

## **CHAPTER 3: ARRESTS**

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## 1.0 POWER AND AUTHORITY TO ARREST

### 1.1 POLICY

It is the policy of the Buffalo Police Department to exercise in a fair and impartial manner, all those powers of arrest conferred by law on Police Officers and to do so in a manner consistent with the stated mission of the Department.

### 1.2 ARRESTS WITHOUT A WARRANT

#### A. Violations and Traffic Infraction

A Buffalo Police Officer may make an arrest without a warrant for a violation or a traffic infraction if:

1. the offense or traffic infraction is believed to have been committed in the Police Officer's presence; and,
2. the offense or traffic infraction is believed to have been committed in the City of Buffalo; and,
3. the arrest is made in Erie County, or in any adjoining county.

#### B. Felonies and Misdemeanors

A Buffalo Police Officer may make an arrest without a warrant anywhere in the State of New York, when (s)he reasonably believes that a felony or misdemeanor was committed within the State.

#### C. Continuous Close Pursuit

##### 1. Crimes

If a member of the Department has authority to make a summary arrest for a crime in this State, (s)he can make an arrest in any adjoining state for that crime, if the arrest of the suspect immediately follows a continuous close pursuit that originated in New York State.

##### 2. Petty Offenses

If a member of the Department has authority to make a summary arrest for a petty offense, (s)he can make an arrest for that petty offense in any County in New York State, if the arrest of the suspect immediately follows a continuous close pursuit that originated in the county in which the petty offense was committed or in an adjoining county.

#### D. City Ordinances

Each sworn member of the Police Force shall have authority to arrest without process any person committing, threatening, or attempting to commit any violation of an ordinance of the city. (City Charter Section 230).

1. While having authority to enforce all City Ordinances, Officers shall not attempt to enforce those ordinances with which they have no familiarity and

which are normally enforced by other agencies of City government (e.g. building codes, fire codes, health codes, plumbing codes, etc.).

2. In lieu of effecting an arrest for a City Ordinance violation, the member may issue an Adjudication Summons (refer to M.O.P. Chapter 3).

### 1.3 ARRESTS WITH A WARRANT

A warrant of arrest issued by a local criminal court may be executed anywhere in the county of issuance or an adjoining county, by any Police Officer to whom it is addressed or a delegate of that Police Officer. It may be executed anywhere in NY State if endorsed by the local criminal court in the county in which the arrest is to be made.

### 1.4 INFORMING THE SUSPECT OF THE OFFICER'S AUTHORITY AND PURPOSE

When making an arrest the Officer must inform the suspect of the Officer's authority and purpose and the reason for making the arrest, or in the case of an arrest pursuant to a warrant, the Officer must inform the suspect of the existence of the warrant and the associated offenses, unless the Officer encounters physical resistance, flight or any other factor that renders such procedure impractical.

### 1.5 UNCONDITIONAL RELEASE OF ARRESTED PERSON

#### A. Warrantless Arrest

If, after making a warrantless arrest of a person, regardless of the offense, the Officer discovers that there does not exist reasonable cause to believe that the arrested person committed the offense or any other offense based upon the conduct in question, the Officer must cause the immediate release of the person from custody.

#### B. Arrest Pursuant to an Arrest Warrant

If an Officer arrests a person on a warrant and it is later determined that the warrant in question has previously been served on the Defendant or that the warrant was withdrawn, the Officer must cause the immediate release of the person from custody.

#### C. Reports Required

In each instance in which a suspect is unconditionally released from custody, the Officer shall prepare a complete report on an Intra-Departmental Memorandum explaining the details of the incident.

Distribution: Original to Commissioner's Office

Copy to Division/District Chief

Copy to CCB

Copy to Command Files

### 1.6 ENTERING PREMISES TO MAKE AN ARREST

#### A. Without an Arrest Warrant

A Buffalo Police Officer may enter any premises in which the Officer reasonably believes the defendant to be present except the defendant's dwelling or the dwelling of a third party. The Officer may enter the defendant's dwelling or the dwelling of a



third party without an arrest warrant or search warrant only in those cases where there exist exigent circumstances which lead the Officer to believe that:

1. a crime has been committed or is being committed, and
2. that immediate action is essential to terminate the crime, or the Officer reasonably suspects that (s)he or others will suffer physical injury or death, or (s)he reasonably believes that evidence of the crime will be destroyed or otherwise lost.

B. With an Arrest Warrant

A Buffalo Police Officer may enter any premises in which the Officer reasonably believes the defendant to be present, except the dwelling of a third party who is not the subject of the arrest warrant. If the defendant is reasonably believed to be in the dwelling of a third party, a search warrant must be obtained.

C. With A Search Warrant

Refer to M.O.P. Chapter 3.

D. Making Notice of Officer's Authority

Before making entry the Officer must give, or make reasonable effort to give, notice of his/her authority and purpose to the occupant, unless there is reasonable cause to believe that giving such notice will:

1. result in escape, or an attempt to escape; or,
2. endanger the life or safety of the Officer or another; or,
3. result in the destruction, damage, or secretion of material evidence.

E. Entry After Giving Notice of Authority

If, after giving notice, or if (s)he is authorized to enter without giving notice, the Officer may enter the premises, and by a breaking if necessary.

1.7 HOUSING PROJECTS

Members of the Department shall provide to housing projects located within the City of Buffalo, police service of the same character and to the same extent as that provided to other City residents.

1.8 NEW YORK STATE THRUWAY JURISDICTION

A. Law enforcement responsibility on the Niagara Section of the New York State Thruway, within the boundaries of the City of Buffalo, lies with the New York State Police Thruway Detail. It encompasses all that section of the Thruway (including exit and entrance ramps) that extends from the Ogden Street Exit/Entrance on the east to the center line of Vulcan Street on the west. It does not include the arterial expressways or the feeder sections of the system.

- B. Traffic infractions committed on the Niagara Section of the Thruway are the sole jurisdiction of the State Police Thruway Detail. No member of the Buffalo Police Department shall make a traffic infraction arrest on this stretch of roadway.
- C. If an investigation, by pursuit or otherwise, takes a member onto the Niagara Section of the Thruway within the City Limits, the member will be accorded all possible cooperation by the Thruway Detail. Conversely, all members of the Department will accord all possible cooperation to the Thruway Detail if an investigation takes them off the Thruway.

#### 1.9 PEACE BRIDGE JURISDICTION

Only the American sector of the Peace Bridge is within the jurisdiction of members of the Department. The American sector extends to the middle of the bridge where the international boundary with Canada is clearly marked. Members have no arrest power on the Canadian side of the bridge.

#### 1.10 VESSELS OF UNITED STATES OR FOREIGN REGISTRY

A sworn member's power to arrest within New York State extends to any vessel, whether of US or foreign registry, that is on the United States' side of the International Boundary line.

#### 1.11 INTERNATIONAL BOUNDARY

The City, State, and Federal boundaries in Lake Erie and the Niagara River are coterminous.

The break wall is well within the City and State boundary. The South Harbor entrance on the break wall is about 3 1/4 miles due east of the International Boundary.

The North Harbor entrance is approximately one mile due east of the International Boundary. The City Water Intake Station is approximately 1,000 feet east of the International Boundary.

The International Boundary is in about the middle of the Niagara River. The exact location can be determined by reference to the Niagara Upper Chart No. 312 of 1949 prepared by the US Corps of Engineers.

For further reference, the City Charter more fully delineates the boundaries of the City of Buffalo.

#### 1.12 FEDERAL CASES

##### A. United States Marshals - U. S. Warrants

No member of the Department shall arrest, or assist in making an arrest, on a United State Warrant, except when called upon by a United States Marshall who is in the immediate discharge of his/her duties, and who needs assistance.

B. Federal Crimes

Members of this Department shall not make arrests for Federal Crimes. Whenever a violation of a Federal Law comes to the attention of a member of the Department, the appropriate Federal Agency shall be immediately contacted.

**NOTE:** In some situations, conduct constituting a crime may violate both state and federal statutes (e.g. bank robbery). In such cases, sworn members of the Buffalo Police Department may arrest the suspect and charge him/her with the state law violation. The District Attorney's Office and the US Attorney's Office will ultimately decide if the defendant shall be tried in state or federal court.

C. Federal Lands/Property

The Buffalo Police Department has no jurisdiction over Federal property for which the Federal Government has accepted a deed of cession executed by the State of New York. There are three such locations within the City of Buffalo. They are the Veteran's Administration Hospital at 3495 Bailey Avenue, the US Court House at 68 Court Street and the track of sovereign land known as the Seneca Buffalo Creek Casino at 1 Fulton Street. Any Buffalo Police Department member directed to respond to either of these facilities or has a need to conduct an investigation /serve warrants, etc., shall contact the appropriate Federal Police Agency for assistance. For the US Court House, contact the Federal Protection Safety Division Police, and for the Veteran's Administration Hospital, contact the Veteran's Administration Police. Questions concerning criminal jurisdiction on Federal property shall be referred to the US Attorney and the Erie County District Attorney for resolution.

D. Courts and Magistrates in Federal Criminal Cases

All cases involving violations of Federal Statutes are within the jurisdiction of the U. S. District Court, located at 68 Court Street, Buffalo, NY, 14202.

1.13 DIPLOMATIC IMMUNITY

A. No member of the Department shall arrest, issue a parking tag to, or issue a summons to, any person who is entitled to diplomatic immunity.

B. Persons entitled to diplomatic immunity should have in their possession an identification card that is issued by the U. S. Department of State and that displays the words either "United Nations" or "Diplomatic."

1. United Nations Identification Card

The United Nations card is embossed with the seal of the United Nations. It contains the name, title, date of issue, and the picture and signature of the envoy. The seal of the Department of State is included, together with the signatures of the Secretary of State and the Chief of Protocol.

2. Diplomatic Identification Card

The Diplomatic Card is embossed with a seal of the Department of State and

includes the photograph and signature of the diplomatic agent. It also includes the diplomat's title, diplomatic mission, and if a family member of a diplomat, his/her relationship to the named individual. The card is signed by the Chief of Protocol for the Secretary of State.

3. Foreign Diplomat/Consular Officials

The Buffalo Police Department will follow the guidelines published by the United States Department of State dated May 1998. For information on Diplomatic and Consular Personnel or to report an incident or accident refer to the list of phone numbers below.

**List of Useful Telephone Numbers**

For information on Diplomatic and Consular personnel and personnel of International Organizations other than the United Nations:

*During Normal Business Hours:*

Current status of U.S. Department of State Federal license tags, registrations,  
or other motor vehicle information.....(202) 895-3532  
Fax.....(202) 895-3646

Current status of U.S. Department of State driver licenses  
and general licensing information.....(202) 895-3521  
For reporting traffic incidents or accidents, issuance  
of citations, etc., involving foreign missions personnel  
.....(202) 895-3521

Current Status of Diplomatic agents and family members..(202) 647-1664

Embassy administrative, technical and service staff  
and families.....(202) 647-1405

Consular personnel and families.....(202) 647-1404

International Organizations.....(202) 647-1402

**Please send copies of incident reports and citations to:  
Diplomatic Security Service, Protective Liaison Division  
Fax.....(202) 895-3613**

*After Normal Business Hours:*

All inquiries should be made to the Diplomatic Security Watch  
Officer; Department of State (operates 24 hours daily).....(202) 647-7277

For Information on United Nations Personnel

*During Normal Business Hours:*

Current status of:

Diplomatic agents and family members.....(212) 415-4131  
U.N. Mission staff and family member.....(212) 415-4168  
U.N. Secretariat employees.....(212) 415-4131 or (212) 415-4168  
U.S. Department of State license tags, registration, or other motor  
vehicle information.....(212) 826-4500

*After Normal Business Hours:*

Information is available from the Communications Section of the U.S. United  
Nations (operates 24 hours daily) .....(212) 415-4444

- C. Instead of arresting, issuing a parking tag or issuing a summons to such person, the member shall obtain the person's name and title, the government that (s)he represents, or, in the case of a parking violation, the license number of the vehicle. This information shall be forwarded to the member's Commanding Officer on an Intra-Departmental Memorandum.

Distribution: Original and first copy to Commissioner  
Copy to Division or District Chief

- D. Members of the Department shall be courteous to such persons and treat them with due respect.

**2.0 CONSTITUTIONAL GUARANTEES**

**2.1 POLICY**

It is the policy of the Buffalo Police Department to protect those rights and freedoms guaranteed to all citizens by both the New York State and the United State Constitutions. The constitutional rights of those suspected of engaging in criminal activity shall in no way be diminished.

**2.2 RIGHTS TO BE PROTECTED**

While it is the duty of every member of the Department to vigilantly protect all those rights enumerated in the New York State and United States Constitutions, the following rights are most commonly implicated in the law enforcement context:

- A. freedom of speech, religion and the press, and the right to peacefully assemble;
- B. freedom from unreasonable searches and seizures;
- C. freedom from self incrimination;
- D. the right to a speedy trial and to confront witnesses;

- E. the right to have counsel present during questioning and at other critical stages of the proceedings.

### **3.0 INTERROGATIONS**

#### **3.1 POLICY**

It is the policy of the Buffalo Police Department to enhance the preparation and presentation of cases by obtaining statements from witnesses, suspects and defendants. All questioning must be consistent with the constitutional rights guaranteed to the person being questioned.

#### **3.2 NON CUSTODIAL INTERROGATIONS**

If a suspect is not in custody, or is not in any significant way deprived of his/her freedom, the suspect need not be apprised of the Miranda Warnings before being questioned.

- A. Miranda Warnings need not be recited to a motorist who has been stopped for a traffic infraction. If the motorist is in custody for a traffic misdemeanor or felony (e.g. DWI), the warnings are required.
- B. A person temporarily detained in a "stop and frisk" situation need not be apprised of the warnings.
- C. At that point in a non custodial interrogation when the suspect is taken into custody or deprived of his/her freedom in a significant way, the suspect must be given the Miranda Warnings before any additional questioning can be done.

#### **3.3 CUSTODIAL INTERROGATIONS**

A. Generally, custodial interrogation means:

1. the person has been taken into custody, or otherwise deprived of his freedom in a significant way; or,
2. the interrogation takes place in a police dominated environment and the suspect is deprived of communication with others; or,
3. the suspect is thrust into an unfamiliar environment and subjected to interrogation; or,
4. when a suspect is in police custody, he is surrounded by antagonistic forces and subjected to techniques of persuasion.

B. When conducting custodial interrogations, the Miranda Warnings must be given before any questions are posed to the suspect.

C. The Miranda Warnings should be read from the Miranda Rights Card supplied by the Department.

D. Questioning of the suspect can only proceed if the suspect waives his/her Miranda rights. The burden of proof is on the government to show that the waiver was made

voluntarily, knowingly and intelligently. The member shall record the date, time and exact words used by the suspect in waiving his/her rights. The member should also attempt to have the suspect sign the Miranda Rights card as well as have the suspect include the date and time of the waiver.

#### 3.4 SPONTANEOUS ADMISSIONS

It is not necessary to advise a suspect of the Miranda Warnings if the member of the Department does not ask the suspect any questions concerning the illegal activity. Spontaneous and unsolicited statements made by the suspect are admissible even though the Miranda Warnings were not given. For these type statements to be admissible in court they cannot be made in reply to a question from the Officer nor may they be made as a response to a statement made by the Officer when it is likely the Officer's statement would elicit such a response (refer to CPL 710.30 in Chapter 3).

#### 3.5 TAKING STATEMENTS - GENERALLY

- A. Miranda Warnings must be given where appropriate (refer to Chapter 3, above).
- B. It is recommended at least one witness should be present for the signing of a statement.
- C. The question and answer style statement is preferred to the narrative type statement. The question and answer style statement is easier to correct and less prone to ambiguity.
- D. Leading questions that elicit a "yes" or "no" response, should be avoided.
- E. For questioning juveniles, refer to M.O.P. Chapter 3.
- F. If a suspect makes a verbal statement but refuses to make a written statement, the details of that verbal statement shall be carefully recorded by the Department member. If a suspect assists in the making of a written statement but then refuses to sign the statement after it has been completed, the unsigned written statement shall be maintained as part of the case file.

#### 3.6 WRITTEN STATEMENTS

##### A. Statement Defined

For purposes of this section, statements shall be construed to mean anything communicated to a member of the Department by a witness, suspect or defendant, concerning the commission of a crime, including admissions and confessions.

- B. Statements shall, when possible, be reduced to writing and signed by the person making that statement.

All written statements shall minimally include:

1. the date and time the statement was commenced and the time concluded;
  2. the location where the statement was taken;
  3. the person's age, date of birth, address and place of employment;
  4. the person(s) present when the statement was made;
  5. if the person making the statement is a suspect, a recitation of the Miranda Warnings and the suspect's voluntary, knowing and intelligent waiver thereof;
  6. a detailed account of the incident in the person's own words;
  7. an acknowledgment by the person of the number of pages that the statement consists of, that (s)he has read the statement or has had the statement read to him/her, and that (s)he has initialed each correction (e.g. I have read this statement, consisting of two pages, and it is all true. I have placed my initials by each correction and I sign it below.);
  8. an affirmation by the person making the statement attesting to its truthfulness (e.g. I, John Doe, do hereby solemnly swear and affirm that the above is my statement, that I have read/or have had read to me this statement, and that the information contained therein is correct and true.);
  9. at the end of the narrative, the signature of the person making the statement as well as the signature of the witness(s);
  10. an attestation by a Notary Public or Commissioner of Deeds (e.g. "*Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011*", together with the Notary's or Commissioner's of Deeds signature and the date his/her commission expires.)
- C. The investigating members shall read the completed statement out loud to the suspect or have the suspect himself/herself read the completed statement out loud to the investigating members.
- D. After the suspect has read the completed statement out loud, or has had the completed statement read out loud to him/her, (s)he should be allowed to make any changes desired. All changes must be initialed by the suspect. The suspect must then read or have the corrections read out loud to him/her.
- E. The signature of the suspect must appear at the end of the statement just above that of the witnesses and the Notary Public or Commissioner of Deeds.
- F. If during the interrogation, the suspect admits to other unrelated offenses, a separate statement should be taken for each unrelated offense.

### 3.7 STATEMENTS OF COMPLAINANTS AND WITNESSES

- A. Whenever the testimony of a witness may prove important in the preparation and presentation of a case, his/her statement should be put in writing as soon as possible, while events are still fresh in his/her mind.
- B. Statements of witnesses should ordinarily be taken in the form of a Supporting Deposition. However, the regular statement form should be used by the Investigating



Officer when it will serve to enhance the preparation and presentation of a case.

- C. Statements of females in cases of sex or moral offenses should be taken by a female Officer if at all possible.
- D. Statements of complainants and witnesses shall have a typed closing statement that reads: "I have read, and or had read to me, the above statement and it is correct and true but not necessarily complete in every minute detail."

### 3.8 CPL 710.30 REQUIREMENT

Any time a defendant makes a statement to a member of the Department in conjunction with a criminal charge that may be introduced by the prosecution as evidence; the member must prepare a 710.30 Notice notifying the defendant's attorney that such statement was made.

### 3.9 RIGHT TO COUNSEL AFTER CRIMINAL COMPLAINT FILED

After a criminal charge has been filed with the Court, a critical stage of the proceeding has been reached and the defendant is entitled to representation by an attorney. Defendants arrested pursuant to an arrest warrant cannot be questioned without the consent of their attorney.

## 4.0 SEARCHES AND SEIZURES

### 4.1 POLICY

It is the policy of the Buffalo Police Department to thoroughly investigate criminal activity, and to search for and seize evidence, contraband and instrumentalities of crime. All searches and seizures must be conducted with due regard for the safety of Department members. The constitutional rights of the parties involved must be safeguarded and the integrity of the Department must not be compromised.

### 4.2 SEARCHES AND SEIZURES - GENERALLY

Questions of law concerning the constitutional validity of a search and seizure are decided on a case by case. It is beyond the scope of a Police Manual of Procedures to address in detail the intricacies of this complex and ever changing area of law. Consequently, only general principles can be presented here.

- A. "Unreasonable searches and seizures" are prohibited by the US Constitution. Generally, any search conducted without a search warrant is "unreasonable" and therefore, impermissible unless it falls within the limited number of exceptions to the search warrant requirement.
- B. A search and seizure pursuant to a search warrant (as opposed to a warrantless search) more readily withstands the scrutiny of the court and can offer some measure of insulation from civil liability.
- C. Searches and seizures, with or without a search warrant, must be based on probable

cause to believe that the property to be seized is stolen, unlawfully possessed, evidence, or an instrumentality of a crime.

- D. The extent of any search is constrained by the nature of the probable cause. (e.g. it would be impermissible to search in a jewelry box when the property sought is a stolen couch.).
- E. All searches should be conducted in the least intrusive manner, with a minimum of disruption to the person and physical property being searched.
- F. While searches shall be thorough they should also be conducted in the shortest amount of time possible.

#### 4.3 EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENT

In the following circumstances, where the requisite level of probable cause exists, a legal search can be conducted without the necessity of first obtaining a search warrant. The critical factor is whether the defendant has an "expectation of privacy" in the place or thing to be searched.

- A. Arrest Warrant Exception: If there exists an active arrest warrant, an Officer may search any premise for the defendant, including the defendant's home, if there is probable cause to believe that the defendant is in that premise at the time of the search. This exception does not permit the Officers to search for the defendant in the dwelling of a third person not named in the warrant. The search is strictly limited to locating the defendant and cannot include searching for evidence.
- B. Search Incident to Arrest: After an arrest has been made a thorough search of the defendant may be undertaken as well as any area within the physical reach of the defendant.
- C. Consent to Search: Any consent to search must be made knowingly, voluntarily and affirmatively (silence and acquiescence are insufficient). Consent must be given by a person who has control of the property and has legal authority to grant such consent. It is always better to obtain written consent although that is not a legal requirement. Consent can be withdrawn at any time.
- D. Frisk: A frisk is a pat down search for weapons.
  - 1. A "stop." When an Officer has reasonable suspicion to believe that a person is committing, has committed, or is about to commit a misdemeanor or felony as defined in the Penal Law, the Officer may stop that person and ask the person's name, address and for an explanation of the conduct (CPL 140.50).
  - 2. During the "stop" if the officer reasonably suspects (s)he is in danger of physical injury, the Officer may conduct a pat down search for anything that is readily capable of causing serious physical injury and of a kind not ordinarily carried in public by law abiding citizens. (CPL 140.50-1).

- E. Plain View Observation: An Officer may seize anything that is within his/her plain view and that the Officer has probable cause to believe is evidence or contraband. The key is to establish that the Officer has a legitimate reason for being in the place from which the evidence or contraband was observed.
- F. Abandoned or Discarded Property: A person relinquishes his/her expectation of privacy in any property that (s)he abandons or discards, including property discarded at the approach of a police officer. Property falling into this category may be searched thoroughly.
- G. Open Fields Exception: Buildings, homes and yards have constitutional protection. Open fields, woods and pastures that are neither fenced nor posted to exclude trespassers, can be searched without a warrant.
- H. Automobile Searches: Automobiles can be searched when the Officer has probable cause to believe that there is evidence in the vehicle. The extent of the search is dictated by the probable cause. An entire automobile may be searched, as well as containers in the automobile, if the probable cause so dictates.
- I. Inventory Search: An inventory search requires that the property lawfully came into the possession of the police (e.g. vehicle towed after an accident) and the inventory is conducted pursuant to a standard Department policy.
- J. Exigent Circumstances: There must be probable cause to believe that a crime has been committed or is being committed, and that immediate action is necessary to terminate the crime, or that someone will suffer physical injury or death, or that evidence of the crime will be destroyed. The search must be made at the time of occurrence under circumstances in which there is no time to secure a search warrant. This exception should be used only in true emergency situations.
- K. Administrative Searches: These are not searches for evidence, but rather inspections to assure compliance with governmental laws and regulations of specific businesses. An administrative search requires a pervasive and detailed regulatory scheme for the specified business. Examples include:
  - 1. firearms dealers and gunsmiths,
  - 2. pawnbrokers,
  - 3. junk dealers,
  - 4. scrap processors,
  - 5. wholesale and retail off-premise sellers of alcoholic beverages.
- L. Searches Expressly Allowed by Statute: There are certain very limited circumstances in which statutes have authorized warrantless searches. Knowledge of current statutes and case law is highly recommended.

#### 4.4 SEARCH WARRANTS

Members shall be guided by Article 690 of the Criminal Procedure Law in obtaining and executing search warrants, and processing property seized by search warrants.

#### 4.5 OBTAINING SEARCH WARRANTS

Supervisors shall take an active part in assisting subordinate officers in obtaining, executing, and following up with search warrants. Search warrants shall not be sought without the Supervisor's prior knowledge and approval. All narcotic related search warrants must have the prior approval of a Narcotics Lieutenant, Detective Sergeant or the Detective Division Captain. Information on narcotics related search warrants is contained in the Narcotics Unit Operations Manual.

#### 4.6 EXECUTING SEARCH WARRANTS - LEGAL REQUIREMENTS

Execution of search warrants is governed by CPL Section 690. Refer to this section for regulations and laws concerning search warrants. All applicable sections of CPL 690 shall be followed.

#### 4.7 EXECUTING SEARCH WARRANTS - STRATEGIC PLANNING

A. The Officer obtaining the search warrant must attempt to gather information concerning the physical layout of the place to be searched, persons who may be present, the possibility that the search will be met with resistance, and whether weapons are present that could pose a serious risk to the safety of the officers executing the search warrant. In those circumstances in which the risk to the Officers executing the search warrant is high or where there is reliable information indicating the presence of weapons in the place to be searched, the SWAT Team Commander must be contacted for assistance.

B. The ranking officer involved in executing a search warrant must a Supervisor or above. (S)he shall conduct a pre-execution briefing with all members involved in the search. The following factors should be addressed:

1. clearly establish the officer who is to be in command;
2. all circumstances leading up to the search warrant;
3. the type and scope of the warrant issued;
4. the name and physical description of the person sought or the kind or property authorized to be seized;
5. a complete description of the physical layout of the location to be searched;
6. the roles of each officer involved in the search warrant execution;
7. tactics and strategies that may be used to gain entry;
8. special hazards that may exist and persons who may be encountered;
9. equipment to be used and the attire to be worn (e.g. plainclothes officers must wear clothing that clearly identifies them as members of the Buffalo Police Department).

C. A member of the team of Officers executing the search warrant shall be designated to

notify the Radio Dispatcher of the location of the search. The notification shall be made simultaneous with entry or immediately thereafter, if prior notification would jeopardize Officer safety.

- D. The Officers executing the search warrant must announce their presence and purpose unless specified otherwise in the search warrant. Only the amount of force sufficient to gain entry shall be used. All persons encountered in the premises must be immediately controlled. The owner or person responsible for the premise shall be given a copy of the search warrant.
- E. An orderly and coordinated search of the premises shall be conducted, consistent with the scope of the warrant. Officers will be assigned specific areas to search. The ranking officer shall ensure that all areas authorized to be searched are searched thoroughly. (S)he must also assure that the extent of the search does not exceed the scope of the warrant.
- F. After the search warrant is executed, a copy of the warrant and a receipt for property taken must be left at the scene and the premises must be secured as best as possible.
- G. All property seized must be inventoried and delivered to the Court without unnecessary delay along with the original search warrant and the Application for a Search Warrant. The ranking Officer shall document on Intra- Departmental Correspondence any damage caused in executing the search warrant or any injuries suffered by any person involved in the search, including police personnel, defendants or other civilians.
- H. All members participating in the execution of the search warrant shall participate in a critique of the entire search warrant operation ranging from the pre-execution briefing, notification of the Dispatcher, the entry, the search and the post execution documentation.

## **5.0 EYEWITNESS IDENTIFICATION**

### **5.1 POLICY**

The identification of a suspect by an eyewitness can be a powerful tool in the arrest and prosecution of criminals. Proper identification procedures can also exonerate suspects who have been wrongly accused. It is the policy of the Buffalo Police Department to use eyewitness identification procedures that are fair and that comply with Constitutional requirements.

### **5.2 EYEWITNESS IDENTIFICATIONS GENERALLY**

- A. The circumstances surrounding the identification of a suspect by a witness must be fundamentally fair. Circumstances created by the police that would unduly suggest that a particular suspect is the culprit, violates the suspect's right to due process.

- B. There are three basic types of police identification procedures:
1. the show-up, in which a suspect is returned to the scene of the crime shortly after its commission, for the purpose of having a witness look at the suspect on a one on one basis;
  2. the photo-array, in which a number of mug shots are grouped together and the witness is asked if (s)he can identify the suspect by picking out the suspect's mug shot;
  3. the line-up, in which the suspect appears with a number of individuals bearing similar physical characteristics, and the witness is asked to pick out the suspect.

### 5.3 SHOW UP IDENTIFICATIONS

- A. If a suspect is apprehended within a reasonable time after the commission of a crime, the suspect shall be returned to the scene of the crime and viewed by the witness. This allows the witness to view the suspect under the same conditions under which the witness saw the suspect commit the crime. For this reason, the witness should not be taken to the location where the suspect was apprehended.
- B. For witnesses or victims that are injured and hospitalized, the suspect can be taken to the hospital for show up identification purposes.
- C. Show up identifications shall not be conducted at a police facility unless the crime occurred there.

### 5.4 PHOTO ARRAY IDENTIFICATIONS

- A. The policy of the Buffalo Police Department is to utilize “double blind” photo arrays as a routing course of criminal investigations.
1. The personnel who organize the photo array should be different from the personnel who show the photo array.
  2. The personnel who show the photo array should not know who the suspect is.
- B. Investigating Officers shall use the Photo-Imaging System to produce photo-arrays. The photos shall depict individuals that have physical characteristics similar to that of the suspect.
- C. Investigating Officers shall not use mug shots from any sealed records.
- D. If a witness identifies a suspect in a photo-array, the photo-array itself becomes evidence and must be preserved by the investigating officer and retained in the case file along with the affidavit and line-up report.
- E. Additional sources of photo images may be available through the NFTA, Department of Motor Vehicles or Board of Education bus passes.

## 5.5 LINE- UP IDENTIFICATIONS

- A. Line-up identification may be used when a suspect is in custody and the identification procedure is necessary to complete the case.
- B. The Officer requesting a line up identification shall prepare a comprehensive report sent through his/her Commanding Officer and directed to the Chief of Detectives. The report shall contain:
  - 1. the name, race, age, height and weight of the person to be viewed;
  - 2. the offense with which defendant is charged;
  - 3. any particular phrase to be repeated by persons in the line-up and the intonation used in saying that phrase;
  - 4. any articles found at the scene of the crime, such as clothing, glasses, etc., shall be made available during the line-up;
  - 5. any other information that may prove relevant in assisting witnesses to accurately identify the perpetrator.
- C. The Chief of Detectives will be responsible for approving or denying requests for line-ups and for arranging payment for civilian stand-ins. The Chief of Detectives or his/her designee is responsible for conducting a line-up.
- D. The Detective assigned to the case will be responsible for:
  - 1. identifying witnesses to the crime for which the defendant is charged and identifying witnesses to similar crimes in which the defendant may be a suspect, and notifying these witnesses of the time and place of the scheduled line-up;
  - 2. making arrangements for at least four (4) stand-ins who must bear as close a resemblance to the defendant as possible ( if the Detective has difficulty locating stand-ins, (s)he shall contact the on duty, Duty Officer for assistance);
  - 3. contacting the District Attorney's Office.
- E. The Crime Scene Technician shall photograph each line-up identification.

## 5.6 DEFENDANT'S RIGHT TO COUNSEL AT LINE-UP IDENTIFICATIONS

- A. If a suspect is taken into custody by virtue of a summary arrest (i.e. no arrest warrant, no accusatory instrument filed, no indictment, etc.) the police need not advise the defendant of his/her right to counsel at the line-up.
- B. A defendant does have a right to an attorney at a line-up identification if:

1. an accusatory instrument has been filed with the court, or the defendant has been arraigned on the criminal charge, or the case was commenced by indictment; or,
2. the defendant specifically requests the presence of an attorney; or,
3. the Police are aware that the suspect is represented by an attorney regarding the investigation for which the line-up is being conducted; or,
4. the line-up is being held pursuant to an ex-parte court order (i.e. obtained by the Police or the DA's Office without notice to the defendant or his/her attorney) and involves a suspect who is incarcerated on an unrelated matter.

C. If the defendant specifically requests an attorney the Detective shall:

1. make a reasonable effort to contact the attorney;
2. allow the attorney a reasonable amount of time to appear (usually two (2) hours, except in unusual circumstances).

D. An attorney is permitted to make limited suggestions as to the conduct of the line-up. It is up to the discretion of the Officer conducting the line-up whether any of the attorney's suggestions will be implemented. The Officer may consult with the DA's Office regarding any such suggestions. All suggestions made by an attorney will be duly noted.

## 5.7 RECORDING CUSTODIAL INTERROGATIONS

All Buffalo Police Detectives conducting custodial interrogations or interviews shall follow the BPD policy manual for recording custodial interrogations found at the end of this document.

## 6.0 USE OF FORCE

### 6.1 POLICY

It is the policy of the Buffalo Police Department to use only that amount of physical force that is objectively reasonable to achieve a legitimate law enforcement objective, including protecting a person from the imminent use of physical force, effecting an arrest or preventing an escape from custody. Any force used must be consistent with the Fourth Amendment of the United States Constitution and Article 35 of the New York State Penal Law. Excessive or unreasonable force shall not be used.

\*\* This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force to protect the public welfare requires a careful balancing of all interests.

## DEFINITIONS

A. **Objectively Reasonable** – An objective standard used to judge an officer's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the



benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.

**B. Deadly Physical Force** - Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

**C. Physical Injury** – Impairment of physical condition or substantial pain.

**D. Serious Physical Injury** – Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

## 6.2 USE OF FORCE - GENERALLY

A. Members of the Department must be familiar with Article 35 of the NYS Penal Law which outlines the legal parameters for the use of physical force and the use of deadly physical force.

B. Physical force shall only be used when no other viable option is available.

C. When force is used, only that amount of force that is objectively reasonable to overcome a subject's resistance or aggression shall be employed.

D. The use of force must be reasonable and can never be reckless.

E. During an encounter in which force has become necessary, the level of resistance or aggression displayed by the subject may vary at different points in the encounter. The level of force used by the Officer shall be adjusted to changes in the suspect's level of resistance or aggression.

### DUTY TO INTERVENE

Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

### RETALIATORY FORCE

Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason

### DE-ESCALATION TECHNIQUES

De-Escalation Techniques are actions taken by members that are designed to eliminate the need to use force in order to resolve any event or situation. De-Escalation Techniques include: talking to a person using a tone of voice and language that is not aggressive or confrontational; creating space or placing barriers between the member and the person;

waiting the person out when circumstances permit; permitting a person to move about when safe; permitting a person the opportunity to make statements or ask questions; slowing down the pace of an incident; tactical repositioning and requesting additional resources. The guiding principles for de-escalation are patience, flexibility, and the desire to resolve each situation peacefully

### **DE-ESCALATION**

Members should, when practicable and reasonable, avoid the Use of Force by using De-Escalation Techniques, including verbal persuasion and warnings, slowing down the pace of an incident, waiting out persons, using barriers, creating distance (and thus the reactionary gap) between the member and the threat, and requesting additional resources such as specialized units, CIT trained members, behavioral health care providers, or negotiators, before resorting to force, and to reduce the need for force. De-escalation Techniques mitigate the threats and gives officers time to utilize extra resources, and increases time available to call more officers or specialty units.

1. Members should, when practicable and reasonable, talk to the person; attempt to convince the person to comply; reduce any threat presented by withdrawing to a position that is tactically advantageous; or take actions that allow the member greater distance and time, in order to de-escalate a situation or deploy a lesser force option or no force at all.
2. Members should perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions including, but not limited to, immediately approaching a person without proper evaluation of the situation, failing to leave sufficient space between the member and the person, closing the reactionary gap, or escalating a situation.
3. Members should not use tactics that unnecessarily escalate an encounter or create a need for force.
4. Members should de-escalate force immediately as resistance decreases.
5. If the member has no alternative to using force, the member shall use only the amount of force that is objectively reasonable to respond to the threat or resistance and shall immediately reduce the level of force as the threat or resistance lessens or stops.

### **CRITICAL THINKING**

Prior to using force, members should use a critical thinking and decision-making framework to analyze and respond to incidents. This framework will allow members to uphold the sanctity of life and protect themselves by decelerating and stabilizing a situation to minimize the likelihood of a Use of Force incident. Using this framework, members should: 1. Assess the situation, threats, and risks; 2. Gather relevant facts about the incident; 3. Consider police powers and BPD policy; 4. Identify options and determine the best course of action; and 5. Act, review, and re-assess the situation

## **6.3 USE OF FORCE CONTINUUM**

- A. Members of the Department may use no more than the amount of force which is objectively reasonable to achieve a legitimate law enforcement objective. In most

cases, the degree of resistance or aggression displayed by a subject will be the primary factor in determining what level(s) of force by the Officer is reasonable and authorized. A subject's reaction to an Officer's attempts at control or restraint may be broadly classified into five categories. Those categories, together with the generally authorized Officer force response options, are set forth below:

1. Compliant/ Cooperative

The subject generally complies with the commands of the Officer and offers no resistance. In this instance the use of force is not authorized, but customary handcuffing and escort techniques are authorized.

2. Passive/Verbal Resistance

The subject passively resists the Officer's attempts to gain compliance or is verbally abusive, insulting or taunting and refuses to comply with the Officer's commands, but is not verbally threatening to cause imminent physical harm to the Officer or another person. The Officer shall use verbal techniques to achieve compliance and if those techniques are unsuccessful, is authorized to take physical control of the subject by grabbing, holding, and /or using customary handcuffing techniques on the subject.

3. Active Resistance

The subject makes physically evasive movements to defeat an Officer's attempt at control (e.g. bracing, tensing, moving away) or verbally threatens imminent harm to the Officer or another person or verbally signals an intention not to be taken into or retained in custody, providing the subject's intent to physically resist is clear. The Officer is authorized to physically restrain and take control of the subject by grabbing, holding forcibly handcuffing and/or using pain compliance holds and/or chemical agent on the subject.

4. Physical Resistance

The subject engages in or is about to engage in resistance or aggression that is aimed directly at the Officer. This includes grabbing, pushing, punching, kicking, biting, throwing objects or any behavior in which the Officer becomes the object of the subject's actions. Physical resistance also includes that situation in which an Officer reasonably believes that the subject is using or is about to use the above degree of physical force against another person. The Officer is authorized to use the amount of force which is objectively reasonable to overcome the resistance or aggression by using chemical agent, physical skills, physical tactics or impact weapons, or any appropriate lesser means of force.

5. Deadly Resistance

The subject engages or is about to engage in such an escalated level of resistance or aggression that the Officer reasonably believes the subject's actions constitute "deadly physical force." "Deadly physical force" means

physical force that, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. It may include attempts to render the Officer unconscious, grabbing for the Officer's service firearm, blows to vital organs, stabbing, shooting, or any other action that would create a likelihood of causing the Officers serious physical injury or death. This category also includes a subject who an Officer reasonably believes is using or is about to use deadly physical force on another person. This level of resistance or aggression authorizes the Officer to use the amount of force objectively reasonable to preserve life or prevent serious physical injury and includes the use of deadly physical force.

- B. Although a subject's level of resistance or aggression is usually the primary factor that determines what level of force is reasonable and authorized, there may be other factors present that may reasonably cause an Officer to escalate or de-escalate the level of force used during an encounter. These factors include, but are not limited to:
1. Officer/Subject Factors (e.g. relative age, size, strength, skill level, injury/exhaustion, number of Officers versus number of subjects);
  2. Influence of drugs or alcohol;
  3. Presence/proximity of weapons;
  4. Other tactical factors (e.g. position of advantage, cover, time for decision);
  5. Availability of other viable force options.

C. PROHIBITED USES OF FORCE

1. Force shall not be used by an officer for the following reasons:

- a. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
- b. To coerce a confession from a subject in custody;
- c. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purposes of scientific testing in lieu of a court order where required;
- d. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.

2. The use of a chokehold or any other similar restraint is strictly prohibited. Chokehold restraint is defined as any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air OR restricting the flow of blood to the brain by compressing the neck where the carotid arteries are located.

#### 6.4 USE OF DEADLY PHYSICAL FORCE

- A. Members of the Department may use deadly physical force but only when it is necessary to defend the Officer or third person from what the Officer reasonably believes to be the use or imminent use of deadly physical force.
- B. Even if the use of deadly physical force is authorized, the Officer may not be reckless in its use.
- C. Depending upon the circumstances in which they are utilized, the use of the night stick, restraining holds, police vehicles, as well as service firearms, may be construed as the use of deadly physical force.
- D. If feasible, Officers will issue a verbal warning before using deadly physical force. Verbal warnings need not be issued when the Officer believes that doing so would increase the danger to the Officer or another person.

#### 6.5 USE OF FIREARMS

- A. Members of the Department shall discharge their firearms at a person only in those circumstances in which it is necessary to defend the Officer or another person from what the Officer reasonably believes to be the imminent use of deadly physical force. In attempting to take a suspect into custody, members of the Department shall discharge their firearms only in those circumstances in which the member reasonably believes that the use of deadly physical force by the suspect is imminent.
- B. Members shall not discharge a firearm or shoulder weapon from or at a moving vehicle or its occupants unless the occupants of the other vehicle are using deadly physical force against you or another person by means other than the vehicle. Members shall not discharge their firearms at or from a moving vehicle when the consequences of so doing will jeopardize the safety of other members of the Department or innocent bystanders.
- C. In those circumstances in which members of the Department are justified in discharging their firearms, they are not allowed to do so recklessly.
- D. Warning shots are prohibited.
- E. Members of the Department may use their firearms for target practice or competition at an approved range. Dry firing or other forms of practice on any Departmental property, except under the personal direction of a firearms instructor, is strictly prohibited.

- F. Members of the Department may use their firearms to incapacitate wild, vicious or rabid animals consistent with the guidelines set forth in M.O.P. Chapter 2.

## 6.6 DRAWING WEAPONS

- A. A member of the Department is authorized to remove his/her firearm from its holster or gun mount and have it ready for immediate use, in any circumstance in which the member reasonably believes his/her life or safety may be in danger.
- B. A member of the Department may point his/her firearm at a person when the officer reasonably believes that the person poses an immediate risk of death or serious physical injury to any other person.

## 6.7 REPORTING REQUIREMENTS – USE OF FORCE OR INJURIES TO CIVILIANS

- A. Reporting requirements shall apply whether an incident occurred on or off-duty. A member of the Department shall prepare a Use of Force Report (via Blue Team) when (s)he:
  - 1. applies any level of physical force as defined in Section 6.3 A3, A4 or A5 above on a person;  
or
  - 2. uses chemical spray on or affecting a person;
  - 3. charges a subject with resisting arrest in violation of the NYS Penal Law Section 205.30.
    - a. When a member of the Department charges a subject with resisting arrest in violation of the NYS Penal Law Section 205.30, that member shall promptly notify their immediate on duty supervisor. The on-duty Supervisor shall as soon as practical, and in any event prior to the end of their tour of duty, conduct an investigation into the circumstances of the arrest and enter their findings on the subordinate's Use of Force Report (via Blue Team).
    - b. If more than one officer is involved and uses any level force as defined above, each officer shall prepare a Use of Force Report Use of Force Report (via Blue Team).
- B. In addition to a Use of Force Report, a member of the Department shall prepare a written report on an Intra-Departmental Memorandum (form P-73) whenever the member:
  - 1. discharges his/her firearm for other than training or recreational purposes (refer to M.O.P. Chapter 3) (also see M.O.P. Chapter 8);
  - 2. takes any law enforcement action that results in, or is alleged to have resulted in, serious physical injury or death to another person.

- C. All reports submitted pursuant to subdivision “A” and “B” above shall be completed prior to the officer’s tour of duty and forwarded through the chain of command to the Internal Affairs Division. The Use of Force Report shall be submitted (via Blue Team). Each member in the chain of command shall review the report for completeness, accuracy and conformity with the Department’s use of force policy (via Blue Team). Each member in the chain of command shall enter their comments on the Use of Force Report (via Blue Team). The final approved report shall be completed **within 10 days** of the incident.

In the event the Use of Force Report (via Blue Team) cannot be utilized the following procedures will be followed:

The hard copy P-1374 will be completed. The on duty supervisor shall fax the P-1374 to the Internal Affairs Division at extension 5229 prior to the end of their tour of duty. If a fax is not possible, the on duty supervisor shall immediately send an email the IAD Inspector. The email shall contain an explanation for the inability to fax the report, the involved officer(s) name(s), the subject’s name, and the incident number.

- D. In the event an officer is incapacitated and unable to prepare the proper reports, the member's immediate Supervisor shall cause the reports to be prepared on the member's behalf (via Blue Team).
- E. The Internal Affairs Division shall review all such reports in relationship with Buffalo Police policy and Article 35 and make recommendations to the Commissioner. In addition, the Internal Affairs Division shall make an annual review of all such incidents and report any patterns or trends that may necessitate additional or modified training or that may require alterations in policy.
- F. The Training Academy Commander shall access Blue Team to determine if there are any training issues needing to be addressed

#### 6.8 PERSONS INJURED RESULTING FROM THE USE OF FORCE

In all circumstances in which a person is injured by a member of the Department as a result of the use of force other than deadly physical force:

- A. the member shall have the injured person taken for medical treatment to the Erie County Medical Center, ECMC;
- B. notify his/her immediate supervisor;
- C. prepare form P-1261 (Request For Medical Attention of Injured Prisoner).

#### 6.9 USE OF AUTHORIZED LESS LETHAL SUBSTANCES /DEVICES /EQUIPMENT

Non-lethal force options such as chemical spray (C.A.P.) or a police baton/asp may be used, if “objectively reasonable” based on the subjects level of resistance or the suspects level of offensive action. THE USE OF SAPS, WEIGHTED GLOVES OR OTHER

NON-LETHAL WEAPONS NOT APPROVED BY THE DEPARTMENT ARE PROHIBITED.

Members of the Department shall use only that type of less lethal substances, devices or equipment specifically authorized by the Department and for which they have received proper training. Officers using these devices must successfully complete an initial training course in their use before issuance.

As per the Commissioner of Police, the Buffalo Police Department will only use/train with less lethal substances, devices and equipment that have been previously trained and taught in the Erie County Police Academy.

A. The Department authorized the following less lethal equipment:

1. CAP Spray
2. ASP/Baton

1. USE OF CHEMICAL SPRAY

A. The Product

The only chemical agent projector (C.A.P.) to be used by an on duty member of the Buffalo Police Department is the Department issued.

B. Issuance

The Department issues authorized chemical agent projectors to those Officers trained in its use. The chemical agent projector issued by the Department is for on duty use only and it is not to be used or carried while the member is off-duty or while employed outside the Department.

C. Replacement

Requests for replacement of empty or malfunctioning chemical agent projectors shall be submitted to the Police Academy on an Intra-Departmental Memorandum (P-73), which shall include an explanation of the necessity for the replacement. When an Officer requests replacement of an empty container, a check will be made to determine if the appropriate number of reports (P-1174) have been submitted to reflect why the chemical agent container is empty. If an appropriate number of reports have not been submitted, the Officer will not be issued a replacement chemical agent.

1. Although chemical agent containers are stamped with a date on the canister, the chemical agent is effective as long as the product is able to be discharged from the canister.
2. If an issued chemical agent projector is lost by any member of the Department, the member must immediately report the loss in writing. The report shall detail the circumstances of the incident and shall be forwarded to the Training Academy through the chain of command.



#### D. Use

##### 1. In General

Chemical agent projector spray is a use of force and shall be used only in conformity with the Departmental policy on use of force. Accordingly, chemical agent projector spray may be used only when its use is objectively reasonable to achieve a legitimate law enforcement objective. As a general rule, chemical agent projector spray is authorized for use on a subject when an Officer encounters “Active Resistance” or “Physical Resistance”, as those terms are defined in the Department’s Use of Force Continuum.

#### E. Officer Accidentally Sprayed With A Chemical Agent

In the event that an Officer is accidentally sprayed with a chemical agent, or is intentionally sprayed by another person, the safety of that Officer becomes paramount. The attempted apprehension of the suspect must be abandoned if the safety of the sprayed Officer is unduly jeopardized.

#### F. Decontamination

1. The arresting Officer is responsible for the decontamination of any prisoner sprayed with a chemical agent. Decontamination will be accomplished in accordance with procedures and regulations at the City Court Lock-up.
2. If the chemical agent is used indoors, occupants are to be advised to air out the room where the chemical agent was used, for at least one hour before using the room.

#### G. Reporting

1. A Use of Force Report (via Blue Team) must be completed any time a member of the Department discharges a chemical agent, except those discharges occurring during testing, training, a malfunction, a use against an animal or an accidental discharge with no person affected. A Use of Force Report (via Blue Team) shall be completed by each Officer using the chemical agent.
2. Accidental discharges with no person affected or uses against animals require an Intra- Departmental Memorandum with explanation directed to the Training Academy.

## 2. USE OF ASP/BATON

- A. The Department issues the ASP Baton to those officers trained in its use. It is for on-duty use and may not be used off-duty or while employed outside the Department.

#### 6.10 PERSONS KILLED OR SERIOUSLY INJURED AS A RESULT OF THE USE OF DEADLY PHYSICAL FORCE

##### A. While on duty

In all circumstances in which a person is killed or seriously injured by an on duty member of the Department and is the result of the use of deadly physical force:

1. the member shall call for medical attention if the person is still alive;
2. the member shall immediately notify his/her immediate supervisor who shall notify the 911 Communications Lieutenant, whom will notify the Commissioner
3. the Homicide Squad shall conduct the investigation.
4. members shall follow the guidelines set out in M.O.P. Chapter 17.

##### B. While off duty

In all circumstances in which a person is killed or seriously injured by an off duty member of the Department and is the result of the use of deadly physical force:

1. the member shall immediately notify the law enforcement agency in the jurisdiction in which the incident occurred and shall request medical attention if the person is still alive;
2. the member shall immediately notify his/her commanding officer, or in the commanding officer's absence, the 911 Communications Lieutenant;
3. the member shall follow the guidelines set out in M.O.P. Chapter 17;
4. and if the incident occurred outside of the city, the 911 Communications Lieutenant shall send Buffalo Police personnel to investigate.

#### 6.11 DISCHARGE OF FIREARMS - REPORTING REQUIREMENTS

##### A. BPD Firearms Report - Intra-Departmental Memorandum - E-Mail Message

Whenever a member discharges a firearm(s) while on duty, other than in practice or at a firearms range, (s)he shall immediately report the incident to the Supervisor on duty in the District in which the incident occurred, except that if the discharge occurred in the headquarters building, the 911 Communications Lieutenant shall be notified. The member must also immediately report the incident to his/her own Supervisor. The member's command will be responsible for obtaining an event number and transmitting an E-Mail message reporting the incident. The member shall prepare a report on an Intra-Departmental Memorandum prior to reporting off duty, relating the details of the incident. The Intra-Departmental Memorandum shall be addressed to the Commissioner, attention to the appropriate Commanding Officers in the chain of command. The member shall also prepare a Firearms Use Report (BPD-1) according to the instructions on that form and before the member reports off duty.

B. Investigation by Commanding Officer - Intra-Departmental Memorandum

The Commanding Officer of the member discharging the firearm shall conduct a complete investigation of the incident and review said incident against Buffalo Police policy and Article 35 and file a report on an Intra-Departmental Memorandum. The report shall be addressed to the Commissioner, attention the appropriate District/Division Commanding Officer in the chain of command.

**Distribution:** Original and copy of form BPD-1, the member's Intra-Departmental Memorandum and the Commanding Officer's Investigation Report on an Intra-Departmental Memorandum shall be sent to the appropriate District/Division Chief; third copy to command files.

C. Action by the District/Division Chief

The District/Division Chief shall carefully examine all reports. They shall make further inquiry as they deem appropriate. The Chief shall make recommendations concerning training, discipline, approval of the member's action, or other appropriate action on an Intra-Departmental Memorandum for the Commissioners final review and decision.

D. Incidents Occurring While Off Duty

1. If a member discharges a firearm while off duty, whether intentionally or accidentally, the member shall notify the police authorities in the jurisdiction in which the incident occurred, and (s)he shall also be responsible for submitting a Firearms Use Report (Form BPD-1) and an Intra-Departmental Memorandum to his/her commanding officer, except that no such notification or report need be made if the officer was legitimately engaged in target practice or hunting.
2. If a member intentionally or accidentally discharges a firearm while off duty and the result is an injury to himself/herself, or injury or death to another, the member shall immediately contact the law enforcement authorities in the jurisdiction in which the incident occurred. Medical attention shall be requested and the scene of the incident preserved (refer M.O.P. Chapter 17). The member must immediately contact his/her Commanding Officer, or in the Commanding Officer's absence, the 911 Communications Lieutenant, and shall as soon as practicable there after, complete a Firearms Use Report and an Intra- Departmental Memorandum.

E. Investigating Incidents Occurring Outside the City

Whenever a member of the Department intentionally or accidentally discharges their firearm while outside the city, other than when legitimately involved in hunting or target practice, the 911 Communications Lieutenant or the Duty Inspector will determine whether a member of the Buffalo Police Department will respond to the incident based on the following:

1. the apparent surrounding circumstances;
2. the severity of the injuries, if any;

3. the possibility of criminal conduct by the member;
4. the distance from the City.

#### 6.12 ADMINISTRATIVE DUTY

At the discretion of the Police Commissioner or his/her designee, any member involved in a shooting or any other incident resulting in death or serious physical injury to another, may be temporarily assigned to administrative duty. Administrative duty, for purposes of this section, is any assignment that does not ordinarily require the making of arrests. Assignment to administrative duty is in no way a punitive measure and shall be used when it tends to advance the mission and goals of the Department.

#### 6.13 ANNUAL INSTRUCTION ON USE OF FORCE

All members of the Department authorized to carry weapons shall receive a copy of the Department's use of force policies as established in this section and shall receive instruction on these policies during their annual firearms qualification at the Firearms Unit.

#### 6.14 DCJS REPORT REQUIREMENTS ON USE OF FORCE

In addition to any reporting requirements already contained in the Manual of Procedures (Chapter 3 - 6.0 Use of Force), if the circumstances of any incident meet the below definitions, a Blue Team Use of Force report shall be submitted to IAD following current directives.

- **Display a chemical agent** – To point a chemical agent at a subject.
- **Use/Deploy a chemical agent** – The operation of the chemical agent against a person in a manner capable of causing physical injury.
- **Brandishes/Uses/Discharges a firearm** – The operation of a firearm against a person in a manner capable of causing physical injury.
- **Brandishes/Uses/Deploys an impact weapon or electronic control weapon**  
The operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury.
- **Uses a chokehold or other similar restraint** - Any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air OR restricting the flow of blood to the brain by compressing the neck where the carotid arteries are located.
- **Conduct that Resulted in Death**
- **Serious bodily injury** - Bodily injury that creates or causes:
  - a substantial risk of death; or

- unconsciousness; or
- serious and protracted disfigurement; or
- protracted loss or impairment of the function of any bodily member, organ or mental faculty.

IAD will be responsible for filing the mandatory reporting to DCJS following the current reporting mechanism.

## **7.0 TRANSPORTING PRISONERS AFTER ARREST**

### **7.1 POLICY**

It is the policy of the Buffalo Police Department that when transporting a prisoner after arrest, members shall take steps necessary to minimize opportunities for the prisoner's escape, and they shall ensure that the safety of the Officers, the prisoner, and the general public is not jeopardized.

### **7.2 PRELIMINARY SEARCHES**

A. Members shall search their police vehicles for contraband and weapons at the beginning and end of each tour of duty. They shall also search the vehicle after removing a prisoner from the vehicle.

B. Members shall not place a prisoner in a police vehicle until they have thoroughly searched the prisoner for:

1. any weapon or dangerous instrument;
2. any article, substance or thing that may pose a danger to the safety of the officers, the prisoner, or the general public, or with which the prisoner may cause damage to property;
3. evidence that the prisoner can destroy, mutilate or effect in any way.

C. The extent of the preliminary search will be determined by the surrounding circumstances but must minimally include:

1. a pat down search of all body and clothing surfaces; and
2. a search of all clothing pockets, purses, bags, etc., in which a weapon or
3. contraband can be concealed and be readily available.

D. Preliminary searches of prisoners of the opposite gender should be avoided whenever possible. Officers of the opposite gender may conduct a preliminary search of the prisoner but only in those instances in which an Officer of the same gender is not readily available and the Officer reasonably believes that:

1. the safety of the Officer or the prisoner is unduly jeopardized by not conducting an immediate preliminary search:
- or

2. immediate action is necessary to preserve evidence material to the case. In any such case, the extent of the search shall not be more intrusive than what the Officer's reasonable belief dictates.

### 7.3 RESTRAINTS

- A. All prisoners will be handcuffed and the handcuffs will be double locked whenever possible.
- B. Prisoners shall be handcuffed with their palms facing out and their hands behind their back unless they have an injury or physical deformity that prevents such method of restraint.
- C. Prisoners shall be transported with their seat belts securely fastened.
- D. Prisoners shall not be placed lying face down in the rear seat of a police vehicle.

### 7.4 PROCEDURES FOR ADULT ARRESTS BY THE BUFFALO POLICE DEPARTMENT

- A. Prisoners shall never be transported in the front seat of any police vehicle.
  - 1. If only one Officer is transporting the prisoner, the prisoner shall be positioned in the rear seat on the passenger side.
  - 2. The number of prisoners being transported in a single vehicle shall not exceed the capacity of the rear seat of the vehicle.
- B. Male and female prisoners shall not be transported together unless they are related (i.e. husband-wife, mother-son, father-daughter, etc.).
- C. Juvenile prisoners under the age of 16 shall not be transported with adult prisoners unless the prisoners are related.
- D. K-9 vehicles shall not be used to transport prisoners.
- E. Vehicles not equipped with safety partitions shall not be used to transport prisoners unless there are two Officers assigned to the unit. In that case, the prisoner shall be secured in the rear passenger side seat.
- F. Prisoners shall not be left unattended in a police vehicle.
- G. Unless otherwise specified, prisoners shall be taken directly to City Court Lock-up. Officers shall not engage in any type of emergency driving or pursuit while prisoners are in the vehicle. They shall not respond to any other calls for service except those instances in which there exists a clear risk of grave injury and the safety of the

prisoner is not unduly jeopardized. Even in these extreme cases, the prisoner shall not be left unattended.

- H. Injured prisoners shall not be transported to the City Court Lock-up but shall be taken for medical treatment first (Refer to M.O.P. Chapter 4).
- I. The Radio Dispatcher shall be notified that the Officers are engaged in transporting prisoners to the City Court Lock-up.
- J. A prisoner shall not be allowed to communicate with friends, relatives, or even his/her attorney from inside a police vehicle.

#### 7.5 TRANSPORTING PRISONERS OF THE OPPOSITE GENDER

In those instances in which no Officer in the vehicle is the same gender as the prisoner being transported, the Officers shall:

- A. advise the Radio Dispatcher of the Officer's location, destination and odometer reading, and request a time check;
- B. take the most direct route to the destination;
- C. advise the Radio Dispatcher of their arrival at their destination and the odometer reading, and request another time check.

#### 7.6 HANDICAPPED PRISONERS

- A. When a prisoner is handicapped, sick or injured the transporting Officer will request the type of assistance and equipment that will enable the Officer to transport the prisoner in a safe and efficient manner. The assistance of the Supervisor shall be sought in unusual cases in which devising a means of transportation for the prisoner is especially difficult.
- B. The transporting Officer shall make arrangements to allow the prisoner to retain any special equipment or medical device that is necessitated by the prisoner's condition.
- C. Officers may dispense with handcuffing handicapped prisoners when it is obvious that the prisoner poses no threat to the Officer, or to himself/herself, and the possibility of escape is negligible.

#### 7.7 ESCAPED PRISONERS

When a prisoner who had been in the custody of a member of this Department escapes, the member shall:

- A. Immediately notify the Radio Dispatcher and provide a complete description of the escapee, his/her last known direction of travel, and any other pertinent information that may assist in the prisoner's re-capture.

- B. The ranking supervisor on duty in the District in which the prisoner escaped shall immediately respond to the scene and lead a coordinated search for the escaped prisoner. They shall use all available resources to re-capture the prisoner.
- C. The 911 Communications Lieutenant shall be notified by the Supervisor at the scene of the escape.
- D. The member of the Department from whom the prisoner escaped shall make a complete report of the incident in writing on Intra-Departmental Memorandum. The report shall be forwarded through proper channels to the member's District/Division Chief who, based on the recommendations of his/her subordinate Commanding Officers and Supervisors, shall take appropriate remedial action.

## **8.0 ARREST BOOKING PROCEDURES**

Officers will adhere to the procedures outlined in the Manual of Procedures for particular cases i.e. Homicide, Sex-Related Offenses, DWI/DWAI, etc.

DWI/DWAI arrests must first proceed to Police Headquarters for testing at the Accident Investigation Unit (AIU) as defined in the Manual of Procedures. After completion of the AIU process, officers will take their prisoner to the City Court Booking and follow established arrest procedure.

### **8.1 JUVENILE ARRESTS**

Refer to M.O.P. Chapter 4

### **8.2 CITY COURT BOOKING**

Arrests made by members of the Buffalo Police Department will consist of two phases:

1. Remanding of the prisoner to the City Court Lock-up;
2. Filing of accusatory instruments – preparation of court folders in City Court Booking

### **8.3 REMANDING OF THE PRISONER TO THE CITY COURT LOCK-UP**

- a. Arresting Officer(s) will inform radio that they are preceding directly to the City Court Lock-up with their prisoner.
- b. Officers will enter the garage and park their police vehicle.
- c. Officer(s) will then exit the patrol vehicle and will secure their weapon(s) in the lockers provided in City Court Booking. **NO WEAPONS OR AMMUNITION ARE TO BE BROUGHT INTO THE CELLBLOCK AREA.** Gun Lockers are located immediately outside prisoner entrance, outside cellblock area in prisoner transport hallway, and inside the booking office area.

### **8.4 SEARCHING PRISONERS AT CITY COURT BOOKING**

Refer to Chapter 4



8.5 SEARCHING PRISONERS OF THE OPPOSITE GENDER

Refer to Chapter 4 - Appendix A- Searches

8.6 STRIP SEARCHES

Refer to M.O.P. Chapter 4

8.7 STRIP SEARCHES – FEMALE PRISONERS

Refer to Chapter 4 – Appendix A

8.8 FILING OF ACCUSATORY INSTRUMENTS – PREPARATION OF COURT FOLDERS

- A. Immediately following the procedures at the City Court Lock-up all arresting officers will proceed to Police Headquarters and complete the final phase of their arrest at City Court Booking.
- B. Upon arrival at City Court Booking the Officers will be asked to produce copies of the P-163, any warrant printouts and the prisoner property receipt(s).
- C. Arresting Officer(s) shall take large property items to Room 104 during normal business hours. When the Property Office is closed, the submitting Officer will secure property/evidence at Police Headquarters. All Officers have access to the evidence/property room via their BPD Employee Identification Card. Put completed paperwork, p10ccb2 and property inside a suitable locker (oversized items may be left on the floor). Enter the transaction in log book on table and place key in drop safe.
- D. Procedures at City Court Booking will continue to be as they are, with a few administrative changes to ease the flow of paperwork and time spent in completing the arrest
- E. Complainants, witnesses or other persons needed to file paperwork will be told to go directly to Buffalo Police Department headquarters (74 Franklin Street), as is the present procedure
- F. The procedures outlined in M.O.P. CHAPTER 3 are still in effect and all officers are directed to adhere to same.
- G. Once the court documentation is completed, the arresting Officer(s) will call their car(s) back in service.

8.9 CIRCUMSTANCES PARTICULAR TO ARRESTS HOSTILE/COMBATIVE PRISONERS

- A. Officers will inform radio that they have a combative and/or hostile prisoner.
- B. Radio will then call the City Court Lock-up and inform them of the situation.

- C. The hostile/combative prisoner will be taken immediately into the City Court Lock-up, via the sally port and metal detector, and placed in an isolation cell.
- D. Buffalo Police Department Personnel cannot leave the facility until they can obtain a property receipt and the copy of the P-163 and other necessary paperwork.
- E. Once the prisoner is placed in the isolation cell, the arresting officer will take their place back in line, if that is the case.

8.10 PRISONERS REQUIRING MEDICAL/PSYCHOLOGICAL TREATMENT PRIOR TO BOOKING

- A. Prisoners that are sick/injured, mentally ill, have ingested or are suspected of having ingested a foreign object or substance and prisoners whose ability is impaired by alcohol/drugs to the extent that they may be unconscious or semi-unconscious must be taken directly to ECMC, unless exigent circumstances exist, for medical treatment prior to being booked at the City Court Booking.
- B. The arresting officer(s) shall prepare a P-1261 (Request for Medical Examination of Prisoner form) leave a copy with the City Court Lock-up after the prisoner is booked. The original P-1261 will accompany the Officer back and copies will be distributed per Department Policy.
- C. All policies pertaining to hospitalized prisoners shall remain in effect.

8.11 PRISONERS REQUIRING MEDICAL/PSYCHOLOGICAL TREATMENT AFTER CONFINEMENT IN THE CITY COURT LOCK-UP

- A. If while in custody a prisoner complains of injury, illness or pain that was not evident when the prisoner was taken into custody, the on-duty Sheriff's Deputy Supervisor shall be notified and determination of the removal of the prisoner to the hospital will be decided according to their departmental policy.
- B. The on-duty Sheriff's Deputy Supervisor will notify Buffalo Police Radio Dispatch that a prisoner is in need of medical attention. The Supervisor shall provide the dispatcher with the radio call number of the arresting officers and/or district of arrest and the name of the prisoner seeking treatment.
- C. Buffalo Police Department Radio Dispatch will call the arresting officer(s) or a car from that district if the arresting officers are unavailable, and direct them to proceed to the City Court Lock-up to take a prisoner to the hospital. Dispatch shall inform the officer(s) of the name of the prisoner seeking treatment. If neither the arresting officer nor a member of his/her unit is available, a mobile patrol unit from B-District shall transport the prisoner. All other procedures regarding transporting of the prisoner shall remain the same.

- D. A prisoner requiring an ambulance shall have a Buffalo Police Officer ride with him/her in the body of the ambulance.
- E. The officer(s) transporting the prisoner shall prepare the “Request for Medical Examination of Prisoner” form (P-1261), or the “Request for Examination of Person Apparently Mentally Ill” form (P-1321) as the case may be. A copy of either form must accompany the prisoner back to the City Court Lock-up. All other copies shall be distributed as stated on the form.

#### 8.12 PERSONS TURNING THEMSELVES IN ON A WARRANT

- a. If a person presents themselves to BPD headquarters to turn him/herself in on a warrant, the district/squad that originated the warrant will be called to pick up the prisoner for processing at the City Court Booking.
- b. If no one from the squad/district is available a mobile patrol unit from B- District will be dispatched to process the arrest.
- c. The prisoner will be transported to the City Court Booking for processing as described above.
- d. Appearance tickets should be issued, whenever possible, to cut down on the number of prisoners needed to be held for arraignment. (Appearance tickets are not to be issued for warrant arrests). It will be the responsibility of the on-duty City Court Lock-up Lieutenant or his/her designee to issue Appearance Tickets. City Court Booking will give the prisoner a copy of the signed Appearance Ticket and advise him/her of their return date for court. A copy will be made and inserted into the prisoner’s CCB file.
- e. All confiscated weapons shall be recorded on a P-10a (Property Report) and secured at Buffalo Police Department Headquarters, as is the present policy.
- f. Evidence will also be handled as per those procedures outlined in the Manual of Procedures.

#### 8.13 PREPARING AND HANDLING ARREST DOCUMENTS

- A. The arrest documents that are prepared shall conform to those required by existing CCB policies and procedures.
- B. Arresting Officers shall use extreme care when charging a prisoner, making certain that all of the elements necessary for sustaining the charge are present. Officers shall not "overcharge" a defendant but shall place only those charges which they reasonably believe can be sustained by the available evidence. Disputes concerning the propriety of placing certain charges shall be resolved by the Lieutenant in charge of City Court Booking, or in his/her absence, the 911 Communication Lieutenant
- C. In executing an Accusatory Instrument, the name of only one Officer shall appear and it shall be the name of the Officer having the most factual knowledge of the case (refer to M.O.P. Chapter 6).
- D. The arresting officer shall assist CCB personnel in completing the Buffalo Police Department Report to the District Attorney (P-32) and the Buffalo Police Department Misdemeanor VTL Arrest form (P-33) (refer to M.O.P. Chapter 6).
  - 1. Special attention shall be given to section "H" on form P-32. This section shall not contain facts that are already contained in the Information/Complaint but shall only contain information that supplements the facts contained in the Information/Complaint. Examples include: background information, previous knowledge of the defendant, suspicions concerning the defendant, etc.
  - 2. The information contained on forms P-32 and P-33 will be used by the District Attorney's Office to determine the propriety of accepting pleas in specific cases. These reports are handled in a confidential manner, are not included in the Court file and are forwarded each day to the District Attorney's Office in a sealed envelope.
  - 3. In the event that the arresting officer has highly sensitive information concerning the defendant that (s)he deems would be inappropriate to reveal on the P-32, the officer may request under Section "H" that the District Attorney personally contact him/her.
- E. It shall be the responsibility of City Court Booking to prepare a cover folder containing all required documents.

8.14 FINGERPRINTING AND PHOTOGRAPHING PRISONERS

Prisoners requiring post-arrest fingerprinting and photographing shall be done as follows:

- A. Persons arrested and issued Appearance Tickets other than at the City Court Lock-up need not be photographed or fingerprinted before being released, but must return to City Court Booking for this purpose, after their arraignment. City Court Booking shall notify the command responsible for the persons arrest and that command shall send a representative to City Court Booking to assist in the process.

B. Children arrested as juvenile delinquents shall be photographed and fingerprinted only in accordance with the current sections of appropriate NYS and/or federal law (see Chapter 4).

8.16 PRISONERS CHARGED BY THE BUFFALO POLICE WHO ARE ALSO WANTED BY AN OUTSIDE AGENCY

In addition to all the normally required arrest documentation, City Court Booking shall place in the court folder, the appropriate copy of the "Apprehension for Outside Agency" form. The form shall contain the name of the individual arrested, the Buffalo Police Department file number (AFN), the name of the wanting agency, and the authority under which the person is wanted (i.e. warrant number, detainer, hold for immigration, etc.).

8.15 BOOKING PRISONERS ARRESTED BY A PRIVATE PERSON

Article 140 of the Criminal Procedure Law dictates those circumstances in which a private person may make an arrest. (Refer CPL140.30 and 35). Prisoners arrested by a private person shall be booked at the City Court Lock-up.

8.17 ARREST MADE WHILE ENGAGED IN OUTSIDE EMPLOYMENT

Refer to M.O.P. Chapter 6.

8.18 PROCEDURE FOR DNA OWED BANNER

It shall be the policy of the City of Buffalo Police Department, to comply with the New York State E-justice portal for all requests for "DNA Owed", on arrested individuals processed at Buffalo City Court Booking,

Upon receiving a CHRI response as "DNA Sample Owed" the on duty CBB Lt will be notified:

1. The On-Duty CBB Lt will then have the arrested individual from which the sample is ordered, brought to the search room.
2. The On-Duty CBB Lt will then explain to the arrested person that "In accordance with a court order/verdict they have been required to submit a DNA Sample to New York State."
3. The On-duty CBB Lt will then inform the arrested individual that the sample is taken via oral swab and is a non-intrusive procedure. The NOTICE OF OBLIGATION TO PROVIDE A DNA SAMPLE FORM will be read to the arrested individual and obtain his/her permission to have the sample collected.
4. After gaining the arrested individuals consent and signature; the sample will be collected/submitted within the guidelines and instructions set forth by New York State.  
\*\*If the individual refuses to have the sample taken, the appropriate boxes of the THE NOTICE OF OBLIGATION TO PROVIDE A DNA SAMPLE FORM will be completed

and forwarded to the New York State office of Forensic Services, for further consideration of prosecution under applicable state law.

**Under NO circumstance will use of force be authorized to compel an arrested individual to submit a sample. Furthermore, NO employee of the Buffalo Police Department shall take any punitive action against the arrested individual for failing to provide a sample while held at CBB. The Buffalo Police Department instead will seek compliance through the means allowed by Statute 9 NYCRR 6191.3 of New York State.**

5. Upon completion an E-mail will be sent to the Erie County Holding center designated Deputy to inform them of completed samples.
6. The NYS DNA Databank envelope will be checked for completeness and sealed in accordance with the instructions and placed in departmental mail.

## **9.0 PRISONER'S PROPERTY**

### **9.1 POLICY**

All property seized by the BPD, other than evidence, contraband, or instrumentalities of a crime, shall be relinquished to the prisoner upon his/her release from custody. Property seized during arrest procedures and received by the City Court Lock-up shall be governed by their respective rules and regulations.

### **9.2 PROCESSING PRISONER'S PROPERTY**

- A. Prisoner's property not otherwise disposed of, shall be picked up Monday – Friday and taken to the Property Office on the first floor of Police Headquarters.
- B. When the Property Office is closed, property shall be stored in a locker within the Evidence/Property Room, at Police Headquarters. Oversized items may be left on the floor. Put the property with the completed paperwork, p10ccb2, inside a suitable locker. Enter the transaction in the log book and place the key in the drop safe.

### **9.3 RETURNING PRISONER'S PROPERTY**

- A. As a general rule, prisoner property is held at the City Court Lock-up. Arresting officers shall bring the yellow copy of the City Court Lock-up Property Receipt; form F-8-3150 City Court Lock-up to City Court Booking along with the P-163 Arrest Data Sheet. Property held at the City Court Lock-up shall be released at their discretion in accordance with their existing procedures.
- B. A prisoner who has been released from custody and appears at the Property Office to claim his/her large or bulky property being held there shall be required to establish

their identity as determined by the Property Office personnel. A copy of the identification presented shall be stapled to the Property Office copy of the P-10cbb(2).

- C. If the prisoner's property has already been forwarded to the Property Office, the person shall be referred to the Property Office window located at the Church Street entrance of Headquarters to reclaim the property.

#### 9.4 DISCREPANCY CLAIMS AND MISSING PRISONER'S PROPERTY

If a prisoner claims a mistake or discrepancy in the property returned, or prisoner's property is missing, and the property had not yet been forwarded to the Property Office, the Officer in charge of CCB shall thoroughly investigate the claim and make a complete report of the incident in writing to his/her Commanding Officer. The Commanding Officer shall review the report and make recommendations before forwarding it to the Commissioner's Office through the chain of command. Any disputes over property being taken by City Court Lock-up personnel shall be referred to the Buffalo Police Department.

#### 9.5 PRISONER'S VEHICLES

- A. If a prisoner has been arrested while in a vehicle, the vehicle will not ordinarily be towed unless:

1. the vehicle or its contents are evidence;
2. the vehicle is the instrumentality of a crime (e.g.. hit and run accidents);
3. the vehicle was used in a criminal transaction rendering it eligible for forfeiture;
4. the vehicle is seized pursuant to VTL 511-b;
5. the seizing officer determines the vehicle is likely to be damaged or stolen.

- B. Refer to M.O.P. Chapter 2 for instructions, if the vehicle is to be towed.

- C. If the vehicle is not to be towed, the arresting Officers, prior to transporting the prisoner for booking, shall:

1. secure the property in the vehicle unless:
  - a. any single item of property has an approximate value in excess of \$50.00, or the property has an approximate aggregate value in excess of \$200.00, in which case it shall be seized for safekeeping; or,
  - b. there exists a reasonable threat that if left in the vehicle, the property will be lost or stolen; or,
  - c. the property constitutes contraband or evidence;
2. if the property is not secured in the vehicle, and it is not evidence or contraband, it shall be held for safekeeping (refer to M.O.P. Chapter 18), and it shall be processed as specified in M.O.P. Chapter 18.

3. notify the district in which the arrest occurred of the vehicle's description and location, the date and time of arrest, the prisoner's name, the vehicle's condition and the arresting officers' names. District personnel shall periodically check on the vehicle.

D. If the vehicle of the prisoner is a commercial truck and it contains perishables, the arresting Officer shall:

1. if locally owned or operated, promptly notify the owner or other person who can take custody of the vehicle;
2. if not locally owned or operated and there is no local contact person, the Senior on-duty Commanding Officer of the unit making the arrest shall be notified and (s)he shall attempt to make contact with responsible parties to dispose of the property.

## **10.0 ARRESTS FOR DWI / DWAI**

### **10.1 POLICY**

It is the policy of the Buffalo Police Department to rigorously enforce laws that prohibit the operation of a motor vehicle while the driver is under the influence of alcohol or drugs. Special arrest procedures have been devised to meet the requirements necessary for successfully prosecuting this category of offender.

### **10.2 CONDUCTING FIELD SOBRIETY TESTS**

Members of the Department suspecting that an operator of a motor vehicle is under the influence of alcohol or drugs may conduct a field sobriety test. If used, these tests must be conducted in an area and under conditions that assure the safety of the motorist and that result in an accurate assessment of the operator's coordination and motor skills. Tests of this nature shall not be conducted on slippery or uneven surfaces, or under weather conditions that would adversely affect the Officer's evaluation. Officers may use one, or all, of the following tests:

#### **A. Finger to Nose Test**

The subject is requested to:

1. stand with feet together and arms at the side
2. turn the palms outward and point with each index finger
3. close his/her eyes and tilt the head back slightly
4. touch the tip of the nose with one index finger at a time
5. return the hand to the side.

#### **B. Alphabet Test**

The Officer must first determine how far the subject went in school. The subject is then asked to recite the alphabet beginning at a letter selected by the Officer. If the



subject stops or misses a letter, (s)he should be asked if (s)he is done. The Officer should note the manner of the subject's speech.

C. Walk and Turn Test

The subject is requested to:

1. place feet on a straight line, left foot in front of right foot, heel to toe
2. keep arms at side and eyes watching his/her feet
3. take nine steps forward, turn, and take nine steps back, counting each step.

10.3 BREATHALYZER TESTING - GENERALLY

Persons arrested for alcohol/drug related driving offenses shall be taken to the Accident Investigation Unit before being booked at City Court Booking. The Breathalyzer test is the standard method of testing used by this Department for persons arrested for DWI and DWAI and it shall be used in every case unless there are extenuating reasons why the Breathalyzer test cannot be administered. (Refer to M.O.P. Chapter 3 for alternatives).

The Breathalyzer Operator shall observe the subject for twenty minutes prior to administering the Breath Test. This minimum twenty minute observation period is not required when the type of test used is a blood test. All tests - breathalyzer or blood tests- of persons suspected of driving while under the influence of alcohol/drugs must be completed within two hours of the time of arrest.

Persons suspected of driving while under the influence of alcohol/drugs must be kept under constant observation from the time of arrest until the time the chemical test is administered. Such person shall not be permitted to place anything in his/her mouth or to smoke within twenty minutes prior to the test.

A person must be allowed to contact an attorney before taking an alcohol/drug test if (s)he so requests and there remains sufficient time to complete the test. Failure to contact an attorney in a timely fashion does not relieve the person of the responsibility for taking the test. If a person requests an attorney the arresting Officer shall:

1. dial the attorney's phone number and confirm contact;
2. make a record of:
  - a. the attorney's name,
  - b. the telephone number,
  - c. the time of the call,
  - d. whether the attorney was contacted;
3. if contact is made, allow the person to speak with the attorney.

Persons suspected of driving under the influence of alcohol/drugs "... shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer." (VTL 1194.4b) Members are not required to inform the defendant of this right to a second test. Failure to allow this second test within a reasonable time, if requested, could result in the suppression of the original test. Additional testing is at the defendant's own expense and (s)he shall be responsible for

documenting the chain of custody and having the sample analyzed.

#### 10.4 BREATHALYZER TESTING PROCEDURE

If the defendant has been arrested for DWI (s)he shall be advised as follows (from the rights card P- 90D):

1. "Your are under arrest for driving while intoxicated"
2. "A refusal to submit to a chemical test or any portion thereof, will result in the immediate suspension and subsequent revocation of your license or operating privilege, whether or not you are found guilty of the charge for which you were arrested"
3. "Your refusal to submit to a chemical test, or any portion thereof, can be introduced into evidence against you at any trial, proceeding or hearing resulting from this arrest"
4. "Will you submit to a chemical test to determine the alcohol content or drug content of your blood?"

If the defendant has been arrested for DWAI (s)he shall be advised as follows:  
(from the rights card P- 90D):

1. "You are under arrest for driving while ability impaired by the use of drugs"
2. "A refusal to submit to a chemical test, or any portion thereof, will result in the immediate revocation of your license or operating privilege, whether or not you are found guilty of the charge for which you were arrested"
3. "Your refusal to submit to a chemical test or any portion thereof, can be introduced into evidence against you at any trial, proceeding or hearing resulting from this arrest"
4. "Will you submit to a chemical test to determine the alcohol or drug content of your blood?"

The defendant shall be issued the Miranda Warnings.

If the defendant refuses to submit to a chemical test, the procedures outlined in M.O.P. Chapter 3 shall also be followed.

If the person agrees to submit to a chemical test, the test shall be conducted at the Accident Investigation Unit by a NYS certified Breathalyzer operator. The Breathalyzer operator shall be responsible for preparing all reports necessitated by the administration of the test and shall ensure that all proper procedures are followed.

The arresting officer shall prepare the New York State Standardized DWI Arrest Instrument (DCJS-3204). The form will be completed for all arrests alleging violations of any section of 1192 VTL. A copy of the report will be included in the case file.

The arresting Officer shall obtain from City Court Booking, a print out of the defendant's current driving record and deliver it to the City Court Lock-up for inclusion in the defendant's Court Folder.

After the test is administered, or after the defendant refuses to submit to a chemical test, all proper documents shall be prepared and the defendant taken to City Court Lock-up for booking.

#### 10.5 ALTERNATIVE TO BREATHALYZER TESTING

A person suspected of driving while under the influence of alcohol/drugs may be subjected to a blood test when:

1. the defendant is hospitalized;
2. the defendant is physically unable to take a breath test;
3. the Breathalyzer is inoperable or a certified Breathalyzer operator is unavailable;
4. the defendant is suspected of being under the influence of drugs;
5. in cases of fatal or serious motor vehicle accident injuries.

In cases in which a blood test is to be administered, the following procedure is applicable:

1. The defendant shall be transported to a hospital if (s)he is not already confined there. Blood may only be withdrawn by a licensed physician, registered nurse, registered physician's assistant, or under the supervision and direction of a physician, medical laboratory technician, medical technologist, phlebotomist or an advanced emergency medical technician. Only a non-alcohol swab shall be used to cleanse the area where the defendant's blood is to be drawn.
2. The hospital staff shall be informed that the defendant is under arrest for driving while under the influence of alcohol/drugs. If the defendant is conscious (s)he must be given the appropriate warnings as outlined in M.O.P. Chapter 3 above. If the defendant then refuses to have blood withdrawn, his/her action should be construed as a refusal to submit to a chemical test. If the defendant is unable to give consent due to his/her injuries, the arresting Officer shall direct the hospital staff to withdraw the blood, basing the Officer's authority on the defendant's Implied Consent as specified in VTL 1194.2. If the defendant was involved in an accident in which there was a fatality or serious physical injury to a person other than the defendant, and (s)he does not give consent, a Court Order may be obtained compelling the defendant's blood to be withdrawn, ( Refer to M.O.P. Chapter 3).

#### Handling the Blood Sample

1. The blood must be drawn in the presence of the arresting officer. After it has been drawn it shall be given to the arresting officer and (s)he shall check the test tube sample to ensure that a label is affixed and that the label contains the name or initials of the physician or other person who withdrew the blood. The Officer delivering the blood sample to the CPS Lab shall also inscribe his/her initials on the label.

2. The Officer shall then place the blood sample with two (2) completed copies of a "Request for Forensic Examination" (DCPS-L-1) in an envelope, seal the envelope, place his/her initials on the outside of the envelope and deliver the envelope to the CPS Lab.
3. When the CPS Lab is not open, the Officer shall deliver the envelope and its contents to the CPS depository located at 45 Elm Street.
4. A copy of the New York State Standardized DWI Arrest Instrument (DCJS-3204) shall be forwarded to the CPS Lab along with the blood sample.
5. The arresting Officer shall be responsible for maintaining the chain of custody of blood samples submitted as evidence.
6. After the CPS Lab has completed the blood testing, they shall forward the results of the examination to the arresting Officer on form DCPS-L-1.
7. The Officer shall then proceed to City Court Lock-up to book the defendant.

#### 10.6 DEFENDANT'S REFUSAL TO SUBMIT TO A CHEMICAL TEST

If a defendant refuses to submit to a chemical test after being given all the appropriate warnings, the arresting Officer shall prepare, the "*Report of Refusal to Submit to a Chemical Test*" (form AA-134). This form, along with all other required forms shall be delivered to City Court Lock-up and included in the defendant's Court Folder.

#### 10.7 COMPELLING SUBMISSION TO A CHEMICAL TEST – FATAL AND SERIOUS PHYSICAL INJURY ACCIDENTS

##### Preliminary Requirements

There must exist, reasonable cause to believe that:

1. the subject was the operator of the motor vehicle involved in an accident; and,
2. a person, other than the defendant was either killed or sustained serious physical injury as that term is defined in Section 10 of the Penal Law: and,
  - a) the subject operated the vehicle in violation of VTL 1192, or that a preliminary breath test indicated that the subject had consumed alcohol; and,
  - b) the subject is under arrest; and,
  - c) the subject has refused to submit to a chemical test or is unable to give his/her consent.

##### Procedure

1. The arresting Officer shall request the assistance of a member of the Accident Investigation Unit (AIU).
2. The AIU member shall contact the Assistant District Attorney on call and apprise him/her of all relevant circumstances. If there exists reasonable cause to justify the issuance of a court order, the Assistant District Attorney shall provide the member with the telephone number of a judge who is to be available for such purpose.

3. When the member speaks with the judge, the member shall have a copy of form P-97 "Verbatim Longhand Notes for Application for Compulsory Chemical Tests Pursuant to Vehicle and Traffic Law Section 1194(a)" and form P- 97A, the court order.
4. If the judge grants the order, the member must sign the judge's name to the court order (P-97A) and the member's own name as the one who signed the order for the judge.
5. The appropriate hospital personnel shall be informed by the member that a court order has been issued to compel the subject to submit to a chemical test.
6. A blood test sample shall then be taken from the subject (Refer to Chapter 3, Section 12.15B and C). The subject cannot refuse to submit to this test and the use of reasonable physical force may be used to compel submission.
7. The court order shall not be left at the hospital but must be delivered to the issuing judge within twenty-four (24) hours of being obtained. This can be accomplished by delivering the order either to the issuing judge or to the District Attorney's Office.

#### 10.8 DRUG RECOGNITION EXPERT

The Buffalo Police Department Accident Investigation Unit (AIU) will keep and maintain an active list of certified drug recognition experts to be used when the Accident Investigation Unit investigators deem necessary.

#### 11.0 DOMESTIC VIOLENCE INCIDENTS

##### 11.1 POLICY:

It is the policy of the Buffalo police Department to respond to Domestic Violence Incidents in accordance with The Family Protection and Domestic Violence Intervention Act of 1994, as amended and any other statutory requirements affecting the law enforce response to domestic incidents. In support of this the Buffalo Police Department shall:

- A. Reduce the incidence and severity of domestic disputes;
- B. Protect victims of domestic disputes and provide them with support through a combination of law enforcement and community services;
- C. Promote Officer safety by ensuring that Officers are fully prepared to respond to, and effectively deal with domestic incident calls for service;
- D. Provide a proactive, pro-arrest approach in responding to domestic incidents.

##### 11.2 DEFINITIONS

- A. A *domestic incident* is any disturbance, dispute, violence (threatened or committed), or report of a crime or an offense between individuals within a *domestic relationship* where police intervention occurs.
- B. A *domestic relationship* includes:

Persons who are “members of the same family or household” as defined in Criminal Procedure Law, Section 530.11(1) and Family Court Act, Section 812(1):

1. Persons related by consanguinity (blood) or affinity (marriage); or
2. Persons legally married to one another; or
3. Persons formerly married to one another; or
4. Persons who have a child in common, regardless whether such persons have been married or lived together at any time.

A *domestic relationship* also includes any person identified as a member of the same family, and persons who are or have been in an intimate relationship, including same sex couples, regardless of whether such persons have lived together at any time. Factors Officers may consider in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of the relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”.

### 11.3 911 PROCEDURES

- A. Whenever the complaint writer reasonably suspects that the safety of the victim is in danger, the call shall be classified as a "violent domestic" and dispatched as a priority two call. All other domestic dispute calls will be dispatched as priority three calls.
- B. Dispatchers shall not cancel a police response to a domestic dispute complaint based solely on a follow-up call from the location of the original call, requesting such cancellation. However, the dispatcher shall advise the officers of the request.

### 11.4 RESPONDING OFFICER PROCEDURES

#### A. On Scene Investigation

When responding to a domestic dispute call, the officers shall:

1. Restore order by gaining control of the situation;
2. Take control of all weapons used or threatened to be used;
3. Assess the need for medical attention and call for medical assistance if indicated;
4. Interview all parties, separately and alone if practical;
5. After each party has been interviewed, responding officers shall confer to determine if an arrest should be made or whether other action should be taken;
6. Collect and record evidence where appropriate;
7. Complete appropriate crime or incident reports where necessary. The New York *Domestic Incident Report* (DCJS-3221) shall be completed in every instance of a *domestic incident*, whether or not a violation of law is

determined to have occurred. The responding Officer is required (CPL 530-11-6) to “advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim of a family offense under the relevant provisions of the criminal procedure law, the Family Court Act and the Domestic Relations Law. Such notice shall be prepared in Spanish and English and if necessary, shall be delivered orally...”. Therefore, the responding Officer must distribute to the victim the pink information sheet attached to Page 2 of the *Domestic Incident Report* (DCJS-3221).

8. If the offender has left the scene and a crime has been committed, the officers will attempt to locate and arrest the suspect;
9. The responding Officer will complete a domestic incident referral card (P-1369DV), and give same to the complainant. A warrant Card (P-1369) shall not be issued in domestic incident cases.

#### B. Arrest

1. Officers will make an arrest and will not attempt to mediate or reconcile the parties whenever:
  - a. There exists reasonable cause to believe that a *felony* was committed, whether in the officer's presence or not;
  - b. There exists reasonable cause to believe that a misdemeanor was committed, whether in the officer's presence or not.
  - c. There exists reasonable cause to believe that a *violation* occurred in the officer's presence;
  - d. A *violation* has occurred out of the Officer's presence and the victim will make a citizen's arrest and sign the required accusatory instruments;
  - e. There exists reasonable cause to believe that a violation of an Order of Protection has occurred and the subject has knowledge of the existence of the order.

In domestic incidents, the officer shall attempt to identify and arrest the primary physical aggressor after considering the comparative extent of any injuries inflicted by and between the parties; whether any such person is threatening or has threatened future harm against another party or another family or household member; whether any such person has a prior history of domestic violence that the officer can reasonably ascertain; and whether any such person acted defensively to protect himself or herself from injury. The officer shall evaluate each complaint separately to determine who is the primary physical aggressor, and shall not base the decision to arrest or not to arrest on the willingness of a person to testify or otherwise participate in a judicial proceeding.

The Officers should state to the victim and the offender that the criminal action is being initiated by the state and not the victim. The arresting Officer shall indicate to the CCB personnel that the arrest is in connection with a domestic incident. Absent exigent circumstances, appearances tickets shall not be issued nor pre-arraignment

bail set. Deviation requires prior approval of the 911 Lieutenant. A victim shall never be discouraged or prevented from filing a petition in Family Court or signing an accusatory instrument to initiate an action in Criminal Court.

If the offense to be charged is either a misdemeanor or felony, and a member of the Special Victims Unit is on duty, that unit shall be notified.

C. Victim Assistance/Crime Prevention

Many victims of domestic disputes feel trapped in violent relationships because they are unaware of the resources available to help them or that domestic violence is a crime. Also, the offenders may have threatened further violence if the victim attempts to leave or seek assistance. Officers are therefore required to provide the following assistance to victims, batterers and where appropriate, the children:

1. Advise all parties of the criminal nature of family violence, its potential for escalation, and that help is available;
2. Secure medical treatment for victims;
3. Insure the safety of children, including checking for signs of child abuse since domestic violence and child abuse are often interrelated;
4. Remain on the scene until satisfied that there is no threat to the victims;
5. Remain on the scene to preserve the peace as one person removes personal property;
6. Provide the victim with referral information for legal or social assistance and support;
7. If necessary, transport the victim and children to a safe haven.

11.5 FORMS TO BE COMPLETED

A. For all domestic incidents, whether a violation of law has occurred or not, the responding Officer must complete:

1. NYS Domestic Incident Report (DCJS 3221);
2. the pink and victim information sheet are issued to the victim.

B. For domestic incidents in which a crime (i.e. felony or misdemeanor) has occurred, the responding officer must complete the Domestic Incident Report and an incident/crime report.

C. For domestic incidents in which an arrest is made, the arresting Officer must complete:

1. a Domestic Incident Report;
2. an incident/crime report (including arrests for violations);
3. accusatory instruments, depositions and related court papers as the case requires



11.6 POLICE ACADEMY RESPONSIBLE FOR TRAINING

The Buffalo Police Training Academy will be responsible for training Department members about family offense laws, including the intake and recording of victims' statements, use of domestic violence incidence report forms, mandatory arrest provisions, victims' rights and specialized evidence collection.

11.7 DOMESTIC DISPUTES INVOLVING DEPARTMENT MEMBERS

All of the procedures involving domestic disputes are equally applicable to Department members who are involved as parties to a domestic dispute.

11.8 OFFICERS RESPONDING TO DOMESTIC DISPUTES INVOLVING DEPARTMENT MEMBERS

Officers responding to incidents of domestic disputes involving department members shall follow the procedures outlined in M.O.P. Chapter 3. In addition, they shall request the appearance of a supervisor in every such case.

11.9 SUPERVISOR'S DUTIES - DEPARTMENT MEMBERS INVOLVED

Whenever a Supervisor responds to a domestic dispute involving a Department member (s)he shall:

- A. Take command of the incident and insure that all Department guidelines are followed;
- B. If an arrest of a Department member is required:
  1. personally place the Department member under arrest;
  2. through the Dispatcher or 911 Lieutenant, request the presence of a member of the Internal Affairs Division.
- C. Whether or not an arrest is made, the Supervisor must seize all guns and firearms, regardless of legal authority under which they are held, if, in the Supervisor's judgment, the health or safety of any individual may be jeopardized thereby.
- D. Whether or not an arrest is made, the Supervisor shall prepare a detailed report (5 copies) of the incident and immediately forward one copy to the Commissioner and one copy to IAD. The remaining copies shall be forwarded through proper channels to IAD.
- E. Whenever it comes to the attention of a Supervisor that a Department member has been involved in a domestic dispute outside of the City of Buffalo, (s)he shall forward a report of the incident to the Commissioner and to the Internal Affairs Division. If a domestic dispute related arrest of a Department member is to be made outside the city, The 911 Communications Lieutenant shall send a member of the IAD to assist the outside agency.

#### 11.10 DUTIES OF COMMANDING OFFICERS AND/OR DISTRICT CHIEFS

- A. Commanding Officers and/or District Chiefs shall review reports submitted by Supervisors concerning Department members involved in domestic disputes. After determining that the report is complete and accurate, they shall forward the report to the Internal Affairs Division together with their recommendations.
- B. They shall assist the Internal Affairs Division in completing the investigation when requested.
- C. In all instances, whether the Department member is the alleged abuser or the victim, the Commanding Officer and/or the District Chief shall apprise the Department member of the availability of the Employee Assistance Program (EAP) and encourage him/her to utilize its services.

#### 11.11 INTERNAL AFFAIRS DIVISION – RESPONSIBILITIES

In incidents of domestic disputes involving Department members, the Internal Affairs Division shall:

- A. Respond to all domestic disputes involving the arrest of Department members, whether or not within the City limits;
- B. Make a determination as to the propriety of immediately suspending the arrested member from duty;
- C. Fully prepare a disciplinary case involving any violation of Department rules;
- D. Cooperate with the District Attorney's prosecution of a criminal case;
- E. Make recommendations to the Commissioner.

#### 11.12 INVOLVED MEMBER'S RESPONSIBILITY

- A. Federal Law, Title 18 U.S.C. 922 (g) (8) requires that whenever a person is served with an order of protection stemming from a domestic violence incident, that person must relinquish all personal weapons. 18 U.S.C. 925 (a) (1) exempts Police Officers but only for weapons issued by the Department and while the member is on duty.
- B. In any case in which an employee of the Buffalo Police Department is named as a defendant/respondent and is served with an Order of Protection, that employee must turn in his/her personal weapons to either the Property Office, a legitimate firearms dealer or the Bureau of Alcohol Tobacco and Firearms. A copy of the Order of Protection and a copy of the receipt for weapons relinquished will be forwarded to IAD through the chain of command.

- C. In cases involving sworn members of the Department, the Department issued weapon will be secured at the member's command and is to be in the member's possession only while the member is on duty.

## **12.0 ORDERS OF PROTECTION**

### **12.1 POLICY**

It is the policy of the Buffalo Police Department to cooperate fully with the local and superior courts in the enforcement of Orders of Protection and to place under arrest those persons who are suspected of being in violation of such Orders.

### **12.2 ENFORCING ORDERS OF PROTECTION – ARREST**

- A. The member must first determine that a valid Order of Protection exists and that the person suspected of violating the Order had knowledge of its existence. Refer to M.O.P Chapter 3.
- B. If there exists, reasonable cause to believe that the person has violated the terms of a valid Order of Protection, the person shall be arrested and taken to the City Court Lock-up for booking. There is no requirement that the violation occurred in the member's presence and the requisite "reasonable cause to believe" a violation occurred, may be based on other factors existing at the time.
- C. The complainant shall be required to make a Supporting Deposition, stating the facts that substantiate the violation. The Supporting Deposition shall be included in the Court File along with a copy of the Order of Protection.
- D. In addition to violating the Order of Protection, the defendant shall be charged with any other criminal conduct which the member has reasonable cause to believe that the defendant committed. This includes, but is not limited to, those sections of the NYS Penal Law prohibiting Criminal Contempt (PL 215.50, PL 215.51 and PL 215.52).
- E. If the Order of Protection is one issued by Family Court, the victim is also required to appear in Family Court to file a petition and shall be so advised.

### **12.3 HANDLING ORDERS OF PROTECTION**

Refer to M.O.P Chapter 6.

## **13.0 ADDITIONAL BOOKING PROCEDURES IN PARTICULAR CASES**

### **13.1 HOMICIDE ARRESTS**

Whenever any member of the Department, other than a member already assigned to the Homicide Squad, makes an arrest for any homicide related offense, the arresting Officer shall immediately notify the Homicide Squad. Instead of transporting the prisoner directly to the City Court Lock-up, the arresting Officer shall take the prisoner directly to the Homicide Squad. The arresting Officer shall not interrogate, question or Mirandize

the suspect. The Homicide Squad will assume control of the investigation and the arresting Officer will be guided by the direction of the Officer in charge of the Homicide Squad.

### 13.2 WELFARE ABUSES

Whenever information is received that an arrested person may be involved in welfare abuses of any kind, the information shall be forwarded to the Erie County Department of Social Services.

### 13.3 FOREIGN NATIONALS

The arrest of foreign nationals is governed by various treaties that the United States has entered into with other countries. Generally, these treaties require that when foreign nationals are arrested, including US citizens when they are arrested outside their own country, they must be afforded an opportunity to have a representative of their own country notified of the arrest. Whenever a foreign national has been arrested, the 911 Communications Lieutenant and the Duty Inspector shall be notified. (S)he shall promptly contact the appropriate foreign consulate or embassy and make a record of such notification. The 911 Communications Lieutenant shall keep a current list of telephone numbers of foreign consulates and embassies. Subject to existing laws and Department regulations concerning access to prisoners, consular offices have a right to visit their nationals who are held in custody. They may converse and correspond with the prisoner and arrange legal representation, but they are precluded from taking any action on the prisoner's behalf if the prisoner refuses such assistance. The 911 Communications Lieutenant shall maintain a current and accurate list of the countries under this category. Members of the Department should contact the US Department of State concerning any questions that arise concerning foreign nationals at (202) 647- 4415. Written inquiries may be addressed to the Office of Assistant Legal Adviser for Consular Affairs, Department of State, Washington, DC 20520.

#### A. Consular Notification and Access

The following information are instructions for Federal, State and Local Law enforcement and other officials regarding foreign nationals in the United States and the rights of Consular Officials to assist them.

##### 1. Summary of Requirements Pertaining to Foreign Nationals:

- a. When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified
- b. In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes.
- c. Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance
- d. When a government official becomes aware of the death of a foreign national; consular officials must be notified.

- e. When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.
- f. When a foreign ship or aircraft wrecks or crashes, consular officials must be notified.

2. Steps to Follow When a Foreign National is Arrested or Detained:

- 1) Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
- 2) If the foreign national's country is **not** on the mandatory notification list (see below):
  - \* Offer without delay, to notify the foreign national's consular officials of the arrest/detention.
  - \* If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay.
- 3) If the foreign national's country **is** on the list of mandatory notification countries (see below):
  - \* Notify that country's nearest consular officials, without delay, of the arrest/detention.
  - \* Tell the foreign national that you are making this notification.
- 4) Keep a written record of the provision of notification and actions taken.

**Mandatory Notification Countries and Jurisdictions**

Algeria	Mauritius
Antigua and Barbuda	Moldova
Armenia	Mongolia
Azerbaijan	Nigeria
Bahamas, The	Philippines
Barbados	Poland (non permanent resident only)
Belarus	Romania
Belize	Russia
Brunei	St. Kitts and Nevis
Bulgaria	St Lucia
China (not Republic of China)	St Vincent and the Grenadines
Costa Rica	Seychelles
Cyprus	Sierra Leone
Czech Republic	Singapore
Dominica	Slovakia
Fiji	Tajikistan
Gambia, The	Tanzania
Georgia	Tonga
Ghana	Trinidad and Tobago

Grenada  
Guyana  
Hong Kong  
Hungary  
Jamaica  
Kazakhstan  
Kiribati  
Kuwait  
Malaysia  
Malta

Tunisia  
Turkmenistan  
Tuvalu  
Ukraine  
United Kingdom (British dependencies also)  
USSR (travel on old passport-refer to new country)  
Zambia  
Zimbabwe

\* More information may be obtained from US Department of State “Consular Notification and Access” Booklet and Pocket Card.

Information on Diplomatic Immunity and BPD policy can be found in the Manual of Procedure Chapter 3.

#### 13.4 SEX RELATED OFFENSES

If any member of the Department, other than a member already assigned to the Special Victims Unit, makes an arrest involving a sex related offense as defined in NYS Penal Law 130, the Special Victims Unit shall be contacted. Statements of victims of sex offenses shall be taken by a member of the Special Victims Unit. The Special Victims Unit shall assist the arresting Officer in gathering evidence and developing the case.

#### 13.5 ARREST OF OPERATORS OF COMMON CARRIERS

- A. When it becomes necessary to arrest the operator of a common carrier (e.g. bus, train, etc.), the arresting officer shall not take the operator off the common carrier unless there is another employee present capable of taking the arrested employee's place. The operator who has been arrested shall be given an opportunity to notify his/her supervisor whenever possible.
- B. If there is no substitute capable of taking over the operator's responsibilities, the arresting officer will accompany the operator to the transit garage or railroad depot to make the arrangements necessary to safeguard the passengers and equipment.
- C. The arresting officer will, at the first opportunity, notify his/her immediate supervisor of the circumstances of the arrest.

#### 13.6 TRAFFIC ARRESTS

Refer to M.O.P. Chapter 7.

#### 13.7 MASS ARRESTS

Refer to M.O.P. Chapter 11.

13.8 MILITARY DESERTERS  
Refer to M.O.P. Chapter 14.

**14.0 MENTALLY ILL**

14.1 POLICY

It is the policy of the Buffalo Police Department to treat all persons suffering from an affliction of mental illness in a humane manner. Members must use appropriate caution in dealing with such persons to protect themselves and others, as well as the mentally ill person himself/herself. Proper medical and psychological attention will be provided in those instances where the person is a danger to himself or others.

14.2 MENTAL ILLNESS DEFINED

Mental illness means an affliction with a mental disease or condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation. (Sec.03.20 MHL)

14.3 POWERS AND DUTIES POLICE/PEACE OFFICERS

A. Emergency Admissions by Police Officers

1. Any Peace Officer acting pursuant to his/her special duties, or any Police Officer, may take into custody any person who appears to be mentally ill and is conducting himself/herself in a manner which is likely to result in serious harm to himself/herself or others, (Sec 9.41 MHL). "Likely to result in serious harm" means:
  - a. substantial risk of physical harm to himself/herself as manifested by physical threats of, or attempts at suicide or serious bodily harm, or other conduct demonstrating that (s)he is dangerous to himself/herself; or
  - b. a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.
2. If the above criteria are met and the person is taken into custody, (s)he shall be immediately taken to the Erie County Medical Center for evaluation.

B. Emergency Admissions by the Director of Community Services

1. The Director of Community Services or his/her designee has the power to direct the removal of any person within his/her jurisdiction to an approved hospital if the parent, spouse, child, physician, health officer, Peace Officer, or Police Officer reports to him/her that such person has a mental illness for which immediate treatment and care in a hospital is appropriate and which is likely to result in serious harm to himself or others (Sec. 9.45 MHL).
2. It is the duty of Peace Officers acting pursuant to their special duties, and Police Officers to take into custody and transport such persons. Under this

section the Police Officer does not have the authority to make an independent evaluation of the mental health of such person.

3. Certain members of the Emergency Outreach Service of Crisis Services are designees of the Director of Community Services. As such, they can direct a Police Officer to transport an apparently mentally ill person to a hospital. The designee must provide the Police Officer with a completed copy of the form entitled "Request to Take Mentally Ill Person into Custody" before the Officer is required to transport the person.

C. Apprehending Escapees from a Mental Health Facility

A person who has been committed or admitted to a Mental Health facility and has escaped or who resists or evades lawful custody, may be apprehended, restrained, transported to, and returned to such facility by a Peace Officer acting pursuant to his/her special duties or any Police Officer. It shall be the duty of Buffalo Police Department members to assist any Mental Health Department representative in taking any such person into custody.

D. Mental Hygiene Warrants

1. A court may issue a warrant for a person's arrest based on a verified statement that establishes that the person is:
  1. mentally ill, and:
    - i. that the person engages in conduct that would likely result in serious harm to himself or others; or
    - ii. that the person engages in conduct that would otherwise constitute disorderly conduct.
2. Mental Hygiene Warrants shall be served only during the times that court is in session and the person can be arraigned.
3. If a sworn member of the Department comes into contact with a person for whom a Mental Hygiene Warrant is outstanding and court is not in session, the person may be apprehended and taken to the Erie County Medical Center if the criteria set forth in M.O.P. Chapter 3 are met. If the criteria in M.O.P. Chapter 3 are not met then the apprehension of the person shall be postponed until court is next in session.

14.4 HANDLING THE MENTALLY ILL

A. General Guidelines

1. The person must be handled with a gentle firmness. Without unduly agitating the mentally ill person beyond his/her current state, the Officer must exert control over the situation, attempting to minimize the potential danger to himself and to the mentally ill person.
2. Members shall attempt to obtain the cooperation of the patient's family and friends in determining the proper action to be taken.
3. Officers shall avoid handling mentally ill persons alone. The Officer would be taking an undue risk, and the patient would be less deterred from resisting than if at least two Officers were present.



4. Officers shall not ride alone in a vehicle with a mentally ill person. The potential for physical danger is too high and the possibility of unfounded allegations of improper conduct is too great.

B. Using Force and Using Restraints

1. If it becomes necessary to use force or restraint, the Officers shall use only that amount of physical force necessary to take the person into custody. Use of the nightstick should be avoided and it should only be used when necessary to defend the Officer from physical injury. When employing force or restraint it is often advisable to approach the person from opposite directions simultaneously, and subdue the person quickly.
2. Handcuffs, or restraints provided by the ambulance crew, shall be used in every instance in which a mentally ill person resists being taken into custody.
3. Mentally ill persons who physically resist being taken into custody should be transported to the hospital by an ambulance after being placed in restraints.

C. Armed and Dangerous Mentally Ill Persons

If a mentally ill person is armed, the Crisis Management Team and the SWAT Team shall be called in accordance with M.O.P. Chapter 11.

D. Searching the Mentally Ill Person

Any apparently mentally ill person taken into custody by a member of the Department shall be thoroughly searched before being placed in a vehicle and transported to a medical facility.

14.5 TRANSPORTING APPARENTLY MENTALLY ILL PERSONS

- A. Apparently mentally ill persons who have not resisted being taken into custody and who are not violent or combative may be transported to the hospital in a Departmental vehicle. All other mentally ill persons shall be transported by ambulance.
- B. If requested to do so by an ambulance attendant or physician, an Officer shall ride in an ambulance that is transporting a mentally ill person. In such case, another Officer in a police vehicle shall follow the ambulance to the hospital.
- C. Any female patient that is being transported to or from a facility shall be accompanied by another female unless she is accompanied by her father, brother, husband or son (MHL 33.17).

14.6 DISPOSITION OF MENTALLY ILL PERSON'S PROPERTY

- A. If a criminal charge has been placed against an apparently mentally ill person, his/her property shall be treated as prisoner's property and handled in accordance with existing procedures.
- B. If no criminal charge has been placed, the apparently mentally ill person's property

shall be delivered to the hospital along with the patient.

- C. Contraband articles shall be retained and handled consistent with procedures outlined in M.O.P. Chapter 5.

#### 14.7 IF NO CRIMINAL CHARGES ARE PLACED

- A. Mentally ill persons who are not charged with a criminal offense and who have been taken into custody under a provision of the Mental Hygiene Law shall be taken directly to the Erie County Medical Center for examination and treatment. The mentally ill person is not to be taken to the City Court Lock-up for booking.
- B. Persons apprehended on the authority of a Mental Hygiene Warrant shall be taken directly to Court and shall not be taken to the City Court Lock-up unless there are also criminal charges outstanding. MHL warrants are to be served only when court is in session.
- C. Whenever questions arise as to the propriety of an examination or admission, members may call the Erie County Medical Center's Comprehensive Psychiatric Emergency Program (CPEP) at 834-3131 or they may call the Crisis Services Suicide Prevention outreach team at 898-3462.

#### 14.8 IF CRIMINAL CHARGES ARE PLACED

##### A. When Court is in Session

When court is in session and an apparently mentally ill person is charged with a criminal offense, the person shall be booked at the City Court Lock-up on the criminal charge and then taken to court for arraignment as soon as possible. It is within the court's discretion to order the person to undergo psychological evaluation.

##### B. When Court is Not in Session

When a criminal charge is placed against an apparently mentally ill person and court is not in session, the person shall be taken to the City Court Lock-up for booking on the criminal charge unless circumstances mandate the person's immediate removal to the Erie County Medical Center. Arrest documents are only prepared for the criminal charges and not the Mental Hygiene Law charges.

##### C. Hospital Guard

No Police hospital guard will be required for mentally ill persons who are also charged with a criminal offense except in unusual cases, such as a serious felony or for some other extenuating reason. Only the Duty Inspector or any Officer senior in rank can approve a request for a police hospital guard. The hospital should be requested to notify the Department of the date and time that the patient is to be released.

#### 14.9 IF THE APPARENTLY MENTALLY ILL PERSON IS REFUSED ADMISSION

- A. If the apparently mentally ill person is refused admission at ECMC, and the conduct in which the person had engaged would have otherwise constituted an offense (e.g. disorderly conduct, harassment, etc.), the person may be taken to the City Court Lock-up for booking on that charge. In this instance a notation that the person was refused hospital admittance must be recorded on the "Request for Examination (form P-1321), as well as the name of the physician who refused such admittance.
- B. If the apparently mentally ill person is refused admission at ECMC and the examining physician recommends a course of action for the mental and physical welfare of the person that does not include preferring criminal charges, the Officer shall attempt to comply with the physician's recommendations where feasible. When in doubt, the Officers shall consult with the Duty Inspector or 911 Communications Lieutenant and follow his/her directions.
- C. If the apparently mentally ill person is refused admission at ECMC and the person had not engaged in any conduct for which an offense could be charged, Officers should attempt to release him/her to the care of a relative or other concerned person.

#### 14.10 ATTEMPTED SUICIDES

In all cases of attempted suicide the member of the Department must:

- A. have the person taken to ECMC for medical and psychological attention;
- B. complete the "Request For Examination" (form P-1321);
- C. notify the Homicide Squad immediately.

#### 14.11 REQUIRED FORMS

- A. In all cases in which an apparently mentally ill person is sent to ECMC for examination and/or admission, Form P-1321 "Request for Examination" shall be prepared in accordance with the instructions on the form. An incident number should be obtained in every case.
- B. In preparing the form, great care must be taken to accurately describe the specific conduct that leads the member to believe that the person "is apparently mentally ill and is conducting himself in a manner that is likely to result in serious physical harm to him/herself or others."

DISTRIBUTION: Original to ECMC  
Copy to City Court Booking  
Copy to Command File  
Copy to Homicide Squad (in cases of attempted suicide only)

#### 14.12 ALTERNATE PROCEDURES

Whenever circumstances exist in which the person's conduct is not so serious as to authorize the Officer to act under MHL 9.41 but it is apparent that the person is mentally ill, the Officer has several alternatives.

- A. Officers may recommend that the family seek guidance from their family physician.
- B. Officers may recommend that the family seek a Mental Hygiene Warrant from City Court.
- C. Officers may put the family in contact with Crisis Services at 834-3131.
- D. Officers may notify the Erie County Director of Community Services (Erie County Commissioner of Mental Health, 95 Franklin Street) of the circumstances and the person involved. It is then the Director's responsibility to take the necessary steps to ensure the proper care and treatment of such person (MHL 9.47). If a referral of this nature is made, the Officer shall prepare an Aided Case Report (P-71) citing all the pertinent facts of the case.
- E. Either a Police Officer or the parent, spouse, or child, of a mentally ill person who is conducting himself/herself in a manner likely to result in serious physical harm to himself/herself or others, may notify the Director of Community Services or his/her designee. Either the Director or his/her designee may direct the removal of such person to the appropriate agency.
- F. An apparently mentally ill person may be admitted to a proper facility upon the certification of two examining physicians.
- G. The person may be admitted as an "informal" or voluntary patient.

## **15.0 JUVENILES IN TROUBLE WITH THE LAW**

### **15.1 POLICY**

It is the policy of the Buffalo Police Department to promote the general welfare of juveniles by working closely with the Family Court and the various service agencies, to detect juveniles who are in trouble and to prevent any further anti-social behavior. The applicable Family Court Act and/or NYS Penal Law sections shall control responses involving juveniles.

### **15.2 CATEGORIES OF JUVENILE IN TROUBLE WITH THE LAW**

- A. Petty Offender
- B. Person in Need of Supervision PINS
- C. Juvenile Delinquent
- D. Juvenile Offender

### 15.3 HANDLING JUVENILE PETTY OFFENDERS

When it has been brought to the attention of any member of the Department that a juvenile is alleged to have committed a petty offense, the member shall:

- A. prepare a Juvenile Bureau Referral Form (P-1294), and
- B. release the juvenile to the parent's custody or to the custody of the person responsible for the juvenile's care.

Distribution of P-1294: original to Juvenile/SVU  
copy to District file

### 15.4 HANDLING PERSONS IN NEED OF SUPERVISION (PINS)

#### A. Investigating Complaints

Members investigating complaints of "persons in need of supervision" shall:

- 1. thoroughly investigate the complaint; and,
- 2. if there is a strong indication that the child fits the criteria of a P.I.N.S., the member shall prepare a Juvenile Bureau Referral Form (P-1294) which shall be forwarded to Juvenile/SVU and (s)he shall also refer the parent or guardian to the Family Court P.I.N.S. Diversion unit at 858-8349, and;
- 3. if the juvenile is a runaway, a missing persons report shall be completed and the parent or guardian shall be advised that they should contact the Family Court P.I.N.S. Diversion Unit as soon as possible.

#### B. Taking Into Custody

Juveniles suspected of being a "person in need of supervisions" shall only be taken into custody by a member of the Department if there is a PINS warrant on file.

#### C. Family Court in Session

In those instances in which Family Court is in session when the "person in need of supervision" is taken into custody, the juvenile, along with the PINS warrant shall be taken directly to Family Court.

#### D. Family Court Not in Session

If Family Court is not in session when the "person in need of supervision" is taken into custody, the member shall transport the juvenile, along with the PINS Warrant, to the Juvenile Detention Center at 766 E. Ferry Street. The member should phone (923-4062) the detention facility prior to his/her departure to let the detention facility personnel know of the anticipated arrival of the juvenile.

### 15.5 HANDLING JUVENILE DELINQUENTS

#### A. Power and Authority to Take Into Custody

1. A Police Officer may take a child under the age of sixteen (16) into custody without a warrant under the same conditions that (s)he may arrest any person for a crime under CPL 140 (FCA 305.2).
2. A private person may take a person under the age of sixteen (16) into custody in cases in which (s)he may arrest another for a crime under CPL 140.30.
3. When a juvenile is taken into custody, or is delivered to a Police Officer by a private person, the Officer shall immediately notify the parent or other person legally responsible for the juvenile's care or other person with whom the juvenile is domiciled (FCA 724).

B. Family Court in Session

When Family Court is in session and the child is to be charged as a juvenile delinquent based on conduct which would constitute a crime, the following procedures shall be followed:

1. The member shall contact the juvenile's parent, guardian, or other person legally responsible for the juvenile's care. If the member is unable to contact the juvenile's parent, guardian or other person legally responsible for the juvenile's care, the member shall leave a notice at the juvenile's residence.
2. Juvenile offenders shall be restrained with handcuffs and shall not be transported along with adult prisoners unless they are related to the adult prisoner.
3. Juvenile Offenders shall be taken to City Court Booking, but should not make entry through the same area as an adult prisoner. The Juvenile and arresting officer shall enter City Court Booking via the outside elevator. Upon entry to City Court Booking, every effort shall be made to keep the juvenile from making contact, visual or otherwise, with any adult prisoner. The arresting officer shall provide the City Court Booking with a completed Juvenile Referral Form (P-1294), and CCB will be responsible for preparing the Juvenile Information/Complaint, and a Supporting Deposition and/or 710.30 Notice when necessary. The preparation of all other related paperwork rests with the arresting Officer.
  - a. The Juvenile Information/Complaint is to be subscribed by the complainant or by the Officer, if the Officer is the complainant.
  - b. The Supporting Deposition is to be subscribed by a witness other than the complainant.
  - c. If an adult and a juvenile are co-defendants and the charges against the juvenile are answerable in Family Court, the name of the juvenile shall not appear in the adult's arrest documents that are forwarded to City Court. However, the name of the adult co-defendant must appear on the juvenile's documents in Family Court.
4. If the juvenile has been charged with conduct that would constitute a felony

for which the juvenile must be fingerprinted and photographed (refer to M.O.P. Chapter 3) the arresting Officer shall contact City Court Booking staff and bring the Juvenile to CCB for photographing and fingerprinting once the area is secure and separate from adults.

5. City Court Booking shall be responsible for assembling all required documentation and forwarding it to Family Court.

C. Family Court Is Not In Session

At any time that Family Court is not in session, members shall adhere to the following procedures:

1. Same as M.O.P. Chapter 3 above.
2. If the juvenile is to be released to a parent, guardian or other person legally responsible for his/her care, City Court Booking shall prepare a Family Court Appearance Ticket.
3. If the juvenile is not to be released, the member must arrange to have him/her detained at the Juvenile Detention facility at 766 E. Ferry.

D. Fingerprinting and Photographing Juveniles

Refer to M.O.P. Chapter 3.

E. Custody and Release of Juvenile Delinquents

Whenever practical, juveniles coming into Police custody for engaging in conduct that would constitute an offense; shall be released as soon as possible to their parents, guardian, or other person responsible for their care. Juveniles who are alleged to have engaged in conduct that would constitute a class D Felony or any more serious felony will be taken to the E. Ferry Detention Center. Juveniles may also be referred for detention for the following reasons:

1. When there is reason to believe that the child will abscond unless detained and the member can clearly articulate this reason.
2. When there is reason to believe that the juvenile will commit another serious offense unless detained and the member can clearly articulate this reason.
3. The juvenile is to be held for another jurisdiction (e.g. absconded from an institution, material witness under court order, parole violator, runaway, etc.).
4. When a parent, guardian, or other person responsible for the juvenile's care cannot be found.
5. Juveniles over 16 years of age can only be accepted for detention under the authority of a warrant or court order.
6. A person in need of supervision (PINS) cannot be placed in detention unless a petition has already been filed with the Family Court.

In any circumstance in which a child is to be petitioned as a juvenile delinquent and (s)he is placed in detention, the petition must be forwarded by City Court Booking to the Family Court within seventy-two hours of the juvenile being placed in detention.

F. Family Court Appearance Ticket

A Family Court Appearance Ticket is a written notice issued and signed by a Police Officer, Peace Officer, probation service director or his/her designee, or the operator of a detention facility or his/her designee, directing a child and his/her parent or other person legally responsible for the child's care, to appear without security at a designated probation service on a specified return date, in connection with the child's commission of the crimes specified in the Appearance Ticket.

1. If the crime charged is a designated felony, and the juvenile is not a "juvenile offender" as defined in PL 10.18, the return date shall be no later than seventy-two (72) hours after the date the Appearance Ticket was issued, excluding Saturdays, Sundays and holidays.
2. A "designated felony" is any of those crimes listed in FCA 301.2 (8).
3. If the crime charged is not a "designated felony," the return date shall be no less than seven (7) and no more than fourteen (14) days after the date the Appearance Ticket was issued. Appearance Tickets issued under these circumstances shall be made returnable as follows:
  - a. District A – Monday 0900hrs
  - b. District B – Monday 1400hrs
  - c. District C - Thursday 0900hrs
  - d. District D - Monday 1400hrs
  - e. District E - Thursday 1400hrs
4. The complainant, the juvenile, the juvenile's parent, guardian, or other person responsible for his/her care, and the Adjustment Bureau must all be provided with a copy of the Appearance Ticket. The Adjustment Bureau's copy must be immediately forwarded along with the Juvenile Information/Complaint, and the Supporting Deposition, if any. The Appearance Ticket must be received by the Adjustment Bureau within twenty-four (24) hours of its issuance.

15.6 HANDLING JUVENILE OFFENDERS (AS DEFINED IN THE PENAL LAW)

A. Notification of Parents

After arresting a child who is categorized as a juvenile offender, the arresting Officer shall immediately notify the juvenile's parent, guardian, or other person responsible for the juvenile's care, and inform him/her of the juvenile's arrest and the location where the juvenile is detained.

B. Booking Procedures

1. Juvenile offenders shall be restrained with handcuffs (refer M.O.P. Chapter 3).



2. Juveniles shall not be transported along with adult prisoners unless they are related to the adult prisoner.
3. Juvenile Offenders shall be processed at City Court Lock-up as outlined in Chapter 4.
4. City Court Booking shall prepare the arrest cards.
5. City Court Booking personnel shall contact the Cell Block and make arrangements to have Cell Block personnel fingerprint and photograph the juvenile. No adult prisoner is to be allowed in/out of the cellblock area while a juvenile is being fingerprinted and photographed. The privacy curtain should be extended and remain extended until the juvenile is fingerprinted and photographed and has left the room.
6. City Court Booking shall forward a copy of the completed fingerprint cards to Albany.
7. If a line-up is necessary, it will be handled in the same manner as though the juvenile were an adult defendant.
8. City Court Booking shall assemble all related original arrest documents and place them in a court folder to be delivered to City Court. City Court Booking shall forward copies of the arrest documents to the Erie County Probation Department Intake, 25 Delaware Avenue, Room 502.
9. If City Court is in session, Officers shall transport the juvenile offender to City Court after processing has been completed.
10. If City Court is not in session, the juvenile offender shall be taken to the Detention Intake Office at 766 E. Ferry at 923-4062. Juvenile offenders are not to be held at Headquarters or any stationhouse unless authorized by the New York State Division for Youth.
11. The Juvenile Referral Card (P-1294) shall be completed for juvenile offenders and a copy of all arrest documents shall be forwarded to SVU.

#### 15.7 ARRANGING FOR DETENTION FOR JUVENILES

When it is necessary to place a child in detention and Family Court is not in session, the member shall:

- A. First call the Detention Intake Office at 923-4062 (this number is for Police purposes only and shall not be divulged to the public) located at 766 E. Ferry. Apprise them of the necessity to place the juvenile in detention and follow their guidance. After the call is placed, CCB will fax the Juvenile Information/Complaint to the Detention Center. This information is required before the Juvenile Detention Center will accept custody of the juvenile.
- B. Thoroughly search the juvenile and seize all contraband, evidence, and instrumentalities of the crime. All other personal property shall be delivered to the Intake Office with the juvenile. A receipt shall be obtained for all property handed over to the Intake Office. Female juveniles shall only be searched by female members of the Department.
- C. Transport the child to the Detention Intake Office at 766 E. Ferry.

## 15.8 INTERVIEWING JUVENILES

- A. The questioning of any juvenile who has been taken into custody can only proceed at a facility that has been approved by the chief administrator of the courts as being a suitable place for questioning juveniles, or, in the alternative, at the juvenile's residence, when the juvenile's parent, guardian, or other person responsible for the his/her care has consented. The appropriate juvenile room in Police Headquarters shall be used for interviewing juveniles.
- B. Reasonable efforts must be made to notify a parent, guardian, or other person responsible for the juvenile's care and have them present prior to the commencement of any questioning.
- C. If after reasonable effort has been made, the parent, guardian, or other person responsible for the juvenile's care cannot be located, the member shall document in a supporting deposition the reason for their absence and the efforts expended in attempting to secure their presence.
- D. Prior to beginning the questioning, the juvenile and his/her parent, guardian, or other person responsible for his/her care, must be advised of the Miranda Warnings.
- E. Questioning shall take place for only a reasonable amount of time.
- F. In questioning female juveniles, a female member should be present in most cases and must be present in morals cases or any case of a sensitive nature. No more than two members shall interview a juvenile at one time.

## 15.9 JUVENILES UNDER THE INFLUENCE OF ALCOHOL/DRUGS

- A. Juveniles under the influence of alcohol/drugs who do not require medical attention should be released to their parent, guardian or other person responsible for the juvenile's care, whenever possible.
- B. If the child is completely disoriented, or it is apparent that medical attention is necessary, the child shall be taken to a hospital for treatment and the parent, guardian, or other person responsible for the child's care, immediately notified.
  - 1. Children's Hospital and ECMC will both accept juveniles who are ill as the result of the ingestion of alcohol/drugs.
  - 2. Juveniles who are under the influence of alcohol/drugs and who are violent or uncontrollable shall be taken to ECMC.
- C. The member of the Department shall also report the incident as a case of possible child neglect to the NYS Register of Child Abuse. Child Protective Services is also available for protective custody until a parent, guardian, or other person responsible for the child's care can be located.

D. Form DSS-2221-A must be completed by the member and forwarded to Juvenile/SVU.

#### 15.10 MAINTENANCE OF JUVENILE RECORDS

The maintenance of juvenile records shall be separate from those of adults. The Buffalo Police, Sex Offense Section shall be responsible for the collection, dissemination and retention of juvenile records.

### 16.0 ARREST WARRANTS

#### 16.1 POLICY

It is the policy of the Buffalo Police Department to record and execute arrest warrants in a manner consistent with constitutional requirements and the requirements of the Criminal Procedure Law and to apply for and use arrest warrants as a mechanism to advance the successful prosecution of criminal cases. The Buffalo Police will not record or execute civil warrants. If any member of the Buffalo Police Department is served with a Civil Warrant, that member will immediately forward the warrant to the City of Buffalo Corporation Council.

#### 16.2 REQUESTS FOR ARREST WARRANTS

When there exists reasonable cause to believe that a person has committed an offense and after a diligent search, the person is unable to be located, the Officers shall issue a Warrant/Summons Request Form (P-1369). If the offense is a crime (misdemeanor or felony); a crime/incident report shall also be prepared.

- A. The complainant shall be advised to report to the Warrant Clerk's Office in City Court, Family Court, etc. with the Warrant Request Form (P-1369). The purpose of the Warrant Request Form is to verify that the police have investigated the incident and to provide sufficient facts about the incident upon which a warrant may be prepared. After the warrant/summons has been either approved or denied, the Warrant/Summons Request Form will be forwarded to the Court Liaison Unit where they will be retained. If there is any change in the crime alleged, the Court Liaison Unit shall notify the Detectives of the concerned unit so that any additional reports may be prepared.
- B. A warrant card (P-1369) shall not be issued in the following cases, but the complainant shall instead be referred to the appropriate Detective Unit.
  1. Sexual assault cases (i.e. rape, sodomy, etc.) shall be referred to SVU.
  2. Telephone harassment shall be referred to the Officer handling obscenity cases in the Narcotics/Vice Units' Communication Crime Unit (CCU).
- C. Members shall not apply for a warrant for an assault upon themselves, without first reporting the circumstances, through their Commanding Officer, to the Commissioner and obtaining his/her permission.

### 16.3 ALL WARRANTS TO BE PROCESSED AT CITY COURT BOOKING

- A. All arrest warrants received by, or delivered to, any member of the Department shall be immediately sent to City Court Booking for processing.
- B. City Court Booking shall be the central repository for all arrest warrants. That unit shall be responsible for making the necessary computer entries and deletions, maintaining appropriate records, and distributing copies of warrants to the various units for execution.
- C. The CCB personnel shall ensure that a Warrant/Want Form (CPS-IS-313-2) is attached to each copy of the arrest warrant before they are distributed to the various Departmental units for service. Copies of arrest warrants shall be distinctly marked as being copies and not originals.
- D. City Court Booking is open 24 hours a day, 7 days a week to assist members in obtaining copies of warrants.

### 16.4 DISTRIBUTION OF ARREST WARRANTS

The original arrest warrant shall remain at CCB until it is executed. Copies of arrest warrants shall be distributed for execution by City Court Booking to the various Departmental units in the following manner:

- A. A copy of the warrant shall be forwarded to the District in which the defendant resides or where (s)he may most likely be located.
- B. Copies of warrants for juveniles shall be forwarded to SVU.
- C. Copies of warrants, in which the underlying crime charged is handled by a specialized unit, shall be forwarded to that unit, consistent with the directives of the Chief of Detectives (e.g. narcotics, sex offenses, etc.).
- D. Copies of warrants for defendants who live outside the City or who can be located outside the City, shall be forwarded to the Correspondence Unit.

### 16.5 WARRANT LOG - DISTRICT/UNIT RESPONSIBILITY

- A. Districts and other units shall maintain a log book of all copies of warrants received from City Court Booking. The Warrant Log shall be in a form, and maintained in a manner, approved by the Chief of Detectives.
- B. The Warrant Log shall be used to record copies of all warrants received by the unit and the date and time the warrant was served or otherwise disposed of.
- C. Entries in the Warrant Log Book shall reflect that copies of warrants remaining unserved for in excess of thirty (30) days have been returned to City Court Booking.

- D. Warrant Logs shall be periodically examined by the Commanding Officer of each unit, as well as other supervisory personnel, to ensure that they are being maintained in a manner consistent with Departmental directives.

#### 16.6 WARRANT/WANT FORM

- A. All copies of warrants forwarded by City Court Booking to any other Department unit must have one (1) copy (green) of the warrant/want Form (CPS-IS-313-2) attached. Any warrant received without such form shall be returned to the CCB Unit with an explanatory note.
- B. CCB personnel and Officers to whom a copy of a warrant is assigned for service shall follow the instructions outlined on the reverse side of the Warrant/Want form.
- C. When the fully completed Warrant/Want Form is received by City Court Booking after the warrant has been served, City Court Booking personnel shall expunge the warrant from the CPS computer and place the original warrant in the court folder to be forwarded with other applicable documents.

#### 16.7 RESPONSIBILITY FOR SERVING ARREST WARRANTS

- A. Commanding Officers in charge of the various Departmental units shall be responsible for ensuring the prompt processing and serving of arrest warrants that have been assigned to their respective commands. Department units will receive from CCB, copies of arrest warrants that they are assigned to execute.
- B. Officers to whom warrants are assigned for service shall:
  - 1. Make a diligent effort to serve the warrant as promptly as possible.
  - 2. When necessary, make a thorough investigation of the offense charged. The investigation shall minimally include an interview of the complainants and witnesses, the taking of all required statements, the preservation of evidence, and attempts to recover stolen property.
  - 3. The investigating Officer must complete in duplicate the Warrant Investigation Report (form P-57) indicating the date, time and place, and person(s) interviewed, in their attempt to apprehend the defendant.
  - 4. If the defendant cannot be readily located, the investigating Officer shall check the City Court Lock-up and the Erie County Correction Facility to see if the subject is incarcerated in either institution.
  - 5. If the defendant cannot be readily located, and the warrant is for a felony, a Class "A" misdemeanor, or for parole violation, the investigating Officer shall contact the particular Social Service Office in writing, for information as to the defendant's current address

#### C. Indictment Warrants:

Officers attempting to serve Indictment Warrants shall, in addition to section "B"

above, also:

1. contact the United States Postal Authorities for any possible change in address;
  2. contact the Auto Registration Unit to determine if the defendant has a NYS driver's license or registration which may indicate a new address;
  3. make at least five (5) attempts to apprehend the defendant;
  4. record all attempts to determine the defendant's whereabouts and all attempts to apprehend the subject, on the Warrant Investigation Report (P-57).
- D. Arrest warrants assigned to individual Officers for service shall not be kept by the Officer but shall be retained in a location in the unit where they are accessible to other Officers.

#### 16.8 POST ARREST PROCEDURES - LOCAL CRIMINAL COURT WARRANTS

After a defendant has been placed under arrest pursuant to an arrest warrant, all the normal booking procedures are to be followed. In addition, the following procedures must also be adhered to.

- A. Before being taken to Court, the defendant must be fingerprinted and photographed. If fingerprinting and photographing are required by the Criminal Procedure Law. Refer M.O.P. Chapter 3.
- B. The City Court Booking shall be responsible for removing the executed warrant from the C.P.S. computer immediately after service.
- C. In addition, CCB personnel shall check the CCB "Daily Record of Arrests" to ensure that in all warrant arrests, the warrants have been removed from the C.P.S. computer.

#### 16.9 POST ARREST PROCEDURES - SUPERIOR COURT WARRANTS

A. A Superior Court Warrant is a warrant from a County Court, State Supreme Court, Violation of Probation Warrants, Indictment Warrants, and Family Court Warrants. Except for Family Court Warrants, defendants booked on all other Superior Court warrants shall be booked at the City Court Lock-up in accordance with existing regulations and booking procedures.

##### B. Family Court Warrants

Adults arrested on Family Court warrants shall be booked at City Court Booking in accordance with existing regulations and booking procedures.

##### C. Pending City Court Charges in Addition to the Superior Court Warrant.

1. If a person is arrested on a Superior Court warrant and there are currently City Court charges on which the prisoner needs to be arraigned, (s)he shall first be

taken to City Court in accordance with existing regulations and booking procedures.

2. The appropriate copy of the "Apprehension for Outside Agency" form shall be attached to the Court papers that accompany the prisoner to City Court.

#### 16.10 UNSERVED WARRANTS

- A. Departmental units which are unable to serve a warrant within thirty (30) days after it was first received, shall on the thirty-first (31) day, complete the Warrant/Want form according to the instructions on its reverse side, and then return the warrant along with the completed Warrant/Want form to City Court Booking.
- B. Commanding Officers shall be responsible for ensuring that members of their command have made a diligent attempt to serve the warrant before it is returned to City Court Booking and that all attempts to locate the defendant have been properly entered on the Warrant/Want form.

#### 16.11 TRANSFER OF WARRANTS

- A. If information is received by the Officer assigned to serve the warrant that the defendant can be located in another command, the warrant and the executed green copy of the Warrant/Want form shall be returned to City Court Booking. CCB shall then redirect the warrant to the proper Command for service.
- B. If the defendant can be found outside the City but within Erie County or in any adjoining county, City Court Booking shall send a copy of the warrant to the Correspondence Unit to be forwarded to the Police Agency in the jurisdiction in which the defendant can be located.
- C. When a copy of a warrant for a felony charge is returned unserved to the City Court Booking, the warrant shall be entered on the CPS computer on the state-wide warrant systems.

#### 16.12 WARRANT ARRESTS FOR OUTSIDE AGENCIES

- A. In those instances in which a person is taken into custody by a member of the Buffalo Police Department pursuant to a warrant issued by a local criminal court other than Buffalo City Court, the arresting Officer shall:
  1. verify that the warrant is still active and that the originating police agency will retrieve the prisoner;
  2. transport the prisoner to the City Court Lock-up for processing;
  3. a notation will be made in the Apprehension For Outside Agencies arrest blotter that the prisoner is being held for a particular outside police agency;
- B. Arrests on non-felony warrants issued outside Erie County or any adjoining county.

1. If a member of the Department is delegated by another agency to arrest a defendant pursuant to a non-felony warrant that was issued by a local criminal court outside of Erie County or any adjoining county, the Officer may hold the defendant for up to two (2) hours while waiting to transfer the defendant to the delegating agency.
2. If the defendant is in default of bail on the original warrant, (s)he can be held for longer than two (2) hours but (s)he must be turned over to the delegating police agency without unnecessary delay.
3. If the transfer is not made within two hours and the defendant is not in default of bail, the defendant must be informed that (s)he has the right to appear in Buffalo City Court for the purpose of being released on his/her own recognizance or having bail fixed.
4. If the defendant does not want to appear in Buffalo City Court, (s)he must "make, sign and deliver" to the Officer, a written statement to that effect. (Such statement is often contained on the reverse of the warrant form). In this case the defendant shall be turned over to the delegating police agency without unnecessary delay.
5. If the defendant does want to appear in Buffalo City Court or refuses to furnish the required statement, (s)he shall be taken to Court without unnecessary delay. The arresting Officer must submit to the Court a written Supporting Deposition reciting material facts concerning the issuance of the warrant, the offense involved, and all other essential matters relating to the arrest.

#### 16.13 ARRESTS ON CITY WARRANTS BY OUTSIDE AGENCIES

- A. When another Police Agency arrests a person for any offense pursuant to a City of Buffalo warrant and the arrest is outside the City limits but within Erie County or an adjoining county, the 911 Communications Lieutenant or the Duty Inspector shall arrange for the prisoner's immediate return by Buffalo Police personnel.
- B. When another Police Agency arrests a person for a non-felony offense pursuant to a City of Buffalo warrant and the arrest is made outside Erie County or any adjoining county, the 911 Communications Lieutenant or the Duty Inspector shall arrange for the prisoner's immediate return but only if travel time to the destination of arrest does not exceed two (2) hours.
- C. When a person is arrested on a City of Buffalo warrant by another Police Agency and the warrant is for a felony, and the arrest is made outside Erie County or any adjoining county, but within New York State, the 911 Communications Lieutenant or the Duty Inspector shall confer with the Chief of Detectives.
- D. When a person is taken into custody outside of New York State on an arrest warrant for a felony that occurred within the City of Buffalo, extradition may be required (refer to M.O.P. Chapter 17).



16.14 EXTRADITION

Refer to M.O.P. Chapter 17.

**17.0 APPEARANCE TICKETS**

17.1 POLICY

It is the policy of the Buffalo Police Department to release all eligible prisoners on Appearance Tickets unless the prisoner has been charged with a domestic violence related offense or there are other extenuating circumstances that preclude such release.

17.2 APPEARANCE TICKET

Applicable sections of the NYS CPL, Penal Law, or Family Court Act as they are in effect at any given time shall govern the use and issuance of Appearance Tickets.

Appearance Tickets shall not be issued when circumstances indicate that the issuance of an Appearance Ticket would be inappropriate (e.g.. where the safety of any person would be jeopardized by the defendant's immediate release, or it is apparent that the defendant will continue to engage in conduct of the same nature for which (s)he was originally arrested, etc.),

Appearance Tickets shall not be issued where the arrested person appears to be under the influence of alcohol, narcotics or other drugs, to the degree that (s)he may endanger himself or others.

When arrests are made for offenses involving domestic violence, Appearance Tickets may be issued only if there are extenuating circumstances and the Duty Inspector or a higher rank authorizes the defendant's release.

17.3 ISSUING APPEARANCE TICKETS AT CITY COURT LOCK-UP/CITY COURT BOOKING

A. The defendant's identity must be positively established. Acceptable forms of identification are:

1. NYS driver's license/non-driver's identification
2. Social Service Card
3. Military ID Card
4. Buffalo Public School or Local College ID Card for the current year
5. US Passport
6. Buffalo Police Mug
7. For defendants eighteen (18) years old or younger, a birth certificate with seal, if presented by a parent or guardian who himself/herself has identification of a kind specified in 1-6 above.

B. There cannot exist active arrest warrants for the defendant.

- C. A copy of the Appearance Ticket (white copy) shall be given to the defendant. The person issuing the Appearance Ticket shall explain to the defendant the nature and purpose of the Appearance Ticket, the day, date, and time the defendant is to appear in Court, and have the defendant sign the Appearance Ticket where indicated. The member shall also warn him/her that failure to appear as required may result in the issuance of a warrant for the defendant's arrest.
- D. In all cases in which an Appearance Ticket is issued, an Arrest Data Report (form P-163), and an Information/Complaint (form P-60) must be completed by the arresting Officer.

## **18.0 ADJUDICATION SUMMONS**

### **18.1 POLICY**

It is the policy of the Buffalo Police Department to use adjudication summons to enforce specific City Ordinances.

### **18.2 DISTRIBUTION OF ADJUDICATION SUMMONS BOOKS**

- A. Adjudication summons books shall be distributed by the Inspector of Administration and Communication to the various Department units as needed.
- B. Adjudication Summons Journals (P-186A) shall be distributed by the office of the Inspector of Administration and Communication to the various Department units to record all Adjudication Summons Books issued to that unit.

### **18.3 OBTAINING ADJUDICATION SUMMONS BOOKS**

The District Commanding Officers will determine the number of Adjudication Books that are necessary for use in their respective commands.

All Adjudication Summons Books shall be charged to the Commanding Officer of the unit receiving them and shall be signed for by an authorized member of that command.

The following procedure will be used when replacement books are required:

1. The Commanding Officer will cause a listing of completed Adjudication Summons Books to be prepared in duplicate on an Intra-Departmental Memorandum. It shall show the beginning and ending number of each completed book.
  - Distribution: Original to Inspector of Administration and Communication
  - Copy to Command file
2. The member receiving additional Adjudication Summons Books shall sign a receipt for the replacement books received, and then deliver the books to his/her Commanding Officer.

#### 18.4 UNITS TO MAINTAIN A RECORD OF ADJUDICATION SUMMONS BOOKS

- A. When new Adjudication Summons Books are received at a Department unit, the Commanding Officer shall ensure that the books are checked for deficiencies. Each book shall be listed by date received and book number, in the journal provided for that purpose.
- B. If any books are discovered to be deficient because of missing summons, misprints, or for any other reason, the deficiencies shall be noted on an Intra-Departmental Memorandum, and the book, together with the Intra-Departmental Memorandum shall be returned to the office of the Deputy Commissioner of Operations.
- C. When a book is issued to a member of his/her command, the officer's name, the date of issuance, and the book number, shall be recorded in the Adjudication Summons Journal (P-186A).

#### 18.5 CARE OF ADJUDICATION SUMMONS BOOKS BY INDIVIDUAL MEMBERS

Members to whom Adjudication Summons Books are issued shall be strictly responsible for their care and use.

Upon receipt of an Adjudication Summons Book, the member shall carefully check it for completeness. If any deficiencies are found, they shall return the book to their Commanding Officer so it can be returned to the office of the Inspector of Administration and Communication.

Adjudication Summons Books shall be maintained in a secure place when not in use and they shall not be taken home or left in any private vehicles.

Members having Adjudication Summons Books shall use care so that the book does not become mutilated, lost, etc.

#### 18.6 ISSUING ADJUDICATION SUMMONSES TO VIOLATORS

A police officer may issue any Adjudication Summons upon having reasonable cause to believe that a violation of a City Ordinance as cited in the Adjudication Summons Book has been committed. **Juveniles cannot be issued an Adjudication Summons.**

The officer has the option to arrest **or** issue a summons but cannot do both.

#### 18.7 PREPARING THE ADJUDICATION SUMMONS

The Adjudication Summons must be filled out completely and accurately or the underlying charges will be dismissed.

If the violator is to be cited for multiple violations, a separate summons shall be prepared for each violation.

A ball-point pen must be used.

All entries must be printed except the Officer's signature.

The violator's name and address must be entered on the Adjudication Summons. Adjudication Summonses must be addressed to an individual unless the violation is for an abandoned or junk vehicle on public or private property. In such case the VIN or license plate number shall be entered. The location where the violation occurred must be entered on the Adjudication Summons.

The Adjudication Summons must include the day, date and time of the violation. The issuing Officer must indicate the manner in which the Adjudication Summons was served. The Adjudication Summons may be personally served on the violator. If the violator is not present and it is left with someone else, the name of the person with whom it was left must be indicated. If the Adjudication Summons is left on a vehicle, the date of service must be indicated and the word "vehicle" shall be substituted for the word "door" on the Adjudication Summons.

The offense code, fine class and the chapter and section violated must be noted. Only those violations noted on the back of the Adjudication Summons Book can be charged. All other City Ordinance violations must be prosecuted in City Court.

The factual part of the Adjudication Summons is a Supporting Deposition. Information contained in this part must be factual and specific. If the issuing Officer did not personally observe the violation, the Officer must state his/her source of knowledge. Additional information can be included on an Intra-Departmental Memorandum and forwarded with the Adjudication Summons to the Adjudication Bureau.

The issuing Officer must sign the Adjudication Summons. The issuing Officer must include his/her employee number and unit to which (s)he is assigned.

#### 18.8 VOIDING AN ADJUDICATION SUMMONS

Whenever an Adjudication Summons must be voided, the member voiding the Adjudication Summons shall complete a Bureau of Administrative Adjudication Void Summons Request. The voided Adjudication Summons shall be attached to the completed form and forwarded to the Administrative Adjudication Bureau.

At the back of the Adjudication Summons Book there is a form to be used to record voided Adjudication Summonses. This is for personal reference only and does not relieve the Officer of the responsibility for preparing the Bureau of Administrative Adjudication Void Summons Request.

#### 18.9 ADJUDICATION SUMMONSES - WHERE RETURNABLE

Adjudication Summonses are only to be made returnable to the Administrative Adjudication Bureau, Room 215, City Hall.

Only those specific City Ordinance violations listed in the Adjudication Summons Book

can be cited for Adjudication. All other City Ordinance violations must be prosecuted through City Court.

18.10 SWORN MEMBERS - APPEARANCE AT THE ADMINISTRATIVE ADJUDICATION BUREAU

Sworn members of the Department shall not appear in court or at any Administrative Adjudication proceeding in connection with an Adjudication Summons that the sworn member may have issued without first having the approval of the Court Liaison Unit.

18.11 PROCESSING ADJUDICATION SUMMONSES – COMMAND/UNIT RESPONSIBILITIES

Commanding Officers are to insure that all Adjudication summons are reviewed for accuracy. White and yellow copies, along with a memo listing the summons numerically, are to be forwarded daily to the Operations Office, Room 212, Headquarters.

The Operations Office will document the summons for statistical data and forward to the Adjudication Bureau, Room 215, City Hall where computer entry will be made.