



ARREST PROCEDURES		
new: ✓ rescinds: ✓ amends: 64.1		cross-reference: accreditation standards: NYSLEAP Standard(s): 64.1
effective date: February, 2012	amend date: December, 2021	

I. PURPOSE

The purpose of this Order is to establish and describe policies and procedures for office personnel making arrests.

II. POLICY

It is the policy of the Sheriff's Office to:

1. Adhere to the laws of arrest, search, and seizure as defined in the U.S. and New York Constitutions, New York Criminal Procedure Law, and other applicable laws;
2. Ensure that all persons arrested and taken into custody are handled in a manner that protects officers, arrested subjects, prisoners, and other person from unnecessary injury; and
3. Protect the rights and dignity of those arrested while preserving property and physical evidence from destruction.

III. DEFINITIONS

Arrest: To deprive a person of their liberty by legal authority. (Black's Law Dictionary).

Arrest Authority: Legally granted authority to arrest, with or without a warrant, which includes the legal authority to physically remove a person from their location, taking that person to a place of confinement or judicial authority.

Custody: Legal or physical control of a person in an area or facility or while in transit; legal, supervisory, or physical responsibility for a person.

IV. GENERAL ARREST PROCEDURES

- A. Only sworn personnel with arrest authority shall make arrests or serve bench or arrest warrants. Non-sworn personnel shall direct persons surrendering at the Public Safety Building to an officer for the arrest or service of a warrant.
- B. All personnel with arrest authority shall review New York State Criminal Procedure Law Article 120 – *Warrant of Arrest* and Article 140 – *Arrest Without a Warrant* on a regular basis and keep themselves apprised of any statutory changes concerning arrest procedures.
- C. Pursuant to CPL§ 140.15-2, “[t] he arresting officer must inform [the person being arrested] of his authority and purpose and of the reason for such arrest unless he encounters physical resistance, flight or other factors rendering such procedures impractical.”
- D. The use of force to make an arrest will be consistent with the NYS Penal Law Article 35 and the policies and procedures set forth in *G.O. 900 Use of Force – General*.
- E. During the arrest and transportation of arrested subjects/prisoners, officers shall take precautions to prevent escape, injury, or damage to property.
- F. All persons arrested by this office shall be handcuffed and searched in accordance with the procedures set forth in this Order, prior to being placed in any police vehicles. All weapons, contraband and evidence found shall be confiscated and processed consistent with evidence and property procedures.
- G. When transporting an arrestee, prior to departure, the officer shall contact TCCC by radio and provide the following information:
 - a. Identify themselves;
 - b. Any other officer riding in the vehicle(by badge number);
 - c. The vehicle number;
 - d. Starting mileage of the vehicle,
 - e. The destination; and
 - f. The number of persons being transported and their gender.

Upon arrival at the destination, the officer will again contact dispatch by radio and identify themselves, state location, and state ending mileage. This shall be the procedure for all arrestees, including those of the opposite sex of the officer. See *G.O. 720 Interactions with Transgender and Gender Non-Conforming Persons* for additional transportation procedures.

- H. Persons who are arrested pursuant to a summary arrest, arrest warrant, bench warrant and/or fugitive complaints, who are in need of an arraignment will be processed in accordance to *G.O. 708 Centralized Arraignment Program (CAP)*.
- I. The officers making an arrest shall complete all the necessary paperwork before the end of their tour-of-duty, unless excused by a supervisor for good cause.

J. Arrest Report:

1. All persons arrested by the office, whether a summary arrest or warrant arrest, shall be logged with an appropriate Spillman Incident Report.

K. The arresting or other assigned officer will ensure that the arrested subject is fingerprinted and photographed pursuant to *G.O. 711 Fingerprints and Photographs*.

L. Handcuffing

1. The purposes of handcuffing an arrested person is to prevent injury and/or escape. All persons arrested by an officer shall be handcuffed unless it is not feasible to do so due to injury, illness, physical disability, age, or other significant circumstances.
2. Method of handcuffing:
 - a. Whenever possible arrested persons/prisoners should be handcuffed prior to being searched;
 - b. The hands shall be handcuffed to the rear of the subject with the palms facing outward, unless an injury or other condition requires handcuffing in front;
 - c. The handcuffs will be double-locked with keyholes facing upward, unless resistance by the subject makes this impractical;
 - d. Once applied and when practical to do so, the handcuffs should be checked for fit by putting the officers small finger between the subject's wrist and the handcuff jaw to ensure that they are not too tight;
 - e. Arrested subjects/prisoners will be transported in an upright position and seat belted when possible;
 - f. At **NO TIME** will any subject be handcuffed to any part of a patrol vehicle;
 - g. When a subject complains that the handcuffs are applied too tight the responsible officer will check to ensure that the handcuffs are applied properly and make any necessary adjustments, if needed. If there is a safety concern, the officer will request assistance before adjusting the handcuffs.
3. At **NO TIME** shall a handcuffed subject be left/placed in a prone position for a significant amount of time. As soon as practical, get the handcuffed subject off of their stomach.

M. Other Restraints

1. In addition to handcuffs, other restraints (i.e. Flex-Cuffs, Hobble Restraints, Waist Chain, and Leg Shackles) may be safely applied, consistent with their intended

purpose, to the arrestee who is violent, to prevent injury to the officer, prevent injury to the arrestee and to prevent property damage. Only restraints that have been issued and approved for use by the office may be used.

2. Upon arrival to the PSB, a medical facility, or other intended destination, the restraints may be removed if the arrestee is no longer violent.

N. Sick, injured or emotionally disturbed arrestees/prisoners

1. An officer who has custody of a person must provide attention to the medical and mental health needs of a person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith. See NYS Civil Rights Law Article 3 §28
 - a. Any time a person has visible injuries or complains of being injured as a result of force used against him/her by an officer, the officer must take appropriate actions to provide medical care for the injured person, when safe to do so. This includes providing first aid, requesting emergency medical services, and/or arranging for other transportation to a hospital or emergency medical facility.
 - b. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in a serious harm to themselves or others.
2. When deemed necessary, arrested subjects/prisoners who are sick or injured shall be transported to the hospital prior to being taken to the PSB for processing. The decision to transport by police vehicle or ambulance shall depend on the seriousness of the illness or injury.
 - a. In the event an injured subject is transported by police vehicle and the subject contaminates the vehicle's interior with any appreciable amount of bio hazardous body fluids the officer shall clean the vehicle using the appropriate cleaning agents.
 - Members shall attire themselves in the appropriate personal protective equipment, i.e. gloves, eye protection, etc.
 - b. If there are any doubts regarding the seriousness or if transport in the police vehicle may aggravate the illness or injury, an ambulance will be called. The officer will always defer to trained medical personnel.
3. Mental hygiene arrestees and other arrested subjects/prisoners who demonstrate signs of mental imbalance or instability to a degree that indicates they may be a threat to themselves or others will be transported in accordance with *G.O. 722 Responding to Incidents Involving Emotionally Disturbed Persons*.

V. SEARCH INCIDENT TO ARREST

- A. The search incident to an arrest must occur during the arrest process or within a reasonable time after the arrest. The arrest must be a full custodial arrest.
- B. An officer making a search incident to an arrest may search only the following places:
 - 1. The entirety of the person being arrested.
 - 2. A person's bag, container, or other personal effect may only be searched incident to an arrest when:
 - a. The item is within the immediate or "grabbable area" of the suspect at the time of his or her arrest or shortly after, and
 - b. The circumstances leading to the arrest suggest that the suspect may gain possession of a weapon or be able to destroy evidence in the bag or container, or
 - c. The officer otherwise has concerns related to personal or public safety. (exigent circumstances).
- C. An officer may not search a person's cellular telephone or other wireless communications device pursuant to a lawful arrest of the person without first obtaining a search warrant. Exceptions to this requirement are as follows:
 - a. The owner or possessor of the device gives consent for the police to search it, or
 - b. There exists a life-threatening situation and there is reasonable cause to believe evidence may exist on the device to diminish or reduce the threat.
- E. Vehicles may be searched incident to the arrest of the occupant or driver only in the following circumstances:
 - 1. The arrested occupant of the vehicle is unsecured and within arm's reach of the passenger compartment at the time of the search, or
 - 2. The officer has a reasonable belief that evidence related to the crime for which the arrest was made is located within the passenger compartment.
 - 3. Once an occupant has been secured and is unable to effectively reach the passenger compartment, the authority to search the vehicle for safety reasons is removed.
- F. Strip Searches
 - 1. Strip searches shall not be conducted unless the officer has an articulable, reasonable suspicion that the person is concealing a weapon or contraband. Reasonable suspicion may be based on, but is not limited to, the following criteria.

- a. Nature of the offense.
 - b. Arrestee's demeanor and appearance.
 - c. Circumstances of the arrest or evidence of a major offense in plain view or during the course of the arrest.
 - d. Arrestee's criminal record, particularly a history of violence or of narcotics offenses.
 - e. Detection of suspicious objects beneath the suspect's clothing during a search incident to an arrest.
2. No strip searches will be conducted in the field except in an extreme emergency.
 3. In every case, the on-duty supervisor must review the need and expressly authorize the strip search.
 4. When authorized by the supervising authority, strip searches may be conducted only under the following conditions:
 - a. In conformance with approved hygienic procedures and professional practices.
 - b. Except in an emergency or when necessary for the safe transport of a prisoner, the strip search will be conducted at the jail in a room specifically authorized for this purpose or within an office locker-room with the approval from a supervisor.
 - c. By the fewest number of personnel necessary and only by those of the same sex as the person arrested.
 - d. Where conditions provide privacy from all but those authorized to conduct the search.
 5. Following a strip search, the officer performing the search shall include in the written report the details which include, at a minimum, the following:
 - Date and place of the search.
 - Identity of the officer conducting the search.
 - Identity of the individual searched.
 - Those present during the search.
 - The identity of the approving supervisor.
 - A detailed description of the nature and extent of the search.
 - The results of the search.
 - A description of the factors contributing to the probable cause that authorized the search.

6. The above requirements shall not apply to arrested persons who have been released to the custody of the Tompkins County correctional facility. In those instances, the policies and procedures of the correctional facility shall apply.

G. Body-Cavity Searches

1. Office personnel do not conduct body cavity searches other than a visual inspection of an individual's mouth. If an officer has reason to believe a body-cavity search is needed to detect weapons, drugs, or other contraband, the following procedures apply:
 - a. The on-duty supervisor is notified.
 - b. A search warrant authorizing the body cavity search is secured.
 - c. The detainee is transported to an appropriate medical facility.
 - d. The search is conducted by the on-duty emergency room physician, while officers stand by to take control of any evidence and provide security to the physician conducting the search.
 - e. Body cavity searches are documented in the officer's arrest report, which will detail the officer's justification for such search, the approving supervisor's name, the location and persons present during the search, and the results of the search. A copy of the report and the warrant are forwarded to the Lieutenant for review.
2. Prior to transporting the arrested person to the medical facility, the officer shall inform the subject of their intention to conduct a body-cavity search, thus giving the subject the opportunity to voluntarily surrender the suspected contraband.

VI. OTHER WARRANTLESS SEARCHES

A. Consent Searches

1. The Fourth Amendment test for a valid consent to search is that the consent must be voluntary, and the voluntariness of the consent granted is a question of fact to be determined from all the circumstances. Consent is not voluntary if it is obtained by threat, force, or by falsely claiming that the search can be conducted without consent.
2. A person's knowledge of their right to refuse to consent to a search is not a prerequisite of voluntary consent. However, if an officer does advise a person that they are free to refuse the officer's request to search, this will be a factor that weighs heavily in favor of the voluntariness of any subsequent consent.
3. To mitigate claims of threats or coercion by officers, consent search investigations should be video or audio recorded.
4. Though not required, officers can also gain written consent to search from the person or persons.

5. Officers should ascertain that the person giving consent to search has authority to give consent to search the vehicle, item or location.
6. To better define the scope of a subject's consent, and when tactically sound, officers should state to the person the items that they are searching for.
7. In order to obtain consent to search, no officer will represent to any person that a search warrant has been issued in a particular case, knowing that such is not true.
8. When conducting a consent search at a suspect's residence or premises under the suspect's control, a minimum of two police officers should be present so the contact/cover principle can be utilized.

B. Exigent Circumstances

1. Probable cause that a crime has occurred, along with exigent circumstances, may justify a search or entry without a warrant.
2. Circumstances relevant to whether exigent circumstances exist to justify a warrantless entry include:
 - a. The reasonable belief that a person is in need of immediate aid or protection from harm.
 - b. The protection of property, such as extinguishing a fire or stopping a burglary.
 - c. Pursuing a fleeing felon or dangerous person.
 - d. Preventing the destruction of evidence. When deciding to conduct a search or entry to prevent the destruction of evidence, police officers should consider:
 - The seriousness of the offense
 - The strength of the probable cause
 - The likelihood that the evidence will be destroyed or removed from the scene if the search is delayed until a warrant is obtained.
3. The authority to enter a place or premise under exigent circumstances is limited to handling the emergency or exigency and officers may not search further without a warrant. Other exceptions to the search warrant requirement may apply. For instance, evidence or contraband in plain view may be seized.
4. After the emergency or exigency has passed, if probable cause to search still exists, officers may secure the scene for the time it takes to get a warrant.

C. Plain View

1. The plain view doctrine states that items that are within the sight of an officer who is legally in a place from which the view is made may be seized without a warrant.

2. The four requirements of plain view are:
 - a. The officer conducting the seizure must lawfully arrive at the position from which the object is plainly seen.
 - b. The object must be in plain view.
 - c. The object's incriminating character must be so immediately and sufficiently apparent that the officer has probable cause to believe the object is contraband or evidence of a crime.
 - d. The officer must have a lawful right of access to the object itself, apart from lawfully viewing the object. For example, an officer might view contraband from outside a window but still need a search warrant to go inside the residence in order to seize the contraband.

D. Abandoned Property, Open Fields, and Curtilage

1. A search warrant is not required for property that has been abandoned. For property to be considered abandoned the following three conditions must apply:
 - a. The property was voluntarily and intentionally abandoned.
 - b. The abandonment was not a result of police misconduct.
 - c. The property was discarded outside the area in which the subject has a reasonable expectation of privacy.
2. Open fields are not protected by the Fourth Amendment as there is no expectation of privacy in those areas regardless of fences, signs or the property's secluded location, especially when the property can be viewed by the public. However, officers must remain aware that a trespass on an open field could implicate result in any seized evidence being ruled inadmissible.
3. Curtilage is the land and areas immediately surrounding the home and so closely associated with the home that it receives the same Fourth Amendment protections as the home. Officers need a search warrant to search curtilage. The extent of curtilage of a private residence is determined by the following:
 - Whether the area is enclosed.
 - The nature and use of the area.
 - The proximity of the area to the home.
 - Any measures taken by the owner to protect the area from observation.

E. Vehicle Exception – Carroll Doctrine

1. Officers who have probable cause to believe that a readily movable vehicle contains (or is) contraband or evidence of a crime may seize the vehicle or stop and search the vehicle without a warrant under the vehicle exception.
2. If probable cause exists to search a readily movable vehicle, there is no requirement for independent exigent circumstances. The officer's determination of probable cause must be based on objective facts that could justify the issuance of a search warrant by a magistrate.
3. The scope of the search is as thorough as a magistrate could authorize in a search warrant. The officer may conduct a search of all locked and unlocked containers and compartments in the vehicle that may reasonably contain the object(s) for which they are searching. However, if probable cause to search is only for a specific container in the vehicle, then police cannot search the rest of the car.
4. Even if the vehicle has been towed, impounded or otherwise secured, as long as probable cause still exists, the vehicle may be searched at a later time or at another place. For example the vehicle may be moved off the roadway for safety reasons, taken to an auto maintenance shop for a more detailed examination, or impounded at the police station or an impound lot.
5. Officers should note that vehicles that are crashed and incapable of being driven, vehicles which are junked, wrecked or permanently immobilized or vehicles such as RV's that are stationary and being used as a residence might not be considered a "readily movable vehicle" for Fourth Amendment purposes.

F. Vehicle Inventory Searches

1. Police officers are authorized to conduct an inventory of items found in lawfully impounded vehicles without a search warrant in accordance with *G.O. 806 Vehicle Towing and Impound Procedures*.

G. Property Inventory Searches

1. A property inventory is an administrative measure designed to protect the owner's property while in police custody; to protect the agency against claims of lost, stolen or damaged property; and to protect office personnel from danger. An inventory is not undertaken to gather evidence. It is the policy of this law enforcement agency to safeguard the above property and interests and to conduct inventories only in accordance with the following procedures.

An inventory search shall be conducted on all property in possession of a custodial arrest while they are being detained at the PSB. Officers will adhere to the procedures set forth in this order in conducting property inventory searches. Failure to follow these procedures may render the inventory search unlawful and result in suppression of any evidence or contraband located.

2. Police officers are authorized to conduct an inventory of items in possession of a person detained at the PSB on a custodial arrest without a search warrant. Any contraband or evidence found in a lawful inventory search of an arrestee's property is admissible in a subsequent criminal prosecution.
3. Upon arrival to the PSB, the inventory search should be conducted as soon as practical. The inventory search should be conducted in front of the arrestee with the officer's On Body Camera Device (OBRD) activated.
4. All property inventoried shall be documented on a *Prisoner Property Inventory & Return Receipt form*.
5. All closed containers found within the property shall be opened for purposes of the inventory. Closed and locked containers shall not be forced open but shall be logged on the inventory form as such. If a key or lock combination is available, locked containers may be opened and inventoried.
6. Contraband and evidence discovered during the course of a property inventory shall be seized, itemized on the Property/Evidence Custody Form and entered as evidence in accordance with the procedures outlined in *G.O. 205 Property/Evidence Management*.
7. Upon the release of the arrestee or transfer of the arrestee to another agency or TCSO jail, the receiving party shall date and sign the form indicating the disposition of the property contained on the Prisoner Property Inventory & Return Receipt form.

VII. ESCAPE OF PERSONS IN CUSTODY

- A. If an arrestee escapes the custody of a transporting officer(s) inside the jurisdiction of Tompkins County, the following will be done immediately:
 1. The Dispatch Center (TCCC) will be notified and provided pertinent information to include:
 - a. Location;
 - b. Direction of travel;
 - c. Pedigree information;
 - d. Charges for which the individual was being held if known at the time; and
 - e. Potential destinations/associated persons of the escapee.
- B. The on-duty Sergeant will be notified, and they will ensure the chain of command notifications are made.
- C. The on-duty Sergeant will be tasked with coordinating the immediate law enforcement response until relieved by a higher authority.

- D. If the arrestee escapes the custody of a transporting officer(s) outside the jurisdiction of Tompkins County, the following will be done immediately:
- a. Notify the local authorities, furnishing the information in 1-a above.
 - b. Request that local authority's contact the Tompkins County Sheriff's Office as soon as possible, or if available, use a cellular phone to notify the on-duty Sergeant.
 - c. Stay with the patrol vehicle and await the arrival of local authorities; and
 - d. Await further instructions from the authority in charge of the incident at the Tompkins County Sheriff's Office.
- E. If the officers are transporting more than one arrestee, the officer will not give chase to the one who is attempting to escape. The officers should secure the area, any arrestees remaining and wait for additional instructions.
- F. The transporting officer(s) must complete all required paperwork and reports before being released from duty.
- G. A complete administrative review and investigation will be conducted of the incident to determine the cause and identify:
- a. Deficiencies in Policy and Procedure and corrective action needed;
 - b. Deficiencies in training and corrective action needed;
 - c. Need of remedial or additional officer training; and
 - d. Officer(s) failure to follow / adhere to policies and procedures as written.

VIII. RELEASE OF ARRESTED PERSON WITHOUT CHARGES

- A. Section 140.24-4 of the CPL states:

If after arresting a person, for any offense, a police officer upon further investigation on inquiry is satisfied that there is not reasonable cause to believe the arrested person committed such offense or any other offense based upon the conduct in question, . . . [the police officer] must immediately release such person from custody.

- B. Based upon the foregoing, office personnel will release an arrested person from custody if upon further investigation or inquiry the officer is satisfied that there is not reasonable cause to arrest the person for any offense.
- C. In such cases, personnel will adhere to the following procedures:
1. Personnel will fully investigate the circumstances to determine whether reasonable cause exists to arrest the subject. As part of this inquiry personnel will consult with a supervisor to make this determination;

2. In the event a decision is made to release the subject the assigned officer will fully document the incident in an Incident Report. Other involved officers will document their actions and/or observations. These reports will include, but not be limited to the following:
 - a. The facts and circumstances of the initial arrest, including the basis of the reasonable cause to make the initial arrest;
 - b. The facts and circumstances upon which the decision to release the subject was based and the identity of the supervisor who was consulted.
3. In the event that force was used on a subject who is subsequently released without being charged with any offense the procedures set forth in *G.O. 900 Use of Force – General* will be followed.

Attachments:

- A. [Prisoner Property Inventory & Return Receipt](#)

By Order Of



Derek Osborne
Sheriff