 5. If approved, the sworn affidavit shall be presented to a judge for issuance of an arrest warrant.
- E. When effecting an arrest with a warrant, the officer making the arrest shall inform the person to be arrested of:
 - 1. The cause of the arrest; and
 - 2. That a warrant has been issued, except when:
 - a. The person flees;
 - b. Forcibly resists; or
 - c. To do so would imperil the arrest.
- F. The officer need not have the warrant on their person but, upon request of the person arrested, shall show it to them as soon as practicable.

- G. Every reasonable effort shall be made to ensure the individual is not being improperly detained and due care shall be exercised to establish their true identify, prior to arrest.
- H. It is the responsibility of the arresting officer to verify the identity of the arrestee as accurately as possible prior to transporting them to jail.
- I. If a question exists as to the positive identification of a warrant arrestee, the arresting officer shall request a booking photograph from the originating agency.
- J. Warrant Confirmation: For arrest purposes, the term “warrant” shall include a “capias”. An officer conducting a criminal investigation will do an NCIC/FCIC computer check for any outstanding warrants. A computer check shall be done through the Communications Section. Confirmation of an outstanding warrant will be conducted on all computer checks.
 - 1. Charlotte County warrants shall be confirmed through the Communications Section with verification from the Warrants Unit. A Charlotte County warrant shall be confirmed before an arrest is made.
 - 2. Warrants issued outside Charlotte County jurisdiction shall be confirmed through the Communications Section. The issuing agency shall be contacted to verify active status. An arrest shall not be made without verification from the issuing agency.
 - 2. Out-of-state warrants shall be verified with the issuing agency for status and extradition purposes. Warrants confirmed for extradition status shall be processed as a fugitive from justice ([FS 941.02 – Fugitives from justice](#)) with no bond. The person shall be released if the verifying agency refuses to extradite on the warrant.
 - 3. Non-Charlotte County warrants issued within the State of Florida may have limitations on the geographical pick-up area. If Charlotte County is outside the verified pick-up area, the person shall be released.
- K. Documentation: All warrant arrests shall be documented on a *Probable Cause Affidavit*. Copies of the warrant shall be attached to the *Probable Cause Affidavit* when available. If a copy is not available, the officer shall attach the original teletype printout of the NCIC/FCIC computer check and the verification of the warrant status.

III. LOCAL PROBABLE CAUSE PICK-UP:

- A. A local probable cause pick-up order is a discretionary tool that officers can utilize as a pre-warrant request.
- B. A local probable cause pick-up shall be initiated when the suspect cannot be located during the initial investigation and probable cause for an arrest exists.

- C. If an arrest can be made on probable cause, the local probable cause pick up will remain active for 14 days. After the 14th day, the officer shall prepare an Arrest Warrant request package to be submitted to the State Attorney's Office for approval.
- D. If the suspect is located and the local probable cause pick-up is active, the arresting officer shall complete the date, time and location of the defendant's arrest on the probable cause affidavit. A supplement shall be added to the original report.
- E. Any new criminal or traffic charges resulting from the local probable cause pick-up shall require a new case number.
- F. After the arrest, the arrest package shall be completed and submitted to the records section.

IV. SEARCH OF PERSON ARRESTED:

- A. The person arrested, and the area within the person's immediate control, shall be searched for the purpose of:
 - 1. Officer Safety;
 - 2. To prevent escape; and
 - 3. To discover the fruits of the crime.
- B. An officer making a lawful search without a warrant shall seize all instruments, articles, or things discovered on the person arrested or within their immediate control.
 - 1. Once it is determined that an arrest is going to be made, all property must be removed from the arrestee, placed in a bag and secured in the trunk/rear area of the vehicle.
- C. Punta Gorda Police Officers are prohibited from conducting strip and/or body cavity searches as defined in [FS 901.211 - Strip searches of persons arrested; body cavity search.](#)
- D. Once in custody the arrestee must be supervised at all times.

V. RESIDENCE ENTRY:

- A. Warrantless Requirement: The entry into a residence is one of the most scrutinized areas of police actions and the foundation of our Constitution's 4th Amendment. A valid arrest warrant, signed by a judge or magistrate, is the legal foundation for an intrusion into an arrestee's home to effect the arrest. A search warrant is also required for entry into a third

party residence to effect the arrest of a person who does not reside at the specific residence, except with consent as outlined in Section B(5) below.

- B. Warrantless Entry: The courts have allowed certain exceptions to the warrant requirement for an arrest to be made inside a residence. These warrantless entry exceptions include:
1. When a suspect has committed a violent crime inside a residence, is armed, and there is likelihood that the person will escape;
 2. When an officer is in fresh pursuit for a misdemeanor crime and the suspect enters their residence, the officer may only follow the suspect into the residence to effect the arrest if the exigencies of the situation create a compelling need for official action and there is no time to secure a warrant (i.e. risk of escape, destruction of evidence, harm to others);
 3. Consent is obtained to enter the premises from an owner or lessor;
 4. A person agrees to leave the residence voluntarily. (An officer may use deception or trickery to have the person voluntarily leave the home. However, trickery and deception shall not be used to gain admittance to the residence.); or
 5. The owner or lessor of a third party residence may provide consent to a search of a residence not belonging to the suspect.
- C. Forced Entry: [FS 901.19 - Right of officer to break into building](#) authorizes an officer to force entry into a building to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant (approved warrant exception). An officer may use all force necessary and reasonable to enter the building. Authorization is permitted after:
1. The officer has announced their authority;
 2. The officer has announced the purpose of the entry and fails to gain admittance;
 3. The officer observes or reasonably believes the person to be inside the building; and
 4. Forced entry into a building shall only be accomplished after authorization from a supervisor or as the result of fresh pursuit.
- D. Protective Sweep: An officer may make a warrantless entry into a residence as part of a protective sweep. A protective sweep is a limited pass through a residence to check for persons who may destroy evidence or pose a threat to the officer.
1. A protective sweep may be conducted after the arrest of a person inside a residence.

2. A protective sweep may be conducted after the arrest of a person immediately outside the premises when there is reason to believe that others are inside the residence and there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. The sweep may be performed only in areas where a person could be concealed. (These areas do not include drawers, files, or other small areas.)
3. Any contraband or evidence observed in plain view may be seized.

VI. STOP AND FRISK

- A. Stop: [FS 901.151 - Stop and Frisk Law](#), as known as the Florida Stop and Frisk Law, allows for the temporary detention of a person under circumstances that reasonably indicate that the person has committed, is committing, or is about to commit a violation of criminal law. These temporary detentions are used for ascertaining the identity of the person and the circumstances surrounding the person's presence. Limitations to the Stop and Frisk Law include:
 1. The detention will not be longer than the time reasonably necessary to determine identification and to inquire about the circumstances creating the reasonable suspicion;
 2. The person shall be released if probable cause does not exist for an arrest; and
 3. The detention shall not extend beyond the initial stop or the immediate area.
- B. Frisk: A person who is temporarily detained may be frisked for weapons if there is reasonable suspicion to believe that the person is armed with a dangerous weapon and is a threat to the safety of the officer or any other person. The frisk may be done only to the extent necessary to disclose or reveal the presence of a weapon.
 1. A weapon discovered during a frisk may be used as probable cause for the arrest of the person.
 2. If an officer plainly feels the presence of what is immediately apparent to be contraband or evidence of a criminal offense, the officer may remove the contraband or evidence and charge the person accordingly. However, the frisk may not extend beyond the scope of a weapon search in order to discover any other contraband - Minnesota v. Dickerson, 508 U.S. 366 (1993).
 3. A frisk may be extended to a bag or container in the person's possession.

- C. Search: If probable cause exists for the arrest of the detained person, the officer will arrest the person and search the person and the area within the person's immediate presence incident to arrest.
- D. Citizen Contacts: An officer may, at any time, request to talk to a citizen as long as the encounter is with the citizen's consent, and the citizen is aware, or should be reasonably aware, of their freedom to leave. This contact is not subject to the Stop and Frisk Law limitations if it is consensual.

VII. SUPERVISION OF SUSPECTS/DETAINEES/ARRESTEES

- A. Suspects, detainees, and/or arrestees who are brought into the Public Safety facility, or any Punta Gorda Police work site, for processing, questioning, or any other reason shall be under the continuous, direct, physical supervision of at least one sworn agency member/officer at all times, without exception.
- B. The sworn agency member/officer shall be responsible for doing nothing other than physically and directly observing the individual.

VIII. ARRESTEE RIGHTS

- A. Miranda Warning: In Miranda v. Arizona, 384 U.S. 435 (1966) the U.S. Supreme Court ruled that a suspect in custody must be advised of the Miranda Warning and a waiver obtained before any interrogation.
 - 1. Custody: The courts have held that custody begins when a person does not reasonably believe that they are free to leave or their freedom of movement has been curtailed by the words and/or actions of an officer. It is the mindset of the person being questioned that will determine a custodial interrogation, not the mindset of the officer.
 - 2. Interrogation: Miranda Warning cards are provided to all officers. The Miranda Warning will be provided to suspects who are questioned while in custody. A Miranda Warning is not required during investigations that include:
 - a. Routine traffic stops;
 - b. General interviews used in the fact finding area of an investigation (Miranda may be required if the fact finding phase becomes accusatory, restricting the freedom of movement of a suspect);
 - c. No questioning of a suspect is required; or
 - d. A Stop and Frisk encounter. Miranda shall be required if a probable cause or warrant arrest is made and the questioning of a suspect continues.

- B. Invocation of Rights: When an arrestee asserts their Miranda rights, the officer shall discontinue questioning if:
1. The arrestee invokes the right to remain silent (questioning may resume if the arrestee reinitiates the process, i.e. starts talking/communicating, notwithstanding their prior invocation of *remaining silent*); or
 2. An arrestee requests the presence of an attorney.
- C. The rights of an arrestee shall be adhered to at all times during any investigation.

IX. CONCEALED WEAPON AND FIREARM LICENSE CHECK

- A. Requirement: [FS 790.06\(3\) - License to carry concealed weapon or firearm](#), mandates that upon notification, the Department of Agriculture and Consumer Services suspends the concealed weapon/firearm license of any person arrested or formally charged with a felony or violent misdemeanor. The suspension will remain in effect until the final disposition of the case.
- B. CCW License Check: When an officer arrests a person for a felony or a violent misdemeanor, the following shall be completed:
1. The Communications Section shall conduct a concealed weapon/firearm license check which may be done along with the NCIC/FCIC warrants check. The arrestee's social security number is required. The results of the check (positive or negative) shall be communicated to the officer, printed out, and included with the arrest package.
 2. The officer shall note the results of the concealed weapon/firearm license check in the narrative of their report.
 3. If the arrestee has been issued, or has applied for, a concealed weapon/firearm license, the officer shall impound the license if it is in the arrestee's possession. The officer shall annotate the possession of the permit on the investigation cover sheet and submit it to the Records Section.
- C. Notification: The Records Section shall notify the Department of Agriculture and Consumer Services via e-mail ([See Appendix Section V\(A\)\(1\)](#)) of all individuals arrested for felonies or violent misdemeanors who possess a concealed weapon/firearm license. The notification shall include the investigation cover sheet, and the incident report.

X. IN-CUSTODY DEATHS

- A. The Florida Department of Law Enforcement (FDLE), Office of Criminal Justice Grants (OCJG) collects data regarding in-custody deaths in accordance with the Death in Custody Reporting Act (DCRA). The DCRA requires states and federal law enforcement agencies to report certain information to the Attorney General regarding the death of any person during interactions with law enforcement officers or while in custody.
- B. The *Death in Custody Questionnaire, Adm 267*, shall be completed for all in-custody deaths that occur. The completed report shall be forwarded to criminaljustice@fdle.state.fl.us no later than 15 days after the end of the grant reporting quarter.

APPROVED


PAMELA R. SMITH, CHIEF OF POLICE

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