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1. PURPOSE

The purpose of this policy is to assure compliance with all current statutory provisions for effecting arrests and to establish guidelines for managing arrested persons.

2. PERSONS AFFECTED

All sworn personnel.

3. POLICY

In making arrests, it shall be the policy of the Hawai'i Police Department that members shall strictly observe all laws, policies and procedures prescribed by the department, the United States Constitution, Hawai'i Revised Statutes and judicial rulings.

4. RESPONSIBILITIES

- 4.1. All sworn personnel shall be responsible for knowing the current statutes governing arrests and the rights and responsibilities associated with making the arrest.
- 4.2. All sworn personnel shall be responsible for knowing the department policy governing arrests and the proper use of discretion in other instances.
- 4.3. All commanding officers shall continually monitor and advise on the proper and judicious application of arrest and the use of force in arrest situations.

5. PROCEDURES

5.1. Use of Discretion

- 5.1.1. Although sworn police officers must enforce the law, an arrest may not be appropriate in all circumstances. Officers may exercise discretion in appropriate circumstances unless it is required by General Order, department policy, law or statute, or by the lawful order of a superior officer.
- 5.1.2. Officers are accountable for their decisions in exercising

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discretion.

- 5.1.3. An officer may decide to advise, warn, cite, or defuse a situation without making an arrest.
- 5.1.4. Discretion is acceptable in situations where the offense poses no immediate threat to public safety.
- 5.1.5. Improper use of discretion may be considered neglect of general responsibilities and subject to disciplinary action.

5.2. Arrest Statutes

- 5.2.1. Section 803-1, HRS, Arrest, By Warrant – No arrest of any person shall be made without first obtaining a warrant or other process therefore from some magistrate, except in the case provided in Chapter 803, HRS, Arrests, Search Warrant or otherwise provided by law.
- 5.2.2. Section 803-2, HRS, By Oral Order – Where a breach of the peace or other offense has been committed, and the offender endeavors to escape, he may be arrested by virtue of an oral order of any magistrate, or without the order, if no magistrate is present.
- 5.2.3. Section 803-3, By Person Present – Anyone in the act of committing a crime may be arrested by any person present, without a warrant.
- 5.2.4. Section 803-4, HRS, On Suspicion – Whenever a crime is committed, and the offenders are unknown, and any person is found near the place where the crime was committed, either endeavoring to conceal oneself, or endeavoring to escape, or under such other circumstances as to justify a reasonable suspicion of his being the offender, the person may be arrested without a warrant.
- 5.2.5. Section 803-5, HRS, By Police Officer Without Warrant
 - a. A police officer or other officer of justice may, without warrant, arrest and detain for examination such persons as may be found under such circumstances as to justify probable cause to believe that they have committed any

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offense, whether in the officer's presence or otherwise.

Offense includes any violations, petty misdemeanors, misdemeanors or felonies.

- b. For purposes of this section, a police officer has probable cause to make an arrest when the facts and circumstances within the officer's knowledge and of which the officer has reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that a crime has been or is being committed.

5.2.6. Section 803-6, HRS, Arrest, How Made – At or before the time of making an arrest, the person shall declare that he is an officer of justice, if such is the case. If he has a warrant, he should show it; or if he makes the arrest without warrant in any of the cases in which it is authorized by law, he should give the party arrested clearly to understand for what cause he undertakes to make the arrest, and shall require him to submit and be taken to the police station or judge. This done, the arrest is complete.

5.2.7. Section 803-7, HRS, Use of Force – In all cases where the person refuses to submit or attempts to escape, such degree of force may be used as is necessary to compel him to submission.

5.2.8. Section 803-11, HRS, Entering House to Arrest – Whenever it is necessary to enter a house to arrest an offender, and entrance is refused, the officer or person making the arrest may force an entrance by breaking doors or other barriers. But before breaking any door, the officer or person shall first demand entrance in a loud voice, and state that the officer or person is the bearer of a warrant of arrest; or if it is the case in which arrest is lawful without warrant, the officer or person shall substantially state that information in an audible voice.

5.3. Releasing an Arrested Person

- 5.3.1. In cases where a person is under arrest and it's discovered that the person did not commit an offense, such person shall be released

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immediately from police custody without being subjected to the booking process.

5.3.2. Before releasing the person, the releasing officer shall obtain;

- a. Person's name;
- b. Address;
- c. Phone number;
- d. Date of birth;
- e. Occupation;
- f. Place of employment.

5.3.3. The above information, along with the circumstances surrounding the detention and release of the person, shall be included in the appropriate crime report.

- a. A person released after determining that there was actually no crime committed requires the releasing officer to submit information through the Records Management System, RMS via a crime report number and incident.
- b. **The case may be closed as unfounded, and a copy of the report shall be forwarded to the division or district commander for review via the RMS workflow.**
- c. **An OBTS, narrative report, and memorandum containing specific information as to the circumstances is submitted.**
- d. **Report writing guidelines under P.M. 6.3 Report Writing Procedures will apply.**

5.4. Notification of Arrest

5.4.1. Prior to or at the time of affecting an arrest, police officers shall identify themselves and clearly state the cause for such an arrest.

5.4.2. As soon as practical after an arrested person has been taken into custody, the arresting officer or any other officer (s) having custody of

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the person, shall make every reasonable effort to inform the arrested person of the offense or offenses in which the person was arrested. If the exact offenses (s) are not known, then the reason for the arrest such as “investigation of a shooting, assault or other incident” shall be provided.

5.5. Use of Force

5.5.1. Members shall be cautious in the arrest and detention of prisoners and shall take all necessary precautions to prevent escape, injury to themselves or any other person, or damage to property.

5.5.2. No person shall be subjected to more restraint than is necessary and proper for his arrest and detention.

5.5.3. When physical force is used, information regarding the use of force will be included in the arrest report. All visible injuries and injuries complained of by the arrestee shall be described and documented.

- a. The names, addresses and statements of unbiased witnesses shall be documented and made part of the report.
- b. All officers present at the scene shall submit a detailed report.
- c. When injury is involved, the arrestee shall be given medical attention as soon as possible following the arrest unless the arrestee refuses. A medical report shall be requested and made part of the report.

5.6. Security Control



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- c. Restraints shall be secured but not to the extent to cause the arrested person injury, or unreasonable discomfort.
- d. Additional issued or approved restraining devices may be utilized if a prisoner violently resists arrest or appears to be seriously mentally disturbed.
- e. Trained personnel will sanction only department-issued or department-owned restraining devices for use.

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- i. Restraining devices which are contaminated with blood or other bodily fluids shall be decontaminated as soon as possible and in accordance with the procedures outlined in the department's Exposure Control Plan. No persons shall be restrained with contaminated restraining devices.
- j. An arrested person shall be treated humanely.
- k. Juvenile offenders may be handcuffed if the offense committed is serious or when circumstances dictate.
- l. It shall be the responsibility of the arresting officer or the officer having custody and/or control to provide for the security and safety of the arrested person.
- m. An officer shall not handcuff oneself to an arrested person.

5.6.4. When more than one person is arrested at the same time, the security control of the persons shall be maintained by one or more officers as necessary. The persons shall be handcuffed in the above-prescribed manner.

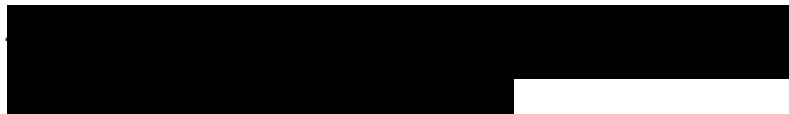
5.6.5. Transportation

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5.7 Booking

5.7.1. Officer-In-Charge (OIC) Responsibilities

- a. For the purpose of this directive, the Officer-In-Charge (OIC) of a patrol district or investigative section shall be an on-duty captain, lieutenant, sergeant, lead field officer or any other officer so designated.
- b. The OIC in each respective patrol district or investigative section shall be responsible for the proper handling of arrested persons.
- c. The OIC shall review the circumstances of each arrest before any person is booked, to determine whether there exist sufficient grounds or facts to justify the arrest.
- d. If it is determined that there are insufficient grounds to justify the arrest, the arrestee shall be released immediately. The word “discharged” shall be inscribed where applicable. In this case, the arrestee should not be detained for the purpose of fingerprinting and photographing.
- e. Prior to the confinement of an arrested person to any police cell block or detention cell, it shall be the responsibility of the OIC to determine if such person is suffering from an ailment which requires periodic medication. The person in charge of the cell block or holding cell shall be informed of medication needs and instructed to permit each medication.
- f. No booking shall be made for an arrest by warrant without first establishing the identity of the person in custody as being the actual person named and accused in the warrant. In all cases when the person in custody or awaiting service of warrant or arrest denies being the person so named and whenever there is not verified identification after all available

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means of same has been exhausted, the person in custody is to be discharged. In the event no arrest was yet made and the person was awaiting service, the warrant is not to be executed. Circumstances explaining the lack of execution of the warrant are to be noted on the Service Control form and attached to the warrant.

- g. The OIC shall review the circumstances of any person prior to the person being released from police custody to determine whether there exist sufficient grounds or facts to justify release.

5.7.2. Booking Procedures

- a. The arresting officer shall review the facts of each case with the OIC before the officer or any other officer completes the required arrest report forms.
- b. Adult and juvenile arrests shall be logged in the respective booking ledgers.
- c. Arrests resulting from traffic accidents shall be assigned report numbers other than the motor vehicle accident report number.
- d. Whenever an arrested person has apparent injuries or complains of injury, whether as a direct result of an arrest or otherwise, the booking officer shall offer and seek medical attention for the person and shall document such actions on the appropriate report forms and supplementary reports.

5.7.3. Fingerprinting and Photographing of Arrested Persons

- a. All adult persons arrested, booked and charged shall be fingerprinted and photographed. For guidelines on fingerprinting and photographing of arrested juveniles, refer to departmental directives or procedures for handling juveniles.

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- b. Whenever an arrestee resists being fingerprinted or photographed or cannot be fingerprinted or photographed for some other reason, it should be noted on the appropriate arrest report forms that the arrestee was not processed accordingly to enable a judge to order the arrestee to return for such booking processes at a later date.

5.7.4. Computer Checks

- a. The OIC shall ensure that computer checks are conducted on any arrested person for outstanding warrants.
- b. A check of NCIC files shall be conducted on all arrested persons.

5.7.5. Property Receipt

- a. The Prisoner Personal Property Receipt shall be completed by the officer conducting an inventory of an arrested person's property. The receipt shall be countersigned by an officer who has witnessed the inventory search and also signed by the arrested person.
- b. The original of the receipt shall be attached to the arrestee's property and a copy shall be attached to the original report.
- c. Property of arrestees who are confined at the Hawai'i Community Correctional Center (HCCC) shall be turned over to the correctional officer receiving said persons after the officer properly signs the original of the Prisoner Personal Property Receipt. The original shall then be attached to the original report and forwarded to the Records Division.

5.7.6. Rights of Arrested Persons

- a. Pursuant to the provisions of Section 803-9, Hawai'i Revised Statutes, officers shall not:

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- Deny an arrested person the right of seeing at reasonable intervals and for a reasonable time at the place of his detention, counsel or a member of his family.
- Unreasonably refuse or fail to make a reasonable effort, whenever an arrested person so requests and prepays the cost of the message, to telephone, send a cable, or wireless message through a police officer or anyone else, to the counsel or member of his family.
- Deny to counsel (whether retained by the arrested person or a member of his family) or to a member of the arrested person's family, the right to see or otherwise communicate with the arrested person at the place of his detention (1) at any time for a reasonable period for the first time after the arrest and (2) thereafter at reasonable intervals and for a reasonable time.
- Interrogate the person before he has had a fair opportunity to see and consult with the attorney or member of his family, after the arrested person has requested to see an attorney or member of his family.
- Continue to detain an arrested person when there are no longer circumstances justifying probable cause to believe that the person has committed any offense.
- Fail within forty-eight hours of the arrest of a person on suspicion of having committed a crime either to release or to charge the arrested person with a crime and take him before a qualified magistrate for examination.

b. Telephone Calls – Interviews – Visitations

- An arrested person shall be allowed to use the telephone for the purpose of making a call to, or responding to a call from a member of his family, counsel or bondsman. In all instances, an officer shall remain present during the conversation.

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- An arrested person shall be allowed to see or communicate with a member of his immediate family, counsel, or bondsman with the approval of the OIC.
- An arrested person having no immediate family shall be permitted to call or communicate with a personal friend or other person who may act in his behalf.

5.8. Custodial Interrogations – Prior to conducting an interview or interrogation of any arrested person or persons, the interrogating officer shall advise such persons of their constitutional rights by utilizing HPD Advice of Rights form or HPD Juvenile Advice of Rights form. Unless such person clearly consents to an interview and waives their rights, no interrogation shall be conducted.

5.9. Non-Felony Charging Decisions – Any persons arrested for violations, petty misdemeanor or misdemeanor offenses may be charged by the arresting officer.

5.10. Felony Charging Decisions

5.10.1. The Prosecutor's Office shall be contacted for charging decisions involving the arrest of any persons for felony offenses.

5.10.2. The name of the deputy prosecutor contacted and the date and time of contact shall be recorded in the appropriate place on the OBTS Arrest Report form.

5.10.3. Bail amounts for felony offenses shall be set by the Prosecutor's Office.

5.11. Release of Arrested Persons Pending Investigation (RPI)

5.11.1. Any arrested person may be released pending further investigation of the offenses involved.

5.11.2. The OIC shall approve the release of any arrested person released

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pending further investigation of offenses.

5.12. Bail

- 5.12.1. Section 804-5, Hawai'i Revised Statutes, provides that persons under arrest may be admitted to bail by the Police Chief or any person named by him, in cases where the punishment for the offense charged may not exceed two years imprisonment, with or without fine.
- 5.12.2. Where bails are set by a judge for felonies, the name of such judge shall be noted on the arrest report by the OIC.
- 5.12.3. Bail shall be established after the arrested person has been brought to the station and booked. Under no circumstances shall arresting officers collect bail at the scene of arrest, or elsewhere, before or without taking the prisoner to the nearest police station.
- 5.12.4. No person under arrest for, or at least the request of, federal authorities shall be released in the custody of attorneys or friends except upon written instructions or authority of a United States Commissioner, or a judge of the United States District Court.
- 5.12.5. Only cash, cashier's or certified checks and postal money orders made out to the District Court as payee shall be accepted as bail or bond for the release of any defendant; provided, however, a traveler's check, except those issued in foreign countries, may be honored when the signature, affixed on it in the presence of an officer, has been verified to be similar to that which is thereon, and a satisfactory degree of determination of the identity of the person issuing the check has been completed. No checks, except as indicated herein, shall be honored. Acceptable checks shall not be in excess of the amount of bail or bond.
- 5.12.6. A prisoner eligible for bail who desires bondsman service shall be referred to a complete list of individuals or firms in such business from which he can make a selection.
- 5.12.7. It shall be the responsibility of the OIC to ascertain when court in that district will convene and to note the appropriate date on all

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bail receipts.

5.12.8. It shall be the duty of the Commander of the Records Division or his designee to see that bail so posted is transferred to the proper district and a receipt is obtained.

5.12.9. Any person under indictment by either the Federal, State or County government, or who is to be surrendered by a bondsman shall be accepted at any district station. If the person has already made an appearance in court, he shall be surrendered to the administrator of HCCC. This directive does not authorize the acceptance of a person under bond awaiting trial for a violation of a federal statute which is not within our jurisdiction.

5.12.10. When a person released on bail is surrendered by his surety, the officer accepting said person shall require the surety to furnish the police department with a notice of surrender. The notice shall be transmitted and processed according to prescribed practices and procedures.

5.12.11. Any request from a Federal Law Enforcement agency for assistance in detaining a person pending a hearing or trial shall be honored.

5.13. Release of Arrested Persons On Their Own Recognizance (ROR)

5.13.1. When a person is arrested for any violation, petty misdemeanor or misdemeanor offense and is unable to post the required bail, the person may be released on his own recognizance (ROR), provided that he is a local resident and is gainfully employed.

5.13.2. Authorization to release any arrested person on his own recognizance must be received from an OIC prior to such a release.

5.13.3. The person shall be scheduled to appear for arraignment at the next court date following the arrest.

5.14. Detention of Prisoners

5.14.1. All prisoners shall be transported to HCCC for confinement after a mittimus or temporary mittimus has been issued by the Court.

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- 5.14.2. The detention cells in any district shall be used only as temporary lockup for the confinement of persons pending investigation, unless otherwise directed by the Police Chief.